INDIRECT TAX

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GOODS AND SERVICES TAX (GST)

PART - 1

TOPIC REFERENCER

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- *Credit and Debit Notes*

TAX INVOICE IN RESPECT OF GOODS

1. What do you mean by invoice and what is the importance of invoice.

Ans- An invoice, bill or tab is a commercial document issued by a seller to a buyer, relating to a sale transaction and indicating the products, quantities, and agreed prices for products or services the seller had provided the buyer. Tax invoice acts as a document evidencing the payment of the value of the goods or services or both as also the tax portion in the same. In certain cases, an invoice serves as a demand for payment and becomes a document of title when paid in full. Under GST, a tax invoice is an important document. It not only evidences supply of goods or services, but is also an essential document for the recipient to avail Input Tax Credit (ITC). A registered person cannot avail input tax credit unless he is in possession of a tax invoice or a debit note.

Under the GST regime, an "invoice" or "tax invoice" means the tax invoice referred to in Section 31 of the CGST Act, 2017. This Section mandates the issuance of an invoice or a bill of supply for every supply of goods or services. Tax invoice is not only to be issued by a person supplying goods or services but also by any registered person buying goods or services from an unregistered person. The type of invoice to be issued depends upon the category of registered person making the supply.

There is no format prescribed for the Tax Invoice. Only certain fields have been prescribed as mandatory fields. Further, invoices may be issued manually or electronically. Issuance of electronic invoices is not mandatory.

2. Explain the provisions relating to tax invoice in respect of supplier of goods.

Ans-tax invoice [Section 31]: The provisions relationg to tax invoice are as under-

(1) Supplier of goods to issue a tax **invoice** [Section 31(1)] : A registered person supplying taxable goods shall issue a tax invoice showing –

- ✓ the description,
- ✓ quantity and value of goods,
- ✓ the tax charged thereon, and
- ✓ such other particulars as may be prescribed

(2) Time limit for issuance of invoice in case of supplier of goods [Section 31(1)] : A registered person supplying taxable goods shall issue invoice before or at the time of,—

a) removal of goods for supply to the recipient, where the supply involves movement of goods; or

b) delivery of goods or making available thereof to the recipient, in any other case.

Example: XYZ traders, Rajasthan supplies goods to PQR Agencies, Delhi. The goods were removed from its godown in Rajasthan on 25th October. XYZ traders needs to issue a tax invoice on or before 25th October.

Tax invoice to be issued in prescribed time in respect of notified goods : The Government may, on the recommendations of the Council, by notification, specify the categories of goods or supplies in respect of which a tax invoice shall be issued, within such time and in such manner as may be prescribed.

"Removal" in relation to goods, means—

(a) despatch of the goods for delivery by the supplier thereof or by any other person acting on behalf of such supplier; or

(b) collection of the goods by the recipient thereof or by any other person acting on behalf of such recipient. [Section 2(96)]

(3) "Tax invoice" shall include any revised invoice issued by the supplier in respect of a supply made earlier.

3. What do you mean by Continuous supply of goods. Explain the provisions relating to issuance of invoice in case of continuous supply of goods.

Ans : The relevant provisions are discussed as under-

(1) "Continuous supply of goods" means a supply of goods—

- ✓ which is provided, or agreed to be provided, continuously or on recurrent basis, under a contract, whether or not by means of a wire, cable, pipeline or other conduit, and for which the supplier invoices the recipient on a regular or periodic basis,
- ✓ and includes supply of such goods as the Government may, subject to such conditions, as it may, by notification, specify. [Section 2(32)]

(2) Issuance of invoice in case of continuous supply of goods : In case of continuous supply 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, as the case may be, each such payment is received

4. Explain the provisions relating to issuance of invoice in respect of goods being sent or taken on approval for sale or return basis.

Ans: Goods sent on approval – Invoice requirements [Section 31(7)]: Where the goods being sent or taken on approval for sale or return are removed before the supply takes place, the invoice shall be issued –

- ✓ before or at the time of supply, or
- ✓ 6 months from the date of removal,

whichever is earlier.

The goods which are taken for supply on approval basis can be moved from the place of business of the registered supplier to another place within the same State or to a place outside the State on a delivery challan along with the e-way bill wherever applicable. The invoice may be issued at the time of delivery of goods. For this purpose, the person carrying the goods for such supply can carry the invoice book with him so that he can issue the invoice in accordance within the time stipulated above, once the supply is fructified.

TAX INVOICE IN RESPECT OF SERVICES

5. Explain the provisions relating to tax invoice in respect of supplier of services

Ans- Tax invoice [section 31]: the provisions relating to tax invoice are as under

(1) Supplier of taxable services to issue –tax invoice within prescribed time [Section 31(2)]

- ✓ A registered person supplying taxable services shall,—
  - before, or
  - after the provision of service but within a prescribed period,
- ✓ issue a tax invoice, showing—
  - the description,
  - value,
  - tax charged thereon, and
  - such other particulars as may be prescribed.

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

6. Explain the provisions relating to time limit for issuing tax invoice,

Ans- Time limit for issuing tax invoice [Rule 47]:

1) Taxable supply of services – Time limit - 30 days from the date of supply of service : The invoice in the case of the taxable supply of services shall be issued within a period of 30 days from the date of the supply of service.

   Insurers, banks etc. – Time limit - 45 days : Where the supplier of services is an insurer or a banking company or a financial institution, including a non-banking financial company, the period within which the invoice or any document in lieu thereof is to be issued shall be 45 days from the date of the supply of service.

2) Inter-branch transactions in case of insurers, banks, telecom operators etc. : An insurer or a banking company or a financial institution, including a non-banking financial company, or a telecom operator, or any other class of supplier of services as may be notified by the Government on the recommendations of the Council, making taxable supplies of services between distinct persons as specified in Section 25,

   may issue the invoice –

   - ✓ before or at the time such supplier records the same in his books of account; or
   - ✓ before the expiry of the quarter during which the supply was made.

7. What do you mean by continuous supply of services. Explain the provisions relating to invoice in case of continuous supply of services.

Ans: The relevant provisions are discussed as under-

1) "Continuous supply of services" means—

   - ✓ a supply of services which is provided, or agreed to be provided, continuously or on recurrent basis, under a contract, for a period exceeding 3 months with periodic payment obligations,
   - ✓ and includes supply of such services as the Government may, subject to such conditions, as it may, by notification, specify. [Section 2(33)]

2) Issuance of invoice in case of continuous supply of services : In case of continuous supply of services the time limit is as under –

	Particulars	Time limit
(a)	where the due date of payment is ascertainable from the contract	the invoice shall be issued on or before the due date of payment.
(b)	where the due date of payment is not ascertainable from the contract	the invoice shall be issued before or at the time when the supplier of service receives the payment.
(c)	where the payment is linked to the completion of an event	the invoice shall be issued on or before the date of completion of that event.

For example: ABC Limited entered into an annual maintenance contract with PQR Ltd. for financial year 2023-24 for repairs of the machinery fitted in factory of PQR Ltd. As per the contract, payment for said services had to be made on 7th April, 2023. However, PQR Ltd. made the payment on 25th April, 2023. Since services provided by ABC Ltd. to PQR Ltd. is a continuous supply of services and due date of payment is ascertainable from the contract, ABC Ltd. had to a tax invoice on or before such due date, viz. 7th April, 2023.

CONTENTS OF TAX INVOICE AND MANNER OF ISSUING TAX INVOICE

8. Write a brief note on particulars which are contained in the invoice.

Ans: Tax invoice – Particulars thereof [Rule 46]:

(1) Contents of Invoice: A tax invoice shall be issued by the registered person containing the following particulars, namely, –

(a)	Name, address and GSTIN of the supplier;	
(b)	A consecutive serial number not exceeding 16 characters, in one or multiple series, containing alphabets or numerals or special characters hyphen or dash and slash symbolised as "-" and "/" respectively, and any combination thereof, unique for a financial year;	
(c)	Date of its issue;	
(d)	If recipient is registered – Name, address and GSTIN or UIN of recipient;	
(e)	If recipient is unregistered and value of supply is–	Particulars of invoice
	✓ ₹ 50,000 or more;	Name and address of the recipient and the address of delivery, along with the name of the State and its code
	✓ less than ₹ 50,000	Un-registered recipient may still request the aforesaid details to be recorded in the tax invoice; However, in cases involving supply of online money gaming or in cases where any taxable service is supplied by or through an ECO or by a supplier of OIDAR services to a recipient who is unregistered, irrespective of the value of

		such supply, a tax invoice issued by the registered person shall contain the name of the state of the recipient and the same shall be deemed to be the address on record of the recipient.
(f)	HSN code for goods or services;	
(g)	Description of goods or services;	
(h)	Quantity in case of goods and unit or Unique Quantity Code thereof;	
(i)	Total value of supply of goods or services or both;	
(j)	Taxable value of the supply of goods or services or both taking into account discount or abatement, if any;	
(k)	Rate of the tax (central tax, State tax, integrated tax, Union territory tax or cess)	
(l)	Amount of tax charged in respect of taxable goods or services (central tax, State tax, integrated tax, Union territory tax or cess);	
(m)	Place of supply along with the name of the State, in the case of a supply in the course of interState trade or commerce;	
(n)	Address of delivery where the same is different from the place of supply;	
(o)	Whether the tax is payable on reverse charge basis; and	
(p)	Signature or digital signature of the supplier or his authorised representative. The signature or digital signature of the supplier or his authorised representative shall not be required in the case of issuance of an electronic invoice in accordance with the provisions of the Information Technology Act, 2000.	
(q)	Quick response code, having embedded Invoice Reference Number (IRN) in it, in case e-invoice has been issued under Rule 48(4).	
(r)	A declaration as below, that an e-invoice is not required to be issued u/r 48(4), in all cases where an invoice is issued, other than an e-invoice, by the taxpayer having aggregate turnover in any preceding financial year from 2017-18 onwards more than ₹ 5 crores.	

	"I/We hereby declare that though our aggregate turnover in any preceding financial year from 2017-18 onwards is more than the aggregate turnover notified under Rule 48(4), we are not required to prepare an invoice in terms of the provisions of the said sub-rule."

However, the Government may, by notification, on the recommendations of the Council, and subject to such conditions and restrictions as mentioned therein, specify that the tax invoice shall have Quick Response (QR) code.

Invoice having QR code : The Central Government vide Notification No. 14/2020-CT dated 21-03-2020 as amended vide Notification No. 71/2020-CT dated 30-09-2020, has notified that –

- ✓ an invoice issued by a registered person, whose aggregate turnover in any preceding financial year from 2017-18 onwards exceeds 500 crore,
- ✓ other than those referred to Rule 54(2)/(3)/(4)/(4A) (i.e. service suppliers of notified services), and registered person referred to in section 14 of the IGST Act, 2017 (*i.e.* OIDAR service suppliers),
- ✓ to an unregistered person (hereinafter referred to as B2C invoice), shall have Dynamic Quick Response (QR) code.

However, where such registered person makes a Dynamic Quick Response (QR) code available to the recipient through a digital display, such B2C invoice issued by such registered person containing cross-reference of the payment using a Dynamic Quick Response (QR) code, shall be deemed to be having Quick Response (QR) code.

Relaxation in respect of quoting of HSN/ Accounting code : The Board may, on the recommendations of the Council, by notification, specify–

1. the number of digits of Harmonised System of Nomenclature code for goods or services that a class of registered persons shall be required to mention; or
2. a class of supply of goods or services for which specified number of digits of Harmonised System of Nomenclature code shall be required to be mentioned by all registered taxpayers; and
3. the class of registered persons that would not be required to mention the Harmonised System of Nomenclature code for goods or services.

In this regard, Notification No. 78/2020–CT dated 15-10-2020 has amended Notification No. 12/2017CT and has notified the following which will be effective from 01-04-2021 :

Sl. No.	Annual Turnover in the preceding Financial Year	Number of Digits of HSN Code
1.	Upto ₹ 5 crores	4

2.	More than ₹ 5 crores	6
However, a registered person having aggregate turnover up to ₹ 5 crores in the previous financial year may not mention 4 digits of HSN Code in a tax invoice issued by him under the said rules in respect of supplies made to unregistered persons.		

(2) Invoice requirements in case of Export/ SEZ supplies : In the case of the export of goods or services, the invoice shall carry an endorsement –

- ✓ "Supply meant for export/supply to sez unit or sez developer for authorised operations on payment of integrated tax"; or
- ✓ "supply meant for export/supply to sez unit or sez developer for authorised operations under bond or letter of undertaking without payment of integrated as the case may be .

Particulars of an export invoice are same as a tax invoice. However, where recipient is unregistered and value of supply is ₹ 50,000 or more, instead of name of State and its code, in case of an export invoice, name of the country of destination is to be mentioned.

Clarification in respect of applicability of Dynamic Quick Response (QR) Code on B2C invoices – *Circular no.146/02/2021-GST dated 23-02-2021 & Circular no.156/12/2021-GST dated21-06-2021*

	Issues	Clarification
1.	To which invoice is Notification No 14/2020-CT dated 21-03-2020 applicable? Would this requirement be applicable on invoices issued for supplies made for Exports?	This notification is applicable to a tax invoice issued to an unregistered person by a registered person (B2C invoice) whose annual aggregate turnover exceeds ₹ 500 crore in any of the financial years from 2017-18 onwards.
		Non-Applicability of requirement of Dynamic QR Code : However, the said notification is not applicable to an invoice issued in following cases: (i) Where the supplier of taxable service is: (a) an insurer or a banking company or a financial institution, including a nonbanking financial company; (b) a goods transport agency supplying services in relation to transportation of goods by road in a goods carriage; (c) supplying passenger transportation service;

		(d) supplying services by way of admission to exhibition of cinematograph in films in multiplex screens. (ii) OIDAR supplies made by any registered person, who has obtained registration under section 14 of the IGST Act 2017, to an unregistered person. No dynamic QR code in case of Exports : As regards the supplies made for exports, though such supplies are made by a registered person to an unregistered person, however, as e-invoices are required to be issued in respect of supplies for exports treating them as Business to Business (B2B) supplies, dynamic QR code will not be applicable to them.
2	What parameters/ details are required to be captured in the Quick Response (QR) Code?	Parameters/ details are required to be captured in the Quick Response (QR) Code : Dynamic QR Code is required, inter-alia, to contain the following information: (i) Supplier GSTIN number (ii) Supplier UPI ID (iii) Payee's Bank A/C number and IFSC (iv) Invoice number & invoice date, (v) Total Invoice Value and (vi) GST amount along with breakup i.e. CGST, SGST, IGST, CESS, etc. Further, Dynamic QR Code should be such that it can be scanned to make a digital payment.

3.	If a supplier provides/ displays Dynamic QR Code, but the customer opts to make payment without using Dynamic QR Code, then will the cross reference of such payment, made without use of Dynamic QR Code, on the invoice, be considered as compliance of Dynamic QR Code on the invoice?	Compliance with the Dynamic QR Code requirements in certain cases : If the supplier has issued invoice having Dynamic QR Code for payment, the said invoice shall be deemed to have complied with Dynamic QR Code requirements. In cases where the supplier, has digitally displayed the Dynamic QR Code and the customer pays for the invoice: i) Using any mode like UPI, credit/ debit card or online banking or cash or combination of various modes of payment, with or without using Dynamic QR Code, and the supplier provides a cross reference of the payment (transaction id along with date, time and amount of payment, mode of payment like UPI, Credit card, Debit card, online banking etc.) on the invoice ; or ii) In cash, without using Dynamic QR Code and the supplier provides a cross reference of the amount paid in cash , along with date of such payment on the invoice; The said invoice shall be deemed to have complied with the requirement of having Dynamic QR Code.
4.	If the supplier makes available to customers an electronic mode of payment like UPI Collect, UPI Intent or similar other modes of payment, through mobile applications or computer based applications, where though Dynamic QR Code is not displayed, but the details of merchant as well as transaction are displayed/ captured otherwise, how can the requirement of Dynamic QR Code as per this notification be complied with?	In such cases, if the cross reference of the payment made using such electronic modes of payment is made on the invoice, the invoice shall be deemed to comply with the requirement of Dynamic QR Code. However, if payment is made after generation / issuance of invoice, the supplier shall provide Dynamic QR Code on the invoice.

5.	Is generation/ printing of Dynamic QR Code on B2C invoices mandatory for pre paid invoices i.e. where payment has been made before issuance of the invoice?	If cross reference of the payment received either through electronic mode or through cash or combination thereof is made on the invoice, then the invoice would be deemed to have complied with the requirement of Dynamic QR Code. In cases other than pre-paid supply i.e. where payment is made after generation/issuance of invoice, the supplier shall provide Dynamic QR Code on the invoice.
6.	Once the E-commerce operator (ECO) or the online application has complied with the Dynamic QR Code requirements, will the suppliers using such e-commerce portal or application for supplies still be required to comply with the requirement of Dynamic QR Code?	The provisions of the notification shall apply to each supplier/ registered person separately, if such person is liable to issue invoices with Dynamic QR Code for B2C supplies as per the said notification. In case, the supplier is making supply through the E-commerce portal or application, and the said supplier gives cross references of the payment received in respect of the said supply on the invoice, then such invoices would be deemed to have complied with the requirements of Dynamic QR Code. In cases other than pre-paid supply *i.e.* where payment is made after generation/ issuance of invoice, the supplier shall provide Dynamic QR Code on the invoice.
7.	Whether Dynamic QR Code is to be provided on an invoice, issued to a person, who has obtained a Unique Identity Number as per the provisions of Section 25(9) of Section 25 of CGST Act 2017?	Any person, who has obtained a Unique Identity Number (UIN) as per the provisions of Section 25(9) of CGST Act 2017, is not a "registered person" as per the definition of registered person provided in section 2(94) of the CGST Act 2017. Therefore, any invoice, issued to such person having a UIN, shall be considered as invoice issued for a B2C supply and shall be required to comply with the requirement of Dynamic QR Code.
8.	UPI ID is linked to the bank account of the payee/ person collecting money. Whether bank account and IFSC details also need to be provided separately in the	Given that UPI ID is linked to a specific bank account of the payee/person collecting money, separate details of bank account and IFSC may not be provided in the Dynamic QR Code.

	Dynamic QR Code along with UPI ID?	
9.	In cases where the payment is collected by some person other than the supplier (ECO or any other person authorized by the supplier on his/ her behalf), whether in such cases, in place of UPI ID of the supplier, the UPI ID of such person, who is authorized to collect the payment on behalf of the supplier, may be provided?	Yes. In such cases where the payment is collected by some person, authorized by the supplier on his/ her behalf, the UPI ID of such person may be provided in the Dynamic QR Code, instead of UPI ID of the supplier.
10	In cases, where receiver of services is located outside India, and payment is being received by the supplier of services in foreign exchange, through RBI approved modes of payment, but as per provisions of the IGST Act 2017, the place of supply of such services is in India, then such supply of services is not considered as export of services as per the IGST Act 2017. Whether in such cases, the Dynamic QR Code is required on the invoice issued, for such supply of services, to such recipient located outside India?	No. Wherever an invoice is issued to a recipient located outside India, for supply of services, for which the place of supply is in India, as per the provisions of IGST Act 2017, and the payment is received by the supplier in foreign currency, through RBI approved mediums, such invoice may be issued without having a Dynamic QR Code, as such dynamic QR code cannot be used by the recipient located outside India for making payment to the supplier.
11.	In some instances of retail sales over the counter, the payment from the customer in received on the payment counter by displaying dynamic QR code on digital display, whereas the invoice, along with invoice number, is generated on the processing system being used by supplier/ merchant after receiving the payment. In such	In such cases, where the invoice number is not available at the time of digital display of dynamic QR code in case of over the counter sales and the invoice number and invoices are generated after receipt of payment, the unique order ID/ unique sales reference number, which is uniquely linked to the invoice issued for the said transaction, may be provided in the Dynamic QR Code for digital display, as long as the details of such unique order

	cases, it may not be possible for the merchant/ supplier to provide details of invoice number in the dynamic QR code displayed to the customer on payment counter. However, each transaction i.e. receipt of payment from a customer is having a unique Order ID/ sales reference number, which is linked with the invoice for the said transaction. Whether in such cases, the order ID/ reference number of such transaction can be provided in the dynamic QR code displayed digitally, instead of invoice number.	ID/ sales reference number linkage with the invoice are available on the processing system of the merchant/ supplier and the cross reference of such payment along with unique order ID/ sales reference number are also provided on the invoice.
12.	When part-payment has already been received by the merchant/ supplier, either in advance or by adjustment (e.g. using a voucher, discount coupon etc), before the dynamic QR Code is generated, what amount should be provided in the Dynamic QR Code for "invoice value"?	The purpose of dynamic QR Code is to enable the recipient/ customer to scan and pay the amount to be paid to the merchant/ supplier in respect of the said supply. When the part-payment for any supply has already been received from the customer/ recipient, in form of either advance or adjustment through voucher/ discount coupon etc., then the dynamic QR code may provide only the remaining amount payable by the customer/ recipient against "invoice value". The details of total invoice value, along with details/ cross reference of the part-payment/ advance/ adjustment done, and the remaining amount to be paid, should be provided on the invoice.

9. Who is the eligible to issue invoice -cum-bill of supply.

Ans-invoice -cum bill of supply [Rule 46A]

goods or services or both to an unregistered person, a single "invoice-cum-bill of supply" may be issued for all such supplies. The said single "invoice-cum-bill of supply" shall contain the particulars as specified under rule 46 or rule 54, as the case may be, and rule 49.

10. Explain the manner of issuing invoice.

Ans-manner of issuing invoice [Rule 48]:

(1) Three Copies in case of supplier of goods [Rule 48(1)] : The invoice shall be prepared in triplicate, in the case of supply of goods, in the following manner, namely,-
- ✓ the original copy being marked as ORIGINAL FOR RECIPIENT;
- ✓ the duplicate copy being marked as DUPLICATE FOR TRANSPORTER; and
- ✓ the triplicate copy being marked as TRIPLICATE FOR SUPPLIER.

(2) Copies in case of supplier of services [Rule 48(2)] : The invoice shall be prepared in duplicate, in the case of the supply of services, in the following manner, namely,
- (a) the original copy being marked as ORIGINAL FOR RECIPIENT; and
- (b) the duplicate copy being marked as DUPLICATE FOR SUPPLIER.

(3) Serial No. to be furnished electronically [Rule 48(3)] : The serial number of invoices issued during a tax period shall be furnished electronically through the common portal in FORM GSTR-1 or in FORM GSTR-1A, if any [Inserted vide Notification No. 12/2024 – CT dated 10.07.2024]

(4) E- Invoicing [Rule 48(4)] : The invoice shall be prepared by such class of registered persons as may be notified by the Government, on the recommendations of the Council, by including such particulars contained in FORM GST INV-01 after obtaining an Invoice Reference Number by uploading information contained therein on the Common Goods and Services Tax Electronic Portal in such manner and subject to such conditions and restrictions as may be specified in the notification.

Exemption by Commissioner : However, the Commissioner through notification may exempt a person or a class of registered persons from issuance of e-invoice for a specified period, subject to such conditions and restrictions as may be specified in the said notification.

The applicability of E-invoicing is as follows:

Aggregate Turnover in any Financial Year from 2017-18	Applicability Date
More than ₹ 500 crores	1st October 2020
More than ₹ 100 crores	1st January 2021
More than ₹ 50 crores	1st April 2021
More than ₹ 20 crores	1st April 2022
More than ₹ 10 crores	1st October 2022
More than ₹ 5 crores	1st August 2023

(5) Invoices other than E-invoice – Not regarded as invoice [Rule 48(5)] : Every invoice issued by a person to whom above provision applies in any manner other than the manner specified in the said sub-rule shall not be treated as an invoice.

(6) Non applicability of certain provisions in case of E-invoice [Rule 48(6)] : The provisions of Rule 48(1)&(2) shall not apply to an invoice prepared in the manner specified in Rule 48(4).

11. Explain the provisions relating to E-invoicing.

Ans- The provisions relating to E-invoicing are discussed as under-

(1) E-invoicing : E-invoicing is not generation of invoice by a Government portal. Taxpayers will continue to create their GST invoices on their own Accounting/ Billing/ ERP Systems as per e-invoice schema. These invoices will then be reported to 'Invoice Registration Portal (IRP)'. On such reporting, IRP will generate a unique 'Invoice Reference Number (IRN)', digitally sign it and return the e-invoice to the supplier. A GST e-invoice will be valid only with a valid IRN. Presently, invoices, credit notes and debit notes, when issued by notified persons (to registered persons (B2B) or for the purpose of exports) are covered under e-invoice. Though different documents are covered, for ease of reference and understanding, the system is referred as 'e-invoicing.

(2) Advantages of e-invoicing :

(a) Auto-reporting of invoices into GST return and auto-generation of e-way bill (wherever required) thus resulting in a substantial reduction in transcription errors.

(b) It will facilitate standardisation and inter-operability leading to reduction of disputes among transacting parties, improve payment cycles, reduction of processing costs and thereby greatly improving overall business efficiency.

(c) It will enable the system-level matching of input tax credit and output tax thereby reducing the tax evasion.

(d) It will eliminate the fake invoices as the tax authorities will have access to data in real-time.

(3) Class of persons notified to mandatorily issue e-invoice : A registered person (except specified class of persons), whose aggregate turnover in any preceding financial year from 2017-18 onwards exceeds ₹ **5 crores**, has been notified as class of persons who shall prepare e-invoice in respect of B2B supplies (supply of goods or services or both to a registered person) or for exports.

Thus, presently, such notified persons are not required/allowed to report B2C invoices. Further, einvoicing is also not applicable to invoices issued by Input Service Distributor (ISD).

If the invoice issued by a notified person is in respect of supplies made by him tax on which is payable under reverse charge under section 9(3), e-invoicing is applicable.

For example, A taxpayer *(say a firm of advocates)* having aggregate turnover in a FY of more than ₹ 10 crore is supplying services to a company (who will be discharging tax liability as recipient under reverse charge mechanism), such invoices have to be reported by said tax payer *(since it is a notified person)* to IRP.

On the other hand, where specified category of supplies are received by notified person from unregistered persons [attracting reverse charge under section 9(4)] or through import of services,

e-invoicing doesn't arise/ not applicable. E-invoicing is also not applicable for import of goods (Bills of Entry).

(4) Exemption from e-invoicing : Following entities are exempt from the mandatory requirement of einvoicing:

(a) Special Economic Zone units [Note : It is important to note here that only SEZ units and not SEZ developers are exempt from issuing e-invoices. Thus, SEZ developers whose turnover exceeds ₹s 5 crores in any preceding financial year from 2017-18 onwards are mandatorily required to issue e-invoices. Further, in case of supplies made by notified persons to SEZ units, e-invoices need to be issued.]

(b) Insurer or banking company or financial institution including NBFC

(c) GTA supplying services in relation to transportation of goods by road in a goods

(d) Supplier of passenger transportation service

(e) Person supplying services by way of admission to exhibition of cinematograph films in multiplex screens.

(f) government department, a local authority.

Thus, above mentioned entities are not required to issue e-invoices even if their turnover exceeds ₹ 5 crore in the preceding financial year from 2017-18 onwards.

For example: XYZ Private Limited has an SEZ unit and a regular DTA unit (both having same PAN). The aggregate total turnover of XYZ Private Limited is more than ₹ 5 crores (considering both the GSTINs). However, the turnover of DTA unit is below ₹ 5 crores for FY 2022-23.

In this scenario, SEZ unit is exempt from e-invoicing. However, e-invoicing will be applicable to DTA Unit because the aggregate turnover of the legal entity in this case is > ₹ 5 crores. The eligibility is based on aggregate annual turnover on the common PAN.

(5) Generation of E-invoice : The taxpayer first prepares and generates his invoice using his own ERP/ accounting/ billing system or manual system. The invoice must conform to the e-invoice schema (standard notified format) and must have the mandatory parameters.

The details of this invoice are uploaded/reported by the taxpayer to the Invoice Registration Portal (IRP). This way taxpayer registers his supply transaction on IRP. On uploading, IRP returns the e-invoice with a unique 'Invoice Reference Number (IRN)' after digitally signing the e-invoice and adding a QR Code (Quick Response Code). Then, the supplier shares the e-invoice with the receiver (along with QR Code).

(6) Cancellation/amendment of reported invoice : Where needed, the seller can cancel IRN for an einvoice already reported by reporting it on IRP within specified time. Amendment of e-invoice already uploaded on IRP will be done only on GST portal. Amendment of invoices is not possible through the IRP.

Exemption from generation of e-invoices is for the entity as a whole and is not restricted by the nature of supply being made by the said entity. – *Circular No. 186/18/2022-GST dated 27-12-2022*

Issue	Clarification
Whether the exemption from mandatory generation of e-invoices in terms of Notification No. 13/2020-CT, dated 21-03-2020, as amended, is available for the entity as whole, or whether the same is available only in respect of certain supplies made by the said entity?	In terms of Notification No. 13/2020-CT, dated 21-03-2020, certain entities/ sectors have been exempted from mandatory generation of e-invoices as per rule 48(4) of CGST Rules, 2017. It is hereby clarified that the said exemption from generation of einvoices is for the entity as a whole and is not restricted by the nature of supply being made by the said entity. Illustration: A Banking Company providing banking services, may also be involved in making supply of some goods, including bullion. The said banking company is exempted from mandatory issuance of e-invoice in terms of Notification No. 13/2020-CT dated 21-03-2020, for all supplies of goods and services and thus, will not be required to issue e-invoice with respect to any supply made by it.

E-invoices are required to be issued for the supplies made to such Government Departments or establishments/ Government agencies/ local authorities/ PSUs, etc. who are registered only for the purpose of tax deduction at source. – Circular No. 198/10/2023-GST dated 17-07-2023

Issue	Clarification
Whether e-invoicing is applicable for supplies made by a registered person, whose turnover exceeds the prescribed threshold for generation of e-invoicing, to Government Departments or establishments/ Government agencies/ local authorities/ PSUs which are registered solely for the purpose of deduction of tax at source as per provisions of section 51 of the CGST Act?	Government Departments or establishments/ Government agencies/ local authorities/ PSUs, which are required to deduct tax at source as per provisions of section 51 of the CGST/SGST Act, are liable for compulsory registration in accordance with section 24(vi) of the CGST Act. Therefore, Government Departments or establishments/ Government agencies/ local authorities/ PSUs, registered solely for the purpose of deduction of tax at source as per provisions of section 51 of the CGST Act, are to

	be treated as registered persons under the GST law as per provisions of Section 2 (94) of CGST Act. Accordingly, the registered person, whose turnover exceeds the prescribed threshold for generation of e-invoicing, is required to issue e-invoices for the supplies made to such Government Departments or establishments/ Government agencies/ local authorities/ PSUs, etc under rule 48(4) of CGST Rules.

TAX INVOICE -OTHER PROVISIONS

12. Explain the provisions relating to issue of revised tax invoice on issuance of registration certificate.

Ans: The provisions relating to issuance of revised tax invoice are here-under-

(1) Revised invoice on issuance of registration certificate : A registered person may, within one month from the date of issuance of certificate of registration and in such manner as may be prescribed, issue a revised invoice against the invoice already issued during the period beginning with the effective date of registration till the date of issuance of certificate of registration to him.

This provision is necessary, as a person who becomes liable for registration has to apply for registration within 30 days of becoming liable for registration. When such an application is made within the time period and registration is granted, the effective date of registration is the date on which the person became liable for registration.

Thus, there would be a time lag between the date of grant of certificate of registration and the effective date of registration. For supplies made by such person during this intervening period, the law enables the issuance of a revised invoice, so that ITC can be availed by the recipient on such supplies.

For example: XYZ Private Ltd. commenced business of supply of goods on 1st April in Rajasthan. Its turnover exceeded ₹ 40,00,000 on 5th November. Thus, it became liable to registration on 5th November. It applied for registration on 28th November and granted registration certificate on 3rd December. Since it applied for registration within 30 days of becoming liable to registration, it was granted registration with effect from 5th November. XYZ Private Ltd. may issue Revised Tax Invoices in respect of taxable supplies effected between 5th November and 3rd December.

Consolidated revised tax invoice : The registered person may issue a consolidated revised tax invoice in respect of all taxable supplies made to a recipient who is not registered under the Act during such period.

Consolidated revised tax invoice in case of inter-State supply : In case of inter-State supplies, where the value of a supply does not exceed ₹ 2,50,000, a consolidated revised invoice may be issued separately in respect of all the recipients located in a State, who are not registered under the Act.

(2) Particulars in revised Tax Invoice [Rule 53(1)] : A revised tax invoice referred to in Section 31 shall contain the following particulars, namely:-

a. the word "Revised Invoice", wherever applicable, indicated prominently;
b. name, address and GSTIN of the supplier;
c. a consecutive serial number not exceeding 16 characters, in one or multiple series, containing alphabets or numerals or special characters hyphen or dash and slash symbolised as "-" and "/" respectively, and any combination thereof, unique for a financial year;
d. date of issue of the document;
e. name, address and GSTIN or UIN, if registered, of the recipient;
f. name and address of the recipient and the address of delivery, along with the name of State and its code, if such recipient is un-registered;
g. Serial number and ddate of the corresponding tax invoice or, as the case may be, bill of supply; and
h. signature or digital signature of the supplier or his authorised representative.

(3) Revised invoice on account of demands etc. - Mention of inadmissibility of ITC [Rule 53(3)]: Any invoice or debit note issued in pursuance of any tax payable in accordance with the provisions of Section 74 or Section 129 or 130 shall prominently contain the words "INPUT TAX CREDIT NOT ADMISSIBLE".

Note : The above sections provides for the following—

- ✓ Section 74 - Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful misstatement or suppression of facts.
- ✓ Section 129 - Detention, seizure and release of goods and conveyances in transit.
- ✓ Section 130 - Confiscation of goods or conveyances and levy of penalty.

13. Explain the provisions where no tax invoice is required to be issued.

Ans- No Tax invoice if the value is less than ₹ 200 [Section 31(3)(b) read with 4th proviso to Rule 46]:

A registered person, other than the supplier engaged in making supply of services by way of admission to exhibition of cinematograph films in multiplex screens, may not issue a tax invoice if –

(i) value of the goods or services or both supplied is less than ₹ 200,
(ii) the recipient is unregistered; and
(iii) the recipient does not require such invoice.

Instead such registered person shall issue a Consolidated Tax Invoice for such supplies at the close of each day in respect of all such supplies.
Above provisions are also applicable to Bill of Supply.

RECEIPT VOUCHER

14. Explain the provisions relating to issuance of Receipt voucher.

Ans-:The relevant provision are the discussed and under

For advances - Issuance of receipt voucher [Section 31(3)(d)] : A registered person shall, on receipt of advance payment with respect to any supply of goods or services or both, issue a receipt voucher or any other document, containing such particulars as may be prescribed, evidencing receipt of such payment.

Contents of receipt voucher [Rule 50] : A receipt voucher shall contain the following particulars, namely,-

a) name, address and GSTIN of the supplier;
b) a consecutive serial number not exceeding 16 characters, in one or multiple series, containing alphabets or numerals or special characters hyphen or dash and slash symbolised as "-" and "/" respectively, and any combination thereof, unique for a financial year;
c) date of its issue;
d) name, address and GSTIN or UIN, if registered, of the recipient;
e) description of goods or services;
f) amount of advance taken;
g) rate of tax (central tax, State tax, integrated tax, Union territory tax or cess);
h) amount of tax charged in respect of taxable goods or services (central tax, State tax, integrated tax, Union territory tax or cess);
i) place of supply along with the name of State and its code, in case of a supply in the course of inter-State trade or commerce;
j) whether the tax is payable on reverse charge basis; and
k) signature or digital signature of the supplier or his authorised representative.

Rate of tax to be 18% and supply to be inter-state supply if the same is not determinable at the time of receipt of advance : Where at the time of receipt of advance,—

(i) the rate of tax is not determinable, the tax shall be paid @ 18%;
(ii) the nature of supply is not determinable, the same shall be treated as inter-State supply.

REFUND VOUCHER

15. Explain the provisions relating to issuance of refund voucher.

Ans- the provisions relating to issuance of refund voucher are discussed as under-

1) Refund voucher if no supply is made and Advance Refunded [Section 31(3)(e)] : Where, on receipt of advance payment with respect to any supply of goods or services or both the registered person issues a receipt voucher, but subsequently no supply is made and no tax invoice is issued in pursuance thereof, the said registered person may issue to the person who had made the payment, a refund voucher against such payment.
2) Contents of Refund Voucher [Rule 51] : A refund voucher shall contain the following particulars, namely:–

a. name, address and GSTIN of the supplier;
b. a consecutive serial number not exceeding 16 characters, in one or multiple series, containing alphabets or numerals or special characters hyphen or dash and slash symbolised as "-" and "/" respectively, and any combination thereof, unique for a financial year;
c. date of its issue;
d. name, address and GSTIN or UIN, if registered, of the recipient;
e. number and date of receipt voucher issued in accordance with the provisions of Rule 50;
f. description of goods or services in respect of which refund is made;
g. amount of refund made;
h. rate of tax (central tax, State tax, integrated tax, Union territory tax or cess);
i. amount of tax paid in respect of such goods or services (Central tax, State tax, Integrated tax, Union territory tax or cess);
j. whether the tax is payable on reverse charge basis; and
k. signature or digital signature of the supplier or his authorised representative

INVOICE REQUIREMENTS IN CASE OF REVERSE CHARGE

16. Explain the provisions relating to issuance of invoice in case of reverse charge or purchases from unregistered supplier.

Ans-The relevant provisions are discussed as under –

1) Purchases from unregistered supplier or under reverse charge - Buyer to prepare an Invoice [Section 31(3)(f)] : A registered person who is liable to pay tax under Section 9(3)/(4) shall issue, within the period as may be prescribed [Inserted by the Finance (No. 2) Act, 2024 w.e.f. 01-11-2024] an invoice in respect of goods or services or both received by him from the supplier who is not registered on the date of receipt of goods or services or both.

   "Supplier who is not registered" shall include the supplier who is registered solely for the purpose of deduction of tax under section 51. [Explanation] [Inserted by the Finance (No. 2) Act, 2024 w.e.f. 01-11-2024]

   Thus, a recipient liable to pay tax by virtue of Section 9(3) has to issue invoice only when supplies have been received from an unregistered supplier.

The recipient is liable to pay tax on reverse charge basis where he receives supply of such goods/ services/ both which are notified for reverse charge purposes. Such supplies can be received from a registered or an unregistered supplier [Section 9(3)].

Further, a builder/promoter is required to pay GST on reverse charge basis under section 9(4) in one or more of the following cases:

(i) A builder/promoter must purchase 80% of inputs and input services used in supplying the service from registered persons. In case of shortfall, he's required to pay tax under reverse charge on all such inward supplies (to the extent short of 80% of the inward supplies from registered supplier).

(ii) Where cement is received from an unregistered person, promoter/builder has to pay tax on supply of such cement on reverse charge basis and

(iii) GST on capital goods is payable by the promoter on reverse charge basis.

2) Time limit for issuing tax invoice in cases where recipient is required to issue invoice.[Rule 47A] : Notwithstanding anything contained in rule 47, where an invoice referred to in rule 46 is required to be issued under Section 31(3)(f) by a registered person, who is liable to pay tax under Section 9(3)/Section 9(4), he shall issue the said invoice within a period of 30 days from the date of receipt of the said supply of goods or services, or both, as the case may be. [Amended Vide Notification No. 20/2024 – Central Tax dated 08-10-2024 w.e.f. 01-11-2024.]

3) Issuance of Payment Voucher [Section 31(3)(g)] : A registered person who is liable to pay tax under Section 9(3)/(4) shall issue a payment voucher at the time of making payment to the supplier.

4) Contents of Payment Voucher [Rule 52] : A payment voucher referred to in Section 31(3)(g) shall contain the following particulars, namely:-

a) name, address and GSTIN of the supplier if registered;
b) a consecutive serial number not exceeding 16 characters, in one or multiple series, containing alphabets or numerals or special characters hyphen or dash and slash symbolised as "-" and "/" respectively, and any combination thereof, unique for a financial year;
c) date of its issue;
d) name, address and GSTIN of the recipient;
e) description of goods or services;
f) amount paid;
g) rate of tax (central tax, State tax, integrated tax, Union territory tax or cess);
h) amount of tax payable in respect of taxable goods or services (central tax, State tax, integrated tax, Union territory tax or cess);
i) place of supply along with the name of State and its code, in case of a supply in the course of inter-State trade or commerce; and

j) signature or digital signature of the supplier or his authorised representative

BILL OF SUPPLY

17. Explain the provisions relating to issuance of bill of supply instead of tax invoice.

Ans- Bill Of Supply [Section 31(3)(C) the provisions relating of issuance of Bill of supply are as under-

1) Bill of supply instead of tax invoice to be issued in case of Exempted Supply or Composite Levy :

A registered person supplying—

- ✓ exempted goods or services or both, or
- ✓ paying tax under the provisions of Section 10 *i.e.* Composition scheme

shall issue, instead of a tax invoice, a bill of supply containing such particulars and in such manner as may be prescribed.

Bill of Supply issued by such persons does not contain the details pertaining to rate of tax and amount of tax. Further, value to be mentioned in the Bill of Supply is not also taxable value.

For example: Ramesh & Sons is a manufacturer of goods who has opted for composition levy under Section 10. It will issue a Bill of Supply to the buyers of goods and not the tax invoice as it does not collect any tax from the buyers, but amount at the rate specified under Section 10.

(2) No bill of supply if value is less than ₹ 200 : The registered person may not issue a bill of supply if the value of the goods or services or both supplied is less than ₹ 200 subject to such conditions and in such manner as may be prescribed.

The Central government *vide* Removal of Difficulty Order No. 3/2019-CT dated 08-03-2019 has clarified that provisions of Section 31(3)(c) of the CGST Act, 2017 shall apply to a person paying tax under Notification No. 2/2019-CT (Rate) dated 07-03-2019 *i.e.* presumptive levy for service providers.

Thus they are required to issue bill of supply instead of tax invoice.

18. What are the contents of bill of supply.

Ans-Bill of the supply [Rule 49]:

(1) Contents of Bill of Supply : A bill of supply shall be issued by the supplier containing the following details, namely,-

a. name, address and GSTIN of the supplier;
b. a consecutive serial number not exceeding 16 characters, in one or multiple series, containing alphabets or numerals or special characters - hyphen or dash and slash symbolised as "-" and "/" respectively, and any combination thereof, unique for a financial year;
c. date of its issue;

d. name, address and GSTIN or UIN, if registered, of the recipient;
e. HSN Code for goods or services;
f. description of goods or services or both;
g. value of supply of goods or services or both taking into account discount or abatement, if any; and
h. signature or digital signature of the supplier or his authorised representative.
i. The signature or digital signature of the supplier or his authorised representative shall not be required in the case of issuance of an electronic bill of supply in accordance with the provisions of the Information Technology Act, 2000.

However, the Government may, by notification, on the recommendations of the Council, and subject to such conditions and restrictions as mentioned therein, specify that the bill of supply shall have Quick Response (QR) code.

(2) Tax invoice issued for any non-taxable supply to be treated as Bill of Supply : Any tax invoice or any other similar 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.

TAX INVOICE IN SPECIAL CASES

19. Certain Suppliers are permitted to issue any document other than tax invoice. Explain

Ans: The relevant provisions are discussed as under-

(1) Relaxation from issuance of tax invoice in respect of Notified Services: The Government may, on the recommendations of the Council, by notification, -
   a) specify the categories of services or supplies in respect of which a tax invoice shall be issued, within such time and in such manner as may be prescribed;
   b) subject to the condition mentioned therein, specify the categories of services in respect of which-
      (i) any other document issued in relation to the supply shall be deemed to be a tax invoice; or
      (ii) tax invoice may not be issued.

   Further, Government may, on the recommendations of the Council, by notification, specify the categories of goods or supplies in respect of which a tax invoice shall be issued, within such time and in such manner as may be prescribed.

(2) Notified Suppliers: Following suppliers may issue a tax invoice, but they are also permitted to issue any other document in lieu of tax invoice, by whatever name called:
   a) Insurers, banks etc. - Consolidated monthly Tax invoice may be issued - No serial numbering and no address of service recipient [Rule 54(2)] : Where the supplier of taxable service is an insurer or a banking company or a financial institution, including a nonbanking financial company, the said supplier may issue a consolidated tax invoice or any other document in lieu thereof, for the supply of services made during a month at

the end of the month, whether issued or made available, physically or electronically whether or not serially numbered, and whether or not containing the address of the recipient of taxable service but containing other information as mentioned under Rule 46.

The signature or digital signature of the supplier or his authorised representative shall not be required in the case of issuance of a consolidated tax invoice or any other document in lieu thereof in accordance with the provisions of the Information Technology Act, 2000.

b) GTA – Additional Requirements [Rule 54(3)] : Where the supplier of taxable service is a goods transport agency supplying services in relation to transportation of goods by road in a goods carriage, the said supplier shall issue a tax invoice or any other document in lieu thereof, by whatever name called, containing—
   (i) the gross weight of the consignment,
   (ii) name of the consigner and the consignee,
   (iii) registration number of goods carriage in which the goods are transported,
   (iv) details of goods transported,
   (v) details of place of origin and destination,
   (vi) GSTIN of the person liable for paying tax whether as consigner, consignee or goods transport agency, and
   (vii) also containing other information as mentioned under rule 46.

c) Tax Invoice or bill of supply to accompany transport of goods [Rule 55A] : The person-incharge of the conveyance shall carry a copy of the tax invoice or the bill of supply issued in accordance with the provisions of rules 46, 46A or 49 in a case where such person is not required to carry an e-way bill under these rules.

d) Passenger transportation service – Ticket is invoice [Rule 54(4)] : Where the supplier of taxable service is supplying passenger transportation service, a tax invoice shall include ticket in any form, by whatever name called, whether or not serially numbered, and whether or not containing the address of the recipient of service but containing other information as mentioned under Rule 46.

   The signature or digital signature of the supplier or his authorised representative shall not be required in the case of issuance of ticket in accordance with the provisions of the Information Technology Act, 2000.

e) Multiplex screens exhibiting films – Electronic ticket is invoice [Rule 54(4A)] : A registered person supplying services by way of admission to exhibition of cinematograph films in multiplex screens shall be required to issue an electronic ticket and the said electronic ticket shall be deemed to be a tax invoice for all purposes of the Act, even if such ticket does not contain the details of the recipient of service but contains the other information as mentioned under rule 46.

   However, the supplier of such service in a screen other than multiplex screens may, at his option, follow the above procedure.

It is important to note here that keeping in view the large number of transactions in banking, insurance, multiplex screens exhibiting films and passenger transportation sector, taxpayers need not mention the address of the customer and the. serial number in their invoices

TRANSPORTATION OF GOODS WITHOUT ISSUE OF INVOICE

20. Explain the provisions relating to transportation of good without issue of invoice.

Ans- (1) Cases where delivery challan can be issued instead of invoice [Rule 55(1)] : The consigner may issue a delivery challan, serially numbered not exceeding 16 characters, in one or multiple series, in lieu of invoice at the time of removal of goods for transportation, containing the following 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.

Contents of Delivery Challan : The delivery challan shall contain the following details:

- ✓ date and number of the delivery challan;
- ✓ name, address and GSTIN of the consigner, if registered;
- ✓ name, address and GSTIN or UIN of the consignee, if registered;
- ✓ HSN code and description of goods;
- ✓ quantity (provisional, where the exact quantity being supplied is not known); taxable value;
- ✓ tax rate and tax amount – central tax, State tax, integrated tax, Union territory tax or cess, where the transportation is for supply to the consignee; place of supply, in case of inter-State movement; and
- ✓ signature.

(2) Three Copies of delivery challan [Rule 55(2)] : The delivery challan shall be prepared in triplicate, in case of supply of goods, in the following manner, namely:–

- ✓ the original copy being marked as ORIGINAL FOR CONSIGNEE
- ✓ the duplicate copy being marked as DUPLICATE FOR TRANSPORTER;
- ✓ and the triplicate copy being marked as TRIPLICATE FOR CONSIGNER.

(3) Declaration [Rule 55(3)] : Where goods are being transported on a delivery challan in lieu of invoice, the same shall be declared as specified in E-way bill.

(4) Tax invoice to be issued after delivery of goods [Rule 55(4)] : 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.

(5) Goods transported in CKD/ SKD condition or in batches/ lots [Rule 55(5)] : Where the goods are being transported in a semi knocked down or completely knocked down condition or in batches or lots—

- ✓ the supplier shall issue the complete invoice before dispatch of the first consignment;
- ✓ the supplier shall issue a delivery challan for each of the subsequent consignments, giving reference of the invoice;
- ✓ each consignment shall be accompanied by copies of the corresponding delivery challan along with a duly certified copy of the invoice; and
- ✓ the original copy of the invoice shall be sent along with the last consignment.

Goods moved within the State or from the State of registration to another State for supply on approval basis - Removal under cover of delivery challan - on conformation of sale IGST payable. – *Circular No. 10/10/2017-GST dated 18-10-2017*

Issue	Clarification
Suppliers of jewellery etc. who are registered in one State may have to visit other States (other than their State of registration) and need to carry the goods (such as jewellery) along for approval. In such cases if jewellery etc. is approved by the buyer, then the supplier issues a tax invoice only at the time of supply. Since the suppliers are not able to ascertain their actual supplies beforehand and while ascertainment of tax liability in advance is a mandatory requirement for registration as a casual taxable person, the supplier is not able to register as a casual taxable person. Such goods are also carried within the same State for the purposes of supply.	A reading of Rule 55 indicates that the goods which are taken for supply on approval basis can be moved from the place of business of the registered supplier to another place within the same State or to a place outside the State on a delivery challan along with the e-way bill wherever applicable and the invoice may be issued at the time of delivery of goods. The person carrying the goods for such supply can carry the invoice book with him so that he can issue the invoice once the supply is fructified. Further, all such supplies, where the supplier carries goods from one State to another and supplies them in a different State, will be inter-state supplies and attract integrated tax in terms of Section 5 of the IGST Act. It is also clarified that this clarification would be applicable to all goods supplied under similar situations.

Removal of art work by an artist to art galleries for exhibition is in various States is not regarded as supply and supply of goods by artists to customers from galleries will be liable to GST. – Circular No. 22/22/2017-GST dated 21-12-2017

i. Art work when supplied on approval basis to be removed on a delivery challan : Art work for supply on approval basis can be moved from the place of business of the registered person (artist) to another place within the same State or to a place outside the State on a delivery challan along with the e-way bill wherever applicable and the invoice may be issued at the time of actual supply of art work.

ii. Inter state supplies of art work – Liable to IGST : Supplies of the art work from one State to another State will be inter-State supplies and attract integrated tax in terms of Section 5 of the IGST Act, 2017

iii. Supply of art work to galleries – Not regarded as supply and not liable to GST : It is further clarified that in case of supply by artists through galleries, there is no consideration flowing from the gallery to the artist when the art works are sent to the gallery for exhibition and therefore, the same is not a supply.

On selection by buyer – GST is leviable : It is only when the buyer selects a particular art work displayed at the gallery, that the actual supply takes place and applicable GST would be payable at the time of such supply.

Goods sent/taken out of India for exhibition or on consignment basis for export promotion – Not supply, hence cannot be regarded as Zero-rated supply. – Circular No. 108/27/2019-GST dated 18-07-2019

(i) Goods sent/taken out of India for exhibition – not regarded as supply : The activity of sending/taking the goods out of India for exhibition or on consignment basis for export promotion, except when such activity satisfy the tests laid down in Schedule I of the CGST Act (hereinafter referred to as the "specified goods"), do not constitute supply as the said activity does not fall within the scope of section 7 of the CGST Act as there is no consideration at that point in time. Since such activity is not a supply, the same cannot be considered as "Zero rated supply" as per the provisions contained in section 16 of the IGST Act.

(ii) Issues relating to maintenance of records, issuance of delivery challan / tax invoice etc. : The same has been clarified as under –

	Issue	Clarification
1	Whether any records are required to be maintained by registered person for sending/ taking specified goods out of India?	The registered person dealing in specified goods shall maintain a record of such goods as per the specified format.

2.	What is the documentation required for sending/ taking the specified goods out of India?	a) Not supply : As clarified above, the activity of sending/taking specified goods out of India is not a supply. b) Sale on approval basis : The said activity is in the nature of "sale on approval basis" wherein the goods are sent/taken outside India for the approval of the person located abroad and it is only when the said goods are approved that the actual supply from the exporter located in India to the importer located abroad takes place. The activity of sending/ taking specified goods is covered under the provisions of section 31(7) of the CGST Act read with rule 55 of CGST Rules, 2017 c) Delivery challan : The specified goods shall be accompanied with a delivery challan issued in accordance with the provisions contained in rule 55 of the CGST Rules. d) Bond/LUT not required : As clarified above, the activity of sending/ taking specified goods out of India is not a zero-rated supply. That being the case, execution of a bond or LUT, as required under section 16 of the IGST Act, is not required.
3.	When is the supply of specified goods sent/ taken out of India said to take place?	a) Sale/ Return – within 6 months : The specified goods sent/taken out of India are required to be either sold or brought back within the stipulated period of 6 months from the date of removal as per the provisions contained in Section 31(7) of the CGST Act b) Deemed supply : The supply would be deemed to have taken place, on the expiry of 6 months from the date of removal, if the specified goods are neither sold abroad nor brought back within the said period.

		c) Supply on sale of goods : If the specified goods are sold abroad, fully or partially, within the specified period of 6 months, the supply is effected, in respect of quantity so sold, on the date of such sale.
4.	Whether invoice is required to be issued when the specified goods sent/ taken out of India are not brought back, either fully or partially, within the stipulated period?	a) Tax invoice in respect of goods sold : When the specified goods sent/taken out of India have been sold fully or partially, within the stipulated period of six months, the sender shall issue a tax invoice in respect of such quantity of specified goods which has been sold abroad, in accordance with the provisions contained in section 12 and section 31 of the CGST Act read with rule 46 of the CGST Rules. b) Tax invoice on deemed supply : When the specified goods sent/taken out of India have neither been sold nor brought back, either fully or partially, within the stipulated period of 6 months, the sender shall issue a tax invoice on the date of expiry of 6 months from the date of removal, in respect of such quantity of specified goods which have neither been sold nor brought back, in accordance with the provisions contained in section 12 and section 31 of the CGST Act read with rule 46 of the CGST Rules

5.	Whether the refund claims can be preferred in respect of specified goods sent/ taken out of India but not brought back?	a) Refund not admissible at the time of sending goods : As the activity of sending/taking specified goods out of India is not a zero-rated supply, the sender of goods cannot prefer any refund claim when the specified goods are sent/taken out of India. b) Refund admissible when supply/ deemed supply takes place: It is clarified accordingly that the sender can prefer refund claim even when the specified goods were sent/taken out of India without execution of a bond or LUT, if he is otherwise eligible for refund as per the provisions contained in section 54(3) the CGST Act read with rule 89(4) of the CGST Rules, in respect of zero rated supply of goods after he has issued the tax invoice. c) Refund not admissible under Rule 96: It is further clarified that refund claim cannot be preferred u/r 96 of CGST Rules as supply is taking place at a time after the goods have already bee sent/taken out of india earlier.

Illustration 1 : M/s. ABC sends 100 units of specified goods out of India. The activity of merely sending/taking such specified goods out of India is not a supply. No tax invoice is required to be issued in this case but the specified goods shall be accompanied with a delivery challan issued in accordance with the provisions contained in rule 55 of the CGST Rules. In case the entire quantity of specified goods is brought back within the stipulated period of six months from the date of removal, no tax invoice is required to be issued as no supply has taken place in such a case. In case, however, the entire quantity of specified goods is neither sold nor brought back within 6 months from the date of removal, a tax invoice would be required to be issued for entire 100 units of specified goods in accordance with the provisions contained in section 12 and section 31 of the CGST Act read with rule 46 of the CGST Rules within the time period stipulated under section 31(7) of the CGST Act.

Illustration 2 : M/s. ABC sends 100 units of specified goods out of India. The activity of sending/taking such specified goods out of India is not a supply. No tax invoice is required to be issued in this case but the specified goods shall be accompanied with a delivery challan

issued in accordance with the provisions contained in rule 55 of the CGST Rules. If 10 units of specified goods are sold abroad say after one month of sending/taking out and another 50 units are sold say after two months of sending/taking out, a tax invoice would be required to be issued for 10 units and 50 units, as the case may be, at the time of each of such sale in accordance with the provisions contained in section 12 and section 31 of the CGST Act read with rule 46 of the CGST Rules. If the remaining 40 units are not brought back within the stipulated period of six months from the date of removal, a tax invoice would be required to be issued for 40 units in accordance with the provisions contained in section 12 and section 31 of the CGST Act read with rule 46 of the CGST Rules. Further, M/s. ABC may claim refund of accumulated input tax credit in accordance with the provisions contained in section 54(3) of the CGST Act read with rule 89(4) of the CGST Rulles in respect of zero-rated supply of 60 units.

FACILITY OF DIGITAL PAYMENT TO RECIPIENT

21. Explain the provisions relating to Facility of digital payment to recipient.

Ans- Facility of digital payment to recipient.[Section 31A]:

The Government may, on the recommendations of the Council, prescribe a class of registered persons who shall provide prescribed modes of electronic payment to the recipient of supply of goods or services or both made by him and give option to such recipient to make payment accordingly, in such manner and subject to such conditions and restrictions, as may be prescribed.

PROHIBITION OF UNAUTHORISED COLLECTION OF TAX

22. Write notes on the following (a) Prohibition of unauthorized collection of tax. (b) Amount of tax to be indicated in tax invoice and other documents.

Ans- The relevant provisions are discussed as under-

Prohibition of Unauthorised Collection of Tax [Section 32]

a) Unregistered person not to collect tax : A person who is not a registered person shall not collect in respect of any supply of goods or services or both any amount by way of tax under this Act.

b) Registered person to collect tax as per Act : No registered person shall collect tax except in accordance with the provisions of this Act or the rules made there-under.

c) Amount of tax to be indicated in tax invoice and other documents, [Section 33]: Notwithstanding anything 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.

CREDIT AND DEBIT NOTES

23. Explain the provisions relating to issuance of Credit and debit notes.

Ans- Credit and debit notes [Section 34]: The relevant provisions provisions are discussed as under-

(1) Issuance of Credit Note [Section 34(1)] : Where one or more tax invoices have been issued for supply of any goods or services or both and

- ✓ the taxable value in the tax invoice is found to exceed the taxable value in respect of such supply, or
- ✓ the tax charged in that tax invoice is found to exceed the tax payable in respect of such supply, or
- ✓ where the goods supplied are returned by the recipient, or
- ✓ where goods or services or both supplied are found to be deficient,

The registered person, who has supplied such goods or services or both, may issue to the recipient one or more credit notes for supplies made in a financial year containing such particulars as may be prescribed.

Thus, a single consolidated credit note can be issued against one or more tax invoices.

"Credit note" means a document issued by a registered person u/s 34(1). [Section 2(37)]

(2) Details of credit note to be given in return [Section 34(2)] : Any registered person who issues a credit note in relation to a supply of goods or services or both shall declare the details of such credit note—

in the return for the month during which such credit note has been issued but not later than

- ✓ 30th November following the end of the financial year in which such supply was made, or
- ✓ the date of furnishing of the relevant annual return,

whichever is earlier,

and the tax liability shall be adjusted in such manner as may be prescribed.

Output tax liability of the supplier not to be reduced – If tax incidence passed on : 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.

Secondary discounts - Credit note need not be issued : Secondary discounts are the discounts which are not known at the time of supply/are offered after the supply is already over. These discounts are not excluded from the value of supply since conditions laid down in section 15(3)(b) of the CGST Act are not satisfied. It is important to note that credit note(s) are not permitted to be issued in case secondary discounts are allowed by the supplier since the tax liability of the supplier does not get reduced in such case. However, supplier can issue financial/commercial credit note(s) to reduce the value of supply payable by the recipient to the supplier. [Circular 92/11/2019-GST dated 07.03.2019]

(3) Issuance of debit note [Section 34(3)] : Where one or more tax invoices have been issued for supply of any goods or services or both and

- ✓ the taxable value in the tax invoice is found to be less than the taxable value in respect of such supply,
- ✓ the tax charged in the tax invoice is found to be less than the tax payable in respect of such supply, the registered person, who has supplied such goods or services or both, shall issue to the recipient one or more debit notes for supplies made in a financial year containing such particulars as may be prescribed.

"Debit note" means a document issued by a registered person u/s 34(3). [Section 2(38)]

(4) Details of debit note to be given in return [Section 34(4)] : Any registered person who issues a debit note in relation to a supply of goods or services or both 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 in such manner as may be prescribed. Explanation : The expression "debit note" shall include a supplementary invoice.

24. What are the contents of Credit and Debit Notes.

Ans- contents of Credit and Debit Notes [Rule 53(1A)]: A Credit or debit note referred to in section 34 shall contain the following paticulars, namely:-

a) name, address and GSTIN of the supplier;
b) nature of the document;
c) a consecutive serial number not exceeding sixteen characters, in one or multiple series, containing alphabets or numerals or special characters-hyphen or dash and slash symbolised as "-" and "/" respectively, and any combination thereof, unique for a financial year;
d) date of issue of the document;
e) name, address and GSTIN or UIN, if registered, of the recipient;
f) name and address of the recipient and the address of delivery, along with the name of State and its code, if such recipient is un-registered;
g) serial number(s) and date(s) of the corresponding tax invoice(s) or, as the case may be, bill(s) of supply;
h) value of taxable supply of goods or services, rate of tax and the amount of the tax credited or, as the case may be, debited to the recipient; and
i) signature or digital signature of the supplier or his authorised representative

TOPIC REFERENCER

- *Accounts and Other Records*
- *Period of Retention of Accounts*
- *Manner of Maintenance of Accounts*
- *E-Way Bill*

ACCOUNTS AND OTHER RECORDS

1. Explain the need for maintenance of accounts and records under GST laws.

Ans- Assessment in GST is mainly focused on self-assessment by the taxpayers themselves. Every taxpayer is required to self-assess the taxes payable and furnish a return for each tax period *i.e.* the period for which return is required to be filed. The compliance verification is done by the department through scrutiny of returns, audit and/or investigation. Thus, the compliance verification 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.

2. Explain the provisions relating to maintenance of accounts and other records. OR

Mr. Bala, a registered person at Chennai wants to maintain proper accounts and records relating to GST. Advise him about the accounts and other records to be maintained under section 35(1) of the CGST Act, 2017. (4 Marks, May 2018)

Ans: Accounts and other records [Section 35]:

(1) List of records and place of maintenance of records [Section 35(1)] :

Every registered person shall keep and maintain, at his principal place of business, as mentioned in the certificate of registration, a true and correct account of—

a) production or manufacture of goods;
b) inward supply of goods or services or both;
c) outward supply of goods or services or both;
d) stock of goods;
e) input tax credit availed;
f) output tax payable and paid; and
g) such other particulars as may be prescribed.

Records to be maintained at each place of business : Where more than one place of business is specified in the certificate of registration, the accounts relating to each place of business shall be kept at such places of business.

Records found at other places – Presumption thereof [Rule 56(10)] : 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.

E-records : The registered person may keep and maintain such accounts and other particulars in electronic form in such manner as may be prescribed.

"Place of business" includes—

a. a place from where the business is ordinarily carried on, and includes a warehouse, a godown or any other place where a taxable person stores his goods, supplies or receives goods or services or both; or
b. a place where a taxable person maintains his books of account; or
c. a place where a taxable person is engaged in business through an agent, by whatever name called. [Section 2(85)]

"Principal place of business" means the place of business specified as the principal place of business in the certificate of registration. [Section 2(89)]

(2) Records prescribed by the Rules [Rule 56(1)] : As prescribed by CGST Rules, 2017 following records are required to be maintained:

a. Accounts and documents pertaining to goods or services imported or exported etc. to be kept: Every registered person shall keep and maintain, in addition to the particulars mentioned in Section 35(1), a true and correct account of—
   i) the goods or services imported or exported, or
   ii) supplies attracting payment of tax on reverse charge,

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

b) Commodity wise stock account to be maintained by non-composition supplier [Rule 56(2)] : Every registered person, other than a person paying tax u/s 10, shall maintain the accounts of stock in respect of goods received and supplied by him, and such accounts shall contain particulars of the opening balance, receipt, supply, goods lost, stolen, destroyed, written off or disposed of by way of gift or free sample and the balance of stock including raw materials, finished goods, scrap and wastage thereof

c) Separate accounts for advances [Rule 56(3)] : Every registered person shall keep and maintain a separate account of advances received, paid and adjustments made thereto.

d) Accounts containing tax details [including ITC] to be kept by person other than composite supplier [Rule 56(4)] : Every registered person, other than a person paying tax under Section 10, shall keep and maintain an account, containing the details of tax payable [including tax payable in accordance with the provisions of Section 9(3) and (4)], tax collected and paid, input tax, input tax credit claimed, together with a register of tax invoice, credit notes, debit notes, delivery challan issued or received during any tax period.

e) Suppliers, Recipients and Storage Details [Rule 56(5)] : Every registered person shall keep the particulars of—

(i) names and complete addresses of suppliers from whom he has received the goods or services chargeable to tax under the Act;

(ii) names and complete addresses of the persons to whom he has supplied goods or services, where required under the provisions of this Chapter;

(iii) 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

(3) Additional accounts or documents by Notified Persons [Section 35(3)] : The Commissioner may notify a class of taxable persons to maintain additional accounts or documents for such purpose as may be specified therein.

"Document" includes written or printed record of any sort and electronic record as defined in Section 2(t) of the Information Technology Act, 2000. [Section 2(41)]

(4) Relaxation in manner of maintenance of records [Section 35(4)] : Where the Commissioner considers that any class of taxable persons 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.

(5) Non accountal of goods or services – Deemed supply – Liable for tax [Section 35(6)] : Subject to the provisions of Section 17(5)(h), where the registered person fails to account for the goods or services or both in accordance with the provisions of Section 35(1), the proper officer shall determine the amount of tax payable on the goods or services or both that are not accounted for, as if such goods or services or both had been supplied by such person and the provisions of Section 73 or Section 74, as the case may be, shall, *mutatis mutandis*, apply for determination of such tax.

(6) Tax payable on goods stored at undeclared places without valid documents [Rule 56(6)]: If any taxable goods are found to be stored at any place(s) other than those declared under rule 56(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.

PERIOD OF RETENTION OF ACCOUNTS

3. Explain the provisions relating to period of retention of accounts.

Ans- Period of retention of accounts [Section 36]:

(1) Accounts to be kept for 72 months from the due date of furnishing of Annual return : Every registered person required to keep and maintain books of account or other records in accordance with the provisions of Section 35(1) shall retain them until the expiry of 72

months from the due date of furnishing of annual return for the year pertaining to such accounts and records.

For example: If the annual returns for the financial year 2022-23 are filed on say 15-12-2023, then the books of account and other records are to be maintained till 31-12-2029.

(2) Accounts pertaining to subject matter of appeal etc. – to be kept for a period of ONE year after final disposal of such appeal etc. or for 72 months from the due date of furnishing of annual return which ever period expires later :

A registered person,—

- ✓ who is a party to an appeal or revision or any other proceedings before any Appellate Authority or Revisional Authority or Appellate Tribunal or court, whether filed by him or by the Commissioner, or is under investigation for an offence under Chapter XIX,
- ✓ shall retain the books of account and other records pertaining to the subject-matter of such appeal or revision or proceedings or investigation for—
  - a period of 1 year after final disposal of such appeal or revision or proceedings or
  - investigation, or
  - the period specified above *i.e.* until the expiry of 72 months from the due date of furnishing of annual return for the year pertaining to such accounts and records,

whichever is later.

MANNER OF MAINTENANCE OF ACCOUNTS

4. XYZ traders has opted for composition scheme in the current financial year. Discuss the records which are not to be maintained by a supplier opting for composition levy as enumerated in Rule 56 of the CGST Rules, 2017.

Ans: Following records are not required to be maintained by a supplier who has opted composition scheme as for per Rule 56(2) and (4) of the CGST Rules, 2017: .

(1) Commodity wise stock account : Composition supplier shall not be required to maintain the 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 and the balance of stock including raw materials, finished goods, scrap and wastage thereof.

(2) Accounts containing tax details including ITC : Composite Supplier paying tax under section 10, shall not be required to keep and maintain an account, containing the details of tax payable (including tax payable in accordance with the provisions of Section 9(3) and (4) *i.e.* on reverse charge basis), tax collected and paid, input tax, input tax credit claimed, together with a register of tax invoice, credit notes, debit notes, delivery challan issued or received during any tax period.

5. What do you mean by agent. List out the records which are required to be maintained by agents. (4 Marks, Dec. 2021)

Ans- The relevant provisions are discussed as under-

(1) Meaning of Agent : Agent means a person, including a factor, broker, commission agent, arhatia, del credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services or both on behalf of another [Section 2(5)].

(2) Records to be maintained by Agent [Rule 56(11)] : Every agent referred to in Section 2(5) shall maintain accounts depicting the,—

(a) particulars of authorisation received by him from each principal to receive or supply goods or services on behalf of such principal separately;

(b) particulars including description, value and quantity (wherever applicable) of goods or services received on behalf of every principal;

(c) particulars including description, value and quantity (wherever applicable) of goods or services supplied on behalf of every principal;

(d) details of accounts furnished to every principal; and

(e) tax paid on receipts or on supply of goods or services effected on behalf of every principal.[Rule 56 (11)]

Maintenance of books of accounts relating to additional place of business by a principal or an auctioneer for the purpose of auction of tea, coffee, rubber etc. – Circular No. 23/23/2017-GST dated 21-12-2017 and Circular No. 47/21/2018-GST dated 08-06-2018	
Issue	**Clarification**
In case of auction of tea, coffee, rubber etc., whether the books of accounts are required to be maintained at every place of business by the principal and the auctioneer, and whether they are eligible to avail input tax credit?	(1) Warehouse where goods are stored to be declared as additional place of business : For the purpose of auction of tea, coffee, rubber, etc, the principal and the auctioneer may declare the warehouses, where such goods are stored, as their additional place of business. The buyer is also required to disclose such warehouse as his additional place of business if he wants to store the goods purchased through auction in such warehouses. For the purpose of supply of tea through a private treaty, the principal and an auctioneer may also comply with the said provisions. (2) Books are to be maintained for each place of business: The principal and the

auctioneer for the purpose of auction of tea, coffee, rubber etc., or the principal and the auctioneer for the purpose of supply of tea through a private treaty, are required to maintain the books of accounts relating to each and every place of business in that place itself in terms of the first proviso to Section 35(1) of the CGST Act

Books for additional place can be maintained at principal place of business However, in case difficulties are faced in maintaining the books of accounts, it is clarified that they may maintain the books of accounts relating to the additional place(s) of business at their principal place of business instead of such additional place(s).

(3) Intimation to jurisdictional officer : The principal and the auctioneer for the purpose of auction of tea, coffee, rubber etc., or the principal and the auctioneer for the purpose of supply of tea through a private treaty, shall intimate their jurisdictional officer in writing about the maintenance of books of accounts relating to the additional place(s) of business at their principal place of business.

(4) Principal and auctioneer entitled to avail ITC : It is further clarified that the principal and the auctioneer for the purpose of auction of tea, coffee, rubber etc., or the principal and the auctioneer for the purpose of supply of tea through a private treaty, shall be eligible to avail input tax credit subject to the fulfilment of other provisions of the CGST Act read with the rules made thereunder.

6. List out the additional records which are to be maintained by manufacturers and service suppliers and C&F agents.

Ans- The additional records to be maintained by manufacturers and service suppliers are as under-

1) Production records by Manufacturers [Rule 56(12)]: Every registered person manufacturing goods maintain monthly production accounts showing quantitative details of raw materials or services used in manufacture and quantitative details of the goods so manufactured including the waste and by prod thereof.
2) Records of Service Suppliers [Rule 56(13)]: Every registered person supplying services shall maintain accounts showing quantitative details of goods used in the provision of services, details of input service utilised and the services supplied.
3) Records by carrier and C&F Agents [Rule 56(17)]: Any person having custody over the goods in capacity of a carrier or a clearing and forwarding agent for delivery or dispatch thereof to a recipier behalf of any registered person shall maintain true and correct records in respect of such goods handle him on behalf of such registered person and shall produce the details thereof as and when required b proper officer.

7. XYZ Ltd. is engaged in supply of works contract services. Enumerate the accounts required to maintained by XYZ Ltd. as per Rule 56(14) of the CGST Rules, 2017.

Ans: Records of Works Contractors [Rule 56(14)]: Every registered person executing works contract shall keep separate accounts for works contract showing-

a. the names and addresses of the persons on whose behalf the works contract is executed;
b. description, value and quantity (wherever applicable) of goods or services received for the execution of works contract;
c. description, value and quantity (wherever applicable) of goods or services utilized in the execution of works contract;
d. the details of payment received in respect of each works contract; and
e. the names and addresses of suppliers from whom he received goods or services.

Thus, XYZ Ltd. will be required to maintain the above records.

8. Enumerate the records which are required to be maintained by owner or operator of godown and transporters. OR Whether the transporters, who are not registered under the GST, are required to maintain any records under the provisions of CGST Act, 2017? Also explain, if any other unregistered persons who are required to maintain records under GST. (2 Marks, Jan. 2021)

Ans: The relevant provisions are discussed as under-

1) Obligation of Owner/Operator of Warehouse and Transporter to Maintain Records [Section 35(2)] : Every owner or operator of warehouse or godown or any other place used for storage of goods and every transporter, irrespective of whether he is a registered person or not, shall

maintain records of the consigner, consignee and other relevant details of the goods in such manner as may be prescribed.

2) Records to be maintained by owner or operator of godown or warehouse and transporters [Rule 58] :

a. Enrolment, if not already registered in GST- Business details to be submitted: Every person required to maintain records and accounts in accordance with the provisions of section 35(2), if not already registered under the Act, shall submit the details regarding his business electronically on the common portal.

Generation and communication of unique enrollment number: Upon validation of the details furnished, a unique enrolment number shall be generated and communicated to the said person.

b. Application for unique common enrollment number: A transporter who is registered in more than one State or Union Territory having the same Permanent Account Number, he may apply for a unique common enrolment number by submitting the details in FORM GST ENR-02 using any one of his GSTIN's, and upon validation of the details furnished, a unique common enrolment number shall be generated and communicated to the said transporter.

However, where the said transporter has obtained a unique common enrolment number, he shall not be eligible to use any of the GSTIN for the purposes of E-Way Bills under Chapter XVI of these rules.

c. Deemed enrollment if already enrolled in other state or UT: The person enrolled in any other State or Union territory shall be deemed to be enrolled in the State or Union territory.

d. Amendment of details : Such person may also amend the details furnished in the prescribed form.

e. Type of Records: The following records are to be maintained –

- ✓ Records to be maintained by a transporter: Records of goods transported, delivered and goods stored in transit by him alongwith GSTIN of the registered consignor and consignee for each of his branches.
- ✓ Records to be maintained by an owner/operator of a warehouse/godown: 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.

f. Manner of storage of goods by warehouse owner/operator: The owner or the operator of the godown shall store the goods in such manner that they can be identified item-wise and owner-wise and shall facilitate any physical verification or inspection by the proper officer on demand.

9. Explain the manner of maintenance of accounts by registered persons.

Ans: Maintenance of accounts by registered persons [Rule 56]:

1) Records may be in electronic form [Rule 56(15)]: The registered person may keep and maintain such accounts and other particulars in electronic form stored on any electronic device and record so maintained shall be authenticated by means of a digital signature.
2) Accounts to be kept all places mentioned in RC [Rule 56(7)]: 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.
3) No entry to be erased/overwritten [Rule 56(8)]: 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 there after correct entry shall be recorded. Where the registers and other documents are maintained electronically, a log of every entry edited or deleted shall be maintained.
4) Serial Number [Rule 56(9)]: Each volume of books of account maintained manually by the registered person shall be serially numbered.
5) Production of records on demand [Rule 56(18)]: 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.
6) Preservation of records [Rule 56(16)]: Accounts maintained by the registered person 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 for the period as provided in Section 36 (i.e., 72 months from the due date of furnishing of annual return for the year pertaining to such accounts and records) and shall, where such accounts and documents are maintained manually, be kept at every related place of business mentioned in the certificate of registration and shali be accessible at every related place of business where such accounts and documents are maintained digitally.

10. Explain the procedure for Generation and maintenance of electronic records.

Ans: Generation and maintenance of electronic records [Rule 57]:

1) Back up of e-records: Proper electronic back-up of records shall be maintained and preserved in such manner that, in the event of destruction of such records due to accidents or natural causes, the information can be restored within a reasonable period of time.
2) Production of hard copy or soft copy on demand: The registered person maintaining electronic records shall produce, on demand, the relevant records or documents, duly authenticated by him, in hard copy or in any electronically readable format.
3) Audit trail etc. to be produced: Where the accounts and records are stored electronically by any registered person, he shall, on demand, provide the details of such files, passwords of such files and explanation for codes used, where necessary, for access and any other information which is required for such access along with a sample copy in print form of the information stored in such files.

ELECTRONIC WAY BILL

11. Explain the need of introduction of E-way bill

Ans: Under GST regime, for quick and easy movement of goods across India without any hindrance, all the check posts across the country are abolished. However, in order to monitor the movement of goods for controlling any tax evasion, e-way bill system has been introduced for inter-State movement of goods and for intra-State movement of goods in a phased manner. Under this system, a taxpayer prior to movement of goods via a conveyance – would inform each transaction's details to the tax department, obtain an acknowledgement number for having thus informed, and then use this acknowledgement number as a valid document accompanying the conveyance carrying goods. The idea is that the taxpayer be made to upload the details of each transaction to a common portal through the Internet, and once uploaded, the common portal would automatically generate a document which can be tracked and verified easily by any stakeholder.

12. What is e-way bill?

Ans: A waybill is a receipt or a document issued by a carrier giving details and instructions relating to the shipment of a consignment of goods and the details include name of consignor, consignee, the point of origin of the consignment, its destination, and route.

Electronic Way Bill (E-Way Bill) is a compliance mechanism wherein by way of a digital interface the person causing the movement of goods uploads the relevant information prior to the commencement of movement of goods and generates e-way bill on the GST portal. In other words, E-way bill is an electronic document generated on the GST portal evidencing movement of goods.

13. What are the benefits of e-way bill?

Ans: Following benefits are expected from e-way bill mechanism:

(i) Physical interface to pave way for digital interface resulting in elimination of state boundary check-posts

(ii) It will facilitate faster movement of goods

(iii) It will improve the turnaround time of trucks and help the logistics industry by increasing the average distances travelled, reducing the travel time as well as costs. E-way Bill is generated electronically in Form GST EWB 01 on the common portal (www.ewaybillgst.gov.in).

The facility of generation, cancellation, updation and assignment of e-way bill shall be made available through SMS to the supplier, recipient and the transporter, as the case may be. E-way Bill can be generated through various modes like Web (Online), Android App, SMS, using Bulk Upload Tool and API (Application Program Interface) based site to site

integration etc. The pre-requisite for generation of e-way bill is that the person who generates e-way bill should be a registered person on GST portal and he should register on the e-way bill portal. If the transporter is not registered person under GST it is mandatory for him to get enrolled on e-way bill portal (https://ewaybillgst.gov.in) before generation of the e-way bill.

14. Explain the provisions relating to inspection of goods in movement.

Ans: Inspection of goods in movement [Section 68]: The relevant provisions are discussed as under-

(1) Carrying of E-way Bill [Section 68(1)]: The Government may require the person in charge of a conveyance carrying any consignment of goods of value exceeding such amount as may be specified to carry with him such documents and such devices as may be prescribed.

(2) Validation of E-way Bill [Section 68(2)]: The details of documents required to be carried under Section 68(1) shall be validated in such manner as may be prescribed.

(3) Transit check of E-way Bill [Section 68(3)]: Where any conveyance is intercepted by the proper officer at any place, he may require the person in charge of the said conveyance to produce the documents prescribed under the said sub-section and devices for verification, and the said person shall be liable to produce the documents and devices and also allow the inspection of goods.

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

15. Explain the procedure for furnishing of information to be furnished prior to commencement of movement of goods and generation of e-way bill.

Ans: Information to be furnished prior to commencement of movement of goods and generation of e-way bill [Rule 138]:

1) Furnishing of information prior to movement of goods and generation of e-way bill if value of consignment exceeds 50,000 [Rule 138(1)]: Every registered person who causes movement of goods of consignment value exceeding ₹ 50,000-

i) in relation to a supply; or

ii) for reasons other than supply; or

iii) due to inward supply from an unregistered person,

shall, before commencement of such movement, furnish information relating to the said goods in Part A of FORM GST EWB-01, electronically, on the common portal.

It is important to note that "information is to be furnished prior to the commencement of movement of goods" and "is to be issued whether the movement is in relation to a supply or for reasons other than supply".

In many cases, goods transit through another State while moving from one area in a State to another area in the same State. It is important to note that E-way bill generation is not dependent on whether a supply is inter-State or not, but on whether the movement of goods

is inter-State or not. Therefore, if the goods transit through a second State while moving from one place in a State to another place in the same State, an e-way bill is required to be generated. [Circular No. 47/21/2018-GST dated 08-06-2018]

Who causes movement of goods: If supplier is registered and undertakes to transport the goods, movement of goods is caused by the supplier. If recipient arranges transport, movement is caused by him. If goods are supplied by an unregistered supplier to a registered known recipient, movement shall be caused by such recipient.

Meaning of Consignment value of goods [Explanation 2]:

The consignment value of goods shall be-

- ✓ the value, determined in accordance with the provisions of Section 15,
- ✓ declared in an invoice, a bill of supply or a delivery challan, as the case may be, issued in respect of the said consignment and
- ✓ also includes the central tax, State or Union territory tax, integrated tax and cess charged, if any, in the document and
- ✓ shall exclude the value of exempt supply of goods where the invoice is issued in respect of both exempt and taxable supply of goods.

As discussed earlier in this chapter, in case of movement of goods for reasons other than supply, the movement is occasioned by means of a delivery challan which has to necessarily contain the value of goods. The value given in the delivery challan should be adopted in the e-way bill.

Special situations where e-way bill needs to be issued even if the value of the consignment is less than ₹ 50,000:

(i) Inter-State transfer of goods by principal to job-worker: Where goods are sent by a Principal located in one State or Union territory to a job worker located in any other State or Union territory, the e-way bill shall be generated either by the Principal or the job worker, if registered, irrespective of the value of the consignment.

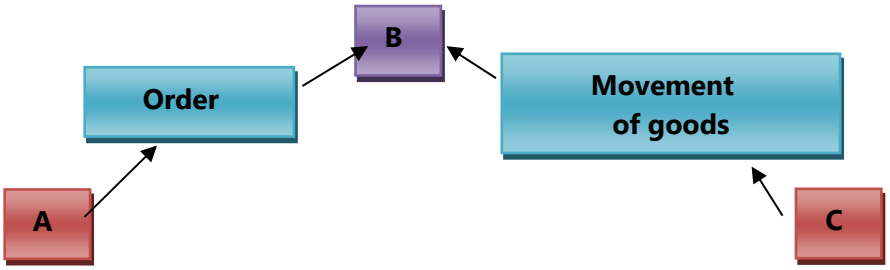
(ii) Inter-State transfer of handicraft goods by a person exempted from obtaining registration: Where handicraft goods are transported from one State or Union territory to another State or Union territory by a person who has been exempted from the requirement of obtaining registration u/s 24(i) and (ii), the e-way bill shall be generated by the said person irrespective of the value of the consignment.

"Handicraft goods" has the meaning as assigned to it in the Government of India, Ministry of Finance, Notification No. 56/2018-CT, dated 23-10-2018. [Explanation 1]

E-way Bill in case of 'Bill To Ship To' Model :

In a "Bill To Ship To" model of supply, there are three persons involved in a transaction, namely:

- ✓ 'A' is the person who has ordered 'B' to send goods directly to 'C'.
- ✓ 'B' is the person who is sending goods directly to 'C' on behalf of 'A'.
- ✓ 'C' is the recipient of goods.



In this complete scenario. two supplies are involved and accordingly two tax invoices are required to be issued:

Invoice -1: which would be issued by 'B' to 'A'.

Invoice-2: which would be issued by 'A' to 'C'.

It is clarified that as per the CGST Rules, 2017, either A or B can generate the e-Way Bill but it may be noted that only one e-Way Bill is required to be generated. [Press Release dated 23-04-2018]

Circular No. 47/21/2018- GST dated 08-06-2018 dated 26-10-2018:

Issue: Whether e-way bill is required where goods move from a DTA unit to a SEZ unit or vice versa located in the same State.

Clarification: Where goods move from a DTA unit to a SEZ unit or vice versa located in the same State, there is no requirement to generate an e-way bill, if the same has been exempted under rule 138(14)(d) of the CGST Rules.

(2) Information to be furnished in e-way bill: An e-way bill Form GST EWB-01 contains two parts –

(i) Part A [comprising of details of GSTIN of supplier & recipient, place of delivery (indicating PIN Code also), document (Tax invoice, Bill of Supply, Delivery Challan or Bill of Entry) number and date, value of goods, HSN code, and reasons for transportation, etc.]: to be furnished by the registered person** who is causing movement of goods of consignment value exceeding 50,000/-and

(ii) Part B (transport details) [Transporter document number (Goods Receipt Number or Railway Receipt Number or Airway Bill Number or Bill of Lading Number) and Vehicle number, in case of transport by road]: to be furnished by the person who is transporting the goods.

**However, information in Part-A may be furnished:

- ✓ by the transporter, on an authorization received from such registered person [First proviso to rule 138(1)] or
- ✓ by the e-commerce operator or courier agency, where the goods to be transported are supplied through an such e-commerce operator or a courier agency, on an authorization received from the consignor [Second proviso to rule 138(1)].

(3) Who is mandatorily required to generate e-way bill?

- ✓ Where the goods are transported by a registered person – whether as consignor or recipient as the consignee (whether in his own conveyance or a hired one or a public conveyance, by road), the said person shall have to generate the e-way bill (by furnishing information in part B on the common portal) [Rule 138(2)].
- ✓ Where the e-way bill is not generated by the registered person and the goods are handed over to the transporter, for transportation of goods by road, the registered person shall furnish the information relating to the transporter in Part B on the common portal and the e-way bill shall be generated by the transporter on the said portal on the basis of the information furnished by the registered person in Part A.
- ✓ Transport by rail/ by air/ vessel – E-way bill to be generated by Supplier or Recipient : Where the goods are transported by railways or by air or vessel, the e-way bill shall be generated by the registered person, being the supplier or the recipient, who shall, either before or after the commencement of movement, furnish, on the common portal, the information in Part B of FORM GST EWB-01. [Rule 138(2A))

Other important points:

(i) Where the goods are transported by railways: There is no requirement to carry e-way bill along with the goods, but railways has to carry invoice or delivery challan or bill of supply as the case may be along with goods. Further, e-way bill generated for the movement is required to be produced at the time of delivery of the goods. Railways shall not deliver goods unless the e-way bill required under rules is produced at the time of delivery (Proviso to rule 138(2A)).

(ii) Optional generation of e-way bill: The registered person or, the transporter may, at his option, generate and carry the e-way bill even if the value of the consignment is does not exceed ₹ 50,000 [First proviso to rule 138(3)].

(iii) Where the movement is caused by an unregistered person either in his own conveyance or a hired one or through a transporter, he or the transporter may, at their option, generate the e-way bill [Second proviso to rule 138(3)].

(iv) An unregistered person required to generate e-way bill in FORM GST EWB-01 or an unregistered person opting to generate e-way bill in Form GST EWB-01, on the common portal, shall submit the details electronically on the common portal in FORM GST ENR03 either directly or through a Facilitation Centre notified by the Commissioner and, upon validation of the details so furnished, a unique enrolment number shall be generated and communicated to the said person [Inserted vide Notification No. 12/2024-CT dated 10.07.2024.]

(v) Where the goods are supplied by an unregistered supplier to a recipient who is registered, the movement shall be said to be caused by such recipient if the recipient is known at the time of commencement of the movement of goods (Explanation 1 to rule 138(3)].

(4) When is it not mandatory to furnish the details of conveyance in Part-B?

Explanation 2 to rule 138(3) stipulates that e-way bill is valid for movement of goods by road only when the information in Part-B is furnished.

However, details of conveyance may not be furnished in Part-B of the e- way bill where the goods are transported for a distance of upto 50 km within the State/Union territory:

- ★ from the place of business of the consignor to the place of business of the transporter for further transportation Third proviso to rule 138(3)); or
- ★ from the place of business of the transporter finally to the place of business of the consignee [Proviso to rule 138(5)).

(5) Unique e-way bill number (EBN) [Rule 138(4)]: Upon generation of the e-way bill on the common portal, a unique e-way bill number (EBN) shall be made available to the supplier, the recipient and the transporter on the common portal.

(6) Transfer of goods from one conveyance to another – updation of details in E-way Bill [Rule 138(5)]: Where the goods are transferred from one conveyance to another, the consignor or the recipient, who has provided information in **Part A**, or the transporter shall, before such transfer and further movement of goods, update the details of conveyance in Part B of the e-way bill on the common portal.

(7) Assignment of E-way bill number to another transporter [Rule 138(5A)]: The consignor or the recipient, who has furnished the information in Part A of FORM GST EWB-01, or the transporter, may assign the e-way bill number to another registered or enrolled transporter for updating the information in Part B of FORM GST EWB-01 for further movement of the consignment.

However, after the details of the conveyance have been updated by the transporter in **Part B** of FORM GST EWB-01, the consignor or recipient, as the case may be, who has furnished the information in Part A of FORM GST EWB-01 shall not be allowed to assign the e-way bill number to another transporter.

Example: A consignor is required to move goods from City X to City Z. He appoints Transporter A for movement of his goods. Transporter A moves the goods from City X to City Y. For completing the movement of goods i.e., from City Y to City Z, Transporter A now hands over the goods to Transporter B. Thereafter, the goods are moved to the destination i.e. from City Y to City Z by Transporter B. In such a scenario, only one e-way bill would be required. Part A can be filled by the consignor and then the e-way bill will be assigned by the consignor to Transporter A. Transporter A will fill the vehicle details, etc. in Part B and will move the goods from City X to City Y. On reaching City Y, Transporter A will assign the said e-way bill to the Transporter B. Thereafter, Transporter B will be able to update the details of Part B. Transporter B will fill the details of his vehicle and move the goods from City Y to City Z [Press Release No. 144/2018 dated 31-03-2018).

(8) Multiple consignments transported in one conveyance – Consolidated E-way bill-to be generated [Rule 138(6)]: After e-way bill has been generated, where multiple consignments are intended to be transported in one conveyance, the transporter may indicate the serial number

of e-way bills generated in respect of each such consignment electronically on the common portal and a consolidated e-way bill in FORM GST EWB-02 maybe generated by him on the said common portal prior to the movement of goods.

Consolidated e-way bill is a document containing the multiple e-way bills for multiple consignments being carried in one conveyance (goods vehicle). That is, the transporter carrying multiple consignments of various consignors and consignees in a single vehicle can generate and carry a single document – consolidated e-way bill instead of carrying separate document for each consignment in a conveyance.

Consolidated EWB is like a trip sheet and it contains details of different e-way bills in respect of various consignments being transported in one vehicle and these e-way bills will have different validity periods. Hence, Consolidated EWB does not have any independent validity period. Further, individual consignment specified in the Consolidated EWB should reach the destination as per the validity period of the individual EWB.

(9)Transporter to generate E-way Bill [Rule 138(7)]: Where the consignor or the consignee has not generated the e-way bill in FORM GST EWB-01 and the aggregate of the consignment value of goods carried in the conveyance is more than 50,000, the transporter, except in case of transportation of goods by railways, air and vessel, shall, in respect of inter-State supply, generate the e-way bill in FORM GST EWB-01 on the basis of invoice or bill of supply or delivery challan, as the case may be, and may also generate a consolidated e- way bill in FORM GST EWB-02 on the common portal prior to the movement of goods. [Note: Provisions of rule 138(7) have not yet been made effective.]

However, where the goods to be transported are supplied through an e-commerce operator or a courier agency, the information in Part A of FORM GST EWB-01 may be furnished by such e-commerce operator or courier agency.

(10) Information submitted for e-way bill can be used for filing GST Returns [Rule 138(8)]: The information furnished in Part A of FORM GST EWB-01 shall be made available to the registered supplier on the common portal who may utilize the same for furnishing details in FORM GSTR-1.

Information to Unregistered Supplier: However, when the information has been furnished by an unregistered supplier in FORM GST EWB-01, he shall be informed electronically, if the mobile number or the email is available.

(11) Cancellation of E-way Bill [Rule 138(9)]: Where an e-way bill has been generated, but goods are either not transported or are not transported as per the details furnished in the e-way bill, the e-way bill may be cancelled electronically on the common portal, either directly or through a Facilitation Centre notified by the Commissioner, within 24 hours of generation of the e-way bill.

However, an e-way bill cannot be cancelled if it has been verified in transit in accordance with the provisions of Rule 138B.

The unique number generated EWB-01. shall be valid for a period of 15 days for updation of Part B of FORM GST EWB-01.

(12) Validity period of E-way Bill/ Consolidated E-Way bill [Rule 138(10)]: An e-way bill or a consolidated e- way bill generated shall be valid for the period from the relevant date, for the distance within the country the goods have to be transported, as mentioned below:

	Distance within country	Validity period from relevant date
1.	Upto 200 km	One day in cases other than Over Dimensional Cargo or multimodal shipment in which at least one leg involves transport by ship.
2.	For every 200 km or part thereof thereafter	One additional day in cases other than Over Dimensional Cargo or multimodal shipment in which at least one leg involves transport by ship.
3.	Upto 20 km	One day in case of Over Dimensional Cargo or multimodal shipment in which at least one leg involves transport by ship
4.	For every **20 km** or part thereof thereafter	One additional day in case of Over Dimensional Cargo or multimodal shipment in which at least one leg involves transport by ship.

However, the Commissioner may, by notification, extend the validity period of e-way bill for certain categories of goods as may be specified therein.

Further where, under circumstances of an exceptional nature, including trans-shipment, the goods cannot be transported within the validity period of the e-way bill, the transporter may extend the validity period after updating the details in Part B of FORM GST EWB-01, if required.

The validity of the e-way bill may be extended within eight hours from the time of its expiry.

"Relevant date" shall mean the date on which the e-way bill has been generated and the period of validity shall be counted from the time at which the e-way bill has been generated and each day shall be counted as the period expiring at midnight of the day immediately following the date of generation of e-way bill.

This can be explained by following examples –

i. Suppose an e-way bill is generated at 00:04 hrs. on 14th March. Then first day would end on 12:00 midnight of 15 - 16 March. Second day will end on 12:00 midnight of 16 - 17 March and so on.

ii. Suppose an e-way bill is generated at 23:58 hrs. on 14th March. Then first day would end on 12:00 midnight of 15 - 16 March. Second day will end on 12:00 midnight of 16 - 17 March and so on.

The validity of the e-way bill starts when first entry is made in Part-B i.e. vehicle entry is made first time in case of road transportation or first transport document number entry in

case of rail/air/ship transportation, whichever is the first entry. It may be noted that validity is not re-calculated for subsequent entries in Part-B. [Explanation 1]

Example: A consignor hands over his goods for transportation on Friday to transporter. However, the assigned transporter starts the movement of goods on Monday. The validity period of e-way bill starts only after the details in Part B are updated by the transporter for the first time. In the given situation, Consignor can fill the details in Part A on Friday and handover his goods to the transporter. When the transporter is ready to move the goods, he can fill Part B ie. the assigned transporter can fill the details in Part B on Monday and the validity period of the e-way bill will start from Monday [Press Release No. 144/2018 dated 31-03-2018].

"Over Dimensional Cargo" shall mean a cargo carried as a single indivisible unit and which exceeds the dimensional limits prescribed in Rule 93 of the Central Motor Vehicle Rules, 1989, made under the Motor Vehicles Act, 1988. [Explanation 2]

(13) Acceptance/ rejection of E-way Bill [Rule 138(11)]: The details of the e-way bill generated under this rule shall be made available to the –

a. supplier, if registered, where the information in Part A of FORM GST EWB-01 has been furnished by the recipient or the transporter; or
b. recipient, if registered, where the information in Part A of FORM GST EWB-01 has been furnished by the supplier or the transporter, on the common portal, and the supplier or the recipient, as the case may be, shall communicate his acceptance or rejection of the consignment covered by the e-way bill.

(14) Deemed acceptance by recipient if no communication within 72 Hours [Rule 138(12)] : Where the recipient does not communicate his acceptance or rejection within 72 hours of the details being made available to him on the common portal, it shall be deemed that he has accepted the said details.

(15) Validity in other States [Rule 138(13)]: The e-way bill generated under this rule or under Rule 138 of the Goods and Services Tax Rules of any State shall be valid in every State and Union territory.

Other Points to remember:

i) E-way bill is not valid for movement of goods without vehicle number on it.
ii) Once E-way bill is generated, it cannot be edited for any mistake. However, it can be cancelled within 24 hours of generation.
iii) E-way bill may be updated with vehicle number any number of times.
iv) The latest vehicle number should be available on e-way bill and should match with the vehicle carrying it in case checked by the department.

(16) E-way bill not required to be generated [Rule 138(14)]: Notwithstanding anything contained in this rule, no e-way bill is required to be generated –

(a) where the goods being transported are specified in Annexure (Annexure contains a list of items where E-way bill is not required to be generated being –

(i) LPG for supply to household and non-domestic exempted category (NDEC) customers;
(ii) Kerosene oil sold under PDS
(iii) Postal baggage transported by Department of Posts
(iv) Natural or cultured pearls and precious or semi-precious stones precious metal and metals clad with precious metals (Chapter 71)
(v) Jewellery, goldsmiths' and silversmiths' wares and other articles (Chapter 71) "excepting Imitation Jewellery (7117)".
(vi) Currency
(vii) Used personal and household effects
(viii) Coral, unworked (0508) and worked coral (9601)

(b) where the goods are being transported by a non-motorised conveyance;)
(c) where the goods are being transported from the customs port, airport, air cargo complex and land customs station to an inland container depot or a container freight station for clearance by Customs;
(d) in respect of movement of goods within such areas as are notified under rule 138(14)(d) of the Goods and Services Tax Rules of the concerned State or Union Territory;
(e) where the goods, other than de-oiled cake, being transported, are specified in the Schedule appended to Notification No. 2/2017-CT (Rate) dated the 28-06-2017 as amended from time to time;
(f) where the goods being transported are alcoholic liquor for human consumption, petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas or aviation turbine fuel;
(g) where the supply of goods being transported is treated as no supply under Schedule III of the Act,
(h) where the goods are being transported –
(i) under customs bond from an inland container depot or a container freight station to a customs port, airport, air cargo complex and land customs station, or from one customs station or customs port to another customs station or customs port, or
(ii) under customs supervision or under customs seal;
(i) where the goods being transported are transit cargo from or to Nepal or Bhutan,
(j) where the goods being transported are exempt from tax under notification No. 7/2017-CT (Rate), dated 28-06-2017 as amended from time to time and notification No. 26/2017-CT (Rate), dated 21-09-2017 as amended from time to time;
(k) any movement of goods caused by defence formation under Ministry of defence as a consignor or consignee;
(l) where the consignor of goods is the Central Government, Government of any State or a local authority for transport of goods by rail;
(m) where empty cargo containers are being transported;

(n) where the goods are being transported upto a distance of 20 kms from the place of the business of the consignor to a weighbridge for weighment or from the weighbridge back to the place of the business of the said consignor subject to the condition that the movement of goods is accompanied by a delivery challan issued in accordance with Rule 55, and

(o) where empty cylinders for packing of liquefied petroleum gas are being moved for reasons other than supply.

Explanation: The facility of generation, cancellation, updation and assignment of e-way bill shall be made available through SMS to the supplier, recipient and the transporter, as the case may be.

16. What documents and devices are to be carried by a person-in-charge of a conveyance.

Ans: Documents and devices to be carried by a person-in-charge of a conveyance [Rule 138A]:

(1) Documents to be carried by person in charge [Rule 138A(1)]: The person in charge of a conveyance shall carry-

a. the invoice or bill of supply or delivery challan, as the case may be; and

b. a copy of the e-way bill in physical form or the e-way bill number in electronic form or mapped to a Radio Frequency Identification Device (RFID) embedded on to the conveyance in such manner as may be notified by the Commissioner.

However, nothing contained in above shall apply in case of movement of goods by rail or by air or vessel.

In case of imported goods: In case of imported goods, the person in charge of a conveyance shall also carry a copy of the bill of entry filed by the importer of such goods and shall indicate the number and date of the bill of entry in Part A of FORM GST EWB-01.

(2) Uploading of tax invoice for Verification [Rule 138A(2)]: In case, e-invoice is issued in the manner prescribed under rule 48(4), the Quick Response (QR) code having an embedded Invoice Reference Number (IRN) in it, may be produced electronically, for verification by the proper officer in lieu of the physical copy of such tax invoice.

(3) Auto-population of invoice information [Rule 138A(3)]: Where the registered person uploads the invoice, the information in Part A of FORM GST EWB-01 shall be auto-populated by the common portal on the basis of the information furnished in FORM GST INV-1.

(4) RFID to Notified transporters [Rule 138A(4)]: The Commissioner may, by notification, require a class of transporters to obtain a unique RFID and get the said device embedded on to the conveyance and map the e- way bill to the RFID prior to the movement of goods.

(5) Other documents to be carried instead of e-way bill [Rule 138A(5)]: Notwithstanding anything contained Rule 138A(1)(b), where circumstances so warrant, the Commissioner may, by notification, require the person-in-charge of the conveyance to carry the following documents instead of the e-way bill-

a. tax invoice or bill of supply or bill of entry; or

b. a delivery challan, where the goods are transported for reasons other than by way of supply.

There is no need to carry the physical copy of tax invoice in cases where e-invoice has been generated and production of the QR code having an embedded IRN electronically, for verification by the proper officer, would suffice [Circular No. 160/16/2021-GST dated 20-09-2021]

Issue	Clarification
Whether carrying physical copy (of invoice is compulsory during movement of goods in cases where suppliers have issued invoices in the manner prescribed under rule 48 (4) of the CGST Rules, 2017 (i.e. in cases of e-invoice).	(1) Rule 138A (1) of the CGST Rules, 2017 inter-alia, provides that the person in charge of a conveyance shall carry – a) the invoice or bill of supply or delivery challan, as the case may be; and b) a copy of the e-way bill or the e-way bill number, either physically or mapped to a Radio Frequency Identification Device embedded on to the conveyance in such manner as may be notified by the Commissioner. (2) Further, rule 138A (2) of CGST Rules, after being amended vide notification No. 72/2020-CT dated 30-09-2020, states that "In case, invoice is issued in the manner prescribed under Rule 48(4), the Quick Reference (QR) code having an embedded Invoice Reference Number (IRN) in it, may be produced electronically, for verification by the proper officer in lieu of the physical copy of such tax invoice". (3) A conjoint reading of rules 138A (1) and 138A (2) of CGST Rules, 2017 clearly indicates that there is no requirement to carry the physical copy of tax invoice in cases where e-invoice has been generated by the supplier. After amendment, the revised rule 138A (2) states in unambiguous words that whenever e-invoice has been generated, the Quick Reference (QR) code, having an embedded Invoice Reference Number (IRN) in it, may be produced electronically for verification by the proper officer in lieu of the physical copy of such tax invoice. (4) Accordingly, it is clarified that there is no need to carry the physical copy of tax invoice in cases where invoice has been generated by the supplier in the manner prescribed under rule 48(4) of the CGST Rules and production of the Quick Response (QR) code having an embedded Invoice Reference Number (IRN) electronically, for verification by the proper officer, would suffice.

17. Explain the procedure of verification of documents and conveyances.

Ans: Verification of documents and conveyances [Rule 138B]:

(1) Interception of conveyance for verification of E-way Bill: The Commissioner or an officer empowered by him in this behalf may authorise the proper officer to intercept any conveyance to verify the e-way bill or the e-way bill number in physical form for all inter-State and intra-State movement of goods.

(2) Installation of RFID readers: The Commissioner shall get RFID readers installed at places where the verification of movement of goods is required to be carried out and verification of movement of vehicles shall be done through such device readers where the e-way bill has been mapped with the said device.

(3) Physical verification of conveyances: The physical verification of conveyances shall be carried out by the proper officer as authorised by the Commissioner or an officer empowered by him in this behalf. However, on receipt of specific information on evasion of tax, physical verification of a specific conveyance can also be carried out by any officer after obtaining necessary approval of the Commissioner or an officer authorised by him in this behalf.

18. Explain the procedure relating to Inspection and verification of goods.

Ans: Inspection and verification of goods [Rule 138C]:

(1) E-recording of summary report of Inspection of Goods: A summary report of every inspection of goods in transit shall be recorded online by the proper officer in Part A of FORM GST EWB-03 within 24 hours of inspection and the final report in Part B of FORM GST EWB-03 shall be recorded within 3 days of such inspection.

However, where the circumstances so warrant, the Commissioner, or any other officer authorised by him, may, on sufficient cause being shown, extend the time for recording of the final report in Part B of FORM EWB-03, for a further period not exceeding three days.

The period of 24 hours or, as the case may be, 3 days shall be counted from the midnight of the date on which the vehicle was intercepted.

(2) One time physical verification of conveyance in State Where the physical verification of goods being transported on any conveyance has been done during transit at one place within the State or in any other State, no further physical verification of the said conveyance shall be carried out again in the State, unless a specific information relating to evasion of tax is made available subsequently.

The hard copies of the notices/orders issued by a tax authority may be shown as proof of initiation of action by a tax authority by the transporter/registered person to another tax authority as and when required. Only such goods and/or conveyances should be detained/confiscated in respect of which there is a violation of the provisions of the GST Acts or the rules made thereunder.

Example : Where a conveyance carrying 25 consignments is intercepted and the person-in-charge of such conveyance produces valid e-way bills and/or other relevant documents in respect of 20 consignments, but is unable to produce the same with respect to the remaining 5 consignments, detention/confiscation can be made only with respect to the 5 consignments and the conveyance in respect of which the violation of the Act or the rules made thereunder has been established by the proper officer. [Circular No. 49/23/2018-GST dated 21-06-2018]

19. Explain the facility for uploading information regarding detention of vehicle.

Ans: Facility for uploading information regarding detention of vehicle [Rule 138D]: Where a vehicle has been intercepted and detained for a period exceeding thirty minutes, the transporter may upload the said information in FORM GST EWB-04 on the common portal.

Explanation: 'Transported by railways', 'transportation of goods by railways', 'transport of goods by rail' and 'movement of goods by rail' does not include cases where leasing of parcel space by Railways takes place.

20. Explain the restriction on furnishing of information in PART A of FORM GST EWB-01.

Ans: Restriction on furnishing of information in PART A of FORM GST EWB-01 [Rule 138E]: No person (including a consignor, consignee, transporter, an e-commerce operator or a courier agency) shall be allowed to furnish the information in PART A of FORM GST EWB-01 in respect of any outward movement of goods of a registered person, who, –

a) Non furnishing of CMP-08 statement for consecutive two quarters being a person paying tax under section 10, or availing the benefit of Notification No. 2/2019-CT (Rate), dated 07-03-2019, has not furnished the statement in FORM GST CMP-08 for two consecutive quarters, or
b) Non furnishing of GSTR-3B returns for consecutive two tax periods: being a person other than a person specified in clause (a), has not furnished the returns for a consecutive period of two tax periods;
c) Non furnishing of GSTR-1 statement for any two months/Quarters: being a person other than a person specified in clause (a), has not furnished the statement of outward supplies for any two months or quarters, as the case may be;
d) being a person, whose registration has been suspended under the provisions of Rule 21A(1)/(2)/(2A).

However, the Commissioner may, on receipt of an application from a registered person in FORM GST EWB-05, on sufficient cause being shown and for reasons to be recorded in writing, by order, in FORM GST EWB-06 allow furnishing of the said information in PART A of FORM GST EWB-01, subject to such conditions and restrictions as may be specified by him.

No order rejecting the request of such person to furnish the information in PART A of FORM GST EWB-01 shall be passed without affording the said person a reasonable opportunity of being heard.

The permission granted or rejected by the Commissioner of State tax or Commissioner of Union territory tax shall be deemed to be granted or, as the case may be, rejected by the Commissioner.

21. Explain the provisions relating to furnishing of Information in case of intra-State movement of gold, precious stones, etc. and generation of e-way bills thereof.

Ans: Information to be furnished in case of intra-State movement of gold, precious stones, etc. and generation of e-way bills thereof [Rule 138F] [Inserted by Notification No. 38/2023 CT dated 04-08-2023]:

(1) Generation of E- way bill in case of Intra state movement of gold etc. if consignment value 2,00,000 or more: Where-

a) a Commissioner of State tax or Union territory tax mandates furnishing of information regarding intra-State movement of Natural or cultured pearls and precious or semi-precious stones precious metal and metals clad with precious metals, Jewellery, goldsmiths' and silversmiths' wares and other articles excepting Imitation Jewellery in accordance with rule 138F(1) of the SGST/ UTGST Rules, and

b) the consignment value of such goods exceeds such amount, not below 2 lakhs, as may be notified by the Commissioner of State tax or Union territory tax, in consultation with the jurisdictional Principal Chief Commissioner or Chief Commissioner of Central Tax, or any Commissioner of Central Tax authorised by him, every registered person who causes intra-State movement of such goods, -

i) in relation to a supply; or

ii) for reasons other than supply; or

iii) due to inward supply from an un-registered person,

shall, before the commencement of such movement within that State or Union territory, furnish information relating to such goods electronically, as specified in Part A of FORM GST EWB-01, against which a unique number shall be generated.

However, where the goods to be transported are supplied through an e-commerce operator or a courier agency, the information in Part A of FORM GST EWB-01 may be furnished by such e-commerce operator or courier agency.

(2) Part B information not to be furnished: The information as specified in PART B of FORM GST EWB-01 shall not be required to be furnished in respect of movement of goods and after furnishing information in Part-A of FORM GST EWB-01, the e-way bill shall be generated in FORM GST EWB-01, electronically on the common portal.

(3) Information of E-way bill to registered supplier: The information furnished in Part A of FORM GST EWB-01 shall be made available to the registered supplier on the common portal who may utilize the same for furnishing the details in FORM GSTR-1.

(4) Cancellation of E-way bill: Where an e-way bill has been generated, but goods are either not transported or are not transported as per the details furnished in the e-waybill, the e-way bill may be cancelled, electronically on the common portal, within 24 hours of generation of the e-way bill.

However, an e-way bill cannot be cancelled if it has been verified in transit in accordance with the provisions of rule 138B.

(5) E-way bill not required to be generated: No e-way bill is required to be generated –

(a) where the goods are being transported from the customs port, airport, air cargo complex and land customs station to an inland container depot or a container freight station for clearance by Customs;

(b) where the goods are being transported –

i. under customs bond from an inland container depot or a container freight station to a customs port, airport, air cargo complex and land customs station, or from one customs station or customs port to another customs station or customs port, or

ii. under customs supervision or under customs seal.

(6) Applicability of other rules: The provisions of Rule 138(10)/(11)/(12), rule 138A, rule 138B, rule 138C, rule 138D and rule 138E shall, mutatis mutandis, apply to an e-way bill generated under this rule. Consignment Value [Explanation]: The consignment value of goods shall be the value, determined in accordance with the provisions of section 15, declared in an invoice, a bill of supply or a delivery challan, as the case may be, issued in respect of the said consignment and also includes the central tax, State tax or Union territory tax charged in the document and shall exclude the value of exempt supply of goods where the invoice is issued in respect of both exempt and taxable supply of goods.

Circular No 61/35/2018-GST dated 04-09-2018	Consignee/ recipient taxpayer storing goods in the transporter's godown – E-way bill requirement and record maintenance: Generally, textile traders use transporters' godown $ for storage of their goods due to their weak financial conditions. The transporter takes delivery of the goods and temporarily stores them in his warehouse for further transportation of the goods till the consignee/recipient taxpayer's premises. In this case, the recipient taxpayer has to declare the transporter's godown as an ApoB. E-way Bill requirements: The goods in movement including when they are stored in the transporter's godown (even if the godown is located in the recipient taxpayer's city/town) prior to delivery shall always be accompanied by a valid e-way bill. The transportation under the e-way bill shall be deemed to be concluded once the goods have reached the transporter's godown (recipient taxpayer's APOB). Hence, e-way bill validity in such cases will not be required to be extended. Further, whenever the goods move from the transporter's godown to the recipient taxpayer's any other PoB, a valid e-way bill shall be required.

	Requirement of maintaining accounts and records : (1) Transporter, being a warehouse keeper, has to maintain accounts and records as specified in section 35 read with rule 58. (2) Recipient taxpayer shall also maintain accounts and records as required under rules 56 and 57. Furthermore, as per rule 56(7), books of accounts in relation to goods stored at the transporter's godown i .e ., the recipient taxpayer's APoB) by the recipient taxpayer may be maintained by him at his PPOB. Thus, the facility of declaring APoB by the recipient taxpayer is in no way putting any additional compliance requirement on the transporters.

TOPIC REFERENCER

- *Manner of Payment of Tax, Interest, etc.*
- *Electronic Cash Ledger*
- *Electronic Credit Ledger*
- *Electronic Liability Register*
- *CPIN, CIN, BRN and E-FPB*
- *Interest on Delayed Payment of Tax*
- *Transfer of Input Tax Credit*
- *Tax Deduction at Source (TDS)*
- *Registration of Persons Liable to Deduct Tax at Source*

MANNER OF PAYMENT OF TAX, INTEREST, ETC.

1. Explain the provisions relating to payment of tax, interest, penalty and other amounts.

Ans: Payment of tax, interest, penalty and other amounts [Section 49]:

(1) Amount deposited to be credited to the Electronic Cash Ledger [Section 49(1)] : Every deposit made towards tax, interest, penalty, fee or any other amount by a person—

- ✓ by internet banking, or
- ✓ by using credit or debit cards, or
- ✓ by National Electronic Fund Transfer (NeFT), or
- ✓ by Real Time Gross Settlement (RTGS), or
- ✓ by such other mode and subject to such conditions and restrictions as may be prescribed,

shall be credited to the electronic cash ledger of such person to be maintained in such manner as may be prescribed.

"Electronic cash ledger" means the electronic cash ledger referred to in Section 49(1). The Electronic Cash Ledger contains a summary of all the deposits/payments made by a taxpayer. Electronic Cash Ledger is maintained on the GST Portal. [Section 2(43)]

(2) ITC to be credited to Electronic Credit Ledger [Section 49(2)] : The input tax credit as self assessed in the return of a registered person shall be credited to his electronic credit ledger, in accordance with Section 41, to be maintained in such manner as may be prescribed.

"Electronic credit ledger" means the electronic credit ledger referred to in Section 49(2). [Section 2(46)]

(3) Utilisation of amount in Electronic Cash Ledger [Section 49(3)] : The amount available in the electronic cash ledger 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 there under in such manner and subject to such conditions and within such time as may be prescribed.

(4) Transfer of CGST to IGST/ SGST/ UTT in electronic cash ledger of the same or distinct person [Section 49(10)] : A registered person may, on the common portal, transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under this Act, to the electronic cash ledger for,-

a. integrated tax, central tax, State tax, Union territory tax or cess; or

b. integrated tax or central tax of a distinct person as specified in Section 25(4)/(5), in such form and manner and subject to such conditions and restrictions as may be prescribed and such transfer shall be deemed to be a refund from the electronic cash ledger under this Act.

However, no such transfer under Section 49(10)(b) shall be allowed if the said registered person has any unpaid liability in his electronic liability register.

(5) Amount transferred in CGST – Deemed deposit [Section 49(11)]: Where any amount has been transferred to the electronic cash ledger under this Act, the same shall be deemed to be deposited in the said ledger as provided in Section 49(1).

(6) Utilisation of amount in Electronic credit ledger – For payment of output tax under CGST and IGST Act [Section 49(4)] : 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 restrictions within such time as may be prescribed.

(7) Manner of utilisation of amount in Electronic Credit Ledger [Section 49(5)] : The amount of input tax credit available in the electronic credit ledger of the registered person on account of—

(a) Credit of IGST – To be utilised for payment of IGST, CGST, SGST and UTGST sequentially : Integrated tax shall first be utilised towards payment of integrated tax and the amount remaining, if any, may be utilised towards the payment of central tax and State tax, or as the case may be, Union territory tax, in that order;

(b) Credit of CGST – To be utilised for payment of CGST and IGST sequentially : The central tax shall first be utilised towards payment of central tax and the amount remaining, if any, may be utilised towards the payment of integrated tax;

(c) Credit of SGST – To be utilised for payment of SGST and IGST sequentially : The State tax shall first be utilised towards payment of State tax and the amount remaining, if any, may be utilised towards payment of integrated tax;

However, the input tax credit on account of State tax shall be utilised towards payment of integrated tax only where the balance of the input tax credit on account of central tax is not available for payment of integrated tax;

(d) Credit of UTGST – To be utilised for payment of UTGST and IGST sequentially : The Union territory tax shall first be utilised towards payment of Union territory tax and the amount remaining, if any, may be utilised towards payment of integrated tax;

However, the input tax credit on account of Union territory tax shall be utilised towards payment of integrated tax only where the balance of the input tax credit on account of central tax is not available for payment of integrated tax;

(e) Credit of CGST – Cannot be utilised for payment of SGST and UTGST : The central tax shall not be utilised towards payment of State tax or Union territory tax; and

(f) Credit of SGST/ UTGST – Cannot be utilised for payment of CGST : The State tax or Union territory tax shall not be utilised towards payment of central tax.

(8) Maximum proportion of output tax liability to be discharged through E-credit ledger to be specified [Section 49(12)] : The Government may, on the recommendations of the Council, subject to such conditions and restrictions, specify such maximum proportion of output tax liability under this Act or under the IGST Act, 2017 which may be discharged through the electronic credit ledger by a registered person or a class of registered persons, as may be prescribed.

(9) Refund of balance in Electronic Ledger [Section 49(6)] : The balance in the electronic cash ledger or electronic 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 in accordance with the provisions of Section 54.

(10) Electronic liability Register [Section 49(7)] : All liabilities of a taxable person under this Act shall be recorded and maintained in an electronic liability register in such manner as may be prescribed.

(11) Order of discharge of liabilities [Section 49(8)] : Every taxable person 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 or the rules made thereunder including the demand determined under Section 73 or Section 74.

(12) Incidence of tax – Deemed to have been passed [Section 49(9)] : Every person who has paid the tax on goods or services or both under this Act shall, unless the contrary is proved by him, be deemed to have passed on the full incidence of such tax to the recipient of such goods or services or both.

Explanation : For the purposes of this Section,—

(a) Date of credit in Government Account – Date of deposit the date of credit to the account of the Government in the authorised bank shall be deemed to be the date of deposit in the electronic cash ledger;

(b) the expression,—

(i) "tax dues" means the tax payable under this Act and does not include interest, fee and penalty; and

(ii) "other dues" means interest, penalty, fee or any other amount payable under this Act or the rules made thereunder.

"Authorised bank" shall mean a bank or a branch of a bank authorised by the Government to collect the tax or any other amount payable under this Act. [Section 2(14)]

Note: Provisions of payment of tax under CGST Act have also been made applicable to IGST Act vide Section 20 of the IGST Act.

2. Explain the provisions relating to Utilisation of ITC and Order of Utilisation of ITC.

Ans: Utilisation of Input tax credit and its order of utilisation : The relevant provisions are as under –

(1) Utilisation of input tax credit subject to certain conditions [Section 49A]: Notwithstanding anything contained in section 49, the input tax credit on account of central tax, State tax or Union territory tax shall be utilised towards payment of integrated tax, central tax, State tax or Union territory tax, as the case may be, only after the input tax credit available on account of integrated tax has first been utilised fully towards such payment.

(2) Order of utilisation of input tax credit [Section 49B]: Notwithstanding anything contained in this Chapter and subject to Section 49(5)(e)&(f), the Government may, on the recommendations of the Council, prescribe the order and manner of utilisation of the input tax credit on account of integrated tax, central tax, State tax or Union territory tax, as the case may be, towards payment of any such tax.

Order of utilization of input tax credit [Rule 88A]: Input tax credit on account of integrated tax shall first be utilised towards payment of integrated tax, and the amount remaining, if any, may be utilised towards the payment of central tax and State tax or Union territory tax, as the case may be, in any order However, the input tax credit on account of central tax, State tax or Union territory tax shall be utilized towards payment of integrated tax, central tax, State tax or Union territory tax, as the case may be, only after the input tax credit available on account of integrated tax has first been utilised fully.

Note: The above provisions has been discussed in detail in Chapter – Input tax credit.

ELECTRONIC CASH LEDGER

3. Write a note on Electronic Cash Ledger.

Ans: Electronic Cash Ledger [Rule 87]:

(1) Maintenance of Electronic Cash Ledger [Rule 87(1)] : The electronic cash ledger shall be maintained in FORM GST PMT-05 for each person, liable to pay tax, interest, penalty, late fee or any other amount, on the common portal for crediting the amount deposited and debiting the payment therefrom towards tax, interest, penalty, fee or any other amount.

(2) Generation of challan [Rule 87(2)] : Any person, or a person on his behalf, shall generate a challan in FORM GST PMT-06 on the common portal and enter the details of the amount to be deposited by him towards tax, interest, penalty, fees or any other amount.

Validity period – 15 days : The challan in FORM GST PMT-06 generated at the common portal shall be valid for a period of 15 days.

(3) Modes of deposit of amount in Electronic Cash Ledger [Rule 87(3)] : The deposit under Rule 87(2) shall be made through any of the following modes, namely:

(i) Internet Banking through authorised banks;

(ii) Unified Payment Interface (UPI) from any bank;

(iii) Immediate Payment Services (IMPS) from any bank;

(iv) Credit card or Debit card through the authorised bank;

(v) National Electronic Fund Transfer or Real Time Gross Settlement from any bank; or

(vi) Over the Counter payment through authorised banks for deposits up to ₹ 10,000 per challan per tax period, by cash, cheque or demand draft.

OTC payment restrictions upto ₹ 10,000 not applicable in following cases : The restriction for deposit upto ₹ 10,000 per challan in case of an Over the Counter payment shall not apply to deposit to be made by–

(a) Government Departments or any other deposit to be made by persons as may be notified by the Commissioner in this behalf;

(b) 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;

(c) 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.

Additional Provisions – Supply of OIDAR services from outside India to Non taxable online recipient : A person supplying online information and database access or retrieval services from a place outside India to a non-taxable online recipient referred to in Section 14, or a person supplying online money gaming from a place outside India to a person in India as referred to in section 14A, of the IGST Act, 2017 may also make the deposit through international money transfer through Society for Worldwide Inter-bank Financial Telecommunication payment network, from the date to be notified by the Board.

Commission to be borne by the payer [Explanation] : For making payment of any amount indicated in the challan, the commission, if any, payable in respect of such payment shall be borne by the person making such payment.

(4) Payment by unregistered supplier using TIN [Rule 87(4)] : Any payment required to be made by a person who is not registered under the Act, shall be made on the basis of a temporary identification number generated through the common portal.

(5) Mandate form for NeFT or RTGS payments [Rule 87(5)] : Where the payment is made by way of National Electronic Fund Transfer or Real Time Gross Settlement or Immediate Payment Service mode 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 from where the payment is to be made.

Validity of mandate form – 15 days : The mandate form shall be valid for a period of 15 days from the date of generation of challan.

(6) Challan Identification Number [CIN] [Rule 87(6)] : On successful credit of the amount to the concerned government account maintained in the authorised bank, a Challan Identification Number shall be generated by the collecting bank and the same shall be indicated in the challan.

(7) Credit in electronic cash ledger on receipt of CIN [Rule 87(7)] : On receipt of the CIN from the collecting bank, the said amount shall be credited to the electronic cash ledger of the person on whose behalf the deposit has been made and the common portal shall make available a receipt to this effect.

(8) Representation to bank on non generation of CIN despite payment [Rule 87(8)] : Where the bank account of the person concerned, or the person making the deposit on his behalf, is debited but no CIN is generated or generated but not communicated to the common portal, the said person may represent electronically in FORM GST PMT-07 through the common portal to the bank or electronic gateway through which the deposit was initiated.
However, where the bank fails to communicate details of CIN to the Common Portal, the E-Cash Ledger may be updated on the basis of e-Scroll of the RBI in cases where the details of the said eScroll are in conformity with the details in challan generated in FORM GST PMT-06 on the Common Portal.

(9) Credit of TDS/TCS [Rule 87(9)] : Any amount deducted u/s 51 or collected u/s 52 and claimed by the registered taxable person from whom the said amount was deducted or, as the case may be, collected shall be credited to his electronic cash ledger.

(10) Refund amount to be debited [Rule 87(10)] : Where a person has claimed refund of any amount from the electronic cash ledger, the said amount shall be debited to the electronic cash ledger.

(11) Credit on account of rejection of refunds [Rule 87(11)] : If the refund so claimed is rejected, either fully or partly, the amount debited under Rule 87(10), to the extent of rejection, shall be credited to the electronic cash ledger by the proper officer by an order made in FORM GST PMT-03.

(12) Communication of discrepancy to Jurisdictional Officer [Rule 87(12)] : A registered person shall, upon noticing any discrepancy in his electronic cash ledger, communicate the same to the officer exercising jurisdiction in the matter, through the common portal in FORM GST PMT-04.

(13) Transfer of amount from one account head to another [Rule 87(13)] : A registered person may, on the common portal, transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under the Act to the electronic cash ledger for Integrated tax, Central tax, State tax or Union territory tax or cess in FORM GST PMT-09.

(14) Transfer of cash balance to distinct person [Rule 87(14)] : A registered person may, on the common portal, transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under the Act to the electronic cash ledger for central

tax or integrated tax of a distinct person as specified in Section 25(4)/(5), in FORM GST PMT-09.

However, no such transfer shall be allowed if the said registered person has any unpaid liability in his electronic liability register.

Rejection of refund on rejection of appeal [Explanation 1] : The refund shall be deemed to be rejected if the appeal is finally rejected.

Deemed rejection of refund [Explanation 2] : The refund shall be deemed to be rejected, if the appeal is finally rejected or if the claimant gives an undertaking to the proper officer that he shall not file an appeal.

ELECTRONIC CREDIT LEDGER

4. Write a note on Electronic Credit Ledger/ Input Tax Credit Ledger.

Ans: Electronic Credit Ledger [Rule 86]:

1) Maintenance of electronic credit ledger by persons eligible for ITC [Rule 86(1)] : The electronic credit ledger shall be maintained in FORM GST PMT-02 for each registered person eligible for input tax credit under the Act on the common portal and every claim of input tax credit under the Act shall be credited to the said ledger.
2) Debits in ledger [Rule 86(2)] : The electronic credit ledger shall be debited to the extent of discharge of any liability in accordance with the provisions of Section 49 or Section 49A or Section 49B.
3) Refunds of ITC to be debited in ledger [Rule 86(3)] : Where a registered person has claimed refund of any unutilized amount from the electronic credit ledger in accordance with the provisions of Section 54, the amount to the extent of the claim shall be debited in the said ledger.
4) Rejection of refund of ITC claim – Re-credit in ledger [Rule 86(4)] : If the refund so filed is rejected, either fully or partly, the amount debited under Rule 86(3), to the extent of rejection, shall be recredited to the electronic credit ledger by the proper officer by an order made in FORM GST PMT-03.
5) Re-credit in ledger [Rule 86(4A)] : Where a registered person has claimed refund of any amount paid as tax wrongly paid or paid in excess for which debit has been made from the electronic credit ledger, the said amount, if found admissible, shall be re-credited to the electronic credit ledger by the proper officer by an order made in FORM GST PMT-03.
6) Repayment of erroneous refund - to be credited to ledger [Rule 86(4B)] : Where a registered person deposits the amount of erroneous refund sanctioned to him,-
   (a) under Section 54(3) of the Act, or
   (b) under Rule 96(3), ~~in contravention of Rule 96(10)~~, [Omitted vide Notification No. 20/2024-CT dated 08-10-2024 w.e.f. 08-10-2024]

   along with interest and penalty, wherever applicable, through FORM GST DRC-03, by debiting the electronic cash ledger, on his own or on being pointed out, an amount equivalent to the amount of erroneous refund deposited by the registered person shall be

re-credited to the electronic credit ledger by the proper officer by an order made in FORM GST PMT-03A.

(7) No direct entry in ledger [Rule 86(5)] : Save as provided in the provisions of this Chapter, no entry shall be made directly in the electronic credit ledger under any circumstance.

(8) Communication of discrepancy to Jurisdictional Officer [Rule 86(6)] : A registered person shall, upon noticing any discrepancy in his electronic credit ledger, communicate the same to the officer exercising jurisdiction in the matter, through the common portal in FORM GST PMT-04.

Deemed rejection of refund [Explanation] : A refund shall be deemed to be rejected, if the appeal is finally rejected or if the claimant gives an undertaking to the proper officer that he shall not file an appeal.

ELECTRONIC LIABILITY REGISTER

5. Write a short note on Electronic Liability Register.

Ans: Electronic Liability Register [Rule 85]:

(1) Maintenance of Electronic Liability Register [Rule 85(1)] : The electronic liability register specified under Section 49(7) shall be maintained in FORM GST PMT-01 for each person liable to pay tax, interest, penalty, late fee or any other amount on the common portal and all amounts payable by him shall be debited to the said register.

(2) Debits in register [Rule 85(2)] : 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 by the said person;

(b) the amount of tax, interest, penalty or any other amount payable as determined by a proper officer in pursuance of any proceedings under the Act or as ascertained by the said person; or

(c) any amount of interest that may accrue from time to time.

(3) Liability to be paid by debiting electronic cash/ credit ledger and corresponding credit in electronic liability register [Rule 85(3)] : Subject to the provisions of Section 49, Section 49A and Section 49B, payment of every liability by a registered person as per his return shall be made by debiting the electronic credit ledger maintained as per Rule 86 or the electronic cash ledger maintained as per Rule 87 and the electronic liability register shall be credited accordingly.

(4) Payments from Electronic Cash Ledger [Rule 85(4)] : The amount deducted under Section 51, or the amount collected under Section 52, or the amount payable on reverse charge basis, or the amount payable under Section 10, any amount payable towards interest, penalty, fee or any other amount under the Act shall be paid by debiting the electronic cash ledger maintained as per Rule 87 and the electronic liability register shall be credited accordingly.

(5) Adjustments of tax reliefs by Appellate Authority in register [Rule 85(5)] : 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.

(6) Adjustments of reduction in penalty in register [Rule 85(6)] : 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.

(7) Discrepancy in electronic liability register to be communicated [Rule 85(7)] : A registered person shall, upon noticing any discrepancy in his electronic liability ledger, communicate the same to the officer exercising jurisdiction in the matter, through the common portal in FORM GST PMT-04.

6. Explain the provisions relating to Identification number for each transaction.

Ans: Identification number for each transaction [Rule 88]:

(1) UIN for each transaction [Rule 88(1)] : 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.

(2) UIN to be indicated in electronic liability register [Rule 88(2)] : The unique identification number relating to discharge of any liability shall be indicated in the corresponding entry in the electronic liability register.

(3) UIN for credit entries in electronic liability register [Rule 88(3)] : A unique identification number shall be generated at the common portal for each credit in the electronic liability register for reasons other than those covered under Rule 88(2).

CPIN, CIN, BRN AND E-FPB

7. What are CPIN, CIN, BRN and E-FPB?

Ans: The relevant terms are discussed as under-

(1) CPIN stands for Common portal Identification Number. It is created for every Challan successfully generated by the taxpayer. It is a 14-digit unique number to identify the challan. CPIN remains valid for a period of **15 days.**

(2) CIN or Challan Identification Number is generated by the banks, once payment in lieu of a generated Challan is successful. It is a 17-digit number that is 14-digit CPIN plus 3-digit Bank Code. CIN is generated by the authorized banks/Reserve Bank of India (RBI) when payment is actually received by such authorized banks or RBI and credited in the relevant government account held with them. It is an indication that the payment has been realized and credited to the appropriate government account. CIN is communicated by the authorized bank to taxpayer as well as to GSTN.

(3) BRN or Bank Reference Number is the transaction number given by the bank for a payment against a Challan.

(4) E-FPB stands for Electronic Focal Point Branch. These are branches of authorized banks which are authorized to collect payment of GST. Each authorized bank will nominate only one branch as its E-FPB for pan India transaction. The E-FPB will have to open accounts under each major head for all governments. Any amount received by such E-FPB towards GST will be credited to the appropriate account held by such E-FPB. For NEFT/RTGS Transactions, RBI will act as E-FPB.

8. How do the new payment systems benefit the taxpayer and the Commercial tax Department ?

Ans: The new payment systems benefit are discussed as under-

- ✓ No more queues and waiting for making payments as payments can be made online 24 × 7.
- ✓ Instant online receipts for payments made online.
- ✓ Tax Consultants can make payments on behalf of the clients.
- ✓ Single Challan form to be created online, replacing the three or four copy Challan.
- ✓ Revenue will come earlier into the Government Treasury as compared to the old system.
- ✓ Greater transparency.
- ✓ Online payments made after 8 pm will be credited to the taxpayer's account on the same day.

INTEREST ON DELAYED PAYMENT OF TAX

9. Explain the provisions relating to Interest on delayed payment of tax.

Ans: Interest on delayed payment of tax [Section 50] :

(1) Interest payable on delayed payment of tax not exceeding 18% [Section 50(1)] : Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest @ 18% p.a.

(2) Calculation of Interest [Section 50(2)]: The interest under Section 50(1) shall be calculated,—

- ✓ in such manner as may be prescribed,
- ✓ from the day succeeding the day on which such tax was due to be paid.

Thus, the period of interest will be from the date following the due date of payment to the actual date of payment of tax.

(3) Interest payable on net amount payable through E-cash ledger : The interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 or section 74A [Inserted by the Finance (No.2) Act, 2024 w.e.f. 01-11-2024] in respect of the said period, shall be payable on that portion of the tax which is paid by debiting the electronic cash ledger.

Thus, Interest on delayed payment of tax, where GST return is furnished after due date, is to be levied on the net tax liability i.e. after allowing the credit of input tax.

(4) Interest on wrong availment and utlisation of ITC [Section 50(3)] : Where the input tax credit has been wrongly availed and utilised, the registered person shall pay interest on such input tax credit wrongly availed and utilised, at such rate not exceeding 18% as may be notified by the Government, on the recommendations of the Council, and the interest shall be calculated, in such manner as may be prescribed.

(5) Other relevant points relating to interest :

(a) The term "tax" here means the tax payable under the Act or Rules made thereunder.

(b) The payment of interest in case of belated payment of tax should be made voluntarily i.e. even without a demand.

(c) The interest payable under this Section shall be debited to the Electronic Liability Register.

(d) The liability for interest can be settled by adjustment with balance in Electronic Cash Ledger but not with balance in electronic credit ledger.

10.Explain the manner of calculating interest on delayed payment of tax

Ans: Manner of calculating interest on delayed payment of tax [Rule 88B]:

(1) Supplies declared in the belated return filed for tax period – Interest payable on tax paid through cash ledger : In case, where the supplies made during a tax period are declared by the registered person in the return for the said period and the said return is furnished after the due date in accordance with provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 or section 74A [Inserted by the Finance (No.2) Act, 2024 w.e.f. 01-11-2024] in respect of the said period, the interest on tax payable in respect of such supplies shall be calculated on the portion of tax which is paid by debiting the electronic cash ledger, for the period of delay in filing the said return beyond the due date, @ 18% p.a.

Where any amount has been credited in the Electronic Cash Ledger as per provisions of Section 49(1) on or before the due date of filing the said return, but is debited from the said ledger for payment of tax while filing the said return after the due date, the said amount shall not be taken into consideration while calculating such interest if the said amount is lying in the said ledger from the due date till the date of its debit at the time of filing return. [Inserted vide Notification No. 12/2024-CT dated 10-07-2024]

(2) Other cases – Interest payable on outstanding amount : In all other cases, where interest is payable in accordance with Section 50(1), the interest shall be calculated on the amount of tax which remains unpaid, for the period starting from the date on which such tax was due to be paid till the date such tax is paid, @ 18% p.a.

(3) Computation of Interest on wrongly availed and utlised ITC : In case, where interest is payable on the amount of input tax credit wrongly availed and utilised in accordance with Section 50(3), the interest shall be calculated on the amount of input tax credit wrongly availed and utilised, for the period starting from the date of utilisation of such

wrongly availed input tax credit till the date of reversal of such credit or payment of tax in respect of such amount, @ 18% p.a.

Utilisation of wrongly availed ITC : Input tax credit wrongly availed shall be construed to have been utilised, when the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, and the extent of such utilisation of input tax credit shall be the amount by which the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed.

Date of utlisation of ITC : The date of utilisation of such input tax credit shall be taken to be, —

(a) the date, on which the return is due to be furnished under section 39 or the actual date of filing of the said return, whichever is earlier, if the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, on account of payment of tax through the said return; or

(b) The date of debit in the electronic credit ledger when the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, in all other cases.

Clarification on charging of interest u/s 50(3) of the CGST Act, 2017, in cases of wrong availment of IGST credit and reversal thereof. – Circular No. 192/04/2023-GST dated 17-07-2023

	Issue	Clarification
1	In the cases of wrong availment of IGST credit by a registered person and reversal thereof, for the calculation of interest under rule 88B of CGST Rules, whether the balance of input tax credit available in electronic credit ledger under the head of IGST only needs to be considered or total input tax credit available in electronic credit ledger, under the heads of IGST, CGST and SGST taken together, has to be considered.	Since the amount of input tax credit available in electronic credit ledger, under any of the heads of IGST, CGST or SGST, can be utilized for payment of liability of IGST, it is the total input tax credit available in electronic credit ledger, under the heads of IGST, CGST and SGST taken together, that has to be considered for calculation of interest under rule 88B of CGST Rules and for determining as to whether the balance in the electronic credit ledger has fallen below the amount of wrongly availed input tax credit of IGST, and to what extent the balance in electronic credit ledger has fallen below the said amount of wrongly availed credit. Thus, in the cases where IGST credit has been wrongly availed and subsequently reversed on a certain date, there will not be any interest liability under section 50(3) of

		CGST Act if, during the time period starting from such availment and up to such reversal, the balance of input tax credit (ITC) in the electronic credit ledger, under the heads of IGST, CGST and SGST taken together, has never fallen below the amount of such wrongly availed ITC, even if available balance of IGST credit in electronic credit ledger individually falls below the amount of such wrongly availed IGST credit. However, when the balance of ITC, under the heads of IGST, CGST and SGST of electronic credit ledger taken together, falls below such wrongly availed amount of IGST credit, then it will amount to the utilization of such wrongly availed IGST credit and the extent of utilization will be the extent to which the total balance in electronic credit ledger under heads of IGST, CGST and SGST taken together falls below such amount of wrongly availed IGST credit, and will attract interest as per section 50(3) of CGST Act, read with section 20 of Integrated GST Act, 2017 and rule 88B(3) of CGST Rules.
2.	Whether the credit of compensation cess available in electronic credit ledger shall be taken into account while considering the balance of electronic credit ledger for the purpose of calculation of interest under rule 88B(3) of CGST Rules in respect of wrongly availed and utilized IGST, CGST or SGST credit.	As per proviso to section 11 of Goods and Services Tax (Compensation to States) Act, 2017, input tax credit in respect of compensation cess on supply of goods and services leviable under section 8 of the said Act can be utilised only towards payment of compensation cess leviable on supply of goods and services. Thus, credit of compensation cess cannot be utilized for payment of any tax under CGST or SGST or IGST heads and/or reversals of credit under the said heads. Accordingly, credit of compensation cess available in electronic credit ledger cannot be taken into account

		while considering the balance of electronic credit ledger for the purpose of calculation of interest under Rule 88B(3) of CGST Rules in respect of wrongly availed and utilized IGST, CGST or SGST credit.

TRANSFER OF INPUT TAX CREDIT

11. Explain the provisions under Section 53 of CGST account of utilization of CGST credit for payment Act, 2017 relating to Transfer of input tax crediton of IGST.

Ans: Transfer of input tax credit [Section 53, use of CGST credit to pay IGST – CGST shall reduced accordingly – Transfer to IGST]: On utilisation of input tax credit availed under CGST Act for payment of tax dues under the IGST Act in accordance with the provisions of Section 49(5), as reflected in the valid return furnished under Section 39(1), the amount collected as central tax shall stand reduced by an amount equal to such credit so utilised and the Central Government shall transfer an amount equal to the amount so reduced from the central tax account to the integrated tax account in such manner and within such time as may be prescribed.

In other words, if CGST is utilised to pay towards dues of IGST, there shall be reduction in CGST on such utilisation and the Central Government shall transfer equivalent amount to the credit of IGST account. Thus, in this manner the Central Government shall ensure due credit to IGST.

Such treatment shall be ensured by the Central Government for UTGST and SGST also in respective cases. It may be noted that equivalent provision is there in Section 18 of IGST Act, 2017.

12. Explain the provisions of Transfer of amounts from Central tax account to State tax account/UTT account.

Ans: Transfer of certain amounts [Section 53A]: Where any amount has been transferred from the electronic cash ledger under CGST Act to the electronic cash ledger under the SGST Act or the UTGST Act, the Government shall, transfer to the State tax account or the Union territory tax account, an amount equal to the amount transferred from the electronic cash ledger, in such manner and within such time as may be prescribed.

13. Explain the provisions of transfer of amounts from Integrated tax Account to State Tax Account/ UTT account.

Ans: Transfer of certain amounts [Section 17A of the IGST Act, 2017]: Where any amount has been transferred from the electronic cash ledger under IGST Act to the electronic cash ledger under the SGST Act or the UTGST Act, the Government shall transfer to the State tax account or the Union territory tax account, an amount equal to the amount transferred from the electronic cash ledger, in such manner and within such time, as may be prescribed.

14. Explain the provisions of Section 18 of IGST Act, 2017 relating to transfer of input tax credit on account of utilization of IGST credit for payment of other taxes.

Ans: Transfer of input tax credit [Section 18 of IGST Act, 2017]: The relevant provisions are discussed as under:

(i) Use of IGST to pay CGST – CG to transfer such amount to Central Tax Account [Section 18(a)] : On utilisation of credit of integrated tax availed under this Act for payment of central tax in accordance with the provisions of Section 49(5) of the CGST Act, the amount collected as integrated tax shall stand reduced by an amount equal to the credit so utilised and the Central Government shall transfer an amount equal to the amount so reduced from the integrated tax account to the central tax account in such manner and within such time as may be prescribed.

(ii) Use of IGST to pay UTGST – Central Government to transfer such amount to Union Territory Tax Account [Section 18(b)] : On utilisation of credit of integrated tax availed under this Act for payment of Union territory tax in accordance with the provisions of Section 9 of the Union Territory Goods and Services Tax Act, the amount collected as integrated tax shall stand reduced by an amount equal to the credit so utilised and the Central Government shall transfer an amount equal to the amount so reduced from the integrated tax account to the Union territory tax account in such manner and within such time as may be prescribed.

(iii) Use of IGST to pay SGST – Central Government to transfer such amount to State Government Tax Account [Section 18(c)] : On utilisation of credit of integrated tax availed under this Act for payment of State tax in accordance with the provisions of the respective State Goods and Services Tax Act, the amount collected as integrated tax shall stand reduced by an amount equal to the credit so utilised and shall be apportioned to the appropriate State Government and the Central Government shall transfer the amount so apportioned to the account of the appropriate State Government in such manner and within such time as may be prescribed.

"Appropriate State" in relation to a taxable person, means the State or Union territory where he is registered or is liable to be registered under the provisions of the CGST Act. [Explanation]

15. What will be the tax consequences if IGST is wrongfully collected and paid to Central Government or State Government.

Ans: Tax wrongfully collected and paid to Central Government or State Government [Section 19 of IGST Act,2017]:

(1) IGST paid instead of CGST/ SGST - Refund: A registered person who has paid integrated tax on a supply considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall be granted refund of the amount of integrated tax so paid in such manner and subject conditions as may be prescribed. to such

(2) CGST/SGST paid instead of IGST - No interest payable on IGST: A registered person who has paid central tax and State tax or Union territory tax, as the case may be, on a

transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall not be required to pay any interest on the amount of integrated tax payable.

TAX DEDUCTION AT SOURCE (TDS)

16. Briefly explain the concept of TDS and TCS under GST law.

Ans: The concept of TDS is as under-

Tax Deduction at Source (TDS): Tax Deduction at Source (TDS) is a system, initially introduced by the Income Tax Department. It is one of the modes/methods to collect tax, under which, certain percentage of amount is deducted by a recipient at the time of making payment to the supplier. It is similar to "pay as you earn" scheme also known as Withholding Tax, in many other countries. It facilitates sharing of responsibility of tax collection between the deductor and the tax administration. It also ensures regular inflow of cash resources to the Government. It acts as a powerful instrument to prevent tax evasion and expands the tax net, as it provides for the creation of an audit trail. Section 51 of CGST Act provides for deduction of tax at source in certain circumstances. This Section specifically lists out the deductors who are mandated by the Central Government to deduct tax at source, the rate of tax deduction and the procedure for remittance of the tax deducted.

17. Explain the provisions relating to deduction of tax at source.

Ans: Tax deduction at source [Section 51]:

(1) Persons liable to deduct tax at source [Section 51(1)] : The TDS provisions empower the Central Government to make it mandatory for the following persons (the deductor) to deduct tax at source from payments made to the suppliers of taxable goods and/or services.

(a) a department or establishment of the Central Government or State Government; 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. The following persons have been notified :

(i) an authority or a board or any other body, –

(a) set up by an Act of Parliament or a State Legislature; or

(b) established by any Government, with 51% or more participation by way of equity or control, to carry out any function;

(ii) Society established by the Central Government or the State Government or a Local Authority under the Societies Registration Act, 1860 ;

(iii) public sector undertakings.

(iv) any registered person receiving supplies of metal scrap falling under Chapters 72 to 81 in the First Schedule to the Customs Tariff Act, 1975, from other registered person. [Inserted vide Notification No. 25/2024-CT dated 09-10-2024 w.e.f. 10-10-2024]

The CBIC vide Circular No. 76/50/2018-GST dated 31-12-2018 has clarified that the provisions of section 51 of the CGST Act are applicable only to such authority or a board or any other body set up by an Act of parliament or a State legislature or established by any Government in which 51% or more participation by way of equity or control is with the Government.

Categories of persons not liable to deduct TDS :

- ✓ TDS provisions shall not apply to the supply of goods or services or both from a public sector undertaking to another public sector undertaking, whether or not a distinct person.
- ✓ TDS provisions shall not apply to the supply of goods or services or both which takes place between one person to another person specified under clauses (a), (b), (c) and (d) of section 51(1) of the said Act. i.e. supplies made by Government Departments and PSUs to other Government Departments and vice-versa are exempt from TDS.

However, if any registered person receiving supplies of metal scrap falling under Chapters 72 to 81 in the First Schedule to the Customs Tariff Act, 1975, from other registered person, tax will be required to be deducted at source.

(2) Deductees : The deductees are the suppliers whose total value of supply of taxable goods and/or services under a contract exceeds ₹ 2,50,000 exclusive of tax & cess as per the invoice.

(3) TDS @ 1% if total value of taxable supply exceeds ₹ 2,50,000 : The deductor has to deduct tax @ 2% (1% CGST and 1% SGST) 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 ₹ 2,50,000.

Thus, individual supplies may be less than ₹ 2,50,000/-, but if total value of supply under a contract is more than ₹ 2,50,000/-, tax will have to be deducted at source. The deductor have to deduct tax @ 2% from the payment made or credited to the supplier of taxable goods and/or services.

Value of supply to exclude taxes [Explanation] : For the purpose of deduction of tax specified above, the value of supply shall be taken as the amount excluding the central tax, State tax, Union territory tax, integrated tax and cess indicated in the invoice.

Provisions under IGST Act, 2017 : It may be noted that Section 20 of IGST Act provides that in the case of tax deducted at source, the deductor shall deduct tax @ 2% from the payment made or credited to the supplier. Further, the value of a supply shall include any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier.

(4) No deduction in Certain Cases : No deduction shall be made if the location of the supplier and the place of supply is in a State or Union territory which is different from the State or as the case may be, Union territory of registration of the recipient. This can be explained as under:

(a) Supplier, place of supply and recipient are in the same state. It would be intra-State supply and TDS (Central plus State tax) shall be deducted. It would be possible for the supplier (i.e. the deductee) to take credit of TDS in his electronic cash ledger.

(b) Supplier as well as the place of supply are in different states. In such cases, Integrated tax would be levied. TDS to be deducted would be TDS (Integrated tax) and it would be possible for the supplier (i.e. the deductee) to take credit of TDS in his electronic cash ledger.

(c) Supplier as well as the place of supply are in State A and the recipient is located in State B. The supply would be intra-State supply and Central tax and State tax would be levied. In such case, transfer of TDS (Central tax + State tax of State B) to the cash ledger of the supplier (Central tax + State tax of State A) would be difficult. So in such cases, TDS would not be deducted.

Thus, when both the supplier as well as the place of supply are different from that of the recipient, no tax deduction at source would be made.

(5) Time limit for deposit of tax – Upto 10th of next Month [Section 51(2)] : The amount deducted as tax under this Section shall be paid to the Government by the deductor within 10 days after the end of the month in which such deduction is made, in such manner as may be prescribed.

(6) TDS certificate to be Furnished to Deductee [Section 51(3)] : A certificate of tax deduction at source shall be issued in such form and in such manner as may be prescribed.

The content of form GSTR 7A (TDS Certificate) are given below:

(a) TDS Certificate No.
(b) GSTIN of deductor
(c) Name of deductor
(d) GSTIN of deductor
(e) Legal name of the deductee/trade name ,if any
(f) Tax period in which tax deducted and accounted for in GSTR-7
(g) Details of supplies
(h) Amount of tax deducted.

(7) Credit of TDS in electronic cash ledger of supplier [Section 51(5)] : The deductee shall claim credit, in his electronic cash ledger, of the tax deducted and reflected in the return of the deductor furnished under Section 39(3), in such manner as may be prescribed.

The deductee can claim credit of the tax deducted, in his electronic cash ledger. This provision enables the Government to cross check whether the amount deducted by the deductor is correct and that there is no mis-match between the amount reflected in the electronic cash ledger and the amount shown in the return filed by deductor.

This is similar to existing practice in income tax relating to E-TDS returns filed by deductor and 26AS statement available for viewing the TDS remitted in respect of transactions by deductee.

(8) Interest on delayed deposit of TDS [Section 51(6)] : If any deductor fails to pay to the Government the amount deducted as tax under Section 51(1), he shall pay interest in accordance with the provisions of Section 50(1) i.e. @ 18% p.a., in addition to the amount of tax deducted.

(9) Determination of the amount in default [Section 51(7)] : The determination of the amount in default under this Section shall be made in the manner specified in Section 73 or Section 74 or section 74A [Inserted by the Finance (No.2) Act, 2024 w.e.f. 01-11-2024].

(10) Refund of excess amount of deduction [Section 51(8)] : The refund to the deductor or the deductee arising on account of excess or erroneous deduction shall be dealt with in accordance with the provisions of Sec. 54.

No refund if TDS is credited to the electronic cash ledger of the deductee : No refund to the deductor shall be granted, if the amount deducted has been credited to the electronic cash ledger of the deductee.

Example: Suppose a supplier makes a supply worth ₹ 1000/- to a recipient and the GST at the rate of 18% is required to be paid. The recipient, while making the payment of ₹ 1000/- to the supplier, shall deduct 1% viz ₹ 10/- as TDS. The value for TDS purpose shall not include 18% GST. The TDS, so deducted, shall be deposited in the account of Government by 10th of the succeeding month.

The TDS so deposited in the Government account shall be reflected in the electronic cash ledger of the supplier (i.e. deductee) who would be able to use the same for payment of tax or any other amount. The purpose of TDS is just to enable the Government to have a trail of transactions and to monitor and verify the compliances.

REGISTRATION OF PERSONS LIABLE TO DEDUCT TAX AT SOURCE

18. Explain the provisions of registration of persons liable to deduct tax of source.

Ans- Registration of tax deductor : A deductor has to compulsorily register without any threshold limit. The deductor has a privilege of obtaining registration under GST without requiring PAN. He can obtain registration using his Tax Deduction and Collection Account Number (TAN) issued under the Income-tax Act, 1961.

19. Explain the procedure for grant of registration to persons required to deduct tax at source.

Ans Grant of registration to persons required to deduct tax at source [Rule 12 of CGST Rules, 2017] :

(a) E-Application by tax deductor electronically : Any person required to deduct tax in accordance with the provisions of Section 51 shall electronically submit an application, duly signed or verified through electronic verification code, in FORM GST REG-07 for the grant of registration through the common portal.

(b) Procedure if tax deductor do not have principal place of business in the state in which registration application is made : A person applying for registration to deduct tax in accordance with the provisions of section 51 in a State or Union territory where he does not

have a physical presence, shall mention the name of the State or Union territory in PART A of the application in FORM GST REG-07 and mention the name of the State or Union territory in PART B thereof in which the principal place of business is located which may be different from the State or Union territory mentioned in PART A.

(c) RC to be issued within 3 Working Days : The proper officer may grant registration after due verification and issue a certificate of registration in FORM GST REG-06 within a period of 3 working days from the date of submission of the application.

(d) Cancellation of RC : Where on request made in writing by registered person or upon an enquiry or pursuant to any other proceeding under the Act, the proper officer is satisfied that a person to whom a certificate of registration in FORM GST REG-06 has been issued is no longer liable to deduct tax at source, the said officer may cancel the registration and such cancellation shall be communicated to the said person electronically in FORM GST REG-08. However, the proper officer shall follow the procedure as provided in Rule 22 for the cancellation of registration.

20.Explain the procedure for furnishing of return by tax deductor at source.

Ans: Form and manner of submission of return by a person required to deduct tax at source [Rule 66] :The relevant provisions are discussed as under:

(i) Furnishing of GSTR-7 Return : Every deductor shall furnish a return in FORM GSTR-7 on or before the 10th day of the month succeeding the calendar month [Amended Vide Notification No. 20/2024-CT dated 08-10-2024 w.e.f. 01-11-2024] electronically through the common portal either directly or from a Facilitation Centre notified by the Commissioner.

(ii) Details of TDS to be made available to deductee : The details furnished by the deductor shall be made available electronically to each of the deductees on the common portal after filing of FORM GSTR-7 for claiming the amount of tax deducted in his electronic cash ledger after validation.

(iii) Certificate to deductee : The certificate shall be made available electronically to the deductee on the common portal in FORM GSTR-7A on the basis of the return furnished above.

TOPIC REFERENCER

- *Introduction*
- *E-Commerce Operator to Pay Tax on Notified Services*
- *Tax Collection at Source (TCS)*
- *Procedural Requirements of E-commerce Operator*

1. What do you mean by E-Commerce. Who are E-commerce operator. Explain various electronic commerce models .

(1) "Electronic commerce" means the supply of goods or services or both, including digital products over digital or electronic network. [Section 2(44)]

In simple words, electronic commerce or ecommerce, means buying and selling the goods or services over internet or computer mediated network.

It includes trading through online platforms, digital marketplaces, online travel agencies and any other means of electronic communication. The definition includes supply of both goods and services which implies that the concept of e-commerce covers the transactions involving the sale of tangible goods as well as the provision of intangible services. The definition specifically includes digital products, implying that supplies of downloadable or electronically delivered products, such as ebooks, software, digital music, online courses and digital videos, are also considered part of e-commerce.

The term "electronic network" encompasses various digital platforms, such as websites, mobile applications and any other electronic means used for buying or selling of goods and/or services. Thus, the definition has a broad scope and is intended to cover a wide range of online transactions and digital activities involving the buying and selling of goods and services.

(2) "Electronic commerce operator" (ECO) means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce. [Section (2(45)]

ECO is engaged in facilitating the supply of any goods and/or services or in providing any information or any other services incidental to or in connection there with but shall not include persons engaged in supply of such goods and/or services on their own behalf. ECO display products as well as services which are actually supplied by some other person to the consumer, on their electronic portal. The consumers buy such goods/services through these portals. On placing the order for a particular product/ service, the actual supplier supplies the selected product/service to the consumer. The price/ consideration for the product/ service is collected by the ECO from the consumer and passed on to the actual supplier after the deduction of commission by the ECO.

(3) Various electronic commerce models : The various e- commerce models are as follows :

(i) Online Marketplace Model : In the online marketplace model, an online centralised platform is provided connecting manufacturers/retailers with potential customers. The platform itself does not own or stock the products or has the expertise to provide services

being sought by the customers; instead it merely facilitates the transactions and may offer additional services such as payment processing, customer support and logistics. The actual supply of goods is done by the respective suppliers. The platform generates revenue by charging supplier fees or commissions for using the marketplace and accessing its customer base. The commission is typically a percentage of each sale made by the supplier.

Example: (1) Amazon, Flipkart, Alibaba, Myntra, etc. Similarly, suppliers of services provide services like cab services, food delivery services through these platforms.

(2) Uber, Ola, etc.

(ii) Direct Sales Model : In the direct sales model, businesses sell their products or services directly to consumers through their own online stores or websites. Customers browse the company's website, select products/services, and complete the purchase directly with the supplier.

Example : Urban ladder, Biba, etc.

(iii) Inventory Model: In the inventory model, inventory of goods/services is owned by the ecommerce operator that it supplies to customers.

The platform takes responsibility for warehousing, inventory management, and fulfillment of orders. This model is typical for traditional retailers who also have an online presence.

Example: Amazon, Flipkart, Snapdeal, etc.

Above e-commerce business models are not exhaustive, and many ecommerce businesses may adopt a combination of these models to suit their specific needs and industry dynamics. E-commerce industry is constantly evolving, and new innovative models may emerge over time.

An other way of classifying the e-commerce transactions is on the basis of supplier-recipient combination, for instance, Business-to-Consumer (B2C), Business-to-Business (B2B), Consumer-to Consumer (C2C), Consumer to Business (C2B), Consumer to Government (C2G), Government to Consumer (G2C) and Business to Government (B2G).

E-COMMERCE OPERATOR TO PAY TAX ON NOTIFIED SERVICES

2. Explain the liability of E-Commerce operator to pay tax on notified Services.

Ans: The relevant provisions are discussed as under-

(1) E-Commerce operator liable to pay tax on notified services [Section 9(5)] :

The Government may,—

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

No physical presence of e-commerce operator in the taxable territory – Representative liable to pay GST : Where an electronic commerce operator does not have a physical presence in the taxable territory, any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax.

No representative in taxable territory : Where an electronic commerce operator does not have a physical presence in the taxable territory and also he does not have a representative in the said territory, such electronic commerce operator shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax.

(2) Manner of reporting of notified services in GSTR-3B: The ECO may, on notified services, including on restaurant service provided through ECO, pay GST, by furnishing the details in Form GSTR-3B, reporting them as OUTWARD TAXABLE SUPPLIES.

Payment of tax on notified services is not allowed through input tax credit of ECO. It has to be paid in cash only. – Circular No. 167/23/2021 GST dated 17-12-2021

It is important to note that this exception is carved out only in respect of supply of services through an e-commerce operator and will not be applicable/ relevant to supply of any goods through an e-commerce operator.

Notification No. 17/2017-CT (Rate) dated 28-06-2017 w.e.f. 01-07-2017	Categories of services the tax on intra-State supplies of which shall be paid by the electronic commerce operator (ECO) : The Central Government has notified that in case of the following categories of services, the tax on intra-State supplies shall be paid by the electronic commerce operator if such services are supplied through ECO – (i) services by way of transportation of passengers by a radio-taxi, motorcab, maxicab, motor cycle, or any other motor vehicle except omnibus; (ia) services by way of transportation of passengers by an omnibus except where the person supplying such service through electronic commerce operator is a company; (ii) services by way of providing accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes, except where the person supplying such service through electronic commerce operator is liable for registration u/s 22(1) of the said CGST Act. (iii) services by way of house-keeping, such as plumbing, carpentering etc, except where the person supplying such service through electronic commerce operator is liable for registration u/s 22(1) of the said CGST Act. (iv) supply of restaurant service other than the services supplied by restaurant, eating joints etc. located at specified premises.
Explanation:	

(i) "Radio taxi" means a taxi including a radio cab, by whatever name called, which is in two-way radio communication with a central control office and is enabled for tracking using Global Positioning System (GPS) or General Packet Radio Service (GPRS).

(ii) "Maxicab", "motorcab", "motor cycle, motor vehicle and omnibus" shall have the same meanings as assigned to them respectively in Section 2(22), (25), (27), (28) and (29) of the Motor Vehicles Act, 1988.

As per Motor Vehicles Act, 1988,—

- ✓ "Maxicab" means any motor vehicle constructed or adapted to carry more than 6 passengers, but not more than 12 passengers, excluding the driver, for hire or reward.
- ✓ "Motorcab" means any motor vehicle constructed or adapted to carry not more than 6 passengers excluding the driver for hire or reward.
- ✓ "Motor car" means any motor vehicle other than a transport vehicle, omnibus, road-roller, tractor, motor cycle or invalid carriage.
- ✓ "Motor vehicle" or "vehicle" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding 25 cubic centimetres;
- ✓ "Omnibus" means any motor vehicle constructed or adapted to carry more than six persons excluding the driver;

(iii) "Specified premises" means premises providing hotel accommodation service having declared tariff of any unit of accommodation above ₹7,500/- per unit per day or equivalent.

TAX COLLECTION AT SOURCE (TCS)

3. Give brief overview of TCS provisions under GST Law.

Ans: TCS refers to the tax which is collected by the electronic commerce operator when a supplier supplies some goods or services through its portal and the payment for that supply is collected by the electronic commerce operator.

Example: There are many e-Commerce operators, like Amazon, Flipkart, Jabong, etc. operating in India. These operators display on their portal products as well as services which are actually supplied by some other person to the consumer.

The goods or services belonging to other suppliers are displayed on the portals of the ECO's and consumers buy such goods/services through these portals. On placing the order for a particular product/service, the actual supplier supplies the selected product/service to the consumer. The price/consideration for the product/service is collected by the ECO from the consumer and passed on to the actual supplier after the deduction of commission by the ECO. The Government has placed the responsibility on the ECO to collect the 'tax' @ 1% from the supplier. This shall be

done by the ECO by paying the supplier, the price of the product/services, less the tax, calculated @ 1%. The said amount will be calculated on the net value of the goods/services supplied through the portal of the ECO.

Cases where tax is not collected at source:

- ✓ Where a suppler supplies through an ECO those SERVICES which are notified under section 9(5) of the CGST Act/ section 5(5) of the IGST Act [hereinafter referred as notified services or services notified under section 9(5)], the tax on such services is to be paid by the ECO as if he is the supplier liable to pay tax on the supply of such services.
- ✓ Where a supplier supplies the goods or services or both on his own account through a web site hosted by him, there is no requirement to collect tax at source.

4. Write a note on Collection of tax at source (TCS).

Ans: Collection of tax at source [Section 52]:

(1) E-commerce operator to collect tax at source of the net value of taxable supplies made through it by Other Suppliers [Section 52(1)] :

Every electronic commerce operator, not being an agent, shall collect an amount calculated at such rate not exceeding 2% (1% CGST and 1% SGST), as may be notified by the Government on the recommendations of the Council, of the net value of taxable supplies made through it by other suppliers where the consideration with respect to such supplies is to be collected by the operator.

"Net value of taxable supplies" shall mean the aggregate value of taxable supplies of goods or services or both, other than services notified under Section 9(5), made during any month by all registered persons through the operator reduced by the aggregate value of taxable supplies returned to the suppliers during the said month. [Explanation]

The Net Value of Taxable supplies will be calculated at GSTIN level and not at gross level. In other words, net supplies are to be calculated for each supplier separately.

- ✓ Since TCS is to be collected on "net value of taxable supplies" made through it, TCS is not required to be collected on exempt supplies.
- ✓ TCS is not required to be collected on supplies on which the recipient is required to pay tax on reverse charge basis.
- ✓ TCS is not liable to be collected on import of goods or services. TCS is not liable to be collected on import of services since these are the supplies on which the recipient is required to pay tax on reverse charge basis. As far as import of goods is concerned, since same would fall within the domain of the Customs Act, 1962, it would be outside the purview of TCS.

No TCS if net value Nil – calculation for each supplier to be made separately – no provision to carry forward negative figures – If in a particular month, the sale returns are more than supplies made, there will be no TCS for that month. However, such negative figure will not be carried forward. Hence, such shortage cannot be adjusted in next month.

TCS on billing basis and not on collection basis – The TCS by electronic commerce operator shall be on billing basis and not on collection basis.

The Government vide Notification No. 15/2024-CT dated 10-07-2024 has notified that every electronic commerce operator, not being an agent, shall collect an amount calculated @ 0.5% (0.25% CGST and 0.25% SGST) of the net value of intra-State taxable supplies made through it by other suppliers where the consideration with respect to such supplies is to be collected by the said operator. Prior to 10th July 2024, rate of TCS was 1% (0.5% CGST and 0.5% SGST).

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

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

The Central Government vide Notification No. 01/2024-IT dated 10-07-2024 has notified that every electronic commerce operator, not being an agent, shall collect an amount calculated @ 0.5% of the net value of inter-State taxable supplies made through it by other suppliers where consideration with respect to such supplies is to be collected by the said operator. Prior to 10th July 2024, rate of TCS was 1%.

(2) Other modes of recovery not to be affected [Section 52(2)] :

The power to collect the amount specified in Section 52(1) shall be without prejudice to any other mode of recovery from the operator.

This sub-section establishes that the powers of e-commerce operator is restricted only to the extent of tax collection at source under circumstances specified therein and nothing more.

(3) Time limit for deposit of tax – Upto 10th of next month [Section 52(3)] :

The amount collected under Section 52(1) shall be paid to the Government by the operator within 10 days after the end of the month in which such collection is made, in such manner as may be prescribed. Further, the amount of tax collected by ECO (TCS amount) is also required to be deposited separately under the respective tax head (i.e. Central tax/ State tax/ Union territory tax/ Integrated tax) by 10th [day of the month succeeding the calendar month in which TCS has been collected.

The ECO can file Form GSTR 8 only when full TCS liability has been discharged.

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

(4) E-Statement to be filed upto 10th of next month [Section 52(4)] :

Every operator who collects the amount specified in Section 52(1) shall furnish a statement, electronically, containing the details of—

- ✓ outward supplies of goods or services or both effected through it, including the supplies of goods or services or both returned through it, and
- ✓ the amount collected under Section 52(1) during a month,

in GSTR-8, within 10 days after the end of such month.

Extension: However, the Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing the statement for such class of registered persons as may be specified therein. Any extension of time limit notified by the Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.

(5) Late fees for delay in filing GSTR-8 [Section 47]: Following late fee is applicable for delay in furnishing of TCS statement in Form GSTR-8:

Quantum of late fee :

(a) ₹ 200 [₹ 100 under CGST and (₹ 100 under SGST/UTGST)] for every day during which such failure continues.

(b) ₹ 10,000 [₹ 5,000 under CGST and (₹ 5,000 under SGST/UTGST)]

whichever is lower.

(6) Maximum time-limit for furnishing Form GSTR-82 : Maximum time-limit upto which ECO can furnish Form GSTR-8 is 3 years from the relevant due date of filing such statement. This time limit can be extended by the Government for an ECO or a class of ECOs subject to such conditions and restrictions as may be specified therein.

(7) Annual Statement to be filed upto 31st December of succeeding financial year [Section 52(5)]

Every operator who collects the amount specified in Section 52(1) shall furnish an annual statement, electronically, containing the details of—

- ✓ outward supplies of goods or services or both effected through it, including the supplies of goods or services or both returned through it, and
- ✓ the amount collected during the financial year,

in such form and manner as may be prescribed, before the 31st December following the end of such financial year.

Extension: The Commissioner may, on the recommendations of the Council and for reasons to be recorded in writing, by notification, extend the time limit for furnishing the annual statement for such class of registered persons as may be specified therein.

Any extension of time limit notified by the Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.

(8) Rectification of mistake in monthly statement by ECO [Section 52(6)] : If any ECO after furnishing a statement under Section 52(4) 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 such omission or incorrect particulars in the statement to be furnished for the month during which such omission or incorrect particulars are noticed, subject to payment of interest, as specified in Section 50(1).

Time limit of rectification : No such rectification of any omission or incorrect particulars shall be allowed after—

- ✓ 30th November following the end of the financial year, or
- ✓ the actual date of furnishing of the relevant annual statement,

whichever is earlier.

(9) Claim of TCS by the supplier [Section 52(7)] :

The supplier who has supplied the goods or services or both through the operator shall claim credit, in his electronic cash ledger, of the amount collected and reflected in the statement of the operator furnished under section 52(4), in such manner as may be prescribed.

(10) Matching of details furnished by the e-commerce operator with the details furnished by the supplier [Section 52(8)] : The details of supplies furnished by every operator under section 52(4) shall be matched with the corresponding details of outward supplies furnished by the concerned supplier registered under this Act in such manner and within such time as may be prescribed.

The following details 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, as amended in FORM GSTR-1A if any,

(a) State of place of supply; and

(b) net taxable value.

However, where the time limit for furnishing FORM GSTR-1, as amended in FORM GSTR-1A if any, under section 37 has been extended, the date of matching of the above mentioned details shall be extended accordingly.

The Commissioner may, on the recommendations of the Council, by order, extend the date of matching to such date as may be specified therein.

(11) Communication of discrepancy in details furnished by the e-commerce operator and the supplier [Section 52(9)]: Where the details of outward supplies furnished by the operator under Section 52(4) do not match with the corresponding details furnished by the supplier under Section 37 or Section 39, the discrepancy shall be communicated to both persons in such manner and within such time as may be prescribed.

(12) Non-rectification of discrepancy, addition of amount of discrepancy to output tax liability of supplier [Section 52(10)]: The amount in respect of which any discrepancy is communicated under section 52(9) and which is not rectified by the supplier in his valid return or the operator in his statement for the month in which discrepancy is communicated, shall be added to the output tax liability of the said supplier, where the value of outward supplies furnished by the operator is more than the value of outward supplies furnished by the supplier, in his return for the month succeeding the month in which the discrepancy is communicated in such manner as may be prescribed.

(13) Interest payable on amount added to the output tax liability of the supplier [Section 52(11)]

The concerned supplier, in whose output tax liability any amount has been added under section 52(10), shall pay the tax payable in respect of such supply along with interest, at the rate specified under section 50(1) on the amount so added from the date such tax was due till the date of its payment.

(14) Issuance of notice to furnish details of supplies and stock [Section 52(12)]: Any authority not below the rank of Deputy Commissioner may serve a notice along with summary

thereof electronically in form GST DRC-01, either before or during the course of any proceedings under this Act, requiring the ECO to furnish such details relating to—

a) supplies of goods or services or both effected through such ECO during any period; or

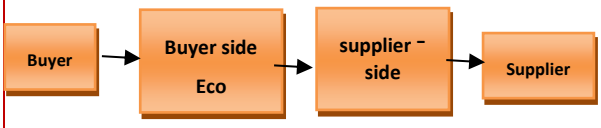
b) stock of goods held by the suppliers making supplies through such ECO in the godowns or warehouses, by whatever name called, managed by such ECO and declared as additional places of business by such suppliers, as may be specified in the notice.

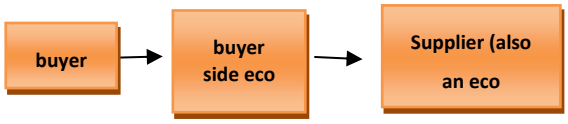
(15) Information to be furnished within 15 days from service of notice [Section 52(13)] : Every ECO on whom a notice has been served under Section 52(12) shall furnish the required information within 15 days of the date of service of such notice.

(16) Penalty for failure to furnish information – Upto ₹ 25,000 : Any person who fails to furnish the information required by the notice served under Section 52(12) shall, without prejudice to any action that may be taken under Section 122, be liable to a penalty which may extend to ₹ 25,000.

(17) When TCS provisions do not apply : TCS provisions are not applicable where GST is payable under reverse charge. TCS provisions also do not apply in case of exempt supply. TCS provisions do not apply on import of goods or services.

Explanation "Concerned supplier" shall mean the supplier of goods or services or both making supplies through the ECO.

Clarification on TCS liability u/s 52 of the CGST Act, 2017 in case of multiple E-commerce Operators in one transaction – Circular No. 194/06/2023-GST dated 17-07-2023		
	Issue	Clarification
1.	In a situation where multiple ECOs are involved in a single transaction of supply of goods or services or both through ECO platform and where the supplier-side ECO himself is not the supplier in the said supply, who is liable for compliances under section 52 including collection of TCS?  	in such a situation where multiple ECOs are involved in a single transaction of supply of goods or services or both through ECO platform and where the supplier-side ECO himself is not the supplier of the said goods or services, the compliances under section 52 of CGST Act, including collection of TCS, is to be done by the supplier-side ECO who finally releases the payment to the supplier for a particular supply made by the said supplier through him. e.g.: Buyer-side ECO collects payment from the buyer, deducts its fees/commissions and remits the balance to Seller-side ECO. Here, the Seller-side ECO will release the payment to the supplier after deduction of his fees/commissions and therefore will also be required to collect TCS, as applicable and

		pay the same to the Government in accordance with section 52 of CGST Act and also make other compliances under section 52 of CGST Act. In this case, the Buyer-side ECO will neither be required to collect TCS nor will be required to make other compliances in accordance with section 52 of CGST Act with respect to this particular supply.
2.	In a situation where multiple ECOs are involved in a single transaction of supply of goods or services or both through ECO platform and the Supplier-side ECO is himself the supplier of the said supply, who is liable for compliances under section 52 including collection of TCS? 	In such a situation, TCS is to be collected by the Buyer-side ECO while making payment to the supplier for the particular supply being made through it. e.g.: Buyer-side ECO collects payment from the buyer, deducts its fees and remits the balance to the supplier (who is itself an ECO as per the definition in Sec 2(45) of the CGST Act). In this scenario, the Buyer-side ECO will also be required to collect TCS, as applicable, pay the same to the Government in accordance with section 52 of CGST Act and also make other compliances under section 52 of CGST Act.

Circular No. 74/48/2018-GST dated 05-11-2018	Tea board is required to collect tax at source. Functions of tea board : Tea Board of India being the operator of the electronic auction system for trading of tea across the country including for collection and settlement of payments, admittedly falls under the category of electronic commerce operator liable to collect Tax at Source. The participants in the said auction are the sellers i.e. the tea producers and auctioneers who carry out the auction on behalf of such sellers and buyers. The buyers in the said auction make payment of a consolidated amount to an escrow Account maintained by the Tea Board. The said consolidated amount is towards the value of the tea, the selling and buying brokerages charged by the auctioneers and also the amount charged by the Tea Board from sellers, auctioneers and buyers. Thereafter, Tea Board pays to the sellers (i.e. tea producers), from the said escrow account, for the supply of goods made by them (i.e. tea) and to the auctioneers for the supply of services made by them (i.e. brokerage). Under no circumstances, the payment is made by the Tea Board to the auctioneers on account of supply of goods i.e., tea sold

	at auction. Clarification : TCS at the notified rate, in terms of section 52 of the CGST Act, shall be collected by Tea Board respectively from the— (i) sellers (i.e. tea producers) on the net value of supply of goods i.e. tea; and (ii) auctioneers on the net value of supply of services (i.e. brokerage).
Notification No. 36/2023 dated 4-8-2023 w.e.f 1-10-2023	Special procedure to be followed by the electronic commerce operators in respect of supplies of goods through them by composition taxpayers. The Central Government has notified that the electronic commerce operator who is required to collect tax at source under section 52 as the class of persons who shall follow the following special procedure in respect of supply of goods made through it by the persons paying tax under composition scheme (hereinafter referred to as the said person), namely:— (i) the electronic commerce operator shall not allow any inter-State supply of goods through it by the said person; (ii) the electronic commerce operator shall collect tax at source u/s 52(1) of the said Act in respect of supply of goods made through it by the said person and pay to the Government as per provisions of Section 52(3) of the said Act; and (iii) the electronic commerce operator shall furnish the details of supplies of goods made through it by the said person in the statement in FORM GSTR-8 electronically on the common portal.
Notification No. 37/2023 dated 04-08-2023	Special procedure to be followed by the electronic commerce operators in respect of supplies of goods through them by unregistered persons. The Central Government has notified that the electronic commerce operator who is required to collect tax at source under section 52 shall follow the following special procedure in respect of supply of goods made through it by the persons exempted from obtaining registration (hereinafter referred to as the said person) : (i) the electronic commerce operator shall allow the supply of goods through it by the said person only if enrolment number has been allotted on the common portal to the said person; (ii) the electronic commerce operator shall not allow any inter-State supply of goods through it by the said person; (iii) the electronic commerce operator shall not collect tax at source u/s 52(1) in respect of supply of goods made through it by the said person; and (iv) the electronic commerce operator shall furnish the details of supplies of goods made through it by the said person in the statement in FORM GSTR-8 electronically on the common portal.

	(v) Where multiple electronic commerce operators are involved in a single supply of goods through electronic commerce operator platform, "the electronic commerce operator" shall mean the electronic commerce operator who finally releases the payment to the said person for the said supply made by the said person through him.

GST on service supplied by restaurants through e-commerce operators [Circular No. 167 / 23 /2021GST dated 17-12-2021] : Certain representations have been received requesting for clarification regarding modalities of compliance to the GST laws in respect of supply of restaurant service through e-commerce operators (ECO). Clarifications are as follows:

	Issue	Clarification
1.	Would ECOs have to still collect TCS in compliance with section 52 of the CGST Act, 2017?	As 'restaurant service' has been notified u/s 9(5) of the CGST Act, 2017, the ECO shall be liable to pay GST on restaurant services provided, with effect from the 1st January, 2022, through ECO. Accordingly, the ECOs will no longer be required to collect TCS and file GSTR 8 in respect of restaurant services on which it pays tax in terms of section 9(5). On other goods or services supplied through ECO, which are not notified u/s 9(5), ECOs will continue to pay TCS in terms of section 52 of CGST Act, 2017 in the same manner at present.
2.	Would ECOs have to mandatorily take a separate registration w.r.t supply of restaurant service [notified under 9(5)] through them even though they are registered to pay GST on services on their own account?	As ECOs are already registered in accordance with rule 8(in Form GST-REG 01) of the CGST Rules, 2017 (as a supplier of their own goods or services), there would be no mandatory requirement of taking separate registration by ECOs for payment of tax on restaurant service under section 9(5) of the CGST Act, 2017.
3.	Would the ECOs be liable to pay tax on supply of restaurant service made by unregistered business entities?	Yes. ECOs will be liable to pay GST on any restaurant service supplied through them including by an unregistered person.
4.	What would be the aggregate turnover of person supplying 'restaurant service' through ECOs?	It is clarified that the aggregate turnover of person supplying restaurant service through ECOs shall be computed as defined in section 2(6) of the CGST Act, 2017 and shall include

		the aggregate value of supplies made by the restaurant through ECOs. Accordingly, for threshold consideration or any other purpose in the Act, the person providing restaurant service through ECO shall account such services in his aggregate turnover.
5.	Can the supplies of restaurant service made through ECOs be recorded as inward supply of ECOs (liable to reverse charge) in GSTR 3B?	No. ECOs are not the recipient of restaurant service supplied through them. Since these are not input services to ECO, these are not to be reported as inward supply (liable to reverse charge).
6.	Would ECOs be liable to reverse proportional input tax credit on his input goods and services for the reason that input tax credit is not admissible on 'restaurant service'?	ECOs provide their own services as an electronic platform and an intermediary for which it would acquire inputs/input service on which ECOs avail input tax credit (ITC). The ECO charges commission/fee etc. for the services it provides. The ITC is utilised by ECO for payment of GST on services provided by ECO on its own account (say, to a restaurant). The situation in this regard remains unchanged even after ECO is made liable to pay tax on restaurant service. ECO would be eligible to ITC as before. Accordingly, it is clarified that ECO shall not be required to reverse ITC on account of restaurant services on which it pays GST in terms of section 9(5) of the Act. It may also be noted that on restaurant service, ECO shall pay the entire GST liability in cash (No ITC could be utilised for payment of GST on restaurant service supplied through ECO).
7.	Can ECO utilize its Input Tax Credit to pay tax w.r.t 'restaurant service' supplied through the ECO?	No. As stated above, the liability of payment of tax by ECO as per section 9(5) shall be discharged in cash.
8.	Would supply of goods or services other than 'restaurant service' through ECOs be taxed at 5% without ITC?	ECO is required to pay GST on services notified u/s 9(5), besides the services/other supplies made on his own account.

		On any supply that is not notified u/s 9(5), that is supplied by a person through ECO, the liability to pay GST continues on such supplier and ECO shall continue to pay TCS on such supplies. Thus, present dispensation continuesfor ECO, on supplies other than restaurant services. On such supplies (other than restaurant services made through ECO) GST will continue to be billed, collected and deposited in the same manner as is being done at present. ECO will deposit TCS on such supplies.
9.	Would 'restaurant service' and goods or services other than restaurant service sold by a restaurant to a customer under the same order be billed differently? Who shall be liable for raising invoices in such cases?	Considering that liability to pay GST on supplies other than 'restaurant service' through the ECO, and other compliances under the Act, including issuance of invoice to customer, continues to lie with the respective suppliers (and ECOs being liable only to collect tax at source (TCS) on such supplies), it is advisable that ECO raises separate bill on restaurant service in such cases where ECO provides other supplies to a customer under the same order.
10.	Who will issue invoice in respect of restaurant service supplied through ECO – whether by the restaurant or by the ECO?	The invoice in respect of restaurant service supplied through ECO under section 9(5) will be issued by ECO.
11.	Clarification may be issued as regard reporting of restaurant services, value and tax liability etc in the GST return.	A number of other services are already notified u/s 9(5). In respect of such services, ECO operators are presently paying GST by furnishing details in GSTR 3B. The ECO may, on services notified u/s 9(5) of the CGST Act,2017, including on restaurant service provided through ECO, may continue to pay GST by furnishing the details in GSTR 3B, reporting them as outward taxable supplies for the time being. Besides, ECO may also, for the time being, furnish the details of such supplies of restaurant services u/s 9(5) in

		Table 7A(1) or Table 4A of GSTR-1, as the case maybe, for accounting purpose. *Registered persons supplying restaurant services through ECOs u/s 9(5) will report such supplies of restaurant services made through ECOs in Table 8 of GSTR-1 and Table 3.1 (c) of GSTR-3B, for the time being.*

5. Mr. X is a supplier selling his own products through a web site hosted by him. Does he fall under the definition of an "electronic commerce operator"? Whether he is required to collect TCS on such supplies?

Ans-As per the definitions in Section 2(44) and 2(45) of the CGST Act, 2017, Mr. X will come under the definition of an "electronic commerce operator". However, according to Section 52 of the Act, TCS is required to be collected on the net value of taxable supplies made through it by other suppliers where the consideration is to be collected by the ECO. In cases where someone is selling their own products through a website, there is no requirement to collect tax at source as per the provisions of this Section. These transactions will be liable to GST at the prevailing rates.

6. If we purchase goods from different vendors and are selling them on our website under our own billing. Is TCS required to be collected on such supplies?

Ans-No. According to Section 52 of the CGST Act, 2017, TCS is required to be collected on the net value of taxable supplies made through it by other suppliers where the consideration is to be collected by the ECO. In this case, there are two transactions – where we purchase the goods from the vendors, and where we sell it through our website. For the first transaction, GST is leviable, and will need to be paid to our vendor, on which credit is available for us. The second transaction is a supply on our own account, and not by other suppliers and there is no requirement to collect tax at source. The transaction will attract GST at the prevailing rates.

PROCEDURAL REQUIREMENTS OF E-COMMERCE OPERATOR

7. Explain the provisions relating to registration of e-commerce operators and persons supplying goods through e-commerce operators.

Ans: Registration : The e-Commerce Operator who is required to collect tax at source as well as the supplier supplying goods or services through an Operator need to compulsorily register under GST. As per Section 24(x) of CGST Act, Every ECO (Electronic Commerce Operator) who is required to collect tax at source under section 52 is specifically required to take registration.
Service suppliers entitled for threshold exemption : Also, supplier who supplies through an ecommerce operator needs to be mandatorily registered irrespective of its turnover [Section 24(ix) of CGST Act].

However, Persons making supplies of services, other than supplies specified u/s 9(5) through an ECO who is required to collect tax at source u/s 52, and having an aggregate turnover, to be computed on all India basis, not exceeding an amount of ₹ 20 lakh (₹ 10 lakh in case of Special Category States of Mizoram, Tripura, Manipur and Nagaland) in a financial year, have been exempted from obtaining registration vide Notification No. 65/2017-CT dated 15-11-2017.

Where the e-commerce operators are liable to pay tax on behalf of the suppliers under a notification issued under section 9(5) of the CGST Act, 2017, the suppliers of such services are entitled for threshold exemption.

8. Explain the procedure for grant of registration to persons required to collect tax at source.

Ans: Grant of registration to persons required to collect tax at source [Rule 12 of CGST Rules, 2017]:

a) E-Application by Tax collector electronically [Rule 12(1)] : Any person required to collect tax at source in accordance with the provisions of Section 52 shall electronically submit an application, duly signed or verified through electronic verification code, in FORM GST REG-07 for the grant of registration through the common portal, either directly or through a Facilitation Centre notified by the Commissioner.

b) Procedure if tax collector do not have principal place of business in the state in which registration application is made : A person applying for registration to collect tax in accordance with the provisions of section 52, in a State or Union territory where he does not have a physical presence, shall mention the name of the State or Union territory in PART A of the application in FORM GST REG-07 and mention the name of the State or Union territory in PART B thereof in which the principal place of business is located which may be different from the State or Union territory mentioned in PART A.

c) RC to be issued within 3 working days [Rule 12(2)] : The proper officer may grant registration after due verification and issue a certificate of registration in FORM GST REG-06 within a period of 3 working days from the date of submission of the application.

d) Cancellation of RC [Rule 12(3)] : Where, on request made in writing by registered person or upon an enquiry or pursuant to any other proceeding under the Act, the proper officer is satisfied that a person to whom a certificate of registration in FORM GST REG-06 has been issued is no longer liable to collect tax at source under Section 52, the said officer may cancel the registration issued under Rule 12(2) and such cancellation shall be communicated to the said person electronically in FORM GST REG-08.

However, the proper officer shall follow the procedure as provided in Rule 22 for the cancellation of registration.

9. Explain the manner of submission of statement of supplies through an e-commerce

Ans: Form and manner of submission of statement of supplies through an operator. e-commerce operator [Rule 67] :

1) E-commerce operator to furnish return in FORM GSTR-8 : Every electronic commerce operator required to collect tax at source under section 52 shall furnish a statement in FORM GSTR-8 electronically on the common portal, either directly or from a Facilitation Centre notified by the Commissioner, containing details of supplies effected through such operator and the amount of tax collected as required under section 52(1).

Contents of GSTR-8 :

Table 3	Details of supplies attracting TCS
Table 4	Amendment to details of supplies attracting TCS in respect of earlier statement
Table 5	Details of Interest on account of late payment of TCS amount (Auto calculated on GST Portal)
Tables 6 & 7	Payment of Tax

(2) Details to be made available to supplier : The details of tax collected at source u/s 52 (1) furnished by the operator shall be made available electronically to each of the registered suppliers on the common portal after filing of FORM GSTR-8 for claiming the amount of tax collected in his electronic cash ledger after validation.

Notes

TOPIC REFERENCER

- *Returns - Basic Aspects*
- *Furnishing Details of Outward Supplies*
- *Furnishing of Returns*
- *Special Returns*
- *Annual Return, Final Return and Levy of Late Fee*
- *Goods and Services Tax Practitioners*
- *Obligation to Furnish Information Return*

RETURNS-BASIC ASPECTS

1. Explain the general provisions relating to returns, their purposes and importance of filing of returns.

Ans: The general provisions relating to returns are as under-

1) "Return" means any return prescribed or otherwise required to be furnished by or under this Act or the rules made thereunder. [Section 2(97)]
2) Meaning of return : "Return" is a statement of specified particulars, relating to business activity undertaken by the taxable person during a prescribed period. The particulars to be furnished in the return generally comprises of the details pertaining to the nature of activities/business operations forming the subject matter of taxation; the measure of taxation such as sale price, turnover, or value; deductions and exemptions; and determination and discharge of tax liability for a given period.

   In any tax law, "filing of returns" constitutes the most important compliance procedure which serves as an important tool for the Revenue Department to collect the financial data and other related information of the assessee. This will enable the Department to have a concrete database which will in turn help them for enforcing the compliance part, as required by the law of land.

   Thus, return process has become a powerful tool to implement the 'data and revenue' collection system so also it has been emphasized as one of the pertinent process under the GST Regime. The submission and processing of return is an important link between the taxpayer and tax administration.
3) Purposes of return : The returns serve the following purposes—
   a) Mode for transfer of information to tax administration;
   b) Compliance verification program of tax administration;
   c) Finalization of the tax liabilities of the taxpayer within stipulated time period;
   d) Providing necessary inputs on basis of which policy decision can be taken;
   e) Management of audit and anti-evasion programs of tax administration.
4) Importance of filing of returns in GST Law : Under the GST laws, the correct and timely filing of returns is of utmost importance because of two reasons.

(i) Firstly, under GST laws, a taxpayer is required to estimate his tax liability on "self-assessment" basis and deposit the tax amount along with/before the filing of such return. The return, therefore, constitutes a kind of working sheet/supporting document for the tax authorities that can be relied upon as the basis on which the tax has been computed by the taxpayer.

(ii) Secondly, under the GST regime, filing of returns not only determines the tax liability of the person filing the same, but it also has a huge bearing on determination of tax liability of other persons with whom the former has entered into taxable activities.

(6) Basic features of return mechanism : The basic features of the return mechanism in GST include electronic filing of returns, uploading of invoice level information and auto-population of information relating to ITC from returns of supplier to that of recipient, invoice-level information matching and auto-reversal of ITC in case of mismatch. The returns mechanism is designed to assist the taxpayer to file returns and avail ITC.

(7) Returns to be filed electronically : All the returns are to be filed online. Returns can be filed using any of the following methods :

a) GSTN portal (www.gst.gov.in) Firstly, taxpayers can file their statement and returns directly on the GST common portal online.

b) Offline utilities provided by GSTN Filing of returns directly may be tedious and time consuming for taxpayers with large number of invoices. For such taxpayers, offline utilities have been provided by GSTN that can be used for preparing the statements offline after downloading the auto populated details and uploading them on the common portal.

c) GST Suvidha Providers (GSPs) GSTN has also developed an ecosystem of GST Suvidha Providers (GSP) that will integrate with the common portal.

- ✓ It is an eco-system of third party service providers, having access to GST system, who can help taxpayers in GST compliance.
- ✓ GSP will develop applications for return filing, reconciliation of purchase register data with auto-populated data for acceptance/rejection/modification, dashboards for taxpayers for quick monitoring.

FURNISHING DETAILS OF OUTWARD SUPPLIES

2. Explain the provisions for furnishing the details of outward supplies.

Ans: Furnishing details of outward supplies [Section 37]:

(1) Persons liable to furnish the details of outward supply [Section 37(1)] : The details of outward supplies of both goods and services are required to be furnished by every registered person including casual registered person except the following—

- ✓ an Input Service Distributor (ISD),
- ✓ a non-resident taxable person,
- ✓ a person paying tax under the provisions of Section 10 i.e. Composition Scheme,
- ✓ a person paying tax under the provisions of Section 51 i.e. person deducting tax at source,

- ✓ a person paying tax under the provisions of Section 52 i.e. person collecting tax at source i.e., e-commerce operator (ECO), not being an agent,
- ✓ a supplier of online information and database access or retrieval services (OIDAR).

The above excluded persons have to file special returns.

1) Form for submission of details of outward supplies [Section 37(1)] : Subject to such conditions and restrictions as prescribed, the details of outward supplies are required to be furnished, electronically, in **Form GSTR-1 on monthly** or quarterly basis as prescribed. Such details can be furnished through the common portal, either directly or from a notified Facilitation Centre.

   Further, a Nil GSTR-1 can be filed through an SMS using the registered mobile number of the taxpayer.

   However, the said person may, after furnishing the details of outward supplies of goods or service or both in FORM GSTR-1 for a tax period but before filing of return in FORM GSTR-3B for the said tax period, at his own option, amend or furnish additional details of outward supplies of goods or services or both in FORM GSTR-1A for the said tax period electronically through the common portal, either directly or through a Facilitation Centre as may be notified by the Commissioner. [Inserted vide Notification No. 12/2024-CT dated 10-07-2024]

   Details to be communicated to the recipient : Such details shall, subject to such conditions and restrictions, within such time and in such manner as may be prescribed, be communicated to the recipient of the said supplies.

2) Due date of submission of GSTR-1 – upto 10th of next month [Section 37(1)] : GSTR-1 for a particular month is filed on or before the 10th day of the immediately succeeding month.

3) Extension of time limit by Commissioner : The due date of filing GSTR-1 may be extended by the Commissioner/Commissioner of State GST/Commissioner of UTGST for reasons to be recorded in writing, by notification, for a class of taxable persons.

   Note: The time limit for furnishing the details of outward supplies in Form GSTR-1 has been extended to 11th day of the month succeeding such tax period.

4) Quarterly Statement by persons opting for QRMP scheme :

   (a) Quarterly statement : The registered persons opting for the Quarterly Return and monthly payment Scheme would be required to furnish the details of outward supply in FORM GSTR-1 quarterly by 13th day of the month succeeding such tax period as per the rule 59 of the CGST Rule.

   (b) Invoice Furnishing Facility (IFF) for first 2 months of quarter : For each of the first and second months of a quarter, such a registered person will have the facility (Invoice Furnishing Facility - IFF) to furnish the details of such outward supplies to a registered person, as he may consider necessary, between the 1st day of the succeeding month till the 13th day of the succeeding month. The said details of outward supplies shall, however, not exceed the value of ₹ 50 lakh in each month. It may be noted that after 13th of the month, this facility for furnishing IFF for previous month would not be

available. As a facilitation measure, continuous upload of invoices would also be provided for the registered persons wherein they can save the invoices in IFF from the 1st day of the month till 13th day of the succeeding month. The facility of furnishing details of invoices in IFF has been provided so as to allow details of such supplies to be duly reflected in the FORM GSTR-2A and FORM GSTR-2B of the concerned recipient.

(c) Details of outward supplies required to be furnished in IFF : In the IFF, the taxpayer has to submit the B2B (business to business) invoice details of both inter-State and intra-State supply transactions along with debit and credit notes of the B2B invoices issued during the month. The details of outward supplies furnished using IFF shall include the –

(i) invoice wise details of inter-State and intra-State supplies made to the registered persons;

(ii) debit and credit notes, if any, issued during the month for such invoices issued previously.

However, if a registered person does not opt to upload invoices using IFF, then he has to upload invoice details for all the 3 months of the quarter in Form GSTR-1.

(d) The details of outward supplies furnished using the IFF, for the first and second months of a quarter, shall not be furnished in FORM GSTR-1 for the said quarter.

Example: A registered person who has availed the QRMP scheme wants to declare 2 invoices out of the total 10 invoices issued in the 1st month of quarter since the recipient of supplies covered by those 2 invoices desires to avail ITC in that month itself. Details of these 2 invoices may be furnished using IFF. The details of the remaining 8 invoices shall be furnished in Form GSTR-1 of the said quarter. The two invoices furnished in IFF shall be reflected in Form GSTR-2B of the concerned recipient of the 1st month of the quarter and remaining 8 invoices furnished in Form GSTR-1 shall be reflected in Form GSTR-2B of the concerned recipient of the last month of the quarter.

(5) GSTR-1 cannot be furnished in certain cases [Section 37(4)] : A registered person shall not be allowed to furnish the details of outward supplies for a tax period, if the details of outward supplies for any of the previous tax periods has not been furnished by him.

However, the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, allow a registered person or a class of registered persons to furnish the details of outward supplies, even if he has not furnished the details of outward supplies for one or more previous tax periods.

As per provisions of Rule 59(6) of the CGST Rules, 2017, A registered person shall not be allowed to furnish GSTR-1 statement in the following cases –

(a) When GSTR 3B not furnished for preceding 1 month : A registered person shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in FORM GSTR-1, if he has not furnished the return in FORM GSTR-3B for preceding one month.

(b) When GSTR-3B not furnished for preceding tax period by QRMP taxpayer : A registered person, required to furnish quarterly return, shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in FORM GSTR-1 or using the invoice furnishing facility, if he has not furnished the return in FORM GSTR-3B for preceding tax period.

(c) Tax liability on excess supply declared in GSTR-1 in comparison to GSTR-3B is not paid or differences not explained : A registered person, to whom an intimation has been issued on the common portal under the provisions of Rule 88C(1) in respect of a tax period, shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in FORM GSTR-1 or using the invoice furnishing facility for a subsequent tax period, unless he has either deposited the amount specified in the said intimation or has furnished a reply explaining the reasons for any amount remaining unpaid, as required under the provisions of Rule 88C(2).

Note: Where the tax payable by a registered person, in accordance with the statement of outward supplies furnished by him in FORM GSTR-1 or using the Invoice Furnishing Facility in respect of a tax period, exceeds the amount of tax payable by such person in accordance with the return for that period furnished by him in **FORM GSTR-3B**, he is given intimation for payment of the differential liability under Rule 88C of the CGST Rules, 2017.

(d) Excess ITC claimed not paid or reasons not explained : A registered person, to whom an intimation has been issued on the common portal under the provisions of Rule 88D(1) in respect of a tax period or periods, shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in FORM GSTR-1 or using the invoice furnishing facility for a subsequent tax period, unless he has either paid the amount equal to the excess input tax credit as specified in the said intimation or has furnished a reply explaining the reasons in respect of the amount of excess input tax credit that still remains to be paid.

(e) Non furnishing of bank account details : A registered person shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in FORM GSTR-1 or using the invoice furnishing facility, if he has not furnished the details of the bank account as per the provisions of rule 10A

(6) Maximum time limit to furnish GSTR-1 statement – 3 years from the due date [Section 37(5)] : A registered person shall not be allowed to furnish the details of outward supplies for a tax period after the expiry of a period of three years from the due date of furnishing the said details.

However, the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, allow a registered person or a class of registered persons to furnish the details of outward supplies for a tax period, even after the expiry of the said period of 3 years from the due date of furnishing the said details

GSTR-1 cannot be furnished before the end of tax period : A taxpayer cannot file GSTR-1 before the end of the current tax period i.e. to say for the month of November before 30th November However, following are the exceptions to this rule :

a. Casual taxpayers, after the closure of their business
b. Cancellation of GSTIN of a normal taxpayer

A taxpayer who has applied for cancellation of registration will be allowed to file GSTR-1 after confirming receipt of the application.

3. What kind of details of outward supplies are required to be furnished in GSTR-1?

Ans: (Contents of information in GSTR-1 [Explanation to Section 37 read with Rule 59(2) of CGST Rules] [Substituted vide Notification No. 12/2024-CT dated 10-07-2024 w.e.f. 01-08-2024]:

1) Basic and other details: The contents of GSTR-1 are as under-

Basic & Other Details	Details of Outward Supplies
✓ GSTIN ✓ Legal name ✓ Trade name, if any ✓ Aggregate turnover in previous year ✓ Year and Month ✓ HSN-wise summary of outward supplies ✓ Details of documents issued	✓ B2B including UIN holders ✓ B2C inter-State supplies where invoice value > ₹1 lakh ✓ Consolidated details of other B2C supplies Zero rated and deemed exports ✓ Debit/ Credit notes issued ✓ Nil rated/ Exempted/ Non-GST ✓ Amendments for prior period ✓ Advances received/advances adjusted

Note: GST is a destination-based consumption tax. Hence, the tax revenue is transferred to the State which is the place of supply of the particular transaction. Since, the place of supply is crucial for determining the share of every State in the tax revenue, GSTR-1 also captures information relating to place of supply.

(2) Invoice wise and consolidated details : The registered person is required to furnish details of invoices and revised invoices issued in relation to supplies made by him to registered and unregistered persons during a month in GSTR-1 in the following manner :

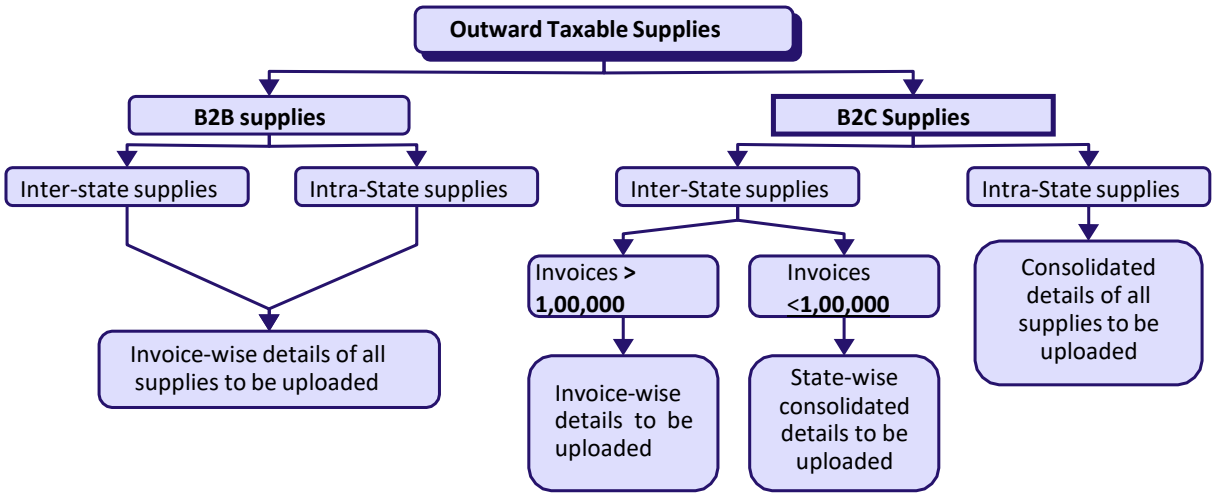
	Invoice-wise details of ALL	Consolidated details of ALL
i	Inter-State and Intra-State supplies made to registered persons i.e. B2B supplies	Intra-State supplies made to unregistered persons for each rate of tax
ii	Inter-State supplies made to unregistered persons with invoice value exceeding ₹ 1,00,000 i.e. B2C supplies	Inter-State supplies made to unregistered persons with invoice value upto ₹ 1,00,000 for each rate of tax separately for each State

Thus, uploading of invoices depends on whether the supply is **B2B** or **B2C** plus whether the supply is intra-State or inter-State.

B2B supplies : For such supplies, all invoices will have to be uploaded irrespective of whether they are intra-State or inter-State supplies. This is so because the recipient will take ITC and thus, invoice matching is required to be done.

B2C supplies : For B2C supplies, uploading in general may not be required as the buyer will not be taking ITC. However, still in order to implement the destination based principle, invoices of value more than ₹ 1.0 lakh in inter-State B2C supplies will have to be uploaded. For inter-State invoices below ₹ 1.0 lakh, State wise summary will be sufficient and for all intra-State invoices, only consolidated details will have to be given.

Invoices can be uploaded at any time during the tax period and not just at the time of filing.



(3) **Debit notes and credit notes :** The registered person is required to furnish details of debit and credit notes, if any, issued during the month for invoices issued previously.

(4) **Other aspects relating to invoice uploading :**

The following aspects are to be noted :

(a) Invoices can be modified/deleted any number of times till the submission of **GSTR-1** of a tax period. The uploaded invoice details are in a draft version till the **GSTR-1** is submitted and can be changed irrespective of due date.

(b) There is no need to upload scanned copies of invoices. Only certain prescribed fields of information from invoices need to be uploaded e.g., invoice no., date, value, taxable value, rate of tax, amount of tax etc. In case there is no consideration, but the activity is a supply by virtue of Schedule 1 of CGST Act, the taxable value will have to be worked out as prescribed and uploaded.

(c) Description of each item in the invoice will not be uploaded. Only HSN code in respect of supply of goods and accounting code in respect of supply of services will have to be fed. The same depends upon the annual turnover of preceding financial year. As per Notification No. 78/2020-CT dated 15-10-2020 w.e.f. 1-4-2021, the number of digits of HSN code to be quoted are as under :

	Annual Turnover in the preceding Financial Year	Number of Digits of HSN Code

1.	Upto ₹ 5 crores	For B2B supply – 4 For B2C supply – 4 (optional)
2.	More than ₹ 5 crores	6
However, a registered person having aggregate turnover up to ₹ 5 crores in the previous financial year may not mention 4 digits of HSN Code in a tax invoice issued by him under the said rules in respect of supplies made to unregistered persons.		

(5) Other Aspects :

- ✓ GSTR-1 needs to be filed even if there is no business activity (Nil Return) in the tax period.
- ✓ Filing of GSTR-1 for current month is possible only when GSTR-1 for the previous month has been filed.
- ✓ Taxpayer opting for voluntary cancellation of GSTIN will have to file GSTR-1 for active period.
- ✓ In cases where a taxpayer has been converted from a normal taxpayer to composition taxpayer, GSTR-1 will be available for filing only for the period during which the taxpayer was registered as normal taxpayer. The GSTR-1 for the said period, even if filed with delay would accept invoices for the period prior to conversion.

(6) Nil GSTR-1 : Filing of GSTR-1 is mandatory for all normal and casual taxpayers, even if there is no business activity in any particular tax period. For such tax period(s), a Nil GSTR-1 is required to be filed as prescribed under Rule 67A of the CGST Rules.

A Nil GSTR-1 does not have any entry.

For example, a Nil GSTR-1 for a tax period cannot be filed, if the taxpayer has made any outward supply (including exempt, nil rated or non-GST supplies), or it has received supplies on which tax is payable under reverse charge or an amendment needs to be made to any of the supplies declared in an earlier return or any credit or debit notes is to be declared/amended etc.

A Nil GSTR-1 can be filed through an SMS using the registered mobile number of the taxpayer. GSTR-1 submitted through SMS is verified by registered mobile number-based OTP facility.

A taxpayer can file Nil GSTR-1, anytime from 1st day of the month subsequent of the tax period .for example GSTR-1 for the calendar month of April, can be filed from 1st May onwards. GSTR-1 for the quarter of April to June can be filed from 1st July onwards.

4. How are the details of outward supply furnished in prior periods amended?

Ans: Amendment in the details of outward supply furnished for prior period [Section 37(3)]:

(a) Scope of amendment/ correction entries :

Amendment on communication of mismatch report : Tables 9, 10 and 11(II) of GSTR-1 provide for amendments in details of taxable outward supplies furnished in earlier periods. The supplier can make amendments in the particulars furnished in GSTR-1 filed by him for the prior periods if he agrees to the mismatch report communicated to him by the system every month,

after the processing of the return. The details of original debit notes/credit notes/refund vouchers issued by the tax-payer in the current tax period as also the revision in the debit notes/credit notes/refund vouchers issued in the earlier tax periods are required to be shown in Table 9 of the GSTR-1.

Ordinarily in Amendment Table the supplier is required to give details of original invoice (No. and Date), the particulars of which have been wrongly entered in GSTR-1 of the earlier months and are now sought to be amended. However, it may happen that, a supplier altogether forgets to include the entire original invoice while furnishing the GSTR-1 for a particular month. In such cases also, he would be required to show the details of the said missing invoice which was issued in earlier month in the Amendment Table only, as such type of errors would also be regarded as data entry error.

(b) Rectification of unmatched entries and in case of short-payment of tax – Tax and interest to be paid [Section 37(3)] : Any registered person, who has furnished the details of outward supplies for any tax period, shall, upon discovery of any error or omission therein, rectify such error or omission in such manner as may be prescribed, and shall pay the tax and interest, if any, in case there is a short payment of tax on account of such error or omission, in the return to be furnished for such tax period.

(c) Time limit for rectification : The maximum time limit within which such amendments are permissible is earlier of the following dates :

- ✓ 30th November following the end of the financial year to which such details pertain; or
- ✓ Date of filing of the relevant annual return.

It may be noted that, the expression 'due date' is missing in time limits prescribed for making amendments under section 37(3) [GSTR-1]. Therefore, dates mentioned in these sections apparently mean actual date of filing and not the due date.

(6) Scope of additional details in Form GSTR-1A [Rule 59(4A)] : The additional details or the amendments of the details of outward supplies of goods or services or both furnished in FORM GSTR-1A may, as per the requirement of the registered person, include the –

(a) invoice wise details of –

(i) inter-State and intra-State supplies made to the registered persons; and

(ii) inter-State supplies with invoice value more than ₹ 1,00,000 made to the unregistered persons;

(b) consolidated details of

(i) intra-State supplies made to unregistered persons for each rate of tax; and

(ii) State wise inter-State supplies with invoice value upto ₹ 1,00,000 made to unregistered persons for each rate of tax;

(c) debit and credit notes, if any, issued during the month for invoices issued previously [Inserted vide Notification No. 12/2024-CT dated 10.07.2024]

5. Explain the provisions relating to communication of details of inward supplies and input tax credit.

Ans: Communication of details of inward supplies and input tax credit [Section 38]: The relevant provisions are as under-

The details of outward supplies furnished by the registered persons u/s 37(1) and of such other supplies as may be prescribed, and an auto-generated statement containing the details of input tax credit shall be made available electronically to the recipients of such supplies in such form and manner, within such time, and subject to such conditions and restrictions as may be prescribed.

The auto-generated statement shall consist of

(a) details of inward supplies in respect of which credit of input tax may be available to the recipient; and

(b) details of supplies in respect of which such credit cannot be availed, whether wholly or partly, by the recipient, on account of the details of the said supplies being furnished u/s 37(1) –

(i) by any registered person within such period of taking registration as may be prescribed; or

(ii) by any registered person, who has defaulted in payment of tax and where such default has continued for such period as may be prescribed; or

(iii) by any registered person, the output tax payable by whom in accordance with the statement of outward supplies furnished by him under the said sub-section during such period, as may be prescribed, exceeds the output tax paid by him during the said period by such limit as may be prescribed; or

(iv) by any registered person who, during such period as may be prescribed, has availed credit of input tax of an amount that exceeds the credit that can be availed by him in accordance with clause (a), by such limit as may be prescribed; or

(v) by any registered person, who has defaulted in discharging his tax liability in accordance with the provisions of Section 49(12) subject to such conditions and restrictions as may be prescribed; or

(vi) by such other class of persons as may be prescribed.

6. Explain the provisions relating to Form and manner of ascertaining details of inward supplies.

Ans: Form and manner of ascertaining details of inward supplies [Rule 60]: The relevant provisions are discussed as under-

(1) Form GSTR-2A :

✓ It is a system generated read only statement of inward supplies for a recipient. This statement is updated on a real time basis. The details become available to the recipient for view/download and are updated incrementally as and when supplier(s) upload or change details in their respective form of return/statement, for the given tax period.

Details of outward supplies furnished by the supplier in Form GSTR-1 or FORM GSTR-1A [Inserted vide Notification No. 12/2024-CT dated 10.07.2024] or using the IFF is made

available electronically to the concerned registered persons (recipients) in Form GSTR-2A, in Form GSTR-4A and in Form GSTR-6A, as the case may be.

- ✓ Details of invoices furnished by a non-resident taxable person in Form **GSTR-5** and by an Input Service Distributor in Form GSTR-6, details of TDS by deductor furnished in Form GSTR-7 and details of TCS by an e-commerce operator furnished in Form GSTR-8, are made available to the recipient, deductee or concerned person, in Form GSTR-2A.
- ✓ Further, details of the integrated tax paid on the import of goods or goods brought in DTA from SEZ unit/developer on a bill of entry are also made available in Form GSTR-2A.

(2) Form GSTR-2B :

- ✓ It is an auto-generated read only statement containing the details of ITC – is made available to the registered person (recipient) for every month. It is a static statement and is available only once a month.
- ✓ It consists of –
  - (i) the details of outward supplies furnished by the suppliers in Form GSTR-1, other than a supplier who has opted for QRMP scheme, between the day immediately after the due date of furnishing of Form GSTR-1 for the previous month to the due date of furnishing of Form GSTR-1 for the month.
  - (ii) the details of outward supplies furnished by the suppliers in may be,-
    - (a) for the 1st month of the quarter, between the day immediately after the due date of furnishing of Form GSTR-1 for the preceding quarter to the due date of furnishing details using the IFF for the 1st month of the quarter;
    - (b) for the 2nd month of the quarter, between the day immediately after the due date of furnishing details using the IFF for the 1st month of the quarter to the due date of furnishing details using the IFF for the 2nd month of the quarter;
    - (c) for the 3rd month of the quarter, between the day immediately after the due date of furnishing of details using the IFF for the 2nd month of the quarter to the due date of furnishing of Form GSTR-1 for the quarter.
  - (iii) the additional details or amendments in details of outward supplies furnished by his supplier in FORM GSTR-1A filed between the day immediately after the due date of furnishing of FORM GSTR-1 for the previous tax period to the due date of furnishing of FORM GSTR-1 for the current tax period [Inserted vide Notification No. 12/2024-CT dated 10.07.2024]
  - (iv) the details of the integrated tax paid on the import of goods or goods brought in the DTA from SEZ unit/developer on a bill of entry in the month.

  Form GSTR-2B consists of all documents filed by suppliers/ISD in their Form GSTR-1, 5 & 6, between the cut-off dates. It also consists of import data for the period which are received within 13th of the succeeding month.

  In case of monthly Form GSTR-1, the cut-off date is 00:00 hours on 12th of the relevant month to 23:59 hours, on 11th of the succeeding month. Whereas for quarterly Form GSTR-

1/IFF, Form GSTR-5 and Form GSTR-6, the cut-off date is 00:00 hours on 14th day of relevant month to 23:59 hours, on 13th day of succeeding month.

The details filed in Form GSTR-1 & 5 (by supplier) & Form GSTR-6 (by ISD) would reflect in the next open Form GSTR-2B of the recipient irrespective of supplier's/ISD's date of filing. If a supplier opting for QRMP files an invoice dated 15th july on 13th August, it will get reflected in GSTR-2B of July (generated on 14th August).if the document is filled on 14th August, the document will be reflected in Form GSTR-2B of August (generated on 14th September).

The statement in Form GSTR-2B for every month shall be made available to the registered person,–

(i) for the 1st and 2nd month of a quarter, a day after the due date of furnishing of details of outward supplies for the said month,

(a) in the IFF by a registered person opting for QRMP, or

(b) in Form GSTR-1 by a registered person other than opting for QRMP

whichever is later.

(ii) in the 3rd month of the quarter, a day after the due date of furnishing of details of outward supplies for the said month, in Form **GSTR-1** by a registered person opting for QRMP.

Example: For the quarter July-September, Form GSTR-2B for a registered person (recipient) who has received supplies from QRMP suppliers as well as from other suppliers will be generated as follows –

Month	Date of generation of GSTR-2B
July	14th August
August	14th September
September	14th October

FURNISHING OF RETURNS

7. Explain the provisions relating to furnishing of returns by taxable person.

Ans: Furnishing of returns [Section 39]:

(1) Furnishing of monthly return [Section 39(1)] : Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52 shall, for every calendar month or part thereof, furnish, a return, electronically, of inward and outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid and such other particulars, in GSTR-3B form by 20th of the month succeeding the relevant calendar month.

Payment of taxes for discharge of tax liability as per FORM GSTR-3B : Every registered person furnishing the return in FORM GSTR-3B shall, subject to the provisions of Section 49 of the Act, discharge his liability towards tax, interest, penalty, fees or any other amount

payable under the Act by debiting the electronic cash ledger or electronic credit ledger, as the case may be, not later than the last date for filing of return in FORM GSTR-3B. [Sub rule (2) of Rule 61 of CGST Rules]

(2) Quarterly return by notified person [First proviso to Section 39] : The Government may, on the recommendations of the Council, notify certain class of registered persons who shall furnish GSTR-3B return for every quarter or part thereof, subject to such conditions and restrictions as may be specified therein. For these persons Quarterly Return Monthly Payment scheme [QRMP] has been notified w.e.f. 01-01-2021.

Monthly payment of taxes by prescribed persons [First proviso to Section 39(7)] : Every registered person furnishing return under QRMP scheme shall pay to the Government, in such form and manner, and within such time, as may be prescribed,

(a) an amount equal to the tax due taking into account inward and outward supplies of goods or services or both, input tax credit availed, tax payable and such other particulars during a month; or

(b) in lieu of the amount referred to in (a) above, an amount determined in such manner and subject to such conditions and restrictions as may be prescribed.

Contents of GSTR-3B :

Basic & Other Details	Other details relating to supplies
✓ GSTIN ✓ Legal name of the registered person ✓ Tax period	✓ Summarised details of outward supplies and inward supplies liable to reverse charge ✓ Summarised details of inter-State supplies made to unregistered persons, composition taxable persons and UIN holders ✓ Eligible ITC ✓ Values of exempt, nil-rated and non-GST inward supplies ✓ Payment of tax ✓ TDS/TCS credit

(3) Return to be furnished even if no taxable supplies made during relevant period [Section 39(8)]: Every registered person who is required to furnish a return under section 39(1)/(2) shall furnish a return for every tax period whether or not any supplies of goods or services or both have been made during such tax period.

(4) Rectification of mistake [Section 39(9)] :

✓ Rectification : Where any registered person after furnishing a return under as per above provisions discovers any omission or incorrect particulars therein, he shall rectify such omission or incorrect particulars in the return to be furnished for the month or quarter during which such omission or incorrect particulars are noticed, subject to payment of interest under this Act.

- ✓ Exception : Such rectification cannot be done when omission or incorrect particulars are discovered as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities.
  Hence, assesse may not be able to pass on the ITC to the receiver in respect of tax payments made by him in pursuance of account of any of the aforementioned situations.
- ✓ Time limit of rectification : No such rectification of any omission or incorrect particulars shall be allowed after –
  - 30th November following the end of the financial year to which such details pertain ; or
  - the actual date of furnishing of relevant annual return,

whichever is earlier.

(5) When return cannot be filed :

A registered person shall not be allowed to furnish a return for a tax period if—

(a) the return for any of the previous tax periods; or

(b) the details of outward supplies under Section 37(1) for the said tax period,

has not been furnished by him.

However, the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, allow a registered person or a class of registered persons to furnish the return, even if he has not furnished the returns for one or more previous tax periods or has not furnished the details of outward supplies for the said tax period.

(6) Maximum time limit to furnish returns – 3 years from due date [Section 39(11)] : A registered person shall not be allowed to furnish a return for a tax period after the expiry of a period of 3 years from the due date of furnishing the said return. However, the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, allow a registered person or a class of registered persons to furnish the return for a tax period, even after the expiry of the said period of 3 years from the due date of furnishing the said return.3

(7) Manner of furnishing of return or details of outward supplies by SMS facility [Rule 67A]

For a registered person who is required to furnish a Nil return under section 39 in FORM GSTR-3B or a Nil details of outward supplies under section 37 in FORM GSTR-1 or a Nil statement in FORM GST CMP-08 for a tax period, any reference to electronic furnishing shall include furnishing of the said return or the details of outward supplies or statement through a short messaging service using the registered mobile number and the said return or the details of outward supplies or statement shall be verified by a registered mobile number based One Time Password facility.

A Nil return or Nil details of outward supplies or Nil statement shall mean a return u/s 39 or details of outward supplies u/s 37 or statement under rule 62, for a tax period that has nil or no entry in all the Tables in FORM GSTR-3B or FORM GSTR-1 or FORM GST CMP-08, as the case may be. [Explanation]

8. Explain the provisions relating to Quarterly Return Monthly Payment Scheme.

Ans: Quarterly Return Monthly Payment Scheme [QRMP Scheme] [Rule 61A of the CGST Rules, 2017] : The relevant provisions are as under-

(1) Eligibility for scheme : A registered person who is required to furnish a return in FORM GSTR-3B, and who has an aggregate turnover of up to ₹ 5 crore in the preceding financial year, is eligible for the QRMP Scheme. The aggregate annual turnover for the preceding financial year shall be calculated in the common portal taking into account the details furnished in the returns by the taxpayer for the tax periods in the preceding financial year. Further, in case the aggregate turnover exceeds ₹ 5 crore during any quarter in the current financial year, the registered person shall not be eligible for the Scheme from the next quarter.

(2) Exercising option for QRMP Scheme :

(a) Option to be exercised at any time during financial year : Facility to avail the Scheme on the common portal would be available throughout the year. According to Rule 61A, a registered person can opt in for any quarter from first day of second month of preceding quarter to the last day of the first month of the quarter. In order to exercise this option, the registered person must have furnished the last return, as due on the date of exercising such option.

For example: A registered person intending to avail of the Scheme for the quarter 'July to September' can exercise his option during 1st of May to 31st of July. If he is exercising his option on 27th July for the quarter (July to September), in such case, he must have furnished the return for the month of June which was due on 22/24th July.

(b) Option applicable for subsequent quarters unless revised : Registered persons are not required to exercise the option every quarter. Where such option has been exercised once, they shall continue to furnish the return as per the selected option for future tax periods, unless they revise the said option.

(c) Time limit to opt out from scheme : Similarly, the facility for opting out of the Scheme for a quarter will be available from first day of second month of preceding quarter to the last day of the first month of the quarter.

(d) Eligibility ceases when turnover exceeds ₹ 5 crore : It is also clarified that such registered person, whose aggregate turnover crosses ₹ 5 crore during a quarter in current financial year, shall opt for furnishing of return on a monthly basis, electronically, on the common portal, from the succeeding quarter. In other words, in case the aggregate turnover exceeds ₹ 5 crore during any quarter in the current financial year, the registered person shall not be eligible for the Scheme from the next quarter.

(e) GSTIN wise applicability : It is further clarified that the option to avail the QRMP Scheme is GSTIN wise and therefore, distinct persons as defined in Section 25 of the CGST Act (different GSTINs on same PAN) have the option to avail the QRMP Scheme for one or more GSTINs. In other words, some GSTINs for that PAN can opt for the QRMP Scheme and remaining GSTINs may not opt for the Scheme.

(3) Furnishing of details of outward supplies under section 37 of the CGST Act.

(a) Quarterly statement : The registered persons opting for the Scheme would be required to furnish the details of outward supply in FORM GSTR-1 quarterly as per the rule 59 of the CGST Rule.

(b) Invoice Furnishing Facility (IFF) : For each of the first and second months of a quarter, such a registered person will have the facility (Invoice Furnishing Facility – IFF) to furnish the details of such outward supplies to a registered person, as he may consider necessary, between the 1st day of the succeeding month till the 13th day of the succeeding month. The said details of outward supplies shall, however, not exceed the value of ₹ 50 lakh in each month. It may be noted that after 13th of the month, this facility for furnishing IFF for previous month would not be available. As a facilitation measure, continuous upload of invoices would also be provided for the registered persons wherein they can save the invoices in IFF from the 1st day of the month till 13st day of the succeeding month. The facility of furnishing details of invoices in IFF has been provided so as to allow details of such supplies to be duly reflected in the FORM GSTR-2A and FORM GSTR-2B of the concerned recipient.

For example, a registered person who has availed the Scheme wants to declare two invoices out of the total ten invoices issued in the first month of quarter since the recipient of supplies covered by those two invoices desires to avail ITC in that month itself. Details of these two invoices may be furnished using IFF. The details of the remaining 8 invoices shall be furnished in FORM GSTR-1 of the said quarter. The two invoices furnished in IFF shall be reflected in FORM GSTR-2B of the concerned recipient of the first month of the quarter and remaining eight invoices furnished in FORM GSTR-1 shall be reflected in FORM GSTR-2B of the concerned recipient of the last month of the quarter. The said facility would however be available, say for the month of July, from 1st August till 13Th August. Similarly, for the month of August, the said facility will be available from 1st September till 13th September.

It is re-iterated that said facility is not mandatory and is only an optional facility made available to the registered persons under the QRMP Scheme.

(c) The details of invoices furnished using the said facility in the first two months are not required to be furnished again in FORM GSTR-1. Accordingly, the details of outward supplies made by such a registered person during a quarter shall consist of details of invoices furnished using IFF for each of the first two months and the details of invoices furnished in FORM GSTR-1 for the quarter. At his option, a registered person may choose to furnish the details of outward supplies made during a quarter in FORM GSTR-1 only, without using the IFF.

(4) Monthly payment of tax :

The registered person under the QRMP Scheme would be required to pay the tax due in each of the first two months of the quarter by depositing the due amount in FORM GST PMT-06, by the 25th of the month succeeding such month. While generating the challan, taxpayers

should select "Monthly payment for quarterly taxpayer" as reason for generating the challan. The said person can use any of the following two options provided below for monthly payment of tax during the first two months –

(a) Fixed Sum Method : A facility is being made available on the portal for generating a prefilled challan in FORM GST PMT-06 for an amount equal to –

(i) 35% of the tax paid in cash in the preceding quarter where the return was furnished quarterly; or

(ii) equal to the tax paid in cash in the last month of the immediately preceding quarter where the return was furnished monthly.

For easy understanding, the same is explained by way of illustration in table below:

(i) In case the last return filed was on quarterly basis for Quarter Ending March, 2023 :

Tax paid in Cash in Quarter (January - March, 2023)		Tax required to be paid in each of the months – April and May, 2023	
CGST	100	CGST	35
SGST	100	SGST	35
IGST	500	IGST	175
Cess	50	Cess	17.5

(ii) In case the last return filed was monthly for tax period March, 2023

Tax paid in Cash in March, 2023		Tax required to be paid in each of the Months – April and May, 2023	
CGST	50	CGST	50
SGST	50	SGST	50
IGST	80	IGST	80
Cess	-	Cess	-

Monthly tax payment through this method would not be available to those registered persons who have not furnished the return for a complete tax period preceding such month. A complete tax period means a tax period in which the person is registered from the first day of the tax period till the last day of the tax period.

(b) Self-Assessment Method : The said persons, in any case, can pay the tax due by considering the tax liability on inward and outward supplies and the input tax credit available, in FORM GST PMT-06. In order to facilitate ascertainment of the ITC available for the month, an auto-drafted input tax credit statement has been made available in FORM GSTR-2B, for every month.

✓ Option available for payment method : The said registered person is free to avail either of the two tax payment method above in any of the two months of the quarter.

- ✓ No deposit required in case of sufficient balance in electronic cash and credit ledger/Nil tax liability : It is clarified that in case the balance in the electronic cash ledger and/or electronic credit ledger is adequate for the tax due for the first month of the quarter or where there is nil tax liability, the registered person may not deposit any amount for the said month. Similarly, for the second month of the quarter, in case the balance in the electronic cash ledger and/or electronic credit ledger is adequate for the cumulative tax due for the first and the second month of the quarter or where there is nil tax liability, the registered person may not deposit any amount.
- ✓ Refund of tax only after furnishing of GSTR-3B : Any claim of refund in respect of the amount deposited for the first two months of a quarter for payment of tax shall be permitted only after the return in FORM GSTR-3B for the said quarter has been furnished. Further, this deposit cannot be used by the taxpayer for any other purpose till the filing of return for the quarter

(5) Quarterly filing of FORM GSTR-3B : Such registered persons would be required to furnish FORM GSTR-3B, for each quarter, on or before 22nd or 24th day of the month succeeding such quarter. In FORM GSTR-3B, they shall declare the supplies made during the quarter, ITC availed during the quarter and all other details required to be furnished therein. The amount deposited by the registered person in the first two months shall be debited solely for the purposes of offsetting the liability furnished in that quarter's FORM GSTR-3B. However, any amount left after filing of that quarter's FORM GSTR-3B may either be claimed as refund or may be used for any other purpose in subsequent quarters. In case of cancellation of registration of such person during any of the first two months of the quarter, he is still required to furnish return in FORM GSTR-3B for the relevant tax period.

The due dates for furnishing the quarterly return is as under

	Class of Registered Persons	Due date
1.	Registered persons whose principal place of business is in the States of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands or Lakshadweep	22nd of the month succeeding such quarter.
2.	Registered persons whose principal place of business is in the States of Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha, the Union territories of Jammu and Kashmir, Ladakh, Chandigarh or Delhi.	24th of the month succeeding such quarter.

(6) Applicability of Interest :

(a) For registered person making payment of tax by opting Fixed Sum Method :

(i) No interest would be payable in case the tax due is paid in the first two months of the quarter by way of depositing auto-calculated fixed sum amount by the due date . In other words, if while furnishing return in FORM GSTR-3B, it is found that in any or both of the first two months of the quarter, the tax liability net of available credit on the supplies made/received was higher than the amount paid in challan, then, no interest would be charged provided they deposit system calculated amount for each of the first two months and discharge their entire liability for the quarter in the FORM GSTR-3B of the quarter by the due date.

(ii) In case such payment of tax by depositing the system calculated amount in FORM GST PMT-06 is not done by due date, interest would be payable at the applicable rate, from the due date of furnishing FORM GST PMT-06 till the date of making such payment.

(iii) Further, in case FORM GSTR-3B for the quarter is furnished beyond the due date, interest would be payable as per the provisions of Section 50 of the CGST Act for the tax liability net of ITC

Illustration 1 – A registered person, who has opted for the Scheme, had paid a total amount of ₹ 100/- in cash as tax liability in the previous quarter of October to December. He opts to pay tax under fixed sum method. He therefore pays ₹ 35/- each on 25 th February and 25 th March for discharging tax liability for the first two months of quarter viz. January and February. In his return for the quarter, it is found that liability, based on the outward and inward supplies, for January was ₹ 40/- and for February it was ₹ 42/-. No interest would be payable for the lesser amount of tax (i.e. ₹ 5 and ₹ 7 respectively) discharged in these two months provided that he discharges his entire liability for the quarter in the FORM GSTR-3B of the quarter by the due date.

Illustration 2 – A registered person, who has opted for the Scheme, had paid a total amount of ₹ 100/- in cash as tax liability in the previous quarter of October to December. He opts to pay tax under fixed sum method. He therefore pays ₹ 35/- each on 25th February and 25th March for discharging tax liability for the first two months of quarter viz. January and February. In his return for the quarter, it is found that total liability for the quarter net of available credit was ₹ 125 but he files the return on 30th April. Interest would be payable at applicable rate on ₹ 55 [₹ 125 – ₹ 70 (deposit made in cash ledger in M1 and M2)] for the period between due date of quarterly GSTR 3B and 30th April

(a) For registered person making payment of tax by opting Self-Assessment Method Interest amount would be payable as per the provision of Section 50 of the CGST Act for tax or any part thereof (net of ITC) which remains unpaid/paid beyond the due date for the first two months of the quarter.

(b) Interest payable, if any, shall be paid through FORM GSTR-3B.

(7) Applicability of Late Fee : Late fee is applicable for delay in furnishing of return/details of outward supply as per the provision of Section 47 of the CGST Act. As per the Scheme, the

requirement to furnish the return under the proviso to Section 39(1) of the CGST Act is quarterly. Accordingly, late fee would be the applicable for delay in furnishing of the said quarterly return/ details of outward supply. It is clarified that no late fee is applicable for delay in payment of tax in first 2 months of the quarter.

9. Explain the manner of dealing with difference in liability reported in statement of outward supplies and that reported in return.

Ans: Manner of dealing with difference in liability reported in statement of outward supplies and that reported in return [Rule 88C] :

(1) Intimation of difference in liability reported in GSTR-1 and GSTR-3B : Where the tax payable by a registered person, in accordance with the statement of outward supplies furnished by him in FORM GSTR-1 as amended in FORM GSTR-1A if any [Inserted vide Notification No. 12/2024-CT dated 10.07.2024], or using the IFF in respect of a tax period, exceeds the amount of tax payable by such person in accordance with the return for that period furnished by him in FORM GSTR-3B, by such amount and such percentage, as may be recommended by the Council, the said registered person shall be intimated of such difference in Part A of FORM GST DRC-01B, electronically on the common portal, and a copy of such intimation shall also be sent to his registered e-mail address, highlighting the said difference and directing him to—

(a) pay the differential tax liability, along with interest u/s 50, through FORM GST DRC-03; or

(b) explain the aforesaid difference in tax payable on the common portal, within a period of 7 days.

(2) Response to Intimation : The registered person shall, upon receipt of the intimation, either,—

(a) pay the amount of the differential tax liability, as specified in Part A of FORM GST DRC-01B, fully or partially, along with interest under section 50, through FORM GST DRC-03 and furnish the details thereof in Part B of FORM GST DRC-01B electronically on the common portal; or

(b) furnish a reply electronically on the common portal, incorporating reasons in respect of that part of the differential tax liability that has remained unpaid, if any, in Part B of FORM GST DRC-01B,

within the said period of 7 days.

(3) Recovery as per Section 79 : Where any amount specified in the intimation remains unpaid within the said period and where no explanation or reason is furnished by the registered person in default or where the explanation or reason furnished by such person is not found to be acceptable by the proper officer, the said amount shall be recoverable in accordance with the provisions of section 79.

10. Explain the manner of dealing with difference in input tax credit available in auto-generated statement containing the details of input tax credit and that availed in return.

Ans: Manner of dealing with difference in input tax credit available in auto-generated statement containing the details of input tax credit and that availed in return. [Rule 88D]:

(1) Intimation for excess availment of ITC : Where the amount of input tax credit availed by a registered person in the return for a tax period or periods furnished by him in FORM GSTR-3B exceeds the input tax credit available to such person in accordance with the auto-generated statement containing the details of input tax credit in FORM GSTR-2B in respect of the said tax period or periods, as the case may be, by such amount and such percentage, as may be recommended by the Council, the said registered person shall be intimated of such difference in Part A of FORM GST DRC-01C, electronically on the common portal, and a copy of such intimation shall also be sent to his e-mail address provided at the time of registration or as amended from time to time, highlighting the said difference and directing him to—

a. pay an amount equal to the excess input tax credit availed in the said FORM GSTR-3B, along with interest payable under section 50, through FORM GST DRC-03, or
b. explain the reasons for the aforesaid difference in input tax credit on the common portal,

within a period of 7 days.

(2) Response to Intimation : The registered person shall, upon receipt of the intimation either,

(a) pay an amount equal to the excess input tax credit, as specified in Part A of FORM GST DRC-01C, fully or partially, along with interest payable under section 50, through FORM GST DRC-03 and furnish the details thereof in Part B of FORM GST DRC-01C, electronically on the common portal, or

(b) furnish a reply, electronically on the common portal, incorporating reasons in respect of the amount of excess input tax credit that has still remained to be paid, if any, in Part B of FORM GST DRC-01C, within the period of 7 days from receipt of Intimation

(3) SCN : Where any amount specified in the intimation remains to be paid within the specified period of 7 days and where no explanation or reason is furnished by the registered person in default or where the explanation or reason furnished by such person is not found to be acceptable by the proper officer, the said amount shall be liable to be demanded in accordance with the provisions of section 73 or section 74 or section 74A [Inserted by the Finance (No.2) Act, 2024 w.e.f. 01-11-2024], as the case may be.

SPECIAL RETURNS

11. Explain the provisions of filing of returns by Composition supplier.

Ans: Filing of returns by composition supplier [Section 39(2) read with Rule 62 of CGST Rules]:

(1) Composition taxpayers and presumptive scheme service suppliers to file return annually and make payment quarterly [Rule 62(1)] : A special procedure for furnishing of return and payment of tax has been prescribed for the registered persons paying composition tax under Section 10.

Such persons will :

(a) Quarterly statement for payment of tax – furnish a statement in form GST CMP-08 containing details of payment of self-assessed tax, for every quarter (or part of the quarter), by 18th day of the month succeeding such quarter.

(b) Yearly return – furnish a return (GSTR 4) for every financial year (or part of the financial year), on or before 30th day of April following the end of such financial year. However, the return in FORM GSTR-4 for a financial year from F.Y. 2024-25 onwards shall be required to be furnished by the registered person till the 30th day of june following the end of such financial year. [Inserted vide Notification No. 12/2024-CT dated 10.07.2024]

(2) Payment of tax, interest, etc. by electronic cash ledger [Rule 62(2)] : Every registered person furnishing the statement under Rule 62(1) shall discharge his liability towards tax or interest payable by debiting the electronic cash ledger.

(3) Contents of information [Rule 62(3)] :

(a) The return furnished shall include the—

(i) invoice wise inter-State and intra-State inward supplies received from registered and unregistered persons; and

(ii) consolidated details of outward supplies made.

(b) Contents of GSTR- 4 :

Basic & Other Details	Details regarding Inward and Outward Supplies
GSTIN ✓ Legal name and Trade name ✓ TDS/TCS credit received [Table 7] ✓ Tax, interest, late fee payable and paid [Table 8] ✓ Refund claimed from Electronic cash ledger **[Table 9]**	✓ Invoice-wise details of all inward supplies (i.e., intra and inter-State supplies and from registered and unregistered persons) including reverse charge supplies and import of services [Table 4] ✓ Summary of self assessed liability as per GST CMP-08 (Net of advances, credit & debit notes and any other adjustments due to amendments etc.) [Table 5] ✓ Tax rate wise details of outward supplies/ inward supplies attracting reverse charge (Net of advances, credit & debit notes and any other adjustments due to

	amendments etc.) – Consolidated details of outward supplies [Table 6]

(c) Consolidated details of outward supplies : Composition taxpayers are neither entitled for any ITC nor entitled to pass on any input tax credit to its customers (registered/unregistered). Therefore, composition taxpayers are required to provide consolidated details of outward supplies in GSTR-4 (Table 6) and not invoice-wise details. However, details of inter-State and intra-State inward supplies received from registered and un-registered persons are to be provided invoice-wise (Table 4).

(d) Tax liability : Since composition suppliers in GSTR-4 are not eligible to take ITC, they discharge their tax liability only by debiting electronic cash ledger.

(4) Auto-population of inward supplies : The inward supplies of a composition supplier received from registered persons filing GSTR-1 will be auto populated in FORM GSTR-4A for viewing.

(5) Statements/return for the period prior to opting for composition scheme [Rule 62(4)]: A registered person who has opted to pay tax under section 10 from the beginning of a financial year shall, where required, furnish the details of outward and inward supplies and return under rules 59, 60 and 61 relating to the period during which the person was liable to furnish such details and returns till the

- due date of furnishing the return for the month of September of the succeeding financial year or
- furnishing of annual return of the preceding financial year,

whichever is earlier.

ITC not available [Explanation]: Here, the person shall not be eligible to avail ITC on receipt of invoices or debit notes from the supplier for the period prior to his opting for the composition scheme.

(6) Furnishing of details on opting out of composition scheme [Rule 62(5)]: A registered person opting to withdraw from the composition scheme at his own motion or where option is withdrawn at the instance of the proper officer shall, where required, furnish a statement in the prescribed form for the period for which he has paid tax under the composition scheme till the 18th day of the month succeeding the quarter in which the date of withdrawal falls and furnish GSTR 4 for the said period till the 30th day of April following the end of the financial year during which such withdrawal falls.

As per Section 29(2), a proper officer is empowered to cancel registration of taxable person if :

a. a person paying tax under composition scheme has not furnished his GSTR-4 for a financial year beyond 3 months from the due date of furnishing the said return
b. any other taxable person has not furnished returns for consecutive period of 6 months (for 2 tax period if the registered person has opted for QRMP scheme.

12. What do you mean by non resident taxable person. Explain the provisions relating to filing of returns by non resident tax payers.

Ans: The relevant provisions are discussed as under-

	Particulars	Explanation
(A)	Monthly return	A registered NRTP is not required to file separately the Statement of Outward Supplies, Statement of Inward Supplies and Return like a normal tax payer. In place of the same, a simplified monthly tax return has been prescribed in Form GSTR-5 for a NRTP for every calendar month or part thereof. NRTP shall incorporate the details of outward supplies and inward supplies in GSTR-5.
(B)	Last date of filing return	The details in GSTR-5 should be furnished within 13 days after the end of the calendar month or within 7 days after the last day of validity period of the registration, whichever is earlier.
(C)	Payment of interest, penalty, fees or any other amount payable	NRTP shall pay the tax, interest, penalty, fees or any other amount payable under the CGST Act or rules thereunder if return is not furnished as per the above time limit.

13. Explain the provisions relating to furnishing of details of inward supplies of persons having Unique Identification Number.

Ans: Details of inward supplies of persons having UIN [Rule 82 of CGST Rules, 2017]:

(1) UIN issued for claiming refund of taxes paid on his inward supplies: Such person shall furnish the details of those inward supplies of taxable goods and/or services on which refund of taxes has been claimed in Form GSTR-11, along with application for such refund claim.

(2) UIN issued for purposes other than refund of taxes paid: Such person shall furnish the details of inward supplies of taxable goods and/or services as may be required by the proper officer in Form GSTR-11.

14. Explain the provisions relating to filing of return by Input service distributor.

Ans: Ans: The provisions relating to filing of return by Input service distributor are summarized as under

(1) Periodicity and form of return : ISD is required to file only a monthly return in Form GSTR-6 electronically through the common portal. Form GSTR-6 contains the details of input tax credit received for distribution, total ITC/ eligible/ ineligible ITC to be distributed for the tax period, distribution of ITC, details of debit/ credit notes, etc.

(2) Due date for filing of return : The details in GSTR-6 should be furnished on/before 13th of the month succeeding the calendar month. GSTR-6 can only be filed after 10th of the month and before 13th of the month succeeding the tax period

(3) Auto-population of input tax credit received for distribution : The details of input tax credit received for distribution by an ISD will be auto populated in Form GSTR-6A. Such details are auto populated in Form GSTR-6A when the registered suppliers file their GSTR-1. ISD can view the auto-populated details of ITC received for distribution in GSTR-6A and, where required, after adding, correcting or deleting the details, furnish GSTR-6.

(4) No supplies can be procured by ISD on which tax is paid on reverse charge basis : An ISD cannot accept any invoices on which tax is to be discharged under reverse charge mechanism. If ISD wants to take reverse charge supplies, in that case it has to separately register as a Normal taxpayer. This is because the ISD mechanism is only to facilitate distribution of credit of taxes paid. The ISD itself cannot discharge any tax liability (as person liable to pay tax) and remit tax to Government account. ISD will have late fee and any other liability only.

15. Explain the provisions relating to furnishing of return by the tax deductors at source.

Ans: Return for tax deducted at source [Section 39(3) read with rule 60(6) and rule 66 of the CGST Rules]: Whenever taxable goods or services or both are supplied to a Central/State Government's Department/ establishment or, local authority, or Governmental agencies, recipient is required to deduct tax at source u/s 51.

(a) Monthly return : Every registered person required to deduct tax at source under section 51 shall electronically furnish a return for every calendar month of the deductions made during the month in GSTR-7 form.

Nil return to be furnished : The registered person shall furnish a return for every calendar month whether or not any deductions have been made during the said month [Amended by the Finance (No.2) Act, 2024 w.e.f. 01-11-2024]

(b) Last date of filing return : The details in GSTR-7 should be furnished on/before 10th of the month succeeding the calendar month in which tax has been deducted at source.

(c) TDS details made available to the deductee: The details of TDS furnished by the deductor in GSTR-7 shall be made available electronically to each of the deductees on the common portal after filing of Form GSTR-7 for claiming the amount of tax deducted in his electronic cash ledger after validation.

(d) Tax deduction at source (TDS) certificate : The TDS certificate shall be made available electronically to the deductee on the common portal in Form GSTR-7A on the basis of the TDS return furnished.

16. Explain the provisions relating to furnishing of statement for tax collection at source.

Ans: GSTR-8 – Statement for tax collection at source [Section 52(4) read with rule 60(7) and rule 67 of the CGST Rules]: The relevant provisions are discussed as under-

(a) Monthly return : An ECO liable to collect tax at source shall furnish a monthly return in Form GSTR-8 electronically through the common portal. Form GSTR-8 contains the details of supplies of goods or services or both effected through ECO, including the supplies of goods or services or both returned through it and the amount of tax collected at source.

(b) Due date of filing return : The details in GSTR-8 should be furnished on/before 10th of the month succeeding the calendar month in which tax has been collected at source. Further, the amount of tax collected by ECO (TCS amount) is required to be deposited by the 10th of the month succeeding the calendar month in which tax has been collected at source.

(c) TCS details to be made available to the suppliers after filing of GSTR-8: The details of tax collected at source furnished by the operator shall be made available electronically to each of the registered suppliers on the common portal after filing of Form GSTR-8 for claiming the amount of tax collected in his electronic cash ledger after validation.

(d) Rectification of errors/omissions in GSTR-8: If after submission of GSTR-8, the ECO discovers any (discrepancy therein on his own not being the result of any scrutiny, audit, inspection or enforcement proceedings – he should rectify such discrepancy in GSTR-8 to be filed for the month during which such discrepancy is noticed, subject to payment of interest under section 50.

No such rectification of any omission or incorrect particulars shall be allowed after the

- 30th November following the end of the financial year or
- the actual date of furnishing of the relevant annual statement,

whichever is earlier.

(e) Claiming of TCS by supplier [Section 52(7)]: The supplier who has supplied the goods and/or services through the ECO claims credit, in his electronic cash ledger of the TCS reported by the ECO in the GSTR-8 filed by it.

(f) Maximum time limit to furnish GSTR-8 statement – 3 years from due date [Section 52(15)]: The operator shall not be allowed to furnish a GSTR-8 statement after the expiry of a period of three years from the due date of furnishing the said statement.

However, the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, allow an operator or a class of operators to furnish a statement, even after the expiry of the said period of three years from the due date of furnishing the said statement.

17. Write a short note on First Return.

Ans- First return [Section 40]

Every registered person 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 the same in the first return furnished by him after grant of registration.

A person has to apply for registration within 30 days when his turnover crosses the threshold limit of ₹ 20 lakh/ ₹ 40 lakhs (in case of suppliers engaged exclusively in supply of goods) (₹ 10 lakh in case of notified Special Category States). Thus, there might be a time lag between a person becoming liable to registration and grant of registration certificate.

During the intervening period, such person might have made the outward supplies, i.e. after becoming liable to registration but before grant of the certificate of registration.

Now, in order to enable such registered person to declare the taxable supplies made by him for the period between the date on which he became liable to registration till the date on which registration has been granted so that ITC can be availed by the recipient on such supplies, firstly, the registered person may issue Revised Tax Invoices against the invoices already issued during said period within 1 month from the date of issuance of certificate of registration [Section 31(3)(a) read with rule 53 of CGST Rules, 2017]. Further, section 40 provides that registered person shall declare his outward supplies made during said period in the first return furnished by him after grant of registration. The format for this return is the same as that for regular return.

ANNUAL RETURN, FINAL RETURN AND LEVY OF LATE FEE

18. Write a short note on Annual Return (5 Marks, May 2018-Old).

Ans: Annual return [Section 44]:

(1) Annual return to be furnished electronically upto 31 December of succeeding financial year [Section 44(1)]: Every registered person, other than –

- ✓ an Input Service Distributor,
- ✓ a person paying tax u/s 51 i.e. persons deducting tax at source,
- ✓ a person paying tax u/s 52, i.e. persons collecting tax at source,
- ✓ a casual taxable person, and
- ✓ a non-resident taxable person,

shall furnish an annual return which may include a self-certified reconciliation statement, reconciling the value of supplies declared in the return furnished for the financial year, with the audited annual financial statement for every financial year electronically, within such time and in such form and in such manner as may be prescribed.

(2) Exemption from filing annual return: The Commissioner may, on the recommendations of the Council, by notification, exempt any class of registered persons from filing annual return under this section.

(3) Government Department and local Authority exempt from furnishing of Annual return : Nothing contained in this section shall apply to any department of the Central Government or a State Government or a local authority, whose books of account are subject to audit by the Comptroller and Auditor-General of India or an auditor appointed for auditing the accounts of local authorities under any law for the time being in force.

(4) Composition scheme supplier : A person paying tax under composition scheme is required to file the Annual Return in Form GSTR-9A (Presently they are exempt from furnishing annual return).

(5) ECO required to collect tax at source : An ECO required to collect tax at source is required to file an annual statement referred to in section 52(5) in Form GST-9B (yet to be notified). The statement for a financial year needs to be filed by 31st December of the next financial year.

Extension : However, the Commissioner may, on the recommendations of the Council and for reasons to be recorded in writing, by notification, extend the time limit for furnishing the annual return for such class of registered persons as may be specified therein.

Any extension of time limit notified by the Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.

Maximum time limit to furnish annual return – 3 years from due date [Section 44(2)]: A registered person shall not be allowed to furnish an annual return for a financial year after the expiry of a period of 3 years from the due date of furnishing the said annual return.

However, the Government may, on the recommendations of the Council, by notification, and subject to such conditions and restrictions as may be specified therein, allow a registered person or a class of registered persons to furnish an annual return for a financial year, even after the expiry of the said period of 3 years from the due date of furnishing the said annual return.

19. Explain the procedure for furnishing Annual return.

Ans: Annual return [Rule 80]: The relevant procedure is discussed as under-

(1) E-filing of annual return [Rule 80(1)] : Every registered person, other than—

- ✓ Department of the Central Government or a State Government or a local authority, whose books of account are subject to audit by the Comptroller and Auditor-General of India or an auditor appointed for auditing the accounts of local authorities,
- ✓ an Input Service Distributor,
- ✓ a person paying tax under section 51 or section 52,
- ✓ a casual taxable person and
- ✓ a nonresident taxable person,

shall furnish an annual return as specified under section 44(1) electronically in FORM GSTR-9 on or before the 31st December following the end of such financial year through the common portal either directly or through a Facilitation Centre notified by the Commissioner.

E-filing of annual return by composition tax payer : A person paying tax under section 10 shall furnish the annual return in FORM GSTR-9A

(2) Annual statement by E-commerce operator [Rule 80(2)] : Every electronic commerce operator required to collect tax at source u/s 52 shall furnish annual statement in FORM GSTR9B (yet to be notified).

(3) Self certified reconciliation statement to be furnished in FORM GSTR-9C [Rule 80(3)] : Every registered person, other than—

Department of the Central Government or a State Government or a local authority, whose books of account are subject to audit by the Comptroller and Auditor-General of India or an auditor appointed for auditing the accounts of local authorities,

- ✓ an Input Service Distributor,
- ✓ a person paying tax under section 51 or section 52,
- ✓ a casual taxable person and
- ✓ a nonresident taxable person,

whose aggregate turnover during a financial year exceeds ₹ 5 crores, shall also furnish a self-certified reconciliation statement as specified under section 44 in FORM GSTR-9C along with the annual return on or before the 31st December following the end of such financial year, electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner.

Self-certified reconciliation statement will reconcile the value of supplies declared in the return furnished for the financial year with the audited annual financial statement.

Notification No. 30/2019-CT dated 28-06-2019	Person supplying online information technology and database access retrieval [OIDAR] services not required to furnish annual return and reconciliation statement The Government has notified the persons compulsorily registered under section 24(xi) of the CGST Act read with rule 14 of CGST Rules supplying OIDAR services from a place outside India to a person in India, other than a registered person, as the class of registered persons who shall not be required to furnish – (a) the annual return u/s 44(1) of the CGST Act read with rule 80(1) of the CGST Rules, and (b) the reconciliation statement u/s 44(2) of the CGST Act read with rule 80(3) of the CGST Rules
Notification No. 09/2020–CT, dated 16-03-2020	Foreign company which is an airlines company not required to furnish reconciliation statement The Central Government has notified the persons who are foreign company which is an airlines company covered under the notification issued under Section 381(1) of the Companies Act, 2013 and who have complied with rule 4(2) of the Companies (Registration of Foreign Companies) Rules, 2014, as the class of registered persons who shall follow the special procedure as mentioned below. The said persons shall not be required to furnish reconciliation statement in FORM GSTR-9C to the CGST Rules, 2017 u/s 44(2) of the said Act read with Rule 80(3) of the said rules.

	However, a statement of receipts and payments for the financial year in respect of its Indian Business operations, duly authenticated by a practicing Chartered Accountant in India or a firm or a Limited Liability Partnership of practicing Chartered Accountants in India is submitted for each GSTIN by the 30th September of the year succeeding the financial year.

20. Who is required to furnish Final Return under CGST Act, 2017 and what is the time limit for the same ? Discuss. (5 Marks, May 2018-NS)

Ans: Final return [Section 45]:

Final return to be furnished on cancellation of registration: Every registered person who is required to furnish a return under section 39(1) and whose registration has been cancelled shall furnish a final return, in such form and manner as may be prescribed within 3 months of –

- ✓ the date of cancellation, or
- ✓ the date of order of cancellation, whichever is later.

21. Explain the procedure for furnishing final return.

Ans: Final return [Rule 81]: Every registered person required to furnish a final return under section 45, shall furnish such return electronically in FORM GSTR-10 through the common portal either directly or through a Facilitation Centre notified by the Commissioner.

22. Explain the provisions for issuance of notice to registered persons who has not furnished return.

Ans: Notice to return defaulters [Section 46]: Where a registered person fails to furnish a return under Section 39[Normal Return], or Section 44 [Annual Return], or Section 45 [Final Return], a notice shall be issued requiring him to furnish such return within 15 days in such form and manner as may be prescribed.

Notice to non-filers of returns [Rule 68]: A notice in FORM GSTR-3A shall be issued, electronically, to a registered person who fails to furnish return under Section 39 or Section 44 or Section 45 or Section 52.

23. What amount of late fees is charged for delay in furnishing of return.

Ans- Evy Of Late Fee [Section 47]:

(1) Delay in furnishing return - Fees of ₹ 100 per day subject to maximum of ₹ 5,000 payable: As per Section 47(1), any registered person who fails to furnish the details of outward supplies required under Section 37 or returns required under Section 39 or Section 45 or Section 52 by the due date shall pay a late fee of—

(i) ₹ 100 for every day during which such failure continues; or

(ii) ₹ 5,000

whichever is less.

(2) Delay in furnishing annual return – Fees of ₹ 100 per day subject to maximum of 0.25% of turnover in the State/UT : As per Section 47(2), any registered person who fails to furnish the return required under Section 44 i.e. annual return by the due date shall be liable to pay a late fee of—

(i) ₹ 100 for every day during which such failure continues; or

(ii) ₹ 0.25% of his turnover in the State or Union territory

whichever is less.

List of statements/returns under GST :

Return	Description	Who Files?	Date for filing
GSTR-1	Monthly statement of outward supplies of goods and/or services	Person registered under regular scheme (including a casual taxable person)	10th of the next month. However, presently, the same is being extended to 11th day of the next month
	Quarterly statement of outward supplies of goods and/or services	Registered persons opting for QRMP Scheme (including a casual taxable person)	13th day of the month succeeding the quarter has been notified as the due date for the recent quarters
GSTR-3B	Monthly return	person registered under regular scheme including casual taxable person	20th of the month.
	Quarterly return	Registered persons opting for QRMP Scheme including casual taxable person	22nd or 24th of the month depending upon the State or Union Territory in which they are registered
GSTR-4	Return for financial year	Registered person paying tax under composition scheme	30th June of the month following the end of such financial year.
GST CMP-08	Quarterly statement for payment of tax	Registered person paying tax under composition scheme	18th of the month succeeding the quarter
GSTR-5	Monthly Return for a non-resident taxpayer	Non-resident Taxpayer	13th of the month succeeding the tax period or within 7 days after expiry of registration, whichever is earlier
GSTR-5A	Monthly return	Registered person providing OIDAR services from a place outside	20th of the next month

		India to a non-taxable online recipient	
GSTR-6	Monthly Return for Input Service Distributor	Input service distributor	13th of the next month
GSTR-7	Monthly Return for Tax deduction at source	Tax deductor at source	10th of the next month
GSTR-8	Monthly Return for Tax Collection at source	E- Commerce operator who is required to collect tax at source	10th of the next month
GSTR-9	Annual Return	Registered Person other than an ISD, TDS/ TCS Taxpayer, Casual Taxable Person and Non-resident Taxpayer	31st December of next Financial Year
GSTR-9B	Annual statement	E-commerce operator required to collect tax at source	31st December of the next Financial Year
GSTR-9C	Reconciliation statement	Registered person whose aggregate turnover during a F.Y. Exceeds ₹ 5 crore.	To be submitted along with the annual return [GSTR-9/9A]
GSTR-10	Final Return	Taxable Person whose registration has been surrendered or cancelled	Within three months of the date of cancellation or date of order of cancellation, whichever is later.
GSTR-11	Details of inward supplies	Persons who have been issued a Unique Identity Number (UIN)	

GOODS AND SERVICES TAX PRACTITIONERS

24. Discuss the provisions relating to Goods and services tax practitioners.

Ans: Goods and services tax practitioners [Section 48] :

1) GST practitioners – Approval as per Rules : The manner of approval of GST practitioners, their eligibility conditions, duties and obligations, manner of removal and other conditions relevant for their functioning shall be such as may be prescribed.

2) Furnishing of returns through GST Practitioners : A registered person may authorise an approved goods and services tax practitioner to furnish the details of outward supplies u/s 37 and the return under section 39 or section 44 or section 45 and to perform such other functions in such manner as may be prescribed.

3) Responsibility vests with Registered Person : The responsibility for correctness of any particulars furnished in the return or other details filed by the GST practitioners shall continue to rest with the registered person on whose behalf such return and details are furnished. "Goods and services tax practitioner" means any person who has been approved under section 48 to act as such practitioner. [Section 2(55)]

25. Explain the provisions relating to a goods and services tax practitioner.

Ans: Provisions relating to a goods and services tax practitioner [Rule 83]:

(1) Application for enrollment as GST practitioner and required qualifications [Rule 83(1)] : An application in prescribed form may be made electronically through the common portal for enrolment as GST practitioner by any person who,—

(i) is a citizen of India;

(ii) is a person of sound mind;

(iii) is not adjudicated as insolvent;

(iv) has not been convicted by a competent court;

and satisfies any of the following conditions, namely:

a) that he is a retired officer of the Commercial Tax Department of any State Government or of the Central Board of Indirect Taxes 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 2 years; or

b) 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;

c) he has passed,

(i) a graduate or 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

(ii) a degree examination of any Foreign University recognised by any Indian University as equivalent to the degree examination mentioned in sub-clause (i); or

(iii) any other examination notified by the Government, on the recommendation of the Council, for this purpose; or

(iv) has passed any of the following examinations, namely:

(a) final examination of the Institute of Chartered Accountants of India; or

(b) final examination of the Institute of Cost Accountants of India; or

(c) final examination of the Institute of Company Secretaries of India.

(2) Acceptance or Rejection of Application [Rule 83(2)] : On receipt of the application, the officer authorised shall, after making such enquiry as he considers necessary, either enrol the applicant as a GST practitioner and issue a certificate to that effect in prescribed form or reject his application where it is found that the applicant is not qualified to be enrolled as a GST practitioner.

(3) Validity of enrollment [Rule 83(3)] : The enrolment shall be valid until it is cancelled.

Passing of examination by GST Practitioner : No person enrolled as a GST practitioner 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. [National Academy of Customs, Indirect Taxes and Narcotics, Department of Revenue, Ministry of Finance, Government of India, has been notified vide Notification No. 24 /2018–CT dated 28-05-2018.]

Passing of examination within 30 months from 1-7-2017 : No person to whom the provisions of Section 48(1)(b) apply shall be eligible to remain enrolled unless he passes the said examination within a period of **30 months** from the appointed date i.e., 1-7-2017.

(4) Disqualification on Misconduct [Rule 83(4)] : If any GST practitioner is found guilty of misconduct in connection with any proceedings under the Act, the authorised officer may, after giving him a notice to show cause for such misconduct and after giving him a reasonable opportunity of being heard, by order direct that he shall henceforth be disqualified to function as a GST practitioner.

(5) Appeal against disqualification order [Rule 83(5)] : Any person against whom an order u/r 83(4) is made, may appeal to the Commissioner against such order within 30 days from the date of issue of such order.

(6) Authorisation of GST practitioner by Registered Person [Rule 83(6)] : Any registered person may, at his option, authorise a GST practitioner on the common portal or, at any time, withdraw such authorisation and the GST practitioner so authorised shall be allowed to undertake such tasks as indicated in the said authorisation during the period of authorisation.

(7) Confirmation of authorization from Registered Person [Rule 83(7)] : Where a statement required to be furnished by a registered person has been furnished by the GST practitioner authorised by him, a confirmation shall be sought from the registered person over email or SMS and the statement furnished by the GST practitioner shall be made available to the registered person on the common portal.

Deemed confirmation : Where the registered person fails to respond to the request for confirmation till the last date of furnishing of such statement, it shall be deemed that he has confirmed the statement furnished by the GST practitioner.

(8) Activities of GST practitioner [Rule 83(8)] : A GST practitioner can undertake any or all of the following activities on behalf of a registered person, if so authorised by him to—

a) furnish the details of outward supplies;

b) furnish monthly, quarterly, annual or final return;

c) make deposit for credit into the electronic cash ledger;
d) file a claim for refund;
e) file an application for amendment or cancellation of registration;
f) furnish information for generation of e-way bill;
g) furnish details of challan in FORM GST ITC-04;
h) file an application for amendment or cancellation of enrolment under rule 58; and
i) file an intimation to pay tax under the composition scheme or withdraw from the said scheme.

Further proceedings on consent of registered person : Where any application relating to a claim for refund or an application for amendment or cancellation of registration or where an intimation to pay tax under composition scheme or to withdraw from such scheme has been submitted by the goods and services tax practitioner authorised by the registered person, a confirmation shall be sought from the registered person and the application submitted by the said practitioner shall be made available to the registered person on the common portal and such application shall not be further proceeded with until the registered person gives his consent to the same.

(9) Consent of registered person to GST practitioner to prepare and furnish return [Rule 83(9)] : Any registered person opting to furnish his return through a GST practitioner shall—
a) give his consent to any GST practitioner to prepare and furnish his return; and
b) before confirming submission of any statement prepared by the GST practitioner, ensure that the facts mentioned in the return are true and correct.

(10) Preparation and e-verification of statement by GST practitioner [Rule 83(10)] : The GST practitioner shall–
(a) prepare the statements with due diligence; and
(b) affix his digital signature on the statements prepared by him or electronically verify using his credentials.

(11) Enrollment as GST practitioner in one state – To be treated as enrolled for other State [Rule 83(11)] : A GST practitioner enrolled in any other State or Union territory shall be treated as enrolled in the State or Union territory for the purposes specified in Rule 83(8).

26. Explain the procedure of surrender of enrolment by GST practitioner.

Ans: Surrender of enrolment of goods and services tax practitioner [Rule 83B] [Inserted by Notification no. 33/2019-CT dated 18.07.2019 with effect from a date to be notified later]

(1) E- Application for surrender: A goods and services tax practitioner seeking to surrender his enrolment shall electronically submit an application in FORM GST PCT-06, at the common portal, either directly or through a facilitation centre notified by the Commissioner.

(2) Cancellation of enrolment: The Commissioner, or an officer authorised by him, may after causing such enquiry as deemed fit and by order in FORM GST PCT-07, cancel the enrolment of such practitioner."

27. Explain the conditions for appearance as GST practitioner.

Ans: Conditions for purposes of appearance [Rule 84]:

(1) Name in Register of Practitioners: No person shall be eligible to attend before any authority as a GST practitioner in connection with any proceedings under the Act on behalf of any registered or un-registered person unless he has been enrolled under Rule 83.

(2) Authorisation Copy: A GST practitioner attending on behalf of a registered 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.

OBLIGATION TO FURNISH INFORMATION RETURN

28. Write a note on Obligation to furnish information return.

Ans: Obligation to furnish information return [Section 150] :

(1) Authorities required to furnish information return [Section 150(1)] : Many authorities who is responsible for maintaining record of registration or statement of accounts or any periodic return or document containing details of payment of tax and other details of—

a) transaction of goods or services or both, or
b) transactions related to a bank account, or
c) transactions related to consumption of electricity, or
d) transaction of purchase, sale or exchange of goods or property or right or interest in a property under any law for the time being in force,

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/agency as may be prescribed.

(2) Specified Persons [Section 150(1)] : The following persons are required to furnish information return-

(a) Taxable person;
(b) Local authority or other public body or association;
(c) State Government's authority responsible for the collection of VAT/sales tax/State excise duty or Central Government's authority responsible for the collection of excise duty or customs duty;
(d) Income tax authority;
(e) Banking company;
(f) State Electricity Board or an electricity distribution or transmission licensee under the Electricity Act, 2003, or any other entity entrusted with such functions by the Central Government or the State Government;
(g) Registrar or Sub-Registrar appointed under Section 6 of the Registration Act, 1908;
(h) Registrar within the meaning of the Companies Act, 2013;
(i) Motor Vehicle registering authority;
(j) Collector referred to in Section 3(c) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013;

(k) Recognised stock exchange; or
(l) Depository; or
(m) Officer of the Reserve Bank of India; or
(n) GSTN; or
(o) Unique Identity Number holders; or
(p) any other person as may be specified, on the recommendations of the Council, by the Government.

(3) Defective Information return – Notice of defect – Defect to be rectified within 30 days or extended period [Section 150(2)] : Where the Commissioner, or an officer authorised by him in this behalf,—

- ✓ considers that the information furnished in the information return is defective,
- ✓ he may intimate the defect to the person who has furnished such information return, and
- ✓ give him an opportunity of rectifying the defect
- ✓ within a period of 30 days from the date of such intimation, or within such further period which, on an application made in this behalf, the said authority may allow.

If defect not rectified – Deemed non submission of return : If the defect is not rectified within the said period of 30 days or, the further period so allowed, then, notwithstanding anything contained in any other provisions of this Act, such information return shall be treated as not furnished and the provisions of this Act shall apply.

(4) Returns not furnished – Prescribed authority may serve notice to furnish return [Section 150(3)] : Where a person who is required to furnish information return has not furnished the same within the time specified in Section 150(1)/(2), the said authority may serve upon him a notice requiring furnishing of such information return within a period not exceeding 90 days from the date of service of the notice and such person shall furnish the information return.

(5) Penalty for failure to furnish information return [Section 123] : If a person who is required to furnish an information return under Section 150 fails to do so within the period specified in the notice issued under Section 150(3) thereof, the proper officer may direct that such person shall be liable to pay a penalty of ₹ 100 for each day of the period during which the failure to furnish such return continues.

Maximum Penalty : The penalty imposed under this Section shall not exceed ₹ 5,000.

TOPIC REFERENCER

- *Export of Goods*
- *Export of Services*
- *Zero Rated Supply*
- *Import of Goods*

EXPORT OF GOODS

1. Explain the provisions relating to export of goods.

Ans: The relevant provisions are discussed as under-

(1) "Export of goods" with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India. [Section 2(5) of IGST Act, 2017]

(2) India is defined as extending to the limits of its maritime zone, which is 200 nautical miles from the coastal baseline. This is far beyond the normal definition of India, which only includes its territorial waters, which in turn extend 12 nautical miles from the baseline. Given the extended meaning of India, export would require that the goods must travel beyond 200 nautical miles from the baseline in order to qualify as having been exported.

(3) Supply of goods where supplier located in India and the place of supply outside India – Deemed to be Inter-State Supply [Section 7(5)(a)] : Supply of goods, when the supplier is located in India and the place of supply is outside India, shall be deemed to be a supply of goods in the course of inter-State trade or commerce.

Following aspects need to be noted :

a) The movement of goods is alone relevant and not the location of the exporter/importer.

b) Unlike export of services which requires fulfilment of certain conditions for a supply to qualify as 'export of services' like the nature of currency in which payment is required to be made, location of the exporter etc., export of goods doesn't require fulfilment of any such conditions.

2. Explain the measures for promotion of exports under GST.

Ans: The following concessions and incentives are provided for export of goods-

1) Exports are zero rated: Export of goods will be treated as 'zero-rated supplies'. Accordingly, while no tax would be payable on such supplies, the exporter will be eligible to claim the corresponding input tax credits. It is relevant to note that the input tax credits would be available to an exporter even if the supplies were exempt supplies so long as the eligibility of the input taxes is established. The exporter may utilise such credits for discharge of other output taxes or alternatively, the exporter may claim a refund of such taxes.

2) Refund of taxes: The exporter will be eligible to claim refund under the following situations:

(i) He may export the goods upon payment of IGST and claim refund of such tax paid; or
(ii) He may export the goods under a Letter of Undertaking, without payment of IGST and claim refund of unutilized input tax credit.

However, refund is not eligible in the following cases-

- ~~If the goods exported out of India are subjected to export duty; or~~ [omitted by the finance act (2) act, 2024 w.e.f. 01/11/2024]
- If the supplier of goods or services or both avails of drawback in respect of central tax.

"Drawback" in relation to any goods manufactured in India and exported, means the rebate of duty, tax or cess chargeable on any imported inputs or on any domestic inputs or input services used in the manufacture of such goods. [Section 2(42)]

No refund of unutilized input tax credit on account of zero rated supply of goods or of integrated tax paid on account of zero rated supply of goods shall be allowed where such zero rated supply of goods is subjected to export duty [Section 54(15)] [omitted by the finance act (2) act, 2024 w.e.f. 01/11/2024]

3. Explain the manner of Refund of integrated tax paid on goods or services exported out of India.

Ans: Refund of integrated tax paid on goods or services exported out of India [Rule 96] :

(1) Shipping bill – Deemed to be refund claim [Rule 96(1)] Inserted by the Finance (No. 2) Act, 2024 w.e.f. 01-11-2024.: The shipping bill filed by an exporter of goods shall be deemed to be an application for refund of integrated tax paid on the goods exported out of India and such application shall be deemed to have been filed only when :

a) the person in charge of the conveyance carrying the export goods duly files departure manifest or an export manifest or an export report covering the number and the date of shipping bills or bills of export; and
b) the applicant has furnished a valid return in FORM GSTR-3B;
However, if there is any mismatch between the data furnished by the exporter of goods in Shipping Bill and those furnished in statement of outward supplies in FORM GSTR-1, as amended in FORM GSTR-1A if any, such application for refund of integrated tax paid on the goods exported out of India shall be deemed to have been filed on such date when such mismatch in respect of the said shipping bill is rectified by the exporter;
c) the applicant has undergone Aadhaar authentication in the manner provided in rule 10B.

Refund of additional integrated tax on account of upward price revision : However, the exporter of goods may file an application electronically in FORM GST RFD-01 through the common portal for refund of additional integrated tax paid on account of upward revision in price of goods subsequent to export of such goods, and on which the amount of integrated tax paid at the time of export of such goods has already been refunded in accordance with

provisions of Rule 96(3), and such application shall be dealt with in accordance with the provisions of rule 89

(2) Details of export invoices to be transmitted electronically to ICEGATE [Rule 96(2)] : The details of the relevant export invoices in respect of export of goods contained in FORM GSTR-1 as amended in FORM GSTR-1A if any, shall be transmitted electronically by the common portal to the system designated by the Customs i.e. ICEGATE 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.

(3) Processing of refund claim and crediting in bank account of Applicant [Rule 96(3)] : Upon the receipt of the information regarding the furnishing of a valid return in FORM GSTR-3B from the common portal, the system designated by the Customs i.e. ICEGATE or the proper officer of Customs, as the case may be, shall process the claim of refund in respect of export of goods and an amount equal to the integrated tax 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.

(4) Cases where refund can be withheld [Rule 96(4)] : The claim for refund shall be withheld where,—

(a) a request has been received from the jurisdictional Commissioner of central tax, State tax or Union territory tax to withhold the payment of refund due to the person claiming refund in accordance with the provisions of Section 54(10)/(11); or

(b) the proper officer of Customs determines that the goods were exported in violation of the provisions of the Customs Act, 1962 or

(c) the Commissioner in the Board or an officer authorised by the Board, on the basis of data analysis and risk parameters, is of the opinion that verification of credentials of the exporter, including the availment of ITC by the exporter, is considered essential before grant of refund, in order to safeguard the interest of revenue.

(5) Transmission of refund claim to proper officer of GST on withholding of refund [Rule 96(5A)] Where refund is withheld in accordance with the provisions of Rule 96(4)(a)/(c), such claim shall be transmitted to the proper officer of Central tax, State tax or Union territory tax, as the case may be, electronically through the common portal in a system generated FORM GST RFD-01 and the intimation of such transmission shall also be sent to the exporter electronically through the common portal, and notwithstanding anything to the contrary contained in any other rule, the said system generated form shall be deemed to be the application for refund in such cases and shall be deemed to have been filed on the date of such transmission.

(6) Transmission of refund claim to GST officer when refund claim is withheld by Custom officer [Rule 96(5B)] : Where refund is withheld in accordance with the provisions of Rule 96(4)(b) and the proper officer of the Customs passes an order that the goods have been exported in violation of the provisions of the Customs Act, 1962, then, such claim shall be transmitted to the proper officer of Central tax, State tax or Union territory tax, as the case

may be, electronically through the common portal in a system generated FORM GST RFD-01 and the intimation of such transmission shall also be sent to the exporter electronically through the common portal, and notwithstanding anything to the contrary contained in any other rule, the said system generated form shall be deemed to be the application for refund in such cases and shall be deemed to have been filed on the date of such transmission.

(7) Refund as per Rule 89 [Rule 96(5C)] : The application for refund in **FORM GST RFD-01** transmitted electronically through the common portal in terms of Rule 96(5A)/(5B) shall be dealt in accordance with the provisions of rule 89.

(8) Bhutan Exports – Refund to Bhutan Government [Rule 96(8)] : The Central Government may pay refund of the integrated tax 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 integrated tax.

(9) Refund form in respect of Services [Rule 96(9)] : The application for refund of integrated tax paid on the services exported out of India shall be filed in FORM GST RFD-01 and shall be dealt with in accordance with the provisions of Rule 89.

~~(10) Ineligible Supplies [Rule 96(10)] : The persons claiming refund of integrated tax paid on exports of goods or services should not have—~~

~~(a) received supplies on which the benefit of Notification No. 48/2017-CT, dated 18-10-2017 [i.e. deemed exports] or Notification No. 40/2017-CT (Rate), dated 23-10-2017/ Notification No. 41/2017-IT (Rate), dated 23-10-2017 has been availed [i.e. concessional rate of tax @ 0.1% (0.05% CGST + 0.05% SGST & 0.1% IGST) for supply of goods made to merchant exporters for export]; or~~

~~(b) availed the benefit under Notification No. 78/2017 or 79/2017-Customs, dated 13-10-2017 [i.e. Imports of goods by EOUs/ Advance Authorisation/ EPCG schemes].~~

~~Explanation : The benefit of the notifications mentioned therein shall not be considered to have been availed only where the registered person has paid IGST and Compensation Cess on inputs and has availed exemption of only Basic Customs Duty (BCD) under the said notifications.~~

Omitted vide Notification No. 20/2024-CT dated 08-10-2024 w.e.f. 08-10-2024

Mechanism for refund of additional Integrated Tax (IGST) paid on account of upward revision in price of the goods subsequent to exports. — Circular No. 226/20/2024-GST dated 11-07-2024

(1) Filing of refund claim for additional IGST paid on account of upward revision of prices of export goods, subsequent to export :

(a) The refund of IGST paid on account of export of goods is processed by the proper officer of Customs in an automated manner without manual intervention in terms of provision of rule 96 of CGST Rules, 2017. However, there exists no mechanism for processing of refunds of any additional integrated tax paid on account of upward revision in price of goods, subsequent to exports, by the proper officer of customs. Therefore, it has been decided that such exporter may file an application for refund of such additional IGST paid in FORM GST RFD-01 electronically on the common portal and such application for refunds would be processed by the jurisdictional

GST officer of the concerned exporter. Accordingly, CGST Rules have been amended vide Notification No. 12/2024-CT dated 10.07.2024 to provide for filing of such refund application in FORM GST RFD-01, which shall be dealt with in accordance with provisions of rule 89 of CGST Rules.

(b) GSTN is in the process of development of a separate category of refund in FORM GST RFD-01, for filing an application of refund of such additional IGST paid. However, till the time such separate category for claiming refund of additional amount of IGST paid is developed on the common portal, such exporter(s) may claim refund of the additional IGST paid on account of upward revision in price of goods subsequent to exports, by filing an application of refund in FORM GST RFD-01 under the category "Any other" with remarks "Refund of additional IGST paid on account of increase in price subsequent to export of goods" along with the relevant documents as prescribed in Rule 89(2)(bb) of the CGST Rules. The exporter shall also upload the statements 9A & 9B as prescribed in Rule 89(2)(bb)&(bc) along with the said refund claim. The exporter may also upload any other document to establish that the refund is admissible to him.

(c) The said refund application shall be processed based on the documentary proof submitted by the refund applicant. Further, the validated details of shipping bills, amount of IGST involved in such shipping bills, as well as the amount of IGST refund sanctioned by the customs under rule 96(3) of CGST Rules will also be made available to jurisdictional GST officers by GSTN to enable them to process such refund claims of additional IGST paid.

(2) Minimum Refund Amount : Section 54(14) of the CGST Act provides that no refund under Section 54(5)/(6) shall be paid to an applicant, if amount is less than ₹ 1,000. Therefore, no such refund shall be paid if the amount claimed is less than ₹ 1,000.

(3) Time limit for filing refund : Rule 89(1B) of CGST Rules, inserted vide Notification No. 12/2024-CT dated 10.07.2024, provides that the application for refund of additional IGST paid can be filed before the expiry of two years from the relevant date as per clause (a) of Explanation (2) of section 54 of the CGST Act. However, in cases, where the relevant date as per clause (a) of Explanation (2) of section 54 of the CGST Act was before the date on which Rule 89(1B) of CGST Rules has come into force, such refund application can be filed before the expiry of a period of two years from the date on which the said sub-rule has come into force.

(4) The following documents are required to be accompanied with the refund claim in order to establish that refund is due to such exporter:

a) Copy of shipping bill or bill of exports;
b) Copy of original invoices;
c) Copy of contract/ other document(s), as applicable, indicating requirement for the revision in price of such goods subsequent to exports;
d) Copy of the original invoices as well as relevant debit note(s)/ supplementary invoices;
e) Proof of payment of additional IGST and applicable interest and details of the relevant FORM GSTR-1/ FORM GSTR-3B furnished by the applicant in which the said debit

note(s)/ supplementary invoice(s) were declared and tax and interest thereon had been paid by the applicant;

f) Proof of receipt of remittance of additional foreign exchange (FIRC) issued by Authorised Dealer-I banks;

g) A certificate of a practising chartered accountant or a cost accountant certifying therein that the said additional foreign exchange remittance is on account of such upward revision in price of the goods subsequent to export;

h) Statement 9A of FORM GST RFD 01; and

i) Statement 9B of FORM GST RFD 01.

(5) The proper officer while processing such refund claim shall verify that the exporter has duly reported the details of the export invoice and the debit note in his statement of outward supplies in FORM GSTR-1 and has duly paid such additional amount of IGST along with applicable interest for which refund is being sought in their FORM GSTR-3B return. The proper officer while ascertaining the eligibility of the refund to the exporter shall verify the revised value declared by the exporter in his FORM GSTR-1/ FORM GSTR-3B and details of foreign exchange remittances received thereof.

(6) The proper officer shall scrutinize the application with respect to its completeness and eligibility and only if the proper officer is satisfied that the whole or any part of the amount claimed is payable as refund, he shall proceed to issue the refund sanction order in FORM GST RFD-06 and the payment order in FORM GST RFD-05. The proper officer shall also upload a detailed speaking order along with the refund sanction order in FORM GST RFD-06 in terms of Instruction No. 03/2022-GST dated 14.06.2022.

(7) Further, there may be certain cases where there is downward revision in price of goods subsequent to exports, when the export has been made with payment of IGST. In all such cases, the supplier of goods/exporter is required to deposit the refund of the IGST received in proportion to the reduction in price of exported goods, along with applicable interest. The proper officer while granting the refund as per para 8 above, shall also verify whether the exporter has deposited the excess refund amount in the cases where there is a downward revision in price of goods subsequent to exports, during the relevant tax period, if any.

Restrictions imposed by Rule 96(10) of the CGST Rules : Exporters who have imported inputs in terms of notification Nos. 78/2017-Cus dated 13-10-2017 would not be eligible to claim refund of Integrated tax paid on exports. However, exporters who are receiving capital goods under the EPCG scheme, either through import in terms of notification No. 79/2017-Cus dated 13-10-2017 or through domestic procurement in terms of notification No. 48/2017-CT, dated 18-10-2017, shall continue to be eligible to claim refund of Integrated tax paid on exports and would not be hit by the restrictions provided in rule 96(10) of the CGST Rules. — Circular No. 125/44/2019-GST dated 18-11-2019

4. Explain the procedure of export of goods or services under bond or Letter of Undertaking.

Ans: Export of goods or services under bond or Letter of Undertaking [Rule 96A]:

(1) Furnishing of bond or Letter of Undertaking for export of goods or services [Rule 96A(1)]: Any registered person availing the option to supply goods or services for export without payment of integrated tax shall furnish, prior to export, a bond or a Letter of Undertaking in FORM GST RFD-11 to the jurisdictional Commissioner, binding himself to pay the tax due along with the interest specified under Section 50(1) within a period of-

(a) 15 days after the expiry of 3 months or such further period as may be allowed by the Commissioner, from the date of issue of the invoice for export, if the goods are not exported out of India; or

(b) 15 days after the expiry of one year, or the period as allowed under the FEMA, 1999 including any extension of such period as permitted by the RBI, whichever is later, from the date of issue of the invoice for export, or such further period as may be allowed by the Commissioner, if the payment of such services is not received by the exporter in convertible foreign exchange or in Indian rupees, wherever permitted by the Reserve Bank of India [Substituted vide Notification No. 12/2024-CT dated 10.07.2024]

(2) Details of export invoices to be transmitted electronically to ICEGATE [Rule 96A(2)]: The details of the export invoices contained in FORM GSTR-1 as amended in FORM GSTR-1A if any [Inserted vide Notification No. 12/2024-CT dated 10.07.2024] furnished on the common portal shall be electronically transmitted to the system designated by Customs (ICEGATE) 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 the said system.)

(3) Recovery of bond amount in case of failure to export goods within specified time limit [Rule 96A(3)]:
Where the goods are not exported within the time specified in Rule 96A(1) and the registered person fails to pay the amount mentioned in the said sub-rule, the export as allowed under bond or Letter of Undertaking shall be withdrawn forthwith and the said amount shall be recovered from the registered person in accordance with the provisions of Section 79.

(4) Restoration on payment of dues by Registered person [Rule 96A(4)] : The export as allowed under bond or Letter of Undertaking withdrawn in terms of Rule 96A(3) shall be restored immediately when the registered person pays the amount due.

(5) Furnishing of Letter of undertaking instead of bond - Conditions and Safeguards [Rule 96A(5)] : The Board, by way of notification, may specify the conditions and safeguards under which a Letter of Undertaking may be furnished in place of a bond.
All registered persons are eligible to furnish a LUT in place of a bond except those who have been prosecuted for cases involving an amount exceeding ₹ 250 lakh.

(6) Applicability to supplies of goods or services to SEZ [Rule 96A(6)] : The provisions of Rule 96A(1) shall apply, mutatis mutandis, in respect of zero-rated supply of goods or services or

both to a Special Economic Zone developer or a Special Economic Zone unit without payment of integrated tax.

Circular No. 197/09/2023-GST dated 17-07-2023 :	
Issue	Clarification
References have been received citing the instances where exporters have voluntarily made payment of due integrated tax, along with applicable interest, in cases where goods could not be exported or payment for export of services could not be received within time frame as prescribed in Rule 96A(1) of CGST Rules. Clarification is being sought as to whether subsequent to export of the said goods or as the case may be, realization of payment in case of export of services, the said exporters are entitled to claim not only refund of unutilized input tax credit on account of export but also refund of the integrated tax and interest so paid in compliance of the provisions of Rule 96A(1) of CGST Rules.	It has been clarified that the substantive benefits of zero rating may not be denied where it has been established that exports in terms of the relevant provisions have been made. The above clarifications imply that as long as goods are actually exported or as the case may be, payment is realized in case of export of services, even if it is beyond the time frames as prescribed in Rule 96A(1), the benefit of zerorated supplies cannot be denied to the concerned exporters. Accordingly, it is clarified that in such cases, on actual export of the goods or as the case may be, on realization of payment in case of export of services, the said exporters would be entitled to refund of unutilized input tax credit in terms of Section 54(3) of the CGST Act, if otherwise admissible. It is also clarified that in such cases subsequent to export of the goods or realization of payment in case of export of services, as the case may be, the said exporters would be entitled to claim refund of the integrated tax so paid earlier on account of goods not being exported, or as the case be, the payment not being realized for export of services, within the time frame prescribed in rule 96A(1). It is further being clarified that no refund of the interest paid in compliance of rule 96A(1) shall be admissible.

5. Explain the procedure for Recovery of refund of unutilised input tax credit or integrated tax paid on export of goods where export proceeds not realised.

Ans: Recovery of refund of unutilised input tax credit or integrated tax paid on export of goods where export proceeds not realised [Rule 96B]:

(1) Recovery of refund if sale proceeds not realised with in the time limit of FEMA [Rule 96B(1)]: Where-

- ✓ any refund of unutilised input tax credit on account of export of goods or of integrated tax paid on export of goods has been paid to an applicant,
- ✓ but the sale proceeds in respect of such export goods have not been realised, in full or in part, in India within the period allowed under the FEMA, 1999, including any extension of such period,
- ✓ the person to whom the refund has been made shall deposit the amount so refunded,
- ✓ to the extent of non-realisation of sale proceeds, along with applicable interest within 30 days of the expiry of the said period or, as the case may be, the extended period,
- ✓ failing which the amount refunded shall be recovered in accordance with the provisions of section 73 or 74 or section 74A [Inserted vide Notification No. 20/2024-CT dated 08-10-2024 w.e.f. 01-11-2024] of the Act, as the case may be, as is applicable for recovery of erroneous refund, along with interest under section 50.

Non recovery in refund in certain cases : However, where sale proceeds, or any part thereof, in respect of such export goods are not realised by the applicant within the period allowed under the FEMA, 1999, but the RBI writes off the requirement of realisation of sale proceeds on merits, the refund paid to the applicant shall not be recovered.

(2) On realisation of sale proceeds, recovered amount to be re-paid to the exporter [Rule 96B(2)]: Where the sale proceeds are realised by the applicant, in full or part, after the amount of refund has been recovered from him and the applicant produces evidence about such realisation within a period of 3 months from the date of realisation of sale proceeds, the amount so recovered shall be refunded by the proper officer, to the applicant to the extent of realisation of sale proceeds, provided the sale proceeds have been realised within such extended period as permitted by the Reserve Bank of India.

Circular No. 125/44/2019-GST dated 18-11-2019	Furnishing of bond or Letter of Undertaking (LUT) is not required in the case of zero rated supply of exempted or non-GST goods. – Circular No. 125/44/2019-GST dated 18-11-2019

Refund of unutilised ITC can be claimed by the exporter of exempted or non-GST goods :

- ✓ As per Section 16(2) of the IGST Act, credit of input tax may be availed for making zero rated supplies, notwithstanding that such supply is an exempt supply. Whereas, as per Section 2(47) of the CGST Act, exempt supply includes non-taxable supply. Further, as per Section 16(3) of the IGST Act, a registeredperson making zero rated supply shall be eligible to claim refund when he either makes supply of goods or services or both under bond or LUT or makes such supply on payment of integrated tax.
- ✓ However, in case of zero rated supply of exempted or non-GST goods, the requirement for furnishing a bond or LUT cannot be insisted upon. It is thus, clarified that in respect of refund claims on account of export of non-GST and exempted goods without payment of

integrated tax; LUT/bond is not required. Such registered persons exporting non GST goods shall comply with the requirements prescribed under the existing law (i.e. Central Excise Act, 1944 or the VAT law of the respective State) or under the Customs Act, 1962, if any.

- ✓ The exporter would be eligible for refund of unutilized input tax credit of central tax, state tax, union territory tax, integrated tax and compensation cess in case of refund of Non-GST paid goods.

6. What are the conditions which are required to be satisfied for levy of IGST at concessional rate of 0.1% on supplies of goods to the exporter for export.

Ans: Integrated tax to be levied @ 0.1% on inter-State supply of taxable goods by a registered supplier to a registered recipient for export subject to specified conditions – Merchant Exports: There is no specific provision in GST law for export through third parties, commonly known as merchant exports. However, a low rate of GST of 0.1% on supplies for export through third parties has been provided by way of exemption notifications. [This is expressed as 0.1% IGST on inter-State supplies or 0.05% CGST plus 0.05% SGST on intra- State supplies].

Circular No. 125/44/2019-GST dated 18-11-2019 has clarified that the exporter receiving goods at concessional rate of tax@ 0.1% (0.05% CGST + 0.05% SGST & 0.1% IGST) will be eligible to take credit of the concessional tax so paid by him. The supplier who supplies goods at the concessional rate will be eligible for refund of ITC on account of inverted tax structure as per the provisions of section 54(3)(ii) of the CGST Act. However, it may be noted that the exporter of such goods can export the goods only under LUT/bond and cannot export on payment of IGST.

Circular No. 08/08/2017 dated 04-10-2017 has clarified that there is no provision for issuance of CT-1 Form – which enables merchant exporters to purchase goods from a manufacturer without payment of tax under the GST regime. The transaction between a manufacturer and a merchant exporter is in the nature of supply and the same would be subject to GST.

Manufacturer exporter means a person who exports goods manufactured by him or intends to export such goods. Merchant exporter means a person engaged in trading activity and exporting or intending to export goods [As defined under Foreign Trade Policy 2015-20].

The merchant exporter can avail the benefit of low rate of GST (0.1%) prescribed under Notification Nos. 41/2017-IT(Rate) and 40/2017-CT (Rate) both dated 23-10-2017 if following conditions (specified in the said notifications) are fulfilled namely:

(i) Tax invoice : The registered supplier shall supply the goods to the registered recipient on a tax invoice;

(ii) Export within 90 days : The registered recipient shall export the said goods within a period of 90 days from the date of issue of a tax invoice by the registered supplier;

(iii) GSTIN of supplier in export documents : The registered recipient shall indicate the GSTIN of the registered supplier and the tax invoice number issued by the registered supplier in respect of the said goods in the shipping bill or bill of export, as the case may be;

(iv) Recipient must be registered with EPC : The registered recipient shall be registered with an Export Promotion Council or a Commodity Board recognised by the Department of Commerce;

(v) Copy of purchase order to Jurisdictional Officer of Supplier : The registered recipient shall place an order on registered supplier for procuring goods at concessional rate and a copy of the same shall also be provided to the jurisdictional tax officer of the registered supplier;

(vi) Movement of goods : The registered recipient shall move the said goods from place of registered supplier–

(a) directly to the Port, Inland Container Deport, Airport or Land Customs Station from where the said goods are to be exported; or

(b) directly to a registered warehouse from where the said goods shall be move to the Port, Inland Container Deport, Airport or Land Customs Station from where the said goods are to be exported;

(vii) Aggregation of supplies at registered warehouse and then export : If the registered recipient intends to aggregate supplies from multiple registered suppliers and then export, the goods from each registered supplier shall move to a registered warehouse and after aggregation, the registered recipient shall move goods to the Port, Inland Container Deport, Airport or Land Customs Station from where they shall be exported;

(viii) Endorsement of tax invoice and acknowledgment from warehouse-keeper : In case of situation referred to in condition (vii), the registered recipient shall endorse receipt of goods on the tax invoice and also obtain acknowledgement of receipt of goods in the registered warehouse from the warehouse operator and the endorsed tax invoice and the acknowledgment of the warehouse operator shall be provided to the registered supplier as well as to the jurisdictional tax officer of such supplier; and

(ix) Proof of export to be given to the supplier and his Jurisdictional Officer : When goods have been exported, the registered recipient shall provide copy of shipping bill or bill of export containing details of GSTIN and tax invoice of the registered supplier along with proof of export general manifest or export report having been filed to the registered supplier as well as jurisdictional tax officer of such supplier.

Full rate applicable if goods not exported within 90 days from tax invoice : The registered supplier shall not be eligible for the above mentioned exemption if the registered recipient fails to export the said goods within a period of 90 days from the date of issue of tax invoice.

Similar Exemption Notification No. 40/2017-CT (Rate) dated 23-10-2017 seeks to prescribe Central Tax rate of 0.05% on intra-State supply of taxable goods by a registered supplier to a registered recipient for export subject to conditions as specified above.

7. What do you mean by Tourist'. Can refund of integrated tax paid on supply of goods to tourist leaving India be granted.

Ans: The relevant provisions are as discussed as under-

(1) "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. [Explanation to Section 15 of IGST Act, 2017]

(2) Refund of integrated tax paid on supply of goods to tourist leaving India [Section 15 of IGST Act, 2017]: The integrated tax paid by tourist leaving India on any supply of goods taken out of India by him shall be refunded in such manner and subject to such conditions and safeguards as may be prescribed.

8. Write a note on deemed exports. OR Discuss three supplies which have been notified as deemed exports u/s 147 of CGST Act, 2017 (3 Marks, Nov. 2018-OS)

Ans: The relevant provisions are discussed as under-

(1) "Deemed exports" means such supplies of goods as may be notified under Section 147 of CGST Act, 2017. [Section 2(39)]

As per Section 147 of the CGST Act, 2017, the Government may, on the recommendations of the Council, notify certain supplies of goods as deemed exports, where goods supplied do not leave India, and payment for such supplies is received either in Indian rupees or in convertible foreign exchange, if such goods are manufactured in India.

Thus, Deemed exports are those supplies of goods that are notified as 'deemed exports' where:

(a) The goods supplied do not leave India,

(b) Payment for such supplies is received in Indian Rupees/ Convertible Foreign Exchange; and

(c) Such goods are manufactured in India.

The definition of 'deemed exports' under this Act is in line with the definition of 'Deemed Exports' under Chapter 07.01 of the Foreign Trade Policy 2015-20. 'Deemed Export' under the FTP 2015-20 covers supply of goods to EOU/STP/EHTP/BTP, supply of goods under advance authorisation etc. and hence provides for refund, drawback and advance authorisation to the supplier of goods. On the other hand, the relevance of 'deemed export' under the GST laws is limited to the grant of refund of taxes on supply of goods as 'deemed export'.

Therefore, a provision has been made under the Act to notify certain transactions as 'deemed export' to avoid situations where the persons might claim refund of taxes on 'deemed export' defined in the FTP 2015-20.

The Central Government vide Notification No. 48/2017-CT dated 18-10-2017 has notified the following supplies as deemed exports under Section 147 of the CGST Act, 2017—

	Description of supply
1	Supply of goods by a registered person against Advance Authorisation. If exports have already been made after availing ITC on inputs used in manufacture of such exports, the goods so supplied should be used in manufacture and supply of taxable goods (other than nil rated or fully exempted goods) and a certificate to this effect from a

	Chartered Accountant should be submitted to the jurisdictional Commissioner of GST or any other officer authorised by him within 6 months of such supply. No such certificate shall be required if input tax credit has not been availed on inputs used in manufacture of export goods. "Advance Authorisation" means an authorisation issued by the Director General of Foreign Trade under Chapter 4 of the Foreign Trade Policy 2015-20 for import or domestic procurement of inputs for physical exports.
2.	Supply of capital goods by a registered person against Export Promotion Capital Goods Authorisation. "Export Promotion Capital Goods Authorisation" means an authorisation issued by the Director General of Foreign Trade under Chapter 5 of the Foreign Trade Policy 2015-20 for import of capital goods for physical exports.
3.	Supply of goods by a registered person to Export Oriented Unit. "Export Oriented Unit" means an Export Oriented Unit or Electronic Hardware Technology Park Unit or Software Technology Park Unit or Bio-Technology Park Unit approved in accordance with the provisions of Chapter 6 of the Foreign Trade Policy 2015-20.
4.	Supply of gold by a bank or Public Sector Undertaking specified in the Notification No. 50/2017-Customs, dated 30-06-2017 (as amended) against Advance Authorisation.

(2) Taxability of deemed exports : Deemed exports are not zero rated supplies by default, unlike the regular exports. Hence, all supplies notified as supply for deemed export are subject to levy of taxes, i.e. such supplies can be made on payment of tax and cannot be supplied under a Bond/LUT. However, the refund of tax paid on the supply regarded as deemed export is admissible to either the supplier or the recipient. Thus, the application for refund has to be filed by the supplier or the recipient (subject to certain conditions) of deemed export supplies, as the case may be.

(3) Refund of taxes in case of deemed exports [Explanation 1 to Section 54 of CGST Act, 2017]
"Refund" includes refund of tax on the supply of goods regarded as deemed exports.
Relevant date [Explanation 2(b) to Section 54 of CGST Act, 2017] : The relevant date for filing refund claim 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.
On perusal of the above, it is clear that clause (b) of Explanation (2) under section 54 of the CGST Act is applicable for determining relevant date in respect of refund of amount of tax paid on the supply of goods regarded as deemed exports irrespective of the fact whether the refund claim is filed by the supplier or by the recipient.
Further, as the tax on the supply of goods, regarded as deemed export, would be paid by the supplier in his return, therefore, the relevant date for purpose of filing of refund claim for

refund of tax paid on such supplies would be the date of filing of return, related to such supplies, by the supplier. [Circular No. 166/22/2021-GST dated 17-11-2021]

Evidences for claiming refund of taxes in case of deemed exports [Notification No. 49/2017-CT dated 18-10-2017] : The following evidences which are required to be produced by the supplier of deemed export supplies for claiming refund, namely:

	Evidences
1.	Acknowledgment by the jurisdictional Tax officer of the Advance Authorisation holder or Export Promotion Capital Goods Authorisation holder, as the case may be, that the said deemed export supplies have been received by the said Advance Authorisation or Export Promotion Capital Goods Authorisation holder, or a copy of the tax invoice under which such supplies have been made by the supplier, duly signed by the recipient Export Oriented Unit that said deemed export supplies have been received by it.
2.	An undertaking by the recipient of deemed export supplies that no input tax credit on such supplies has been availed of by him.
3.	An undertaking by the recipient of deemed export supplies that he shall not claim the refund in respect of such supplies and the supplier may claim the refund.

Refund to recipient of deemed export supplies : Similarly, in case the refund is filed by the recipient of deemed export supplies, an undertaking by the supplier of deemed export supplies that he shall not claim the refund in respect of such supplies is also required to be furnished manually.

It has been clarified that in a case where recipient of deemed export supplies claims the refund on such supplies, there is no restriction on such recipient in availing ITC of the tax paid on such supplies. [Circular No. 147/03/2021-GST dated 12-03-2021]

EXPORT OF SERVICES

9. Explain the provisions relating to export of services.

Ans: The provisions relating to Export of services are under-

(1) "Export of services" means the supply of any service when, -

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

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

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

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

(v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in Section 8. [Section 2(6) of IGST Act, 2017]

Deemed distinct persons [Explanation 1 to Section 8] : Where a person has,–

(i) an establishment in India and any other establishment outside India;
(ii) an establishment in a State or Union territory and any other establishment outside that State or Union territory; or
(iii) an establishment in a State or Union territory and any other establishment registered within that State or Union territory,
(iv) then such establishments shall be treated as establishments of distinct persons.

Branch or agency or representational office to be regarded as establishment [Explanation 2 to Section 8] : A person carrying on a business through a branch or an agency or a representational office in any territory shall be treated as having an establishment in that territory.

Thus, where a branch office/agency or representational office is situated in different place other than the head office, it will be considered as an establishment of a distinct person.

Service supplied by establishment of person in India to own establishment out of India exempt [Entry 10E] : Service supplied by establishment of person in India to own establishment out of India is exempt, if place of supply is out of India.

(2) Supply of services where supplier is located in India and the place of supply is outside India – Deemed to be inter-State supply [Section 7(5)(a)] : Supply of services, when the supplier is located in India and the place of supply is outside India, shall be deemed to be a supply of services in the course of inter-State trade or commerce.

Export of services to be zero rated : Under the GST regime, Export of service will be treated as 'zerorated supplies'. Accordingly, while no tax would be payable on such supplies, the exporter will be eligible to claim the corresponding input tax credits. It is relevant to note that the input tax credits would be available to an exporter even if supplies were exempt supplies as long as the eligibility of the input taxes as input tax credits is established.

When the Indian exporters, undertaking export of services, are paid the export proceeds in INR from the Special Rupee Vostro Accounts of correspondent bank(s) of the partner trading country, opened by AD banks, the same shall be considered to be fulfilling the conditions of Section 2(6)(iv) of IGST Act, 2017, subject to the conditions/ restrictions mentioned in Foreign Trade Policy, 2023 & extant RBI Circulars and without prejudice to the permissions/approvals, if any, required under any other law. – Circular No. 202/14/2023-GST dated 27-10-2023

A company incorporated in India and a body corporate incorporated by or under the laws of a country outside India, which is also referred to as foreign company under Companies Act, are separate persons under CGST Act, and thus are separate legal entities. Therefore, Supply of services by a subsidiary/ sister concern/ group concern, etc. of a foreign company, which is incorporated in India under the Companies Act, 2013, to the establishments of the said foreign company located outside India (incorporated outside India), would amount to export of service subject to fulfillment of other conditions. – Circular No. 161/17/2021-GST dated 20-09-2021

Issue	Clarification

Whether the supply of service by a subsidiary/ sister concern/ group concern, etc. of a foreign company in India, which is incorporated under the laws in India, to the foreign company incorporated under laws of a country outside India, will hit by condition (v) of Section 2(6) of IGST Act.	Analysis of the issue : (i) Section 2(6)(v) of IGST Act, which defines "export of services", places a condition that the services provided by one establishment of a person to another establishment of the same person, considered as establishments of distinct persons as per Explanation 1 of section 8 of IGST Act, cannot be treated as export. In other words, any supply of services by an establishment of a foreign company in India to any other establishment of the said foreign company outside India will not be covered under definition of export of services. (ii) Further, perusal of the Explanation 2 to section 8 of the IGST Act suggests that if a foreign company is conducting business in India through a branch or an agency or a representational office, then the said branch or agency or representational office of the foreign company, located in India, shall be treated as establishment of the said foreign company in India. Similarly, if any company incorporated in India, is operating through a branch or an agency or a representational office in any country outside India, then that branch or agency or representational office shall be treated as the establishment of the said company in the said country. (iii) In view of the above, it can be stated that supply of services made by a branch or an agency or representational office of a foreign company, not incorporated in India, to any establishment of the said foreign company outside India, shall be treated as supply between establishments of distinct persons and shall not be considered as "export of services" in view of condition (v) of Section 2(6) of IGST Act. Similarly, any supply of service by a company incorporated in India to its branch or agency or representational office, located in any other country and not incorporated under the laws of the said country, shall also be considered as supply between establishments of distinct persons and cannot be treated as export of services. (iv) From the perusal of the definition of "person" under section 2(84) of the CGST Act, 2017 and the definitions of "company" and "foreign company" under Section 2 of the Companies Act, 2013, it is observed that a company incorporated in India and a foreign company incorporated outside India, are separate "person" under the provisions of CGST Act and accordingly, are separate legal entities. Thus, a subsidiary/ sister concern/ group

	concern of any foreign company which is incorporated in India, then the said company incorporated in India will be considered as a separate "person" under the provisions of CGST Act and accordingly, would be considered as a separate legal entity than the foreign company. Clarification : In view of the above, it is clarified that a company incorporated in India and a body corporate incorporated by or under the laws of a country outside India, which is also referred to as foreign company under Companies Act, are separate persons under CGST Act, and thus are separate legal entities. Accordingly, these two separate persons would not be considered as "merely establishments of a distinct person in accordance with Explanation 1 in section 8". Therefore, supply of services by a subsidiary/ sister concern/ group concern, etc. of a foreign company, which is incorporated in India under the Companies Act, 2013 (and thus qualifies as a 'company' in India as per Companies Act), to the establishments of the said foreign company located outside India (incorporated outside India), would not be barred by the condition section 2(6)(v) of the IGST Act 2017 for being considered as export of services, as it would not be treated as supply between merely establishments of distinct persons under Explanation 1 of section 8 of IGST Act 2017. Similarly, the supply from a company incorporated in India to its related establishments outside India, which are incorporated under the laws outside India, would not be treated as supply to merely establishments of distinct person under Explanation 1 of section 8 of IGST Act 2017. Such supplies, therefore, would qualify as 'export of services', subject to fulfilment of other conditions as provided u/s 2(6) of IGST Act.
Circular No. 78/52/2018 GST dated 31-12-2018	Where an exporter of services located in India is supplying certain services to a recipient located outside India, either wholly or partly through any other supplier of services located outside India, the following two supplies are taking place: – (a) Supply of services from the exporter of services located in India to the recipient of services located outside India for the full contact value; (b) Import of services by the exporter of services located in India from the supplier of services located outside India with respect to the outsourced portion of the contract.

	Thus, the total value of services as agreed to in the contract between the exporter of services located in India and the recipient of services located outside India will be considered as export of services if all the conditions laid down in section 2(6) of the IGST Act, 2017 read with section 13(2) of the IGST Act are satisfied. **Supplier liable to pay IGST on import of services under RCM and entitled for ITC :** It is clarified that the supplier of services located in India would be liable to pay IGST on reverse charge basis on the import of services on that portion of services which has been provided by the supplier located outside India to the recipient of services located outside India. Furthermore, the said supplier of services located in India would be eligible for taking ITC of the IGST so paid. **Consideration of service paid outside India to supplier of outsourced services – its deemed receipt in India for purpose of export of service:** Thus, even if the full consideration for the services as per the contract value is not received in convertible foreign exchange in India due to the fact that the recipient of services located outside India has directly paid to the supplier of services located outside India (for the outsourced part of services), that portion of the consideration shall also be treated as receipt of consideration for export of services in terms of section 2(6)(iv) of the IGST Act, provided the: (a) IGST has been paid by the supplier located in India for import of services on that portion of the services which has been directly provided by the supplier located outside India; and (b) RBI by general instruction or by specific approval has allowed that part of the consideration for such exports can be retained outside India.

Illustration: ABC Ltd. India has received an order for supply of services amounting to $ 500,000/- to a US based client. ABC Ltd. India is unable to supply the entire services from India and asks XYZ Ltd. Mexico (who is not merely an establishment of a distinct person viz. ABC Ltd. India, in accordance with the Explanation 1 in section 8 of the IGST Act) to supply a part of the services (say 40% of the total contract value). ABC Ltd. India shall be the exporter of services for the entire value if the invoice for the entire amount is raised by ABC Ltd. India. The services provided by XYZ Ltd. Mexico to the US based client shall be import of services by ABC Ltd. India and it would be liable to pay IGST on the same under reverse charge and also be eligible to take ITC of the IGST so paid. Further, if the provisions contained in section 2(6) of the IGST Act are not fulfilled with respect to the realization of convertible foreign exchange, say only 60% of the consideration is received in India and the remaining

amount is directly paid by the US based client to XYZ Ltd. Mexico, even in such a scenario, 100% of the total contract value shall be taken as consideration for the export of services by ABC Ltd. India provided IGST on import of services has been paid on the part of services provided by XYZ Ltd Mexico directly to the US based client and RBI (by general instruction or by specific approval) has allowed that a part of the consideration for such exports can be retained outside India. In other words, in such cases, the export benefit will be available for the total realization of convertible foreign exchange by ABC Ltd. India and XYZ Ltd. Mexico.

ZERO RATED SUPPLY

10. What do you mean by Zero-rating. How does zero rating works. How Zero-rated supplies are different from exempt supplies.

Ans: The relevant aspects are discussed as under-

(1) Concept of zero-rating : By zero rating it is meant that the entire value chain of the supply is exempt from tax. This means that in case of zero rating, not only is the output exempt from payment of tax, there is no bar on taking/availing credit of taxes paid on the input side for making/providing the output supply.

Under GST Law, exports and supplies to SEZ units/developers for their authorized operations are zero rated. Supply to SEZ units/ developers is zero-rated in the same manner as is applicable for the physical exports.

(2) Manner of implementing zero rating : The concept of zero rating of supplies requires the supplies (outward) as well as the inputs or input services used in supplying the (outward) supplies to be free of GST. This is done by employing the following means :

a) The taxes paid on the supplies which are zero rated are refunded;

b) The credit of inputs/ input services used in supplying the zero rated supply is allowed;

c) Wherever the supplies (which are zero rated) are exempted, or the supplies are made without payment of tax, the taxes paid on the inputs or input services, i.e. the unutilised ITC is refunded. Thus, even if a zero rated supply is exempt, the credit of input tax may be availed.

A registered person making zero rated supply can claim refund under either of the following options, namely:

(a) he may supply goods and/or services under bond or Letter of Undertaking (LUT) without payment of IGST and claim refund of unutilised ITC; or

(b) he may supply goods and/or services on payment of IGST and claim refund of such tax paid on goods and/or services supplied.

Circular No. 01/ 2017 dated 26-07-2017 has clarified that the provisions of section 16 relating to zero rated supply will apply to GST Compensation Cess also. Hence,

(i) exporters can claim refund of GST Compensation Cess paid on goods exported by him, or

(ii) GST Compensation Cess will not be charged on goods exported under bond or LUT and he will be eligible for refund of ITC of GST Compensation Cess relating to goods exported.

(3) Difference between Zero-rated supplies and exempt supplies : The difference between zero rated supplies and exempted supplies is tabulated as below :

	Exempted Supplies	Zero rated supplies
Meaning	Exempt supply means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax and includes nontaxable supply.	Zero-rated supply means – ✓ export of goods and/or services or ✓ supply of goods or services or both "for authorised operations" to a Special Economic Zone developer or a Special Economic Zone unit.
Taxability	No tax on the outward exempted supplies, however, the input supplies used for making exempt supplies to be taxed	No tax on the outward supplies; Input supplies also to be tax free.
ITC	Credit of input tax needs to be reversed, if taken. No ITC is allowed on the exempted supplies.	Credit of input tax may be availed for making zero- rated supplies, even if such supply is an exempt supply. ITC allowed on zero rated supplies.
Valuation	Any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly exempt from tax under the CGST or IGST Act shall not be liable to registration.	A person exclusively making zero rated supplies may have to register as refunds of unutilised ITC or IGST paid have to be claimed.
Documents	A registered person supplying exempted goods and/or services shall issue, instead of a tax invoice, a bill of supply.	Normal tax invoice shall be issued.

11. Define 'Zero rated supply'. Explain the provisions relating to availment of ITC and refund of taxes in case of Zero rated supplies.

Ans: Zero rated supply [Section 16 of IGST Act, 2017] [Inserted by Finance Act, 2021 w.e.f. 01-10-2023] :

(a) Zero rated supply [Section 16(1)] : "Zero rated supply" means any of the following supplies of goods or services or both, namely:–

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

(ii) supply of goods or services or both for authorised operations to a Special Economic Zone developer or a Special Economic Zone unit.

(b) Input tax credit eligible in respect of Zero Rated Supplies [Section 16(2)] : Subject to the provisions of Section 17(5) of the CGST Act, credit of input tax may be availed for making zerorated supplies, notwithstanding that such supply may be an exempt supply.

(c) Refund of tax [Section 16(3)] : A registered person making zero rated supply shall be eligible to claim refund of unutilised input tax credit on supply of goods or services or both, without payment of integrated tax, under bond or Letter of Undertaking, in accordance with the provisions of section 54 of the CGST Act or the rules made thereunder, subject to such conditions, safeguards and procedure as may be prescribed.

Recovery of refund on non-realisation of sale proceeds : However, the registered person making zero rated supply of goods shall, in case of non-realisation of sale proceeds, be liable to deposit the refund so received along with the applicable interest @ 18% p.a. within 30 days after the expiry of the time limit prescribed under the Foreign Exchange Management Act, 1999 for receipt of foreign exchange remittances, in such manner as may be prescribed.

(d) Restriction of zero-rated supply on payment of integrated tax and refund thereof only to a notified class of taxpayers/notified supplies of goods or services [Section 16(4)] : The Government may, on the recommendation of the Council, and subject to such conditions, safeguards and procedures, by notification, specify–

- ✓ a class of persons who may make zero rated supply on payment of integrated tax and claim refund of the tax so paid in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder;
- ✓ a class of goods or services or both, on zero rated supply of which, the supplier may pay integrated tax and claim the refund of tax so paid, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder [Amended by the Finance (No. 2) Act, 2024 w.e.f. 01-11-2024]

For this purpose as per Notification No. 01/2023-IT dated 31-07-2023 amended vide Notification No 5/2023-IT dated 26-10-2023 the following have been notified :

(i) All classes of goods or services (except goods like pan-masala and tobacco) have been notified as the class of class of goods or services which may be exported on payment of integrated tax and on which the supplier of such goods or services may claim the refund of tax so paid, and

(ii) All suppliers to a Developer or a unit in Special Economic Zone undertaking authorised operations have been notified as the class of persons who may make supply of goods or services (except goods like pan-masala and tobacco) to such Developer or a unit in Special Economic Zone for authorised operations on payment of integrated tax and on which the said suppliers may claim the refund of tax so paid.

(e) No refund if export duty leviable [Section 16(5)]: No refund of unutilised input tax credit on account of zero rated supply of goods or of integrated tax paid on account of zero rated

supply of goods shall be allowed where such zero rated supply of goods are subjected to export duty. [Amended by the Finance (No. 2) Act, 2024 w.e.f. 01-11-2024]

(f) Transactions with EOUs : Zero rating is not applicable to supplies to EOUs and there is no special dispensation for them under GST regime. Therefore, supplies to EOUs are taxable like any other taxable supplies. EOUs, to the extent of exports, are eligible for zero rating like any other exporter.

Circular No. 48/22/2018-GST dated 14-06-2018	
Issue	**Clarification**
Whether the benefit of zero rated supply can be allowed to all procurements by a SEZ developer or a SEZ unit such as event management service hotel and accommodation services,consumables	A conjoint reading of Section 16(1) of IGST Act, 2017, read with Rule 89(1) of CGST Rules, 2017, reveals that the supplies to a SEZ developer or a SEZ unit shall be zero rated and the supplier shall be eligible for refund of unutilized input tax credit or integrated tax paid, as the case may be, only if such supplies have been received by the SEZ developer or SEZ unit for authorized operations. An endorsement to this effect shall have to be issued by the specified officer of the Zone. Therefore, subject to the provisions of section 17(5) of the CGST Act, if event management services, hotel, accommodation services, consumables etc. are received by a SEZ developer or a SEZ unit for authorised operations, as endorsed by the specified officer of the Zone, the benefit of zero rated supply shall be available in such cases to the supplier.

12. Explain the manner of calculating the maximum amount of refund in case of zero rated supply of goods or services.

Ans: The manner of calculating the maximum amount of refund in case of zero rated supply of goods or services is as under-

(1) Refund in case of Zero rated supplies [Rule 89(4)] : In the case of zero-rated supply of goods or services or both without payment of tax under bond or letter of undertaking in accordance with the provisions of Section 16(3) of the IGST Act, 2017, refund of input tax credit shall be granted as per the following formula–

$$\text{Refund amount} = \frac{(\text{Turnover of zero-rated supply of goods} + \text{Turnoverof zero - rated supply of services}) \times \text{Net ITC}}{\text{Adjusted Total Turnover}}$$

Where,—

A) "Refund amount" means the maximum refund that is admissible;

~~B)~~ "Net ITC" means input tax credit availed on inputs and input services during the relevant period ~~other than the input tax credit availed for which refund is claimed under Rule 89(4A) or (4B) or both;~~ [Omitted vide Notification No. 20/2024-CT dated 08-10-2024 w.e.f. 08-10-2024]

C) "Turnover of zero-rated supply of goods" means –

- ✓ the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking or
- ✓ the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier,

whichever is less,

~~other than the turnover of supplies in respect of which refund is claimed under rule 89 (4A) or (4B) or both.~~ [Omitted vide Notification No. 20/2024-CT dated 08-10-2024 w.e.f. 08-10-2024]

D) "Turnover of zero-rated supply of services" means the value of zero-rated supply of services made without payment of tax under bond or letter of undertaking, calculated in the following manner, namely:

Zero-rated supply of services is the aggregate of the payments received during the relevant period for zero-rated supply of services and zero-rated supply of services where supply has been completed for which payment had been received in advance in any period prior to the relevant period reduced by advances received for zero-rated supply of services for which the supply of services has not been completed during the relevant period;

E) "Adjusted Total Turnover" means the sum total of the value of –

(a) the turnover in a State or a Union territory, as defined under section 2(112), excluding the turnover of services; and

(b) the turnover of zero-rated supply of services determined in terms of (D) above and nonzero-rated supply of services,

excluding the value of exempt supplies other than zero-rated supplies during the relevant period. [Amended vide Notification No. 20/2024–CT dated 08-10-2024 w.e.f. 08-10-2024]

F) "Relevant period" means the period for which the claim has been filed.

G) Value of Exported Goods : The value of goods exported out of India shall be taken as –

(i) the Free on Board (FOB) value declared in the Shipping Bill/Bill of Export; or

(ii) the value declared in tax invoice or bill of supply,

(iii) whichever is less.

As per Circular No 197/09/2023-GST dated 17-7-2023 the value of goods exported out of India has to be considered as per the above Explanation for the purpose of calculation of "adjusted total turnover" in the formula under the said sub-rule.

Bunching of refund claims across financial years permitted :

- ✓ Circular No. 125/44/2019-GST dated 18-11-2019 has clarified that the relevant period has been defined in the context of the refund claim and is not linked to a tax period. The exporter, at his option, may file refund claim for one calendar month/quarter or by clubbing successive calendar months/quarters.
- ✓ Circular No. 135/05/2020-GST dated 31-03-2020 it has been clarified that i.e. the restriction on bunching of refund claims across financial years shall not apply. Thus, the calendar month(s)/ quarter(s) for which refund claim has been filed, can spread across different financial years.

~~(2) Refund of ITC on inputs and input services other than those for which benefit of Deemed Exports Claimed [Rule 89(1A)] : In case of supplies received on which the supplier has availed the benefit of Notification No. 48/2017-CT dated 18-10-2017 (i.e., where supplier has claimed refund of tax paid on deemed exports), refund of input tax credit, availed in respect of other inputs or input services used in making zero-rated supply of goods or services or both, shall be granted.~~

~~[Note : In case of deemed exports, refund application can be made either by the recipient of deemed export supplies or by the supplier of deemed export supplies if the recipient does not claim ITC on such goods and gives an undertaking that the supplier may claim the refund.]~~ [Omitted vide Notification No. 20/2024-CT dated 08-10-2024 w.e.f. 08-10-2024.]

~~Refund of Input tax credit in Specified Situations [Rule 89(4B)] : In case of supplies received on which the supplier has availed the benefit of Notification No. 40/2017-CT (R) dated 23-10-2017/ Notification No. 41/2017-IT (R) dated 23-10-2017 [concessional rate of tax @ 0.1% (0.05% CGST + 0.05% SGST & 0.1% IGST) for supply of goods made to merchant exporters for export] or Notification No. 78/2017-Cus dated 13-10-2017/ Notification No. 79/2017-Cus dated 13-10-2017 [imports of goods by EOUs/Advance Authorisation/EPCG schemes], or all of them, refund of input tax credit, availed in respect of inputs received under the said notifications for export of goods and the input tax credit availed in respect of other inputs or input services to the extent used in making such export of goods, shall be granted.~~ [Omitted vide Notification No. 20/2024-CT dated 08-10-2024 w.e.f. 08-10-2024.]

(3) Amount refunded as ITC to be debited in Electronic Credit Ledger [Rule 89(3)] : Where the application relates to refund of input tax credit, the electronic credit ledger shall be debited by the applicant by an amount equal to the refund so claimed.

Circular No. 147/03//2021-GST dated 12-03-2021	Calculation of "Adjusted Total Turnover" – The value of export/ zero-rated supply of goods to be included while calculating "adjusted total

	turnover" will be same as being determined as per the amended definition of "Turnover of zero-rated supply of goods.

"Adjusted Total Turnover" includes "Turnover in a State or Union Territory", as defined in Section 2(112) of CGST Act. As per Section 2(112), "Turnover in a State or Union Territory" includes turnover/value of export/ zero-rated supplies of goods. The same value of zero-rated/ export supply of goods, as calculated as per amended definition of "Turnover of zero-rated supply of goods", need to be taken into consideration while calculating "turnover in a state or a union territory", and accordingly, in "adjusted total turnover" for the purpose of Rule 89(4). Thus, the restriction of 150% of the value of like goods domestically supplied, as applied in "turnover of zero-rated supply of goods", would also apply to the value of "Adjusted Total Turnover" in Rule 89(4) of the CGST Rules, 2017.

The same can explained by the following illustration where actual value.

Illustration: Suppose a supplier is manufacturing only one type of goods and is supplying the same goods in both domestic market and overseas. During the relevant period of refund, the details of his inward supply and outward supply details are shown in the table below:

Net admissible ITC = ₹ 270

(All values in ₹)

Outward Supply	Value per unit	No of units supplied	Turnover	Turnover as per amended definition
Local (Quantity 5)	200	5	1,000	1,000
Export (Quantity 5)	350	5	1,750	1500(200x1.5x5)
Total			2,750	2,500

The formula for calculation of refund as per Rule 89(4) is :

Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) × Net ITC ÷ Adjusted Total Turnover

Turnover of Zero-rated supply of goods (as per amended definition) = ₹ 1,500

Adjusted Total Turnover = ₹ 1,000 + ₹ 1,500 = ₹ 2,500 [and not ₹ 1,000 + ₹ 1,750] × Net ITC = ₹ 270

Refund Amount = ₹ [1,500 × 270 ÷ 2,500] = ₹ 162.

Thus, the admissible refund amount in the instant case is ₹ 162.

Circular No. 125/44/2019-GST dated 18-11-2019	Determination of refundable amount in case of refund of unutilised ITC on account of – (i) exports without payment of tax, (ii) supplies made to SEZ Unit/SEZ Developer without payment of tax; or (iii) accumulation due to inverted tax structure'.

In case of refund of unutilized ITC on account of (i) exports without payment of tax, (ii) supplies made to SEZ Unit/SEZ Developer without payment of tax or (iii) accumulation due to inverted tax structure, the common portal calculates the refundable amount as the least of the following amounts :

a) The maximum refund amount as per the formula in rule 89(4) or rule 89(5) of the CGST Rules, 2017 [formula is applied on the consolidated amount of ITC, i.e. Central tax + State tax/Union Territory tax + Integrated tax]
b) The balance in the electronic credit ledger of the applicant at the end of the tax period for which the refund claim is being filed after the return in Form GSTR-3B for the said period has been filed; and
c) The balance in the electronic credit ledger of the applicant at the time of filing the refund application.

After calculating the least of the above 3 amounts, as detailed above, the equivalent amount is to be debited from the electronic credit ledger of the applicant in the following order:

- ✓ Integrated tax, to the extent of balance available;
- ✓ Central tax and State tax/Union Territory tax, equally to the extent of balance available and in the event of a shortfall in the balance available in a particular electronic credit ledger (say, Central tax), the differential amount is to be debited from the other electronic credit ledger (i.e., State tax/Union Territory tax, in this case).

13. Explain general provisions relating to Import of goods and services.

Ans: The general provisions relating to import of goods and services are as under :

(1) Import of goods and/ or services – Deemed to be inter-State supply: Under the GST regime, Article 269A of the Constitution provides that the supply of goods, or of services, or both in the course of import into the territory of India shall be deemed to be supply of goods, or of services, or both in the course of inter-State trade or commerce for levy of integrated tax. So import of goods or services will be treated as deemed State supplies and is subject to Integrated tax. inter- tax.

Accordingly, Section 7 of the IGST Act stipulates that import of goods/services into the territory of India shall be treated as supply of goods/services in the course of inter-State trade or commerce. Resultantly, import of goods or services will be treated as deemed inter-State supplies and would be subject to integrated

(2) Mechanism for levy of IGST on goods/ services: While IGST on import of services would be leviable under the IGST Act, the levy of the IGST on import of goods would be levied under the Customs Act, 1962 read with the Custom Tariff Act, 1975. The importer of services will have to pay tax on reverse charge basis. However, in respect of import of OIDAR by unregistered, non-taxable recipients, the supplier located outside India shall be responsible for payment of taxes. Either the supplier of OIDAR services has to take registration or has to appoint a person in India for payment of taxes.

Supply of goods and/or services to a Special Economic Zone (SEZ) unit/Developer is also treated as an inter-State supply and thus, is subject to levy of IGST.

(3) Importer Exporter Code (IEC): As per DGFT's Trade Notice No. 09 dated 12-06-2017, the PAN of an entity is to be used as IEC. If importer is registered under GST, he is required to declare only GSTIN as PAN is part of GSTIN.

14. Explain the provisions of IGST Act, 2017 relating to levy of taxes on import of goods.

Ans: The relevant provisions are discussed as under-

(1) "Import of goods" with its grammatical variations and cognate expressions, means bringing goods into India from a place outside India. [Section 2(10) of IGST Act, 2017]

(2) Import of goods - Deemed to be inter-State supply [Section 7(2)]: Supply of goods imported into the territory of India, till they cross the customs frontiers of India, shall be treated to be a supply of goods in the course of inter-State trade or commerce.

"Customs frontiers of India" means the limits of a customs area as defined in Section 2 of the Customs Act, 1962. [Section 2(4) of IGST Act, 2017]

"Customs area" means, -

- ✓ the area of a customs station or a warehouse; and
- ✓ includes any area in which imported goods or export goods are ordinarily kept before clearance by Customs Authorities. [Section 2(11) of Customs Act, 1962)]

(3) Place of supply of goods imported into India [Section 11 of IGST Act, 2017] : The place of supply of goods, imported into India shall be the location of the importer.

(4) IGST on import of goods [Proviso to Section 5 of IGST Act, 2017] : The integrated tax on goods other than the goods as may be notified by the Government on the recommendations of the Council, imported into India shall be levied and collected—

- ✓ following the provisions of Section 3 of the Customs Tariff Act, 1975
- ✓ on the value as determined under the Customs Tariff Act, 1975
- ✓ at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962.

Supply of online money gaming notified as the supply of goods on import of which, integrated tax shall be levied and collected under section 5(1) of the IGST Act, 2017[Notification No.2023 IT ,dated 29-09-2023 w.e.f.10-10-2023]

Integrated tax to be in addition to other duties of customs : The integrated tax on goods shall be in addition to the applicable Basic Customs Duty (BCD) which is levied as per the Customs Tariff Act. In addition, GST compensation cess, may also be levia-Tble on certain luxury and demerit goods under the Goods and Services Tax (Compensation to States) Cess Act, 2017.

The Customs Tariff Act, 1975 has accordingly been amended to provide for levy of integrated tax and the compensation cess on imported goods.

Accordingly, goods which are imported into India shall, in addition to the Basic Customs duty, be liable to integrated tax at such rate as is leviable under the IGST Act, 2017 on a similar article on its supply in India.

Point when IGST is levied on imported goods : Customs duty is leviable when importation of goods gets complete, i.e. when the goods become part of the mass of goods within the country; the taxable event being reached at the time when the goods reach the customs barriers and bill of entry for home consumption is filed. Thus, the point of levy and collection of IGST will also be the point when the bill of entry for home consumption is filed.

Value for purpose of levy of Integrated tax : Further, the value of the goods for the purpose of levying integrated tax shall be, assessable value plus Customs Duty levied under the Act, and any other duty chargeable on the said goods under any law for the time being in force as an addition to, and in the same manner as, a duty of customs.

The value of the imported article for the purpose of levying cess shall be, assessable value plus Basic Customs Duty levied under the Act, and any sum chargeable on the goods under any law for the time being, in force as an addition to, and in the same manner as, a duty of customs. The integrated tax paid shall not be added to the value for the purpose of calculating cess.

In cases where imported goods are liable to Anti-Dumping Duty or Safeguard Duty, value for calculation of IGST as well as GST Compensation Cess also includes Anti-Dumping Duty and Safeguard duty.

For example: Suppose the assessable value of an article imported into India is ₹ 10,00,000/-. Basic Customs Duty is 10% ad-valorem. Integrated tax rate is 12%. Social Welfare Surcharge @ 10% is leviable. The computation of Integrated Tax on imports of goods shall be determined as under–

Particulars	₹
Assessable Value [A]	10,00,000
Add: Basic Customs duty @ 10% of [A] [B]	1,00,000
Add: Social Welfare Surcharge on basic customs duty i.e. 10% of [B] [C]	10,000
Total value for levy of Integrated Tax u/s 3(7) of CTA, 1975 [D]	11,10,000
Add: Integrated tax under Section 3(7) @ 12% of [D] [E]	1,33,200
Total cost of imported goods	12,43,200
Total Customs duty [B + C + E]	2,43,200

Note: In case the goods are also leviable to cess under the GST (Compensation to States) Cess Act, 2017, the same will be collected on the value taken for levying integrated tax. Thus, in the above example, in case, GST Compensation cess is leviable, the same would be levied on ₹ 11,10,000/-.

(5) 'Out and out supplies/ Third Country shipments/ Merchant Trading transactions not liable to GST if goods never enter India : Merchant Trading Transactions (MTT) i.e. where the supplier of goods will be resident in one foreign country, the buyer of goods will be resident in another foreign country and the merchant or intermediary will be resident in India, would primarily not come under the ambit of GST since they do not involve entry of goods into India.

As per Para 7 in Schedule-III, supply of goods from place in the non-taxable territory to another person in the nontaxable territory, without such goods entering into the taxable territory, shall not be considered as supply of goods or supply of services. Further, value of such third country shipments is not included in the value of exempt supply for the purpose of reversal of ITC under rules 42 and 43 of CGST Rules [Explanation to section 17(3) of the CGST Act].

(6) High sea sale Transactions – Not subject to IGST as IGST is to be paid at the time of presentation of bill of entry : High Sea Sales of imported goods is a term used to denote a transaction whereby the original importer sells the goods to a third person before the goods are entered for customs clearance.

As per Para 8(b) in Schedule-III, Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption shall not be regarded as supply of goods or supply of services.

Further, value of such high sea sales is not included in the value of exempt supply for the purpose of reversal of ITC under rules 42 and 43 of CGST Rules. [Explanation to section 17(3) of the CGST Act]

As per section 14 of the Customs Act, 1962, the value for the purpose of charging customs duty on imported goods is the value at the time of importation, i.e. at the time of filing of the bill of entry. Further, IGST on imported goods is also levied at the time of filing of bill of entry. Therefore, in case of high sea sales, the assessable value of imported goods for levying customs duty and IGST is determined on the basis of the price paid by the last high sea sales buyer who files the bill of entry for home consumption.

Circular No. 33/2017-Cus dated 01-08-2017 has clarified that the importer (last buyer in the chain) would be required to furnish the entire chain of documents, such as original invoice, high seas sales contract, details of service charges/ commission paid etc. to establish a link between the first contracted price of the goods and the last transaction.

(7) Integrated tax on warehoused goods : The Customs Act, 1962 provides for removal of goods from a customs station to a warehouse without payment of duty. The said Act has been amended to include 'warehouse' in the definition of "customs area" in order to ensure that

an importer would not be required to pay the Integrated tax at the time of removal of goods from a customs station to a warehouse.

Last buyer before clearance to pay IGST as part of customs on final purchase value : As per Para 8(a) in Schedule-III, where the supplier (i.e. original importer) of warehoused goods supplies such goods to any person (i.e. consignee) before the clearance for home consumption, such transaction shall not be regarded as either supply of goods or supply of services. In other words, the supply of goods before their clearance from the warehouse would not be subject to the levy of IGST and the same would be levied and collected only when the warehoused goods are cleared for home consumption from the customs bonded warehouse. The value of such in-bond sales is included in the value of exempt supply for the purpose of reversal of ITC under rules 42 and 43 of CGST Rules. [Explanation to section 17(3) of the CGST Act]

Value for levying IGST in case of supply of warehoused goods = (a) Transaction value (Sale value) OR (b) Value determined at the time of filing into-bond bill of entry u/s 14 of the Customs Act, 1962 + Basic customs duty + any other sum leviable under any law for the time being in force as customs duties excluding IGST and GST Compensation Cess

WHICHEVER IS HIGHER

If goods are sold more than once while being deposited in the warehouse, the last transaction value is taken as the transaction value for the purpose of determining the value for levying IGST in the manner given above. If only a part of the goods are sold, the two values that are to be compared are –

(a) transaction value of the goods sold; and

(b) proportionate value (of the goods sold) determined at the time of filing into-bond bill of entry u/s 14 of the Customs Act, 1962 + Basic customs duty + any other sum leviable under any law for the time being in force as customs duties excluding IGST and GST Compensation Cess.

The remaining goods (which are not sold) are assessed on the value determined under section 14 of the Customs Act plus basic customs duty and any other sum leviable under any law for the time being in force as customs duties excluding IGST and GST Compensation Cess.

One more issue connected with the above point is that whether such sale of warehoused goods can be considered as an "exempt supply" so as to trigger input tax credit reversal under section 17(2) of CGST Act, 2017.

It may also be noted that an amendment has also been made under Section 17(3) of CGST Act, 2017 to the effect that the transactions specified in Schedule-III (which includes the newly inserted entries) except sale of land and sale of building post completion shall not be included for the purpose of input tax credit reversal.

(8) Input tax credit of integrated tax : The definition of "input tax" in relation to a registered person also includes the integrated tax charged on import of goods. Thus, input tax credit of the integrated tax paid at the time of import shall be available to the importer and the same can be utilized by him as Input Tax credit for payment of taxes on his outward supplies. The integrated tax shall, in essence, be a pass-through to that extent. GST Compensation Cess paid on import of goods is also available as ITC. The ITC of GST Compensation Cess, however, can only be used for payment of GST Compensation Cess. The Basic Customs Duty (BCD) and social welfare surcharge, shall however, not be available as input tax credit.

(9) Classification of goods : HSN (Harmonised System of Nomenclature) code would be used for the purpose of classification of goods under the GST regime.

(10) Taxability of goods imported by SEZ : Goods imported by a unit or a developer in the Special Economic Zone (SEZ) for authorised operations are exempted from the whole of IGST leviable under section 3(7) of the Customs Tariff Act, 1975 vide Notification No. 64/2017 Customs dated 05-07-2017.

(11) Taxability of goods imported by EOU : Goods imported by Export Oriented Undertaking (EOU) attract liability to customs duty. Import of goods by 100% EOU's are governed by Notification No. 52/2003-Cus as amended by Notification No. 9/2019-Cus dated 25-03-2019. EOUs are allowed duty free import of goods (exempt from Customs duties, IGST & GST Compensation Cess) under the said notifications.

(12) Import as baggage : Passenger baggage is exempted from IGST as well as GST Compensation Cess. The basic customs duty @ 35% and the applicable social welfare surcharge is leviable on the value which is in excess of the duty free allowances provided under the Baggage Rules, 2016.

(13) Registration for importer of goods : Reverse charge provisions do not cover importers of goods. Importers are also not listed among the categories of persons in section 24 of the CGST Act for whom registration is compulsory. However, all importers are required to quote GSTIN in the bill of entry for the purpose of payment of IGST on import of goods as also for availing ITC of such IGST.

(14) Registration in case of import of exempted goods : In terms of section 23 of the CGST Act, persons engaged exclusively in the supply of goods (import and export) that is either not liable to tax or is wholly exempt from tax under the CGST or IGST Acts are not required to obtain registration. In such cases, PAN (which is authorized as IEC by DGFT) of the importer and exporter would suffice. [Instruction No. 10/2017-Cus dated 06-07-2017]

IMPORT OF SERVICES

15. What do you mean by Import of services. Explain the provisions of levy of Integrated tax on import of services.

Ans: The relevant provisions are discussed as under-)

(1) "Import of services" means the supply of any service, where- (i) the supplier of service is located outside India,

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

(ii) the place of supply of service is in India. [Section 2(11) of IGST Act, 2017] Thus, only where the location of supplier is outside India but the location of recipient and the place of supply is in India, it shall qualify as import of services.

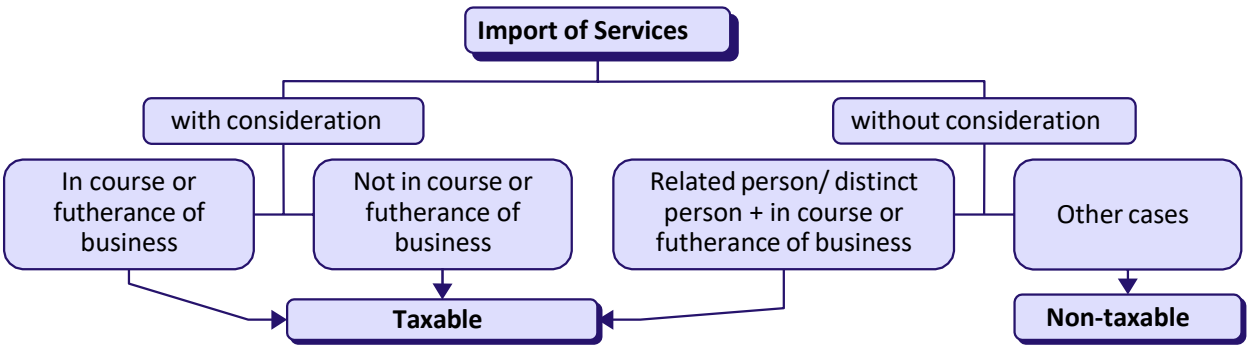
(2) Significance of consideration and business test in Taxability of Importation of Services: As per the provisions contained in Section 7(1)(b) of the CGST Act, 2017, import of services for consideration whether or not in the course or furtherance of business, shall be considered as a supply.

Thus, in general, imports of services without consideration shall not be considered as supply. However, business test is not required to be fulfilled for import of service to be considered as supply.

Furthermore, in view of the provisions contained in Schedule I of the CGST Act, 2017, the import of services by a person from a related person or from a distinct person as defined in Section 25 of the CGST Act, 2017, in the course or furtherance of business shall be treated as supply even if it is made without any consideration. In view of the provisions contained in Section 14 of the IGST Act, 2017, import of free services from Google and Facebook by all of us, without any consideration, are not considered as supply. Import (Downloading) of a song for consideration for personal use would be a service, even though the same is not in the course or furtherance of business. Import of some services by an Indian branch from their parent company, in the course or furtherance of business, even if without consideration, will be a supply.

hus, import of services can be considered as supply based on whether there is consideration or not and whether the service is supplied in the course or furtherance of business.

The same has been explained below :



(3) Import of service – Deemed to be Inter-State Supply [Section 7(4)] : Supply of services imported into the territory of India shall be treated to be a supply of services in the course of inter-State trade or commerce.

(4) Person liable to pay tax in case of importation of service :

- ✓ In case of importation of service, the recipient of imported service who is located in India (other than non-taxable online recipient of OIDAR service) is the person who has to pay IGST on the service under reverse charge. [Section 5(3) of the IGST Act read with serial number (1) of Notification No. 10/2017 IGST (R) dated 28-06-2017]
- ✓ In case of services supplied by a person located outside India by way of transportation of goods by a vessel from a place outside India upto the custom station of clearance in India, IGST is to be paid by the importer located in India. In other words, in case of foreign shipping lines providing inbound transportation of goods (from a place outside India upto the customs station of clearance in India), IGST is to be paid by the importer. [Section 5(3) of the IGST Act read with serial number (10) of Notification No. 10/2017 IGST (R) dated 28-06-2017]
- ✓ In case of importation of OIDAR services by a non-taxable online recipient, supplier of OIDAR services is liable to pay IGST.
- ✓ In case of importation of notified services through ECO, ECO is liable to pay IGST.

(5) ITC of IGST paid on importation of services : Unlike IGST on importation of goods, IGST on importation of services is not specifically included in the definition of input tax vide a separate clause. Hence, IGST on importation of services is included within the ambit of IGST leviable on other interState supplies, i.e. under clause (c) of section 2(62) of the CGST Act. Therefore, IGST paid on importation of services is available as ITC at par with IGST paid on any other supply subject to conditions and restrictions prescribed under sections 16 and 17 of the CGST Act for availing such credit.

(6) Registration for importer of services : Section 24(iii) of the CGST Act mandates compulsory registration for persons, without any benefit of the threshold limit for registration, who are required to pay tax under reverse charge. Accordingly, importer of services who are required to pay IGST under reverse charge have to obtain compulsory registration under GST law so as to be able to pay tax on imported services under reverse charge. Thus, recipient of imported services other than non-taxable online recipient must register compulsorily.

TOPIC REFERENCER

- *Unjust Enrichment and Refund of Tax*
- *Refund in Special Cases*
- *Provisional Refund*
- *Refund to Special Persons*
- *Interest on Delayed Refunds*
- *Consumer Welfare Fund and its Utilisation*

UNJUST ENRICHMENT AND REFUND OF TAX

1. What do you understand by "Unjust Enrichment"?

Ans: Doctrine Of Unjust Enrichment :The doctrine of unjust enrichment means no person can be unjustly enriched at expense of another person. In indirect taxes, the tax/duty burden passes on to the person who ultimately consumes goods or services. Since the law authorises recovery of indirect taxes (Goods and Services tax, excise duty, customs, sales/ purchases tax) from consumers, therefore, it is always presumed that incidence of tax/duty has been passed.

Therefore, if any refund becomes due to the supplier/importer, then, since supplier/importer has recovered the tax/duty from the consumers, thus, to be fair, refund should be made to consumers. However, it is not possible to locate individual consumer and pay refund to them. Also without authority of law Government cannot retain the excess tax/duty. Therefore, Section 54(8) of CGST Act, 2017 has been introduced which provides that any refund due to a recipient shall be transferred to Consumer Welfare Refund and will be used for the purpose of protection and welfare of the consumers. The refund shall be granted to the supplier only when he proves that incidence of tax/duty has not been passed to any other person or in certain other specified cases

2. List out the situations that may necessitate refund claim.

Ans: Situations leading to Refund Claims: A claim for refund may arise in the following situations –

(1) Export/supply to SEZ developer/unit on payment of IGST: In case where notified class of goods and/or services are exported or, notified class of persons export goods and/or services or supply goods and/or services to an SEZ developer/unit, on payment of IGST, subject to such conditions, safeguards and procedure as may be prescribed, refund of such IGST paid on goods and/or services supplied is available [Section 16(4) of IGST Act].

(2) Unutilised input tax credit (ITC) in the following cases:

(a) Zero rated supplies (i.e. export/supply to SEZ developer/unit)

(b) Accumulated ITC on account of inverted duty structure.

(3) Tax paid on the supply of goods regarded as deemed exports may be claimed by recipient.

(4) Refund of any balance in the electronic cash ledger after payment of tax, interest, penalty, fee or any other amount payable under this Act or the rules made there under may be claimed as per provision of Section 49(6) of the CGST Act, 2017.

(5) Refund on account of issuance of refund vouchers for taxes paid on advances against which goods or services have not been supplied, may be claimed as per provision of Section 31(3) of the CGST Act, 2017

(6) Refund of tax wrongly collected and paid to the Government [i.e. CGST & SGST paid by treating the supply as intra-State supply which is subsequently held as inter-State supply and vice versa as per Section 77 of the CGST Act, 2017 and Section 19 of the IGST Act, 2017.

(7) The IGST paid by tourist leaving India on any supply of goods taken out of India by him as per Section 15 of IGST Act, 2017.

(8) Tax becomes refundable as a consequence of judgment, decree, order or direction of the Appellate Authority, Appellate Tribunal or any court.

(9) On finalization of provisional assessment, if any tax becomes refundable to assessee (on account of assessed tax on final assessment being less than the tax deposited by the assessee) as per Section 60 of CGST Act, 2017.

(10) Refund of taxes on purchase made by UN bodies or embassies etc. as per Section 54(2) of CGST Act, 2017.

3. Write a note on refund of tax u/s 54 of CGST Act.

Ans: Refund of tax [Section 54]:

(1) Application of refund to be made in prescribed form within 2 years from relevant date [Section 54(1)] : Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application electronically in prescribed form i.e. Form GST RFD-01 before the expiry of 2 years from the relevant date.

Refund of balance in the electronic cash ledger - Can be claimed in prescribed form : A registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of Section 49(6), may claim such refund in Form RFD-01 electronically through GST common portal.

"Relevant date" means –

	Case	Relevant date
(a)	Goods exported out of India where a refund of tax paid is available in respect of goods themselves or, as the case may be, the inputs or input services used in such goods –	
	(i) if the goods are exported by sea or air	✓ the date on which the ship or the aircraft in which such goods are loaded, leaves India; or
	(ii) if the goods are exported by land	✓ the date on which such goods pass the frontier; or

	(iii) if the goods are exported by post	✓ the date of despatch of goods by the Post Office concerned to a place outside India;
(b)	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;
(c)	in case of zero-rated supply of goods or services or both to a SEZ developer or a SEZ unit where a refund of tax paid is available in respect of such supplies themselves, or as the case may be, the inputs or input services used in such supplies	✓ the due date for furnishing of return u/s 39 in respect of such supplies;
(d)	Services exported out of India where a refund of tax paid is available in respect of services themselves or, as the case may be, the inputs or input services used in such services and	
	(i) the supply of services had been completed prior to the receipt of such payment	✓ the date of receipt of payment in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India;
	payment for the services had been received in advance prior to the date of issue of the invoice	✓ the date of issue of invoice
(e)	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;
(f)	Refund of unutilised input tax credit under clause (ii) of the first proviso to Section 54(3) i.e. on account of inverted duty structure	✓ the due date for furnishing of return under section 39 for the period in which such claim for refund arises;
(g)	Where tax is paid provisionally under this Act or the rules made thereunder	✓ the date of adjustment of tax after the final assessment thereof;
(h)	A person, other than the supplier	✓ the date of receipt of goods or services or both by such person; and
(i)	Other cases	✓ the date of payment of tax.

(2) Documentary evidences to be furnished [Section 54(4)] : The application shall be accompanied by—

a. such documentary evidence as may be prescribed to establish that a refund is due to the applicant; and

b. such documentary or other evidence (including the documents referred to in Section 33) as the applicant may furnish to establish that the amount of tax and interest, if any, paid on such tax or any other amount paid in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such tax and interest had not been passed on to any other person.

Documentary evidences not required if refund claim is less than ₹ 2 lakh : Where the amount claimed as refund is less than ₹ 2,00,000, it shall not be necessary for the applicant to furnish any documentary and other evidences but he may file a declaration, based on the documentary or other evidences available with him, certifying that the incidence of such tax and interest had not been passed on to any other person.

(3) Order of Refund – Sum to be credited to fund [Section 54(5)] : If, on receipt of any such application, the proper officer is satisfied that the whole or part of the amount claimed as refund is refundable, he may make an order accordingly and the amount so determined shall be credited to the Consumer Welfare Fund.

(4) Time limit for sanction of refund – 60 days from date of Refund Application [Section 54(7)]: The proper officer shall issue the refund order within 60 days from the date of receipt of application complete in all respects.

The time limit of 60 days shall be counted from the date of filing claim for refund as mentioned in the acknowledgment received for refund claim. [Section 54(7) read with Rule 90(1) and 90(2)]

(5) Refund of State tax in prescribed manner [Section 54(8A)] : The Government may disburse the refund of the State tax in such manner as may be prescribed.

(6) No refund below ₹ 1,000 [Section 54(14)] : No refund shall be paid to an applicant, if the amount is less than ₹ 1,000. The limit of ₹ 1,000 shall apply for each tax head separately and not cumulatively. Further, the limit would not apply in cases of refund of excess balance in the electronic cash ledger. Circular No. 125/44/2019-GST dated 18-11-2019.

"Refund" includes –

(a) refund of tax paid on zero-rated supplies of goods or services or both or on inputs or input services used in making such zero-rated supplies, or

(b) refund of tax on the supply of goods regarded as deemed exports, or

(c) refund of unutilised input tax credit as provided under Section 54(3). [Explanation 1]

4. Explain the manner of filing application for refund of tax, interest, penalty, fees or any other amount.

Ans: Application for refund of tax, interest, penalty, fees or any other amount [Rule 89]: (1) E-refund application [Rule 89(1)] : Any person, except the persons covered under notification issued under Section 55, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of Section 49(6) or any tax, interest, penalty, fees or any other amount paid

by him, other than refund of integrated tax paid on goods exported out of India, may file, subject to the provisions of rule 10B, an application electronically in FORM GST RFD-01 through the common portal.

However, in case of refund of IGST paid on goods exported out of India, there is no need for filing a separate refund application in Form GST RFD-01 since the shipping bill filed by the exporter is itself treated as a refund claim.

Shipping bill filed by an exporter shall be deemed to be an application for refund of integrated tax paid on the goods exported out of India [Rule 96].

Supplies of goods/ Services to SEZ – Filing requirements of Refund Application : In respect of supplies to a Special Economic Zone unit or a Special Economic Zone developer, the application for refund shall be filed by the –

(a) supplier of goods after such goods have been admitted in full in the Special Economic Zone for authorised operations, as endorsed by the specified officer of the Zone;

(b) supplier of services along with such evidence regarding receipt of services for authorized operations as endorsed by the specified officer of the Zone.

"Specified officer" means a specified officer or an authorised officer as defined under rule 2 of the Special Economic Zone Rules, 2006.

Deemed export – Recipient/ Supplier to file application : In respect of supplies regarded as deemed exports, the application may be filed by,—

(a) the recipient of deemed export supplies; or

(b) the supplier of deemed export supplies in cases where the recipient does not avail of input tax credit on such supplies and furnishes an undertaking to the effect that the supplier may claim the refund.

However, in a case when the refund was being claimed by the recipients, they were facing difficulties on the portal to claim refund of tax paid since the portal required them to first debit the amount so claimed from their electronic credit ledger. Considering this difficulty, it is clarified that in a case where recipient of deemed export supplies claims the refund on such supplies, there is no restriction on such recipient in availing ITC of the tax paid on such supplies because when they proceed to file refund on the portal, the system requires them to debit the amount so claimed from their electronic credit ledger.

However, it is important to note that the ITC of tax paid on deemed export supplies, allowed to the recipients for claiming refund of such tax paid, is not ITC in terms of the provisions of Chapter V of the CGST Act, 2017. Therefore, the ITC so availed by the recipient of deemed export supplies would not be subjected to provisions of section 17. This implies that entire amount paid by the recipient will be available as ITC irrespective of the fact whether it is blocked in terms of section 17(5). - Circular No. 172/04/2022 GST dated 06-07-2022

Further, there arose a question as to whether the ITC availed by the recipient of deemed export supply for claiming refund of tax paid on supplies regarded as deemed exports is to be included in the "Net ITC" for computation of refund of unutilised ITC under rule 89(4) & rule 89(5). It is clarified that as seen above, since the ITC of tax paid on deemed export supplies, allowed to

the recipients for claiming refund of such tax paid, is not ITC in terms of the provisions of Chapter V of the CGST Act, such ITC availed by the recipient of deemed export supply for claiming refund of tax paid on supplies regarded as deemed exports is not to be included in the "Net ITC" for computation of refund of unutilised ITC on account of zero-rated supplies under rule 89(4) or on account of inverted rated structure under rule 89(5). -Circular No. 172/04/2022 GST dated 06-07-2022

Refund of advance tax to be claimed after last return furnished by NRTP : Refund of any amount, after adjusting the tax payable by the applicant out of the advance tax deposited by Non resident taxable person under section 27 at the time of registration, shall be claimed only after the last return required to be furnished by him has been so furnished

(2) Manner of claiming refund u/s 77 [Rule 89(1A)] : Any person, claiming refund under section 77 of any tax paid by him, in respect of a transaction considered by him to be an intra-State supply, which is subsequently held to be an inter-State supply, may, before the expiry of a period of 2 years from the date of payment of the tax on the inter-State supply, file an application electronically in FORM GST RFD-01 through the common portal.

(3) Manner of claiming refund of additional integrated tax paid on account of upward revision in price of the goods subsequent to exports [Rule 89(1B)] [Inserted vide Notification No. 12/2024-CT dated 10.07.2024]: any person, claiming refund of additional integrated tax paid on account of upward revision in price of the goods subsequent to exports, and on which the refund of integrated tax paid at the time of export of such goods has already been sanctioned as per rule 96, may file an application for such refund of additional integrated tax paid, electronically in FORM GST RFD-01 through the common portal, subject to the provisions of rule10B, before the expiry of 2 years from the relevant date as per Explanation(2)(a) of section 54.

However, the said application for refund can be filed before the expiry of 2 years from 10-07-2024, in cases where the relevant date as per Explanation (2)(a) of section 54 of the Act was before 10-07-2024.

(4) Documentary evidences which are to be furnished along with refund application [Rule 89(2)]: The application shall be accompanied by any of the following documentary evidences in Annexure 1 in Form GST RFD-01, as applicable, to establish that a refund is due to the applicant, namely:

(a) Details of Appellate order giving rise to refund : The reference number of the order and a copy of the order passed by the proper officer or an appellate authority or Appellate Tribunal or court resulting in such refund or reference number of the payment of the amount specified in Section 107(6) and Section 112(8) claimed as refund (i.e. amount to be deposited at the time of filing of appeal before Appellate Authority or Appellate Tribunal).

(b) Details of shipping bill for export : A statement containing the number and date of shipping bills or bills of export and the number and the date of the relevant export invoices, in a case where the refund is on account of export of goods other than electricity.

It is important to note that realization of convertible foreign exchange is one of the conditions for export of services whereas in case of export of goods, realization of consideration is not a pre-condition. Consequently, documentary evidence in the form of a statement containing no. and date of relevant BRCs/FIRCs are not required here.
However, in case of non-realization of consideration in terms of FEMA, the exporter may be called upon to repay the refund claimed by him [Rule 96B].

(c) Details of energy exported if refund is on account of electricity : A statement containing the number and date of the export invoices, details of energy exported, tariff per unit for export of electricity as per agreement, along with the copy of statement of scheduled energy for exported electricity by Generation Plants and the copy of agreement detailing the tariff per unit, in case where refund is on account of export of electricity.

(d) Details of export invoices: A statement containing the number and date of export invoices along with copy of such invoices, the number and date of shipping bills or bills of export along with copy of such shipping bills or bills of export, the number and date of Bank Realisation Certificate or foreign inward remittance certificate in respect of such shipping bills or bills of export along with copy of such Bank Realisation Certificate or foreign inward remittance certificate issued by Authorised Dealer-I Bank, the details of refund already sanctioned under Rule 96(3), the number and date of relevant supplementary invoices or debit notes issued subsequent to the upward revision in prices along with copy of such supplementary invoices or debit notes, the details of payment of additional amount of integrated tax, in respect of which such refund is claimed, along with proof of payment of such additional amount of integrated tax and interest paid thereon, the number and date of foreign inward remittance certificate issued by Authorised Dealer-I Bank in respect of additional foreign exchange remittance received in respect of upward revision in price of exports along with copy of such foreign inward remittance certificate, along with a certificate issued by a practicing chartered accountant or a cost accountant to the effect that the said additional foreign exchange remittance is on account of such upward revision in price of the goods subsequent to exports and copy of contractor other documents, as applicable, indicating requirement for the revision in price of exported goods and the price revision thereof, in a case where the refund is on account of upward revision in price of such goods subsequent to exports;
A reconciliation statement, reconciling the value of supplies declared in supplementary invoices, debit notes or credit notes issued along with relevant details of Bank Realisation Certificate or foreign inward remittance certificate issued by Authorised Dealer-I Bank, in a case where the refund is on account of upward revision in price of such goods subsequent to exports; [Inserted vide Notification No. 12/2024-CT dated 10.07.2024]

(e) Bank realisation certificate in case of export of services : A statement containing the number and date of invoices and the relevant Bank Realisation Certificates or Foreign Inward Remittance Certificates, as the case may be, in a case where the refund is on account of the export of services.

(f) Endorsement in case of supplies of goods to SEZ : A statement containing the number and date of invoices as provided in Rule 46 along with the evidence regarding goods admitted in full for authorized operations as endorsed by the specified officer of SEZ in case of supply of goods made to a SEZ unit or a SEZ developer.

(g) Endorsement in case of supplies of services to SEZ : A statement containing the number and date of invoices, the evidence regarding the endorsement by specified officers of SEZ and the details of payment, along with the proof thereof, made by the recipient to the supplier for authorised operations as defined under the SEZ Act, 2005, in a case where the refund is on account of supply of services made to a SEZ unit or a SEZ developer.

(h) Declaration that tax has not been collected from SEZ unit/ developer : A declaration to the effect that tax has not been collected from the Special Economic Zone unit or the Special Economic Zone developer, in a case where the refund is on account of supply of goods or services or both made to a Special Economic Zone unit or a Special Economic Zone developer;

(i) Invoice details in case of deemed exports : A statement containing the number and date of invoices along with such other evidence as may be notified in this behalf, in a case where the refund is on account of deemed exports;

(j) Invoice details etc. in case of refund of ITC : 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 Section 54(3) where the credit has accumulated on account of the rate of tax on the inputs being higher than the rate of tax on output supplies, other than nil-rated or fully exempt supplies;

(k) Details of final assessment order giving rise to refund : The reference number of the final assessment order and a copy of the said order in a case where the refund arises on account of the finalisation of provisional assessment;

(l) Details of transaction where nature of supply changes : A statement showing the details of transactions considered as intra-State supply but which is subsequently held to be inter-State supply;

(m) Statement of excess tax payment : A statement showing the details of the amount of claim on account of excess payment of tax and interest, if any, or any other amount paid[Inserted by Notification by No.38/2023 Ct. w.e.f 04-08-2023]

(n) Details to be furnished by unregistered person to claim refund : A statement containing the details of invoices viz. number, date, value, tax paid and details of payment, in respect of which refund is being claimed along with copy of such invoices, proof of making such payment to the supplier, the copy of agreement or registered agreement or contract, as applicable, entered with the supplier for supply of service, the letter issued by the supplier for cancellation or termination of agreement or contract for supply of service, details of payment received from the supplier against cancellation or termination of such agreement along with proof thereof, in a case where the refund is claimed by an

unregistered person where the agreement or contract for supply of service has been cancelled or terminated;

(o) Certificate by supplier that tax liability is not adjusted : A certificate issued by the supplier to the effect that he has paid tax in respect of the invoices on which refund is being claimed by the applicant; that he has not adjusted the tax amount involved in these invoices against his tax liability by issuing credit note; and also, that he has not claimed and will not claim refund of the amount of tax involved in respect of these invoices, in a case where the refund is claimed by an unregistered person where the agreement or contract for supply of service has been cancelled or terminated;

(p) Declaration that incidence of tax not passed on if refund amount is upto ₹ 2,00,000: A declaration to the effect that the incidence of tax, interest or any other amount claimed as refund has not been passed on to any other person, in a case where the amount of refund claimed does not exceed ₹ 2,00,000.

CA/CMA certificate if refund claimed exceeds ₹ 2,00,000 : However, where the amount of refund claimed exceeds ₹ 2 lakh, a Certificate in Annexure 2 of Form GST RFD-01 by a Chartered Accountant or a Cost Accountant to the effect that there is no unjust enrichment in the case of the applicant [i.e. incidence of tax, interest or any other amount claimed as refund has not been passed on to any other person.]

No certificate/declaration required : A certificate is not required to be furnished in respect of cases covered under Section 54(8)(a)/(b)/(c)/(d)/(f) i.e.—

(i) refund of tax paid on export of goods or services or both or on inputs or input services used in making such exports;

(ii) refund of unutilised ITC in case of zero rated supplies or accumulated ITC on account of inverted duty structure;

(iii) refund of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued, or where a refund voucher has been issued. The expression "invoice" referred here means invoice conforming to the provisions contained in Section 31.

(iv) refund of tax in pursuance of Section 77, i.e. tax paid on a transaction treating it as an intra-State supply, but which is subsequently held to be an inter-State supply or viceversa.

(v) the tax or interest borne by such other class of applicants as the Government may, on the recommendations of the Council, by notification, specify.

A certificate is not required to be furnished in cases where refund is claimed by an unregistered person who has borne the incidence of tax.

Explanation : 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.

Furnishing of certification/declaration under Rule 89(2)(l) or 89(2)(m) of the CGST Rules, 2017 for not passing the incidence of tax to any other person is not required in cases of refund

of excess balance in electronic cash ledger as unjust enrichment clause is not applicable in such cases [Circular No.166/22/2021-GST dated 17-11-2021]

5. Explain the manner of granting Acknowledgment of refund application.

Ans: Acknowledgment [Rule 90]:

(1) Claim for refund from the electronic cash ledger - E-acknowledgment for refund [Rule 90(1)]: Where the application relates to a claim 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.

The time limit for filing refund application i.e. 2 years from the relevant date would not be applicable in cases of refund of excess balance in electronic cash ledger. [Circular No. 166/22/2021-GST dtd 17-11-2021] The time period of 60 days for interest applicability u/s 54(7) shall be counted from such date of filing.

(2) Refund claim other than claim for refund from the electronic cash ledger - Scrutiny by PO [Rule 90(2)] :

(a) The application for refund, other than claim for refund from electronic cash ledger, shall be forwarded to the proper officer.

(b) The proper officer shall, within a period of 15 days of filing of the said application, scrutinize the application for its completeness.

(c) Where the application is found to be complete in terms of Rule 89, 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.

(d) The time period specified in Section 54(7) shall be counted from such date of filing.

Refund acknowledgment clearly indicates the date of filing of the claim for refund. Refund order is required to be issued within 60 days from the date of filing claim for refund as mentioned in said acknowledgment.

(3) Communication of deficiencies [Rule 90(3)] : Where any deficiencies are noticed, the proper officer 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 of such deficiencies.

Exclusion of time period in computing limitation period of 2 years : However, the time period, from the date of filing of the refund claim in FORM GST RFD-01 till the date of communication of the deficiencies in FORM GST RFD-03 by the proper officer, shall be excluded from the period of 2 years as specified under section 54(1), in respect of any such fresh refund claim filed by the applicant after rectification of the deficiencies.

(4) Communication of deficiencies in SGST rules – Deemed communication under these rules [Rule 90(4)] : Where deficiencies have been communicated in FORM GST RFD-03 under the State Goods and Service Tax Rules, 2017, the same shall also deemed to have been communicated under this rule along with the deficiencies communicated under Rule 90(3).

(5) Withdrawal of refund application [Rule 90(5)] : The applicant may, at any time before issuance of provisional refund sanction order in FORM GST RFD-04 or final refund sanction order in FORM GST RFD-06 or payment order in FORM GST RFD-05 or refund withhold order in FORM GST RFD-07 or notice in FORM GST RFD-08, in respect of any refund application filed in FORM GST RFD-01, withdraw the said application for refund by filing an application in FORM GST RFD-01W.

(6) Re-credit of amount debited on withdrawal application [Rule 90(6)] : On submission of application for withdrawal of refund in FORM GST RFD-01W, any amount debited by the applicant from electronic credit ledger or electronic cash ledger, as the case may be, while filing application for refund in FORM GST RFD-01, shall be credited back to the ledger from which such debit was made.

TDS/TCS credited to electronic cash ledger can also be claimed as refund Circular No. 166/22/2021-GST dated 17-11-2021	
Issue	Clarification
Whether refund of TDS/TCS deposited in electronic cash ledger under the provisions of section 51/52 of the CGST Act can be refunded as excess balance in cash ledger?	The amount deducted/ collected as TDS/TCS by TDS/ TCS deductors under the provisions of section 51/52 of the CGST Act, as the case may be, and credited to electronic cash ledger of the registered person, is equivalent to cash deposited in electronic cash ledger. It is not mandatory for the registered person to utilise the TDS/TCS amount credited to his electronic cash ledger only for the purpose for discharging tax liability. The registered person is at full liberty to discharge his tax liability in respect of the supplies made by him during a tax period, either through debit in electronic credit ledger or through debit in electronic cash ledger, as per his choice and availability of balance in the said ledgers. Any amount, which remains unutilized in electronic cash ledger, after discharge of tax dues and other dues payable under CGST Act and rules made thereunder, can be refunded to the registered person as excess balance in electronic cash ledger in accordance with the proviso to Section 54(1), read with Section 49(6) of CGST Act.

6. Explain the manner of sanctioning refund.

Ans: Order sanctioning refund [Rule 92] :

(1) Order of final refund [Rule 92(1)] : Where, upon examination of the application, the proper officer is satisfied that a refund is due and payable to the applicant,

- ✓ he shall make an order 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 under Section 54(6), amount adjusted against any outstanding demand under the Act or under any existing law and the balance amount refundable.

(2) Refund to be granted both in cash and credit, based on original mode of payment [Rule 92(1A)] : Where, upon examination of the application of refund of any amount paid as tax other than the refund of tax paid on zero-rated supplies or deemed export, the proper officer is satisfied that a refund under Section 54(5) of the Act is due and payable to the applicant, he shall make an order in FORM RFD-06 sanctioning the amount of refund to be paid, in cash, proportionate to the amount debited in cash against the total amount paid for discharging tax liability for the relevant period, mentioning therein the amount adjusted against any outstanding demand under the Act or under any existing law and the balance amount refundable and for the remaining amount which has been debited from the electronic credit ledger for making payment of such tax, the proper officer shall issue FORM GST PMT-03 re-crediting the said amount as Input Tax Credit in electronic credit ledger.

(3) Issuance of notice if refund not admissible - Sanction or rejection of refund claim [Rule 92(3)] : Where the proper officer 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 to the applicant, requiring him to furnish a reply within a period of 15 days of the receipt of such notice and after considering the reply, make an order in sanctioning the amount of refund in whole or part, or rejecting the said refund claim and the said order shall be made available to the applicant electronically and the provisions of Rule 92(1) shall, mutatis mutandis, apply to the extent refund is allowed.

Opportunity of being heard before rejection : No application for refund shall be rejected without giving the applicant an opportunity of being heard.

(4) E-payment of final refund [Rule 92(4)] : Where the proper officer is satisfied that the amount refundable is payable to the applicant under Section 54(8), he shall make an order and issue a payment order 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 on the basis of a consolidated payment advice.

However, the order shall not be required to be revalidated by the proper officer.

The payment order shall be required to be revalidated where the refund has not been disbursed within the same financial year in which the said payment order was issued.

Note: Section 54(8) lists the circumstances in which the refundable amount is to be paid to the applicant instead of being credited to the Consumer Welfare Fund.

(5) Disbursement on basis of consolidated payment advice [Rule 92(4A)] : The Central Government shall disburse the refund based on the consolidated payment advice issued as above.

(6) Refund to be credited to Consumer Welfare Fund [Rule 92(5)] : Where the proper officer is satisfied that the amount refundable is not payable to the applicant under Section 54(8), he shall make an order in FORM GST RFD-06 and issue a payment order in FORM GST RFD-05, for the amount of refund to be credited to the Consumer Welfare Fund.

7. State the exceptions to the principle of unjust enrichment as applicable to refund claims. OR State five cases where refundable amount shall be paid to the applicant, instead of being credited to Consumer Welfare Fund under CGST Act, 2017. (5 Marks, May 2018-NS) (4 Marks, Dec. 2021)

Ans: The relevant provisions are discussed as under-

(1) Circumstances under which the refund would be granted to the applicant [Section 54(8)] : The principle of unjust enrichment is applicable in all cases of refund except in the following cases where the refundable amount shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to—

(a) refund of tax paid on export of goods or services or both or on inputs or input services used in making such exports;

Thus, the principle of unjust enrichment shall not apply only in case of export of goods or services. In other words the supply of goods or services to SEZ units or to a developer shall be covered by the said principle. Thus, the person applying the refund on account of zero-rated supplies to SEZ units or developer shall prove that he has borne the burden of tax and has not collected the same from such SEZ units or developer.

(b) refund of unutilised ITC in case of zero rated supplies or accumulated ITC on account of inverted duty structure;

(c) refund of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued, or where a refund voucher has been issued;

(d) refund of tax in pursuance of Section 77 i.e. CGST paid instead of IGST or vice versa;

(e) the tax and interest, if any, or any other amount paid by the applicant, if he had not passed on the incidence of such tax and interest to any other person; or

(f) the tax or interest borne by such other class of applicants as the Government may, on the recommendations of the Council, by notification, specify.

(2) Refund to be granted only as per this Section [Section 54(9)] : Notwithstanding anything to the contrary contained in any judgment, decree, order or direction of the Appellate Tribunal or any court or in any other provisions of this Act or the rules made thereunder or in any other law for the time being in force, no refund shall be made except in accordance with the provisions of Section 54(8).

8. Explain the provisions of withholding of refund under GST law.

Ans: Withholding of refund claim: The relevant provisions are as under-

(1) Withholding of refund/ Deduction of dues from refund [Section 54(10)] : Where any refund is due to a registered person who has defaulted in furnishing any return or who is required to pay any tax, interest or penalty, which has not been stayed by any court, Tribunal or Appellate Authority by the specified date, the proper officer may—

(a) withhold payment of refund due until the said person has furnished the return or paid the tax, interest or penalty, as the case may be;

(b) deduct from the refund due, any tax, interest, penalty, fee or any other amount which the taxable person is liable to pay but which remains unpaid under this Act or under the existing law.

"Specified date" shall mean the last date for filing an appeal under this Act.

(2) Withholding of refund till disposal of Appeal [Section 54(11)] : Where an order giving rise to a refund is the subject matter of an appeal or further proceedings or where any other proceedings under this Act is pending and the Commissioner is of the opinion that grant of such refund is likely to adversely affect the revenue in the said appeal or other proceedings on account of malfeasance or fraud committed, he may, after giving the taxable person an opportunity of being heard, withhold the refund till such time as he may determine.

(3) Order withholding refund [Rule 92(2)] : Where the proper officer or the Commissioner is of the opinion that the amount of refund is liable to be withheld, he shall pass an order in Part A of FORM GST RFD-07 informing him the reasons for withholding of such refund.

Order for release of withheld refund : Where the proper officer or the Commissioner is satisfied that the refund is no longer liable to be withheld, he may pass an order for release of withheld refund in Part B of FORM GST RFD-07.

(4) Interest on withheld refund [Section 54(12)] : Where a refund is withheld under Section 54(11), the taxable person shall, notwithstanding anything contained in Section 56, be entitled to interest at such rate not exceeding 6% as may be notified on the recommendations of the Council, if as a result of the appeal or further proceedings he becomes entitled to refund

REFUND IN SPECIAL CASES

9. Discuss the provisions relating to refund of the amount of advance tax deposited by a casual taxable person/non resident taxable person under Section 27(2) of the CGST Act, 2017.

Ans: Provisions relating to refund of the amount of advance tax deposited by a casual Taxable Person/ Non Resident Taxable [Section 54(13)]: The amount of advance tax deposited by a casual taxable person or a non- resident taxable person under Section 27(2), shall not be refunded unless such person has, in respect of the entire period for which the

certificate of registration granted to him had remained in force furnished all the returns required under Section 39.

As per Rule 89(1) of the CGST Rules, 2017, refund of any amount, after adjusting the tax payable by the applicant out of the advance tax deposited by him under Section 27 at the time of registration, shall be claimed in the last return required to be furnished by him.

10. Explain the cases where refund of unutilised Input tax credit can be granted to registered person.

Ans: Refund of un-utilised Input tax credit [Section 54(3)]: The relevant provisions are discussed as under-

(1) Refund of ITC can be claimed at the end of tax period: Registered person may claim refund of any unutilised input tax credit at the end of any tax period.

(2) Cases when refund of un-utilised ITC is allowed:

(a) Zero rated supplies made without payment of tax.

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

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

(ii) supply of goods or services or both for authorised operations to a Special Economic Zone developer or a Special Economic Zone unit. [Section 2(23) read with Section 16 of IGST Act, 2017]

In such cases, refund of unutilised ITC at the end of any tax period, of amount determined under rule 89(4), shall be granted to the applicant and the the electronic credit ledger shall be debited by the applicant by an amount equal to the refund so claimed.

(b) Inverted duty structure : Where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council.

Suppliers who supply goods to merchant exporters at the concessional rate of 0.1% [0.05% CGST and 0.05% SGST/UTGST or 0.1% IGST, as the case may be], under Notification No. 40/2017-CT (R) dated 23-10-2017/Notification No. 41/2017-IT (R) dated 23-10-2017, subject to certain conditions specified in said notifications, are also eligible for refund on account of inverted tax structure.

(3) Cases where refund of ITC is not Admissible : However, refund is not eligible in the following cases–

~~(a) Refund of unutilized ITC shall not be allowed if the goods exported out of India are subjected to export duty; or~~ [Omitted by Finance Act (No. 2) Act, 2024 w.e.f. 01-11-2024]

(b) Refund of ITC shall not be allowed if the supplier of goods or services or both avails of drawback in respect of CGST or claims refund of the IGST paid on such supplies.

While claiming refund of accumulated ITC in case of zero rated supplies without payment of tax, a supplier can avail drawback of only basic customs duty and cannot claim

drawback of any of the taxes under GST (Central Tax, Integrated Tax, State/Union Territory Tax). In other words, a supplier availing drawback of only basic customs duty shall be eligible for refund of unutilized ITC of central tax/ State tax/ Union territory tax/ integrated tax/ compensation cess under the said provision. It is further clarified that refund of eligible credit on account of State tax shall be available even if the supplier has availed of drawback in respect of central tax [Circular No, 125/44/2019-GST dated 18-11-2019]

(c) If the supplier of goods or services or both claims refund of output tax paid under IGST Act.

"Drawback" in relation to any goods manufactured in India and exported, means the rebate of duty, tax or cess chargeable on any imported inputs or on any domestic inputs or input services used in the manufacture of such goods. [Section 2(42)]

(4) Refund of ITC not admissible in case goods are subject to export duty: No refund of unutilised input tax credit on account of zero rated supply of goods or of integrated tax paid on account of zero rated supply of goods shall be allowed where such zero rated supply of goods is subjected to export duty. [Inserted by the Finance (No. 2) Act, 2024 w.e.f. 01-11-2024]

Notification No. 15/2017- CT (Rate) dated 28-06- 2017 w.e.f. 01-07-2017 as amended by Notification No. 15/2023-CT (Rate) dated 19-10-2023 w.e.f. 20-10-2023	Construction Services not eligible for refund of unutilized ITC under CGST Act : The Central Government has notified that no refund of unutilised ITC shall be allowed under section 54(3) of CGST Act, in case of supply of services of construction of a complex, building or a part thereof, intended for sale to a buyer, wholly or partly, where the amount charged from the recipient of service includes the value of land or undivided share of land, as the case may be, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier

11. Explain the manner of calculating the maximum amount of refund in case of zero rated supply of goods or services.

Ans: The manner of calculating the maximum amount of refund in case of zero rated supply of goods or services is as under-

(1) Refund in case of Zero rated supplies [Rule 89(4)]: In the case of zero-rated supply of goods or services or both without payment of tax under bond or letter of undertaking in accordance with the provisions of Section 16(3) of the IGST Act, 2017, refund of input tax credit shall be granted as per the following formula-

$$\text{Refund amount} = \frac{(\text{Turnover of zero-rated supply of goods} + \text{Turnover of zero - rated supply of services}) \times \text{Net ITC}}{\text{Adjusted Total Turnover}}$$

Where,—

a. "Refund amount" means the maximum refund that is admissible;

b. "Net ITC" means input tax credit availed on inputs and input services during the relevant period ~~other than the input tax credit availed for which refund is claimed under Rule 89(4A) or (4B) or both~~; [Omitted vide Notification No. 20/2024-CT dated 08-10-2024 w.e.f. 08-10-2024]

c. "Turnover of zero-rated supply of goods" means –

- ✓ the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking or
- ✓ the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier,

whichever is less,

a. ~~other than the turnover of supplies in respect of which refund is claimed under rule 89(4A) or (4B) or both~~. [Omitted vide Notification No. 20/2024-CT dated 08-10-2024 w.e.f. 08-10-2024]

b. "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;

c. "Adjusted Total Turnover" means the sum total of the value of –

(i) the turnover in a State or a Union territory, as defined under section 2(112), excluding the turnover of services; and

(ii) the turnover of zero-rated supply of services determined in terms of (D) above and nonzero-rated supply of services,

excluding the value of exempt supplies other than zero-rated supplies; and during the relevant period. [Omitted vide Notification No. 20/2024-CT dated 08-10-2024 w.e.f. 08-10-2024]

d. "Relevant period" means the period for which the claim has been filed.

Bunching of refund claims across financial years permitted :

Circular No. 125/44/2019-GST dated 18-11-2019 has clarified that the relevant period has been defined in the context of the refund claim and is not linked to a tax period. The exporter, at his option, may file refund claim for one calendar month/quarter or by clubbing successive calendar months/quarters.

Circular No. 135/05/2020-GST dated 31-03-2020 it has been clarified that i.e. the restriction on bunching of refund claims across financial years shall not apply. Thus, the calendar month(s)/ quarter(s) for which refund claim has been filed, can spread across different financial years.

e. Value of exported goods [Explanation] : The value of goods exported out of India shall be taken as –

(i) the Free on Board (FOB) value declared in the Shipping Bill or Bill of Export; or

(ii) the value declared in tax invoice or bill of supply,

whichever is less.

~~(2) Refund of ITC on inputs and input services other than those for which benefit of Deemed Exports Claimed [Rule 89(4A)] : In case of supplies received on which the supplier has availed the benefit of Notification No. 48/2017-CT dated 18-10-2017 (i.e., where supplier has claimed refund of tax paid on deemed exports), refund of input tax credit, availed in respect of other inputs or input services used in making zero-rated supply of goods or services or both, shall be granted.~~

~~[Note: In case of deemed exports, refund application can be made either by the recipient of deemed export supplies or by the supplier of deemed export supplies if the recipient does not claim ITC on such goods and gives an undertaking that the supplier may claim the refund.]~~

f. ~~Refund of Input tax credit in Specified Situations [Rule 89(4B)] : In case of supplies received on which the supplier has availed the benefit of Notification No. 40/2017-CT (R) dated 23-10-2017/ Notification No. 41/2017-IT (R) dated 23-10-2017 [concessional rate of tax @ 0.1% (0.05% CGST + 0.05% SGST & 0.1% IGST) for supply of goods made to merchant exporters for export] or Notification No. 78/2017-Cus dated 13-10-2017/ Notification No. 79/2017-Cus dated 13-10-2017 [imports of goods by EOUs/Advance Authorisation/EPCG schemes], or all of them, refund of input tax credit, availed in respect of inputs received under the said notifications for export of goods and the input tax credit availed in respect of other inputs or input services to the extent used in making such export of goods, shall be granted.~~ [Omitted vide Notification No. 20/2024-CT dated 08-10-2024 w.e.f. 08-10-2024]

(3) Amount refunded as ITC to be debited in Electronic Credit Ledger [Rule 89(3)] : Where the application relates to refund of input tax credit, the electronic credit ledger shall be debited by the applicant by an amount equal to the refund so claimed.

12. Explain the manner of calculating the maximum amount of refund of ITC in case of inverted duty structure. OR

Royal Industries wishes to claim refund of ITC accumulated on account of inverted duty structure. Can it do so? If yes, specify the time-limit within which the refund can be claimed by Royal Industries as provided under the CGST Act.

Note: Output supplies of Royal Industries are not nil rated/ fully exempt supplies.

Ans: The relevant provisions are discussed as under-

(1) Refund of ITC on account of inverted duty structure [Rule 89(5)] : In the case of refund on account of inverted duty structure, refund of input tax credit shall be granted as per the following formula—

$$\text{Maximum Refund Amount} = \left\{\frac{\text{(Turnover of inverted rated supply of goods and services)} \times \text{Net ITC}}{\text{Adjusted Total Turnover}}\right\} - \left\{\text{Tax payable on such inverted rated supply of goods and services} \times \frac{\text{Net ITC}}{\text{ITC availed on inputs and input services}}\right\}$$

Where,—

- ✓ "Net ITC" shall mean input tax credit availed on inputs during the relevant period ~~other than the input tax credit availed for which refund is claimed under Rule 89(4A)/(4B) or both~~; and [Omitted vide Notification No. 20/2024-CT dated 08-10-2024 w.e.f. 08-10-2024]
- ✓ "Adjusted Total turnover" shall have the same meaning as assigned to it in Rule 89(4) i.e. Adjusted Total Turnover" means the sum total of the value of
  - (a) the turnover in a State or a Union territory, as defined under section 2(112), excluding the turnover of services; and
  - (b) the turnover of zero-rated supply of services determined in terms of clause (D) above and non-zero-rated supply of services,

  excluding the value of exempt supplies other than zero-rated supplies during the relevant period. [Amended vide Notification No. 20/2024–CT dated 08-10-2024 w.e.f. 08-10-2024.]
- ✓ Relevant period means the period for which the claim has been filed.

(2) Time Limit for making refund application : A person claiming refund is required to file an application before the expiry of 2 years from the relevant date. The term 'relevant date' as explained in the Explanation to Section 54 of the CGST Act, inter alia, stipulates that in case of refund of unutilized ITC on account of inverted duty structure, relevant date is **the** due date for furnishing of return under section 39 for the period in which such claim for refund arises.

(3) Amount refunded as ITC to be debited in electronic credit ledger [Rule 89(3)] : Where the application relates to refund of input tax credit, the electronic credit ledger shall be debited by the applicant by an amount equal to the refund so claimed.

Circular No. 125/44/2019-GST dated 18-11-2019	Clarification on refund amount for claim of refund of accumulated ITC on account of inverted duty structure. Where there are multiple inputs attracting different rates of tax, in the formula provided in rule 89(5) of the CGST Rules, the term "Net ITC" covers the ITC availed on all inputs in the relevant period, irrespective of their rate of tax. The calculation of refund of accumulated ITC on account of inverted tax structure, in cases where several inputs are used in supplying the final

	product/output, can be clearly understood with help of the following example : (i) Suppose a manufacturing process involves the use of an input A (attracting 5% GST) and input B (attracting 18% GST) to manufacture output Y (attracting 12% GST). (ii) The refund of accumulated ITC in the situation at (i) above, will be available under section 54(3) of the CGST Act read with rule 89(5) of the CGST Rules, which prescribes the formula for the maximum refund amount permissible in such situations. (iii) Further assume that the claimant supplies the output Y having value of ₹ 3,000/- during the relevant period for which the refund is being claimed. Therefore, the turnover of inverted rated supply of goods and services will be ₹ 3,000/-. Since the claimant has no other outward supplies, his adjusted total turnover will also be ₹ 3,000/-. (iv) If we assume that Input A, having value of ₹ 500/- and Input B, having value of ₹ 2,000/-, have been purchased in the relevant period for the manufacture of Y, then Net ITC shall be equal to ₹ 385/- (₹ 25/- and ₹ 360/- on Input A and Input B respectively). (v) Therefore, multiplying Net ITC by the ratio of turnover of inverted rated supply of goods and services to the adjusted total turnover will give the figure of ₹ 385/-. (vi) From this, if we deduct the tax payable on such inverted rated supply of goods or services × (Net ITC ÷ ITC availed on inputs and input services), which is ₹ 360/-, we get the maximum refund amount, as per rule 89(5) of the CGST Rules which is ₹ 25/-.
Circular No. 125/44/2019-GST dated 18-11-2019	Clarification on refund of accumulated ITC of input services and capital goods arising on account of inverted duty structure. It is clarified that both the law and the related rules clearly prevent the refund of tax paid on input services and capital goods as part of refund of input tax credit accumulated on account of inverted duty structure. Vide Circular No. 135/05/2020 dated 31-03-2020 it has been clarified that HSN/SAC code should be added in statement of invoices relating to inward supply so as to easily identify the supplies of inputs, capital goods and input services.
Circular No. 125/44/2019-GST dated 18-11-2019	Clarification on the term "input" On certain occasions, ITC on stores and spares, packing materials, materials purchased for machinery repairs, printing and stationery items, is not considered as part of Net ITC on the grounds that these are not directly consumed in the manufacturing process and therefore, do not

	qualify as input. There are also instances where stores and spares charged to revenue are considered as capital goods and therefore the ITC availed on them is not included in Net ITC, even though the value of these goods has not been capitalized in his books of account by the claimant. Clarification : It is clarified that input tax credit of the GST paid on inputs shall be available to a registered person as long as he/she uses or intends to use such inputs for the purposes of his/her business and there is no specific restriction on the availment of such ITC anywhere else in the GST Act. The GST paid on inward supplies of stores and spares, packing materials etc. shall be available as ITC as long as these inputs are used for the purpose of the business and/or for effecting taxable supplies, including zero-rated supplies, and the ITC for such inputs is not restricted under section 17(5) of the CGST Act. Further, capital goods have been clearly defined in section 2(19) of the CGST Act as goods whose value has been capitalized in the books of account and which are used or intended to be used in the course or furtherance of business. Stores and spares, the expenditure on which has been charged as a revenue expense in the books of account, cannot be held to be capital goods.
Circular No. 135/05/2020-GST dated 31-03-2020	Refund of accumulated input tax credit (ITC) on account of reduction in GST Rate – The input and output tax rates being same, though attracting different tax rates at different points in time do not fall under inverted tax structure and refund claim is not admissible. Issue : It has been brought to the notice of the Board that some of the applicants are seeking refund of unutilized ITC on account of inverted duty structure where the inversion is due to change in the GST rate on the same goods. This can be explained through an illustration. An applicant trading in goods has purchased, say goods "X" attracting 18% GST. However, subsequently, the rate of GST on "X" has been reduced to, say 12%. It is being claimed that accumulation of ITC in such a case is also covered as accumulation on account of inverted duty structure and such applicants have sought refund of accumulated ITC under Section 54(3)(ii) of the CGST Act. Clarification : It may be noted that refund of accumulated ITC in terms Section 54(3)(ii) of the CGST Act is available where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies. It is noteworthy that, the input and output being the same in such cases, though attracting different tax rates at different points in time, do not get covered under the provisions of Section 54(3)(ii) of the CGST Act.

	It is hereby clarified that refund of accumulated ITC under section 54(3)(ii) of the CGST Act would not be applicable in cases where the input and the output supplies are the same.
Circular No. 135/05/2020–GST dated 31-03-2020	Change in manner of refund of tax paid on supplies other than zero rated supplies : Amount of refund in electronic cash ledger and electronic credit ledger will be admissible proportionately as per the original mode of payment. Issue : For refund claims on supplies other than zero rated supplies, no separate debit of ITC from electronic credit ledger is required to be made by the applicant at the time of filing refund claim, being claim of tax already paid. However, the total tax would have been normally paid by the applicant by debiting tax amount from both electronic credit ledger and electronic cash ledger. At present, in these cases, the amount of admissible refund, is paid in cash even when such payment of tax or any part thereof, has been made through ITC. As this could lead to allowing unintended encashment of credit balances, this issue has been engaging attention of the Government. Accordingly, amendments have been made by vide Notification No. 16/2020-CT dated 23-03-2020, by inserting rule 86(4A) and rule 92(1A) of the CGST Rules, 2017. The combined effect the above mentioned changes is that any such refund of tax paid on supplies other than zero rated supplies will now be admissible proportionately in the respective original mode of payment i.e. in cases of refund, where the tax to be refunded has been paid by debiting both electronic cash and credit ledgers (other than the refund of tax paid on zero-rated supplies or deemed export), the refund to be paid in cash and credit shall be calculated in the same proportion in which the cash and credit ledger has been debited for discharging the total tax liability for the relevant period for which application for refund has been filed. Such amount, shall be accordingly paid by issuance of order in FORM GST RFD-06 for amount refundable in cash and FORM GST PMT-03 to recredit the amount attributable to credit as ITC in the electronic credit ledger.
Circular No. 197/09/2023-GST dated 17-7-2023	Refund of ITC u/s 54(3) restricted to the extent of credit reflected in Form GSTR-2B. In wake of insertion of Section 16(2)(aa) and Rule 36(4) of the CGST Rules, 2017 [Refer Chapter – Input Tax Credit], it has been decided that the refund of accumulated ITC shall be restricted to the ITC as per those

	invoices, the details of which are uploaded by the supplier in Form GSTR-1 and are reflected in the Form GSTR-2B of the applicant.
Circular No. 135/05/2020-GST dated 31.03.2020 a amended by Circular No. 173/05/2022 GST dated 06.07.2022	Refund admissible in case output supplies are made under concessional notification: There may, however, be cases where though inputs and output goods are same, but the output supplies are made under a concessional notification due to which the rate of tax on output supplies is less than the rate of tax on inputs. In such cases, as the rate of tax of output supply is less than the rate of tax on inputs at the same point of time due to supply of goods by the supplier under such concessional notification, the credit accumulated on account of the same is admissible for refund under the provisions of clause (ii) of the first proviso to section 54(3), other than the cases where output supply is either Nil rated or fully exempted, and also provided that supply of such goods or services are not notified by the Government for their exclusion from refund of accumulated ITC under the said clause.

PROVISIONAL REFUND

13. When can provisional refund be granted under GST law. Explain the procedure for grant of provisional refund.

Ans: The relevant provisions are discussed as under-

A) Provisional refund of 90% of the amount claimed in case of zero-rated supply of goods or services or both [Section 54(6)] :

- ✓ The proper officer may,
- ✓ in the case of any claim for refund on account of zero-rated supply of goods or services or both made by registered persons, other than such category of registered persons as may be notified by the Government on the recommendations of the Council,
- ✓ refund on a provisional basis, 90% of the total amount so claimed, excluding the amount of input tax credit provisionally accepted,7
- ✓ in such manner and subject to such conditions, limitations and safeguards as may be prescribed, and
- ✓ thereafter make an order under Section 54(5) for final settlement of the refund claim after due verification of documents furnished by the applicant.
- ✓ The remaining 10% can be refunded later after due verification of documents furnished by the applicant

B) Grant of provisional refund [Rule 91] :

(1) Conditions for grant of provisional refund [Rule 91(1)]: The provisional refund in accordance with the provisions of Section 54(6) shall be granted 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 ₹ 2.5 crores.

(2) Sanction of provisional refund [Rule 91(2)] : The proper officer, after scrutiny of the claim and the evidence submitted in support thereof and on being prima facie satisfied that the amount claimed as refund under Rule 91(1) is due to the applicant in accordance with the provisions of Section 54(6), shall make an order in FORM GST RFD-04, sanctioning the amount of refund due to the said applicant on a provisional basis within a period not exceeding 7 days from the date of the acknowledgement under Rule 90(1)/(2).

However, the order issued in FORM GST RFD-04 shall not be required to be revalidated by the proper officer.

(3) E-payment of provisional refund [Rule 91(3)] : The proper officer shall issue a payment order in FORM GST RFD-05 for the amount sanctioned under Rule 91(2) 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 on the basis of a consolidated payment advice.

However, the payment order in FORM GST RFD-05 shall be required to be revalidated where the refund has not been disbursed within the same financial year in which the said payment order was issued.

(4) Disbursement of refund [Rule 91(4)] : The Central Government shall disburse the refund based on the consolidated payment advice issued as above.

14. Write a note on credit of the amount of rejected refund claim.

Ans: Credit of the amount of rejected refund claim [Rule 93]:

(1) Re-credit of amount to electronic credit ledger on communication of deficiencies [Rule 93(1)] : Where any deficiencies have been communicated under Rule 90(3), the amount debited under Rule 89(3) shall be re-credited to the electronic credit ledger.

(2) Re-credit of amount to electronic credit ledger on rejection of refund [Rule 93(2)] : Where any amount claimed as refund is rejected under Rule 92, either fully or partly, the amount debited, to the extent of rejection, shall be re-credited to the electronic credit ledger by an order made in FORM GST PMT-03.

Deemed rejection [Explanation] : A refund shall be deemed to be rejected, if the appeal is finally rejected or if the claimant gives an undertaking in writing to the proper officer that he shall not file an appeal.

Clarification in respect of certain challenges faced by the registered persons in implementation of provisions of GST Laws. - Circular No. 137/07/2020-GST dated 13-04-2020

It has been brought to the notice of the Board that certain challenges are being faced by taxpayers in adhering to the compliance requirements under various other provisions of the CGST Act. The issues and relevant clarifications are as under —

	Issue	Clarification
1.	An advance is received by a supplier for a Service contract which subsequently got cancelled. The supplier has issued the invoice before supply of service and paid the GST thereon. Whether he can claim refund of tax paid or is he required to adjust his tax liability in his returns ?	In case GST is paid by the supplier on advances received for a future event which got cancelled subsequently and for which invoice is issued before supply of service, the supplier is required to issue a "credit note" in terms of section 34 of the CGST Act. He shall declare the details of such credit notes in the return for the month during which such credit note has been issued. The tax liability shall be adjusted in the return subject to conditions of section 34 of the CGST Act. There is no need to file a separate refund claim. However, in cases where there is no output liability against which a credit note can be adjusted, registered persons may proceed to file a claim under "Excess payment of tax, if any" through FORM GST RFD-01.
2.	An advance is received by a supplier for a Service contract which got cancelled subsequently. The supplier has issued receipt voucher and paid the GST on such advance received. Whether he can claim refund of tax paid on advance or he is required to adjust his tax liability in his returns?	In case GST is paid by the supplier on advances received for an event which got cancelled subsequently and for which no invoice has been issued in terms of section 31(2) of the CGST Act, he is required to issue a "refund voucher" in terms of section 31(3)(e) of the CGST Act read with rule 51 of the CGST Rules. The taxpayer can apply for refund of GST paid on such advances by filing FORM GST RFD-01 under the category "Refund of excess payment of tax".
3.	Goods supplied by a supplier under cover of a tax invoice are returned by the recipient. Whether he can claim refund of tax paid or is he required to adjust hi	In such a case where the goods supplied by a supplier are returned by the recipient and where tax invoice had been issued, the supplier is required to issue a "credit note" in terms of section 34 of the CGST Act. He shall declare the details of such credit notes in the return for the month during which such credit note has been issued. The tax liability shall be adjusted in the return subject to conditions of section 34 of the CGST Act. There is no need to file a separate refund claim in such a case. However, in cases where there is no output liability against which a credit note can be adjusted, registered persons may proceed to file a claim under "Excess payment of tax, if any" through FORM GST RFD-01.

REFUND TO SPECIAL PERSONS

15. List the persons entitled to refund under Section 55 of the CGST Act, 2017. OR Write a note on Refund to UN Bodies, Embassies etc.

Ans-Supplies made to UN bodies and embassies may be exempted from payment of GST as per international obligations. However, this exemption has been operationalized by way of a refund mechanism. So, a taxable person making supplies to such bodies would charge the tax due and remit the same to Government account.

However, the UN bodies and other entities notified u/s55 of the CGST Act, 2017 can claim refund of the taxes paid by them on their purchases. The claim has to be made before the expiry of 2 years from the last day of the quarter in which such supply was received. Detailed provisions have been discussed hereunder :

(1) Refund in certain cases [Section 55] : The Government may, on the recommendations of the Council, by notification, specify –

- ✓ any specialised agency of the United Nations Organisation, or
- ✓ any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947,
- ✓ Consulate or Embassy of foreign countries, and
- ✓ any other person or class of persons as may be specified in this behalf,

who shall, subject to such conditions and restrictions as may be prescribed, be entitled to claim a refund of taxes paid on the notified supplies of goods or services or both received by them.

In exercise of above power, following persons have been notified, subject to fulfilment of specified conditions :

(i) United Nations or a specified international organization**; and

(ii) Foreign diplomatic mission or consular post in India, or diplomatic agents or career consular officers posted therein

**"Specified international organisation" means an international organisation declared by the Central Government in pursuance of section 3 of the United Nations (Privileges and Immunities Act) 1947, to which the provisions of the Schedule to the said Act apply. Notification No,16/2017-CT (R) dated 28-06-2023 w.e.f.1-7-2017

Further, in exercise of said power, Canteen Stores Department (CSD), under the Ministry of Defence, has been notified as a person who shall be entitled to claim a refund of 50% of the applicable CGST/IGST paid by it on all inward supplies of goods received by it for the purposes of subsequent supply of such goods to the Unit Run Canteens of the CSD or to the authorized customers of the CSD Notification No,6/2017-CT (R) dated 28-06-2023 w.e.f.1-7-2017

Specialized agencies notified u/s 55 of CGST Act entitled to refund of IGST paid on import of goods : Section 55 of the CGST Act provides refund of taxes paid on the notified supplies

of goods and/or services by notified specialized agencies like United Nations or a specified international organisation. Section 3(7) of Customs Tariff Act, 1975 provides for a parity between the integrated tax rate attracted on imported goods and the integrated tax applicable on the domestic supplies of goods. Therefore, on this principle of parity, specialised agencies ought to get the refund of the IGST paid on imported goods. - Circular No. 23/2019-Cus. dated 01-08-2019

(2) Time Limit for filing Refund Claim [Section 54(2)] : The above mentioned persons may make an application for such refund, in such form and manner as may be prescribed, once in every quarter, but before the expiry of 2 years from the last day of the quarter in which such supply was received.

16. Explain the manner of refund of tax to specialized agency of UN or Multilateral Financial Institution and Organization Consulate or Embassy of foreign countries, etc.

Ans: Refund of tax to certain persons [Rule 95]:

(a) Quarterly E-application for refund : Any person eligible to claim refund of tax paid by him on his inward supplies as per notification issued under Section 55 shall apply for refund in FORM GST RFD-10 once in every quarter, electronically on the common portal or otherwise, along with a statement of the inward supplies of goods or services or both in FORM GSTR-11.

(b) Acknowledgment : An acknowledgement for the receipt of the application for refund shall be issued in FORM GST RFD-02.

(c) Conditions to be Satisfied for Sanction of Refund : The refund of tax paid by the applicant shall be available if

(i) the inward supplies of goods or services or both were received from a registered person against a tax invoice;

(ii) name and GSTIN or UIN of the applicant is mentioned in the tax invoice; and

(iii) such other restrictions or conditions as may be specified in the notification are satisfied.

However, where Unique Identity Number of the applicant is not mentioned in a tax invoice, the refund of tax paid by the applicant on such invoice shall be available only if the copy of the invoice, duly attested by the authorized representative of the applicant, is submitted along with the refund application in FORM GST RFD-10.

(d) Provisions of Rule 92 applicable : The provisions of Rule 92 shall, mutatis mutandis, apply for the sanction and payment of refund under this rule.

(e) Treaty/ International agreement to prevail over the rules in case of inconsistency : 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.

Refund of tax paid on inward supplies of goods received by Canteen Stores Department [Rule 95B]: [Inserted vide Notification No. 12/2024-CT, dated 10.07.2024.]

(a) Refund application to be filed quarterly : A Canteen Stores Department under the Ministry of Defence, which is eligible to claim the refund of 50% of the applicable central tax paid by it on all inward supplies of goods received by it for the purposes of subsequent supply of such goods to the Unit Run Canteens of the Canteen Stores Department or to the authorised customers of the Canteen Stores Department as per notification issued under section 55, shall apply for refund in FORM GST RFD-10A once in every quarter, electronically on the common portal.

(b) Application to be dealt as per Rule 89 : Such application for refund of tax paid on inward supplies of goods filed in FORM GST RFD-10A shall be dealt in a manner similar to that of application for refund filed in FORMGST RFD-01 in accordance with the provisions of rule 89.

(c) Conditions to be satisfied : The refund of tax paid by the applicant shall be available, if –

(i) the inward supplies of goods were received from a registered person against a tax invoice and details of such supplies have been furnished by the said registered person in his details of outward supply in FORM GSTR-1 and the said supplier has furnished his return in FORM GSTR-3B for the concerned tax period;

(ii) name and GSTIN of the applicant is mentioned in the tax invoice; and

(iii) goods have been received by Canteen Stores Department for the purpose of subsequent supply to the Unit Run Canteens of the Canteen Stores Department or to the authorised customers of the Canteen Stores Department.

INTEREST ON DELAYED REFUNDS

17. Explain the provisions relating to interest on delayed refunds.

Ans: Interest on delayed refunds [Section 56]:

(1) Interest not exceeding 6%, if refund is not paid within 60 days from receipt of application: If –

- ✓ any tax ordered to be refunded under Section 54(5) to any applicant, and
- ✓ such tax is not refunded within 60 days from the date of receipt of application under Section 54(1),
- ✓ interest at such rate not exceeding 6% as may be specified in the notification issued by the Government on the recommendations of the Council shall be payable in respect of such refund
- ✓ for the period of delay beyond 60 days from the date of receipt of such application till the date of refund of such tax, to be computed in such manner and subject to such conditions and restrictions as may be prescribed

Interest @ 6% p.a. has been notified vide Notification No. 13/2017-CT dated 28-6-2017 w.e.f. 1-7-2017

(2) Refund as a consequence of adjudicating/appellate authority order – Interest not exceeding 9%, if refund is not paid within 60 days from receipt of application: Where –
any claim of refund arises from an order passed by an adjudicating authority or Appellate Authority or Appellate Tribunal or court which has attained finality, and

- ✓ the same is not refunded within 60 days from the date of receipt of application filed consequent to such order,
- ✓ interest at such rate not exceeding 9% as may be notified by the Government on the recommendations of the Council shall be payable in respect of such refund,
- ✓ from the date immediately after the expiry of 60 days from the date of receipt of application till the date of refund.

Interest @ 9% p.a. has been notified vide Notification No. 13/2017-CT dated 28-6-2017 w.e.f. 1-7-2017.

(3) Refund as a consequence of appellate order – Appellate order deemed to be order passed under section 54(5) : Where any order of refund is made by an Appellate Authority, Appellate Tribunal or any court against an order of the proper officer u/s 54(5), the order passed by the Appellate Authority, Appellate Tribunal or by the court shall be deemed to be an order passed u/s 54(5). [Explanation]

18. Write a note on order sanctioning interest on delayed refunds.

Ans: Order sanctioning interest on delayed refunds [Rule 94] :

(1) Order of Interest on delayed refund : Where any interest is due and payable to the applicant under Section 56, the proper officer shall make an order along with a payment order in FORM GST RFD-05.

Such order shall specify therein :

(i) the amount of refund which is delayed,
(ii) the period of delay for which interest is payable, and
(iii) the amount of interest payable,

Such interest shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund.

(2) Exclusions in period of delay : The following periods shall not be included in the period of delay, namely:

(a) any period of time beyond 15 days of receipt of notice in FORM GST RFD-08 under Rule 92(3), that the applicant takes to –
(i) furnish a reply in FORM GST RFD-09, or
(ii) submit additional documents or reply; and

(b) any period of time taken either by the applicant for furnishing the correct details of the bank account to which the refund is to be credited or for validating the details of the bank account so furnished, where the amount of refund sanctioned could not be credited to the bank account furnished by the applicant. [Amended by Notification No.38/2023 CT w.e.f.01-102023]

CONSUMER WELFARE FUND AND ITS UTILISATION

19. What is Fund or Consumer Welfare Fund? How is this fund utilised.

Ans: As per Section 2(51) of CGST Act, 2017, "Fund" means the Consumer Welfare Fund established u/s 57.

(1) Consumer Welfare Fund [Section 57]:

(i) Establishment of fund : The Government shall constitute a Fund, to be called the Consumer Welfare Fund.

(ii) Sums to be credited to fund : There shall be credited to the Fund,—

(a) the amount of refund determined by an order passed under Section 54(5);

(b) any income from investment of the amount credited to the Fund; and

(c) such other monies received by it

in such manner as may be prescribed under Rule 97 of the CGST Rules, 2017.

(2) Amounts to be credited to/paid from Consumer Welfare Fund [Rule 97 of the CGST Rules, 2017] :

(a) All amounts of duty/central tax/ integrated tax/Union territory tax/cess and income from investment along with other monies specified in Section 12C(2) of the Central Excise Act, 1944, Section 57 of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017, Section 21 of the UTGST Act, 2017 and Section 12 of the GST (Compensation to States) Act, 2017 shall be credited to the Fund.

However, an amount equivalent to 50% of the amount of integrated tax determined under Section 54(5) of the CGST Act, 2017, read with Section 20 of the IGST Act, 2017, shall be deposited in the Fund.

An amount equivalent to 50% of the amount of compensation cess determined under section 54(5) of the CGST Act, read with section 11 of the GST (Compensation to States) Act, shall be deposited in the Fund. [Second Proviso to rule 97(1)]

(b) Where any amount, having been credited to the Fund, is ordered or directed to be paid to any claimant by the proper officer, appellate authority or court, the same shall be paid from the Fund.

(3) Utilisation of Fund [Section 58] :

(i) Utilisation for Welfare of Consumers : All sums credited to the Fund shall be utilised by the Government for the welfare of the consumers in such manner as may be prescribed.

(ii) Account and Records : The Government or the authority specified by it shall maintain proper and separate account and other relevant records in relation to the Fund and prepare an annual statement of accounts in such form as may be prescribed in consultation with the Comptroller and Auditor-General of India.

Accounts of the Fund maintained by the Central Government shall be subject to audit by the Comptroller and Auditor General of India.

(iii) Constitution of Standing Committee [Rule 97(4)] : The Government shall, by an order, constitute a Standing Committee who shall make recommendations for proper utilisation of the money credited to the Consumer Welfare Fund for welfare of the consumers.

(4) Applicant [Explanation] :

'Applicant' means,

(i) the Central Government or State Government;

(ii) regulatory authorities or autonomous bodies constituted under an Act of Parliament or the Legislature of a State or Union Territory;

(iii) any agency or organization engaged in consumer welfare activities for a minimum period of 3 years, registered under the Companies Act, 2013 or under any other law for the time being in force;

(iv) village or mandal or samiti or samiti level co-operatives of consumers especially Women, Scheduled Castes and Scheduled Tribes;

(v) an educational or research institution incorporated by an Act of Parliament or the Legislature of a State or Union Territory in India or other educational institutions established by an Act of Parliament or declared to be deemed as a University under section 3 of the University Grants Commission Act, 1956 and which has consumers studies as part of its curriculum for a minimum period of three years; and

(vi) a complainant as defined under section 2(1)(b) of the Consumer Protection Act, 1986, who applies for reimbursement of legal expenses incurred by him in a case instituted by him in a consumer dispute redressal agency.

TOPIC REFERENCER

- *Job Work Procedure*
- *ITC and Job-work Provisions*

1. What do you mean by Job work.

Ans: "Job work" means any treatment or process undertaken by a person on goods belonging to another registered person and the expression "job worker" shall be construed accordingly. [Section 2(68)]

2. Explain the provisions relating to job work under CGST Act, 2017.

Ans: Job work procedure [Section 143]: The provisions are as under –

(1) Inputs and Capital goods can be sent to Job-worker without payment of tax [Section 143(1)]: A registered person ("Principal") may send any inputs or capital goods under intimation and subject to such conditions as may be prescribed, to a job worker for job work and from there subsequently send to another job worker and likewise without payment of tax. The principal is not required to reverse the ITC availed on inputs or capital goods dispatched to job-worker.

Inputs and Capital Goods can be sent directly to Job-worker's Premises: Principal can send inputs or capital goods directly to the job-worker without bringing them to his premises and can still avail the credit of tax paid on such inputs or capital goods.

However, he is required to bring back inputs, after completion of job work or otherwise, or capital goods, other than moulds and dies, jigs and fixtures, or tools, within 1 year and 3 years, respectively, of their being sent out, to any of his place of business, without payment of tax.

Goods can be supplied from Job-worker's Premises : He can also supply such inputs, after completion of job work or otherwise, or capital goods, other than moulds and dies, jigs and fixtures, or tools, within 1 year and 3 years, respectively, of their being sent out from the place of business of a job worker—

(a) on payment of tax within India, or

(b) with or without payment of tax for export,

as the case may be.

Extension in time limit of 1 year by further period of 1 year and of 3 years by further period of 2 years : The period of one year and three years may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding one year and 2 years respectively. Extension of time is allowed to cover the situations where the period of 1 year specified is not adequate in respect of job works such as hull construction/fabrication of vessels (for defence purposes), since these processes complete in a period of around 14 to 16 months.

Principal to declare job-workers place as Additional Place of Business : The principal shall not supply the goods from the place of business of a job worker in accordance with the above provisions unless the said principal declares the place of business of the job worker as his additional place of business.

However, such declaration is not required by principal where:—

i) where the job worker is registered under Section 25; or

ii) where the principal is engaged in the supply of notified goods by Commissioner.

Intimation to be given to Jurisdictional Officer : Before supply of goods to the job-worker, the principal would be required to intimate the Jurisdictional Officer containing the details of the description of inputs intended to be sent by the principal and the nature of processing to be carried out by the job-worker. The said intimation shall also contain the details of the other job-workers, if any.

(2) Principal to keep proper records : The responsibility for keeping proper accounts for the inputs or capital goods shall lie with the principal.

(3) Deemed supply of inputs [Section 143(3)] : Where the inputs sent for job work—

- ✓ are not received back by the principal after completion of job work or otherwise in accordance with the above provisions, or
- ✓ are not supplied from the place of business of the job worker in accordance with the above provisions

within a period of 1 year or extended period (which cannot exceed one year) of their being sent out, it shall be deemed that such inputs had been supplied by the principal to the job worker on the day when the said inputs were sent out.

(4) Deemed supply of capital goods [Section 143(4)] : Where the capital goods, other than moulds and dies, jigs and fixtures, or tools, sent for job work—

- ✓ are not received back by the principal in accordance with the above provisions, or
- ✓ are not supplied from the place of business of the job worker in accordance with the above provisions

within a period of 3 years or extended period (which cannot exceed two years) of their being sent out, it shall be deemed that such capital goods had been supplied by the principal to the job worker on the day when the said capital goods were sent out.

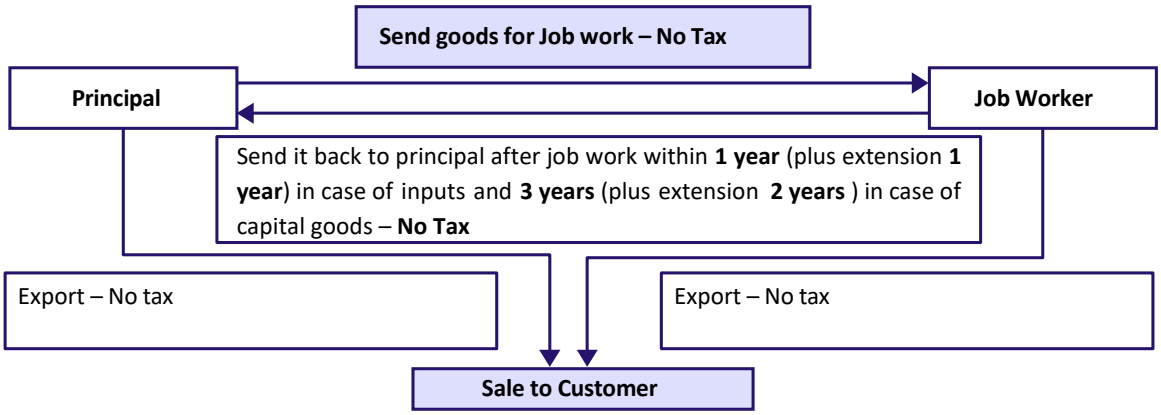
(5) Removal of waste and scrap on payment of tax [Section 143(5)] : Any waste and scrap generated during the job work—

- ✓ may be supplied by the job worker directly from his place of business on payment of tax, if such job worker is registered, or
- ✓ by the principal, if the job worker is not registered.

Input includes intermediate goods [Explanation] : Input includes intermediate goods arising from any treatment or process carried out on the inputs by the principal or the job worker. Such intermediate product can also be removed without the payment of tax.

Therefore, both input and intermediate product can be cleared without payment of tax to job-worker.

The above can be explained diagrammatically as below :



In the above chart the Job worker can directly sell the goods on behalf of principal provided that principal declares the job worker's premises as 'additional place of business' except where :

- ✓ Job worker is registered under Section 25; or
- ✓ Principal is engaged in supply of notified goods.

3. Explain the conditions and restriction in respect of inputs and capital goods sent to the job worker.

Ans: Conditions and restrictions in respect of inputs and capital goods sent to the job worker [Rule 45]:

(1) Inputs/ Semi-finished goods/ Capital goods to be sent to job worker under the cover of a challan [Rule 45(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, including where such goods are sent directly to a job-worker.

Transfer to another job worker – Challan can be issued by Job worker or Principal Manufacturer : Where the goods are sent from one job worker to another job worker, the challan may be issued either by the principal or the job worker sending the goods to another job worker.

Endorsement on Principal's Challan : The challan issued by the principal may be endorsed by the job worker, indicating therein the quantity and description of goods where the goods are sent by one job worker to another or are returned to the principal.

Further endorsement of challan : The challan endorsed by the job worker may be further endorsed by another job worker, indicating therein the quantity and description of goods where the goods are sent by one job worker to another or are returned to the principal.

(2) Challan to contain details [Rule 45(2)] : The challan issued by the principal to the job worker shall contain the details specified in Rule 55.

(3) Submission of intimation [Rule 45(3)] : The details of challans in respect of goods dispatched to a job worker or received from a job worker "during a specified period" shall be included in FORM GST ITC-04 furnished for that period on or before the 25th day of the

month succeeding the said period or within such further period as may be extended by the Commissioner by a notification in this behalf.

However, any extension of the time limit notified by the Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.

Specified period : It shall mean –

(a) the period of 6 consecutive months commencing on the 1st day of April and the 1st day of October in respect of a principal whose aggregate turnover during the immediately preceding financial year exceeds ₹ 5 crore; and

(b) a financial year in any other case. [Explanation]

(4) Deemed supply of goods if not returned within specified period and such supply to be declared in GSTR-1 [Rule 45(4)] : Where the inputs or capital goods are not returned to the principal within the time stipulated in Section 143, it shall be deemed that such inputs or capital goods had been supplied by the principal to the job worker on the day when the said inputs or capital goods were sent out and the said supply shall be declared in FORM GSTR-1 and the principal shall be liable to pay the tax along with applicable interest.

(5) Requirement to generate E-way Bill : In case of job work, e-way bill shall be generated either by the principal or by the registered job worker irrespective of the value of the consignment, where goods are sent by a principal located in one State/Union territory to a job worker located in any other State/ Union territory. Further, the e-way bill shall be generated by the principal, wherever required, in case the job worker is unregistered.

4. Explain the registration requirements job-worker under GST Law.

Ans: The relevant provisions are discussed as under-

(1) Threshold limit for Registration [Section 22(1) of the CGST Act] : Every supplier of goods or services or both is required to obtain registration in the State or the Union territory from where he makes the taxable supply if his aggregate turnover exceeds ₹ 20 lakh in a financial year.

However where such person makes taxable supplies of goods or services or both from State of Manipur, Mizoram, Nagaland, and Tripura, he shall be liable to be registered if his aggregate turnover in a financial year exceeds ₹ 10 lakh.

As job work is a service, the job worker would be required to obtain registration if his aggregate turnover exceeds the prescribed threshold.

Job workers making inter-State supply of services to a registered person – Exempted [Notification No. 7/2017-IT dated 14-09-2017] : Job workers engaged in making inter-State supply of services to a registered person have been exempted from obtaining registration. However, nothing contained in this notification shall apply to a job-worker:

(i) who is liable to be registered under Section 22(1) or who opts to take registration voluntarily under Section 25(3) of the CGST Act; or

(ii) who is involved in making supply of services in relation to jewellery, goldsmiths' and silversmiths' wares and other articles (Chapter 71 of the Tariff).

(2) As per Explanation (i) to Section 22 of CGST Act, the expression "aggregate turnover" shall include all supplies made by the taxable person, whether on his own account or made on behalf of all his principals.

However, the supply of goods, after completion of job work, by a registered job worker shall be treated as the supply of goods by the principal referred to in Section 143, and the value of such goods shall not be included in the aggregate turnover of the registered job worker in terms of explanation (ii) to Section 22 of CGST Act.

ITC AND JOB-WORK PROVISIONS

5. What do you mean by Job-work. Explain the provisions relating to taking input tax credit in respect of inputs and capital goods sent for job work.

Ans:

(A) "Job work" means any treatment or process undertaken by a person on goods belonging to another registered person and the expression "job worker" shall be construed accordingly. [Section 2(68)]

(B) Taking input tax credit in respect of inputs and capital goods sent for job work [Section 19]:

(i) ITC allowed to Principal in respect of inputs sent to job-worker [Section 19(1)] : The principal shall, subject to such conditions and restrictions as may be prescribed, be allowed input tax credit on inputs sent to a job worker for job work.

(ii) Allowability of ITC even if Inputs sent directly to job-worker [Section 19(2)]: Notwithstanding anything contained in Section 16(2)(b), the principal shall be entitled to take credit of input tax on inputs even if the inputs are directly sent to a job worker for job work without being first brought to his place of business.

(iii) Inputs not received back by principal within ONE year – Deemed supply of inputs to jobworker [Section 19(3)] :

Where the inputs sent for job work are –

- ✓ not received back by the principal after completion of job-work or otherwise
- ✓ or are not supplied from the place of business of the job worker in accordance with Section 143(1)(a)/(b)

within one year of being sent out, it shall be deemed that such inputs had been supplied by the principal to the job worker on the day when the said inputs were sent out.

In case of direct dispatch to job worker - Period of ONE year starts from receipt of inputs by job-worker : Where the inputs are sent directly to a job worker, the period of one year shall be counted from the date of receipt of inputs by the job worker.

(iv) ITC allowed to Principal in respect of capital goods sent to job-worker [Section 19(4)] : The principal shall, subject to such conditions and restrictions as may be prescribed, be allowed input tax credit on capital goods sent to a job worker for job work.

(v) Allowability of ITC even if capital goods sent directly to job-worker [Section 19(5)] : Notwithstanding anything contained in Section 16(2)(b), the principal shall be

entitled to take credit of input tax on capital goods even if the capital goods are directly sent to a job worker for job work without being first brought to his place of business.

(vi) Capital goods not received back by Principal within 3 years – Deemed supply of capital goods to job-worker [Section 19(6)] : Where the capital goods sent for job work are not received back by the principal within a period of 3 years of being sent out, it shall be deemed that such capital goods had been supplied by the principal to the job worker on the day when the said capital goods were sent out.

In case of direct dispatch to job worker - Period of 3 year starts from receipt by job worker: Where the capital goods are sent directly to a job worker, the period of 3 years shall be counted from the date of receipt of capital goods by the job worker.

(vii) Moulds and dies, jigs and fixtures, or tools - Time limit not applicable [Section 19(7)]: Nothing contained in Section 19(3) or Section 19(6) shall apply to moulds and dies, jigs and fixtures, or tools sent out to a job worker for job work.

"Principal" means the person referred to in Section 143. [Explanation]

Authors Note : The CGST Amendment Act, 2018 has made an amendment in Section 143 where the time limit for bringing back the inputs can be extended for a period not exceeding 1 year and that of capital goods can be extended for a period not exceeding 2 years by the Commissioner on sufficient cause being shown.

Circular No. 47/21/2018-GST dated 08-06-2018	
Issue	**Clarification**
Where moulds and dies owned by Original Equipment Manufacturers (OEM) are sent free of cost (FOC) to a component manufacturer, whether OEMs are required to reverse input tax credit in this case?	Moulds and dies owned by the original equipment manufacturer (OEM) which are provided to a component manufacturer (the two not being related persons or distinct persons) on free on cost (FOC) basis does not constitute a supply as there is no consideration involved. Further, since the moulds and dies are provided on FOC basis by the OEM to the component manufacturer in the course or furtherance of his business, there is no requirement for reversal of input tax credit availed on such moulds and dies by the OEM. However, where the contract between OEM and component manufacturer is for supply of components made by using the moulds/dies belonging to the component manufacturer, but the same have been supplied by the OEM to the component manufacturer on FOC basis, the OEM will be required to reverse the credit availed on such moulds/ dies, as the same will not be considered to be provided by OEM to the component manufacturer in the course or furtherance of the former's business.

Circular No.38/12/2018 dated 26-03-2018 as amended by Circular No. 88/07/2019-GST dated 1-2-2019	Clarification on issues related to Job Work

(1) **Scope/ambit of job work – Job-worker can use his own goods in addition to goods received from Principal :** Doubts have been raised on the scope of job work and whether any inputs, other than the goods provided by the principal, can be used by the job worker for providing the services of job work. It may be noted that the definition of job work, as contained in Section 2(68) of the CGST Act, entails that the job work is a **treatment or process** undertaken by a person on **goods belonging to another registered person.** Thus, the job worker is expected to work on the goods sent by the principal and whether the activity is covered within the scope of job work or not would have to be determined on the basis of facts and circumstances of each case. Further, it is clarified that the job worker, in addition to the goods received from the principal, can use his own goods for providing the services of job work.

(2) **Requirement of registration for the Principal/ job worker :**

a) **Principal must be registered person :** As per Section 143, only a registered person can send the goods for job work under the said provisions. It may also be noted that the registered person (principal) is not obligated to follow the said provisions. It is his choice whether to avail or not to avail of the benefit of these special provisions.

b) **Job-worker (whether located in same State or different State) need to be registered if his turnover exceeds threshold exemption :** Job worker is required to obtain registration only in cases where his aggregate turnover, to be computed on all India basis, in a financial year exceeds the threshold limit regardless of whether the principal and the job worker are located in the same State or in different States.

(3) **Supply of goods by the principal from job worker's place of business/ premises :** The supply of goods by the principal from the place of business/premises of the job worker will be regarded as supply by the principal and not by the job worker as specified in Section 143(1)(a) of the CGST Act.

(4) **Movement of goods from the principal to the job worker and the documents and intimation required therefor :** The following is clarified with respect to the issuance of challan, furnishing of intimation and other documentary requirements in this regard:

a. **Where goods are sent by principal to only one job worker – Removal under cover of challan :** The principal shall prepare in triplicate, the challan in terms of Rules 45 and 55 of the CGST Rules, for sending the goods to a job worker. Two copies of the challan may be sent to the job worker along with the goods. The job worker should send one copy of the said challan along with the goods, while returning them to the principal. The FORM GST ITC-04 will serve as the intimation as envisaged under Section 143 of the CGST Act, 2017.

b. **Where goods are sent from one job worker to another job worker – removal can be under challan issued by job-worker or under endorsement of challan issued by**

Principal : In such cases, the goods may move under the cover of a challan issued either by the principal or the job worker. In the alternative, the challan issued by the principal may be endorsed by the job worker sending the goods to another job worker, indicating therein the quantity and description of goods being sent. The same process may be repeated for subsequent movement of the goods to other job workers.

c. **Where the goods are returned to the principal by the job worker** : The job worker should send one copy of the challan received by him from the principal while returning the goods to the principal after carrying out the job work.

d. **Where the goods are sent directly by the supplier to the job worker** : In this case, the goods may move from the place of business of the supplier to the place of business/premises of the job worker with a copy of the invoice issued by the supplier in the name of the buyer (i.e. the principal) wherein the job worker's name and address should also be mentioned as the consignee, in terms of Rule 46 of the CGST Rules. The buyer (i.e., the principal) shall issue the challan under Rule 45 of the CGST Rules and send the same to the job worker directly as stated above. In case of import of goods by the principal which are then supplied directly from the customs station of import, the goods may move from the customs station of import to the place of business/premises of the job worker with a copy of the Bill of Entry and the principal shall issue the challan under Rule 45 of the CGST Rules and send the same to the job worker directly.

e. **Where goods are returned in piecemeal by the job worker** : In case the goods after carrying out the job work, are sent in piecemeal quantities by a job worker to another job worker or to the principal, the challan issued originally by the principal cannot be endorsed and a fresh challan is required to be issued by the job worker.

f. **Submission of intimation** : It is the responsibility of the principal to include the details of all the challans relating to goods sent by him to one or more job worker or from one job worker to another and its return therefrom. The FORM GST ITC-04 will serve as the intimation as envisaged under Section 143 of the CGST Act.

(5) Liability to issue invoice, determination of place of supply and payment of GST :

(a) Doubts have been raised about the time, value and place of supply in the hands of principal or job worker as also about the issuance of invoices by the principal or job worker, as the case may be, with regard to the supply of goods from principal to the recipient from the job worker's place of business/premises and the supply of services by the job worker.

(b) The following is clarified with respect to the issuance of an invoice, time of supply and value of supply:

1. **Supply of job work services :**

- The job worker, as a supplier of services, is liable to pay GST if he is liable to be registered.

- He shall issue an invoice at the time of supply of the services as determined in terms of Section 13 read with Section 31 of the CGST Act.
- The value of services would be determined in terms of section 15 of the CGST Act and would include not only the service charges but also the value of any goods or services used by him for supplying the job work services, if recovered from the principal.
- The value of moulds and dies, jigs and fixtures or tools, which have been provided by the Principal to job worker and received by latter, may not be included in the value of job work services provided its value has been factored in the price for the supply of such services by the job worker.

2. Supply of goods by the principal from the place of business/ premises of job worker :

- The time, value and place of supply would have to be determined in the hands of the principal irrespective of the location of the job worker's place of business/premises.
- Further, the invoice would have to be issued by the principal.
- It is also clarified that in case of exports directly from the job worker's place of business/ premises, the LUT or bond, as the case may be, shall be executed by the principal.

Illustration: The principal is located in State A, the job worker in State B and the recipient in State C. In case the supply is made from the job worker's place of business/ premises, the invoice will be issued by the supplier (principal) located in State A to the recipient located in State C. The said transaction will be an inter-State supply. In case the recipient is also located in State A, it will be an intra-State supply.

3. Supply of waste and scrap generated during the job work : Section 143(5) of the CGST Act provides that the waste and scrap generated during the job work may be supplied by the registered job worker directly from his place of business or by the principal in case the job worker is not registered. The principles enunciated above would apply mutatis mutandis in this case.

(c) Violation of conditions laid down in Section 143 :

- If the inputs or capital goods are neither returned nor supplied from the job worker's place of business/premises within the specified time period, the principal would issue an invoice for the same and declare such supplies in his return for that particular month in which the time period of 1 year (plus extension of one year)/ 3 years (plus extension of two years) has expired.
- The date of supply shall be the date on which such inputs or capital goods were initially sent to the job worker and interest for the intervening period shall also be payable on the tax.
- If such goods are returned by the job worker after the stipulated time period, the same would be treated as a supply by the job worker to the principal and the job worker would be liable to pay GST if he is liable for registration in accordance

with the provisions contained in the CGST Act read with the rules made thereunder.

- Further, there is no requirement of either returning back or supplying the goods from the job worker's place of business/premises as far as moulds and dies, jigs and fixtures, or tools are concerned.

(6) Availability of input tax credit to the principal and job worker :

Issue : Whether the job worker is eligible for ITC in respect of inputs, etc. used by him in supplying job work services.

It is clarified that, in view of the provisions contained in Section 16(2)(b) of the CGST Act, the input tax credit would be available to the principal, irrespective of the fact whether the inputs or capital goods are received by the principal and then sent to the job worker for processing, etc. or whether they are directly received at the job worker's place of business/premises, without being brought to the premises of the principal.

It is also clarified that the job worker is also eligible to avail ITC on inputs, etc. used by him in supplying the job work services if he is registered.

TOPIC REFERENCER

- *Self Assessment, Provisional Assessment and Other Provisions*
- *Audit by Tax Authorities*
- *Special Audit*

SELF ASSESSMENT, PROVISIONAL ASSESSMENT AND OTHER PROVISIONS

1. What is the need of Assessment and Audit under GST laws.

Ans: A supplier will come to know the extent of his tax liability which has to be discharged on a continuous and regular basis only after assessment. Assessment means determination of tax liability and includes self-assessment, re-assessment, provisional assessment, summary assessment and best judgment assessment. GST is a trust based taxation regime wherein the assessee is required to self assess his returns and determine tax liability without any intervention by the tax official. Therefore, a tax regime that relies on self-assessment has to put in place a robust audit mechanism to measure and ensure compliance of the provisions of law by the taxable person.

2. Define assessment and write a note on self assessment.

Ans: The relevant provisions are discussed as under-

(1) "Assessment" [Section 2(11)] means determination of tax liability under this Act AND includes–

- ✓ self-assessment,
- ✓ re-assessment,
- ✓ provisional assessment,
- ✓ summary assessment, and
- ✓ best judgment assessment.

(2) Self assessment [Section 59] : Every registered person shall self assess the taxes payable under this act and furnish a return for each tax period as specified under Section 39.

3. Explain the concept of 'Provisional Assessment'

Ans: Provisional assessment [Section 60 read with Rule 98 of CGST Rules, 2017]: The relevant provisions are discussed as under –

(1) Provisional assessment – When resorted [Section 60(1)] : Provisional assessment can be resorted, where the taxable person is unable to determine—

- ✓ the value of goods or services or both, or
- ✓ the rate of tax applicable thereto.

Request of provisional assessment in writing : The taxable person may furnish an application in prescribed form stating therein reasons for payment of tax on a provisional

basis along with the documents in support of his request, electronically through the common portal, either directly or through a Facilitation Centre notified by the Commissioner.

Notice seeking additional information : The proper officer may, on receipt of the application, issue a notice in prescribed form requiring the registered person to furnish additional information or documents in support of his request and the applicant shall file a reply to the notice, and may appear in person before the said officer if he so desires.

Passing of order for provisional assessment – Within 90 days of receipt of application: The proper officer shall pass an order,—

- ✓ within a period not later than 90 days from the date of receipt of such request,
- ✓ allowing payment of tax on provisional basis
- ✓ at such rate or on such value as may be specified by him.

(2) Execution of bond by Taxable Person [Section 60(2)] : The payment of tax on provisional basis may be allowed,—

- ✓ if the taxable person executes a bond in such form as may be prescribed, and
- ✓ with such surety or security not exceeding 25% of the amount covered in the bond as the proper officer may deem fit,
- ✓ binding the taxable person for payment of the difference between the amount of tax as may be finally assessed and the amount of tax provisionally assessed.

Bond under SGST/ IGST valid for CGST : A bond furnished to the proper officer under the State Goods and Services Tax Act/Integrated Goods and Services Tax Act shall be deemed to be a bond furnished under the provisions of this Act and the rules made thereunder.

Amount will be total of all GST and cess : The term "amount" shall include the amount of integrated tax, central tax, State tax or Union territory tax and cess payable in respect of such transaction.

(3) Final assessment within 6 months [Section 60(3)] : The proper officer shall,—

- ✓ within a period not exceeding 6 months from the date of the communication of the order issued under Section 60(1),
- ✓ pass the final assessment order after taking into account such information as may be required for finalizing the assessment.

Extension of time limit : The period specified of 6 months, on sufficient cause being shown and for reasons to be recorded in writing, be extended—

- ✓ by the Joint Commissioner or Additional Commissioner for a further period not exceeding 6 months, and
- ✓ by the Commissioner for such further period not exceeding 4 years.

Thus, a provisional assessment can remain provisional for a maximum of 5 years.

Notice seeking information for finalization : For finalization of assessment, proper officer shall issue a notice in prescribed form, calling for such information and records, as may be required and shall issue a final assessment order specifying the amount payable by the registered person or the amount refundable, if any.

(4) Interest payable if final amount is more than provisional amount [Section 60(4)]: The registered person shall be liable to pay interest—

- ✓ on any tax payable on the supply of goods or services or both under provisional assessment but not paid on the due date specified under Section 39(7) or the rules made thereunder,
- ✓ at the rate specified under Section 50(1) i.e. 18% p.a.,
- ✓ from the first day after the due date of payment of tax in respect of the said supply of goods or services or both till the date of actual payment,
- ✓ whether such amount is paid before or after the issuance of order for final assessment.

(5) Interest on amount of refund [Section 60(5)] : Where the registered person is entitled to a refund consequent to the order of final assessment u/s 60(3), subject to the provisions of Section 54(8), interest shall be paid on such refund as provided in Section 56 i.e. if tax becomes refundable consequent to the order of final assessment, the registered person shall be paid interest at the rate specified u/s 56 from the date immediately **after the expiry of** 60 days from the date of receipt of application in accordance with the provisions of Section 54(1) till the date of refund of such tax.

In simple words, in case any tax amount becomes refundable subsequent to finalization of the provisional assessment, then interest (subject to the eligibility of refund and absence of unjust enrichment) at the specified rate will be payable to the supplier.

(6) Release of security : The applicant may file an application for release of security furnished after issue of final assessment order. The proper officer shall release the security after ensuring that applicant has paid the amount specified in final assessment order and issue an order within a period of 7 working days from the date of receipt of the application.

4. Explain the provisions of Scrutiny of returns. OR
Explain the recourse that may be taken by the officer in case proper explanation is not furnished for the discrepancy detected in the return filed, while conducting scrutiny u/s 61 of the CGST Act, 2017. (5 Marks, May 2019)

Ans: Scrutiny of returns [Section 61 read with Rule 99 of CGST Rules, 2017]:

(1) Scrutiny of returns – Discrepancies to be informed and explanations to be sought [Section 61(1)] : The proper officer may—

- ✓ scrutinize the return and related particulars furnished by the registered person
- ✓ to verify the correctness of the return, and
- ✓ inform him of the discrepancies noticed, if any, in such manner as may be prescribed, and
- ✓ seek his explanation thereto.

(2) Issue of notice [Rule 99] : In case any discrepancy is found during scrutiny of return, proper officer shall issue a notice to the said person informing him of such discrepancy 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.

(3) Reply to notice [Rule 99] : The registered person to whom notice is issued may –

- ✓ accept the discrepancy as 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 to the proper officer or
- ✓ submit his explanation regarding non-acceptance of discrepancy within a period of 30 days of being informed by the proper officer or such further period as may be permitted by him.

(4) Explanations found acceptable – No further action [Section 61(2)] : In case the explanation is found acceptable, the registered person shall be informed accordingly and no further action shall be taken in this regard.

(5) Explanations not found acceptable - Audit, Inspection or notice by proper officer [Section 61(3)] : In case–

- ✓ no satisfactory explanation is furnished within a period of 30 days of being informed by the proper officer or such further period as may be permitted by him; or
- ✓ where the registered person, after accepting the discrepancies, fails to take the corrective measure in his return for the month in which the discrepancy is accepted,

the proper officer may take recourse to any of the following provisions, namely:-

a) proceed to conduct audit under Section 65 of the Act;

b) direct the conduct of a special audit under Section 66 which is to be conducted by a Chartered Accountant or a Cost Accountant nominated for this purpose by the Commissioner; or

c) undertake procedures of inspection, search and seizure under Section 67 of the Act; or

d) initiate proceeding for determination of tax and other dues u/s 73 or 74 of the Act.

5. Explain the provisions relating to assessment of non filers of return. OR
Explain in what cases, assessment order passed by proper officer may be Withdrawn under CGST Act, 2017? (5 Marks, May 2018-NS)

Ans: Assessment of non-filers of returns [Section 62 read with Rule 100 of CGST Rules, 2017]:

(1) Best judgment assessment of non-filers [Section 62(1)] [Inserted by the Finance (No.2) Act, 2024 w.e.f. 01-11-2024] : Notwithstanding anything to the contrary contained in Section 73 or Section 74 or section 74A1 , where a registered person–

- ✓ fails to furnish the return under Section 39 (monthly/quarterly) or under Section 45 (final return), and
- ✓ a notice under Section 46 has been issued by proper officer to the defaulting taxable person requiring him to furnish the return within a period of 15 days and taxable person fails to file return within the given time;

the Proper Officer may proceed to assess the tax liability of said person to the best of his judgment taking into account all the relevant material which is available or which he has gathered.

(2) Time limit for Assessment Order – 5 years from due date of annual return : The order of Best Judgment assessment shall be issued by Proper Officer in the FORM GST ASMT-13 and a summary thereof shall be uploaded electronically in FORM GST DRC-07.

The Assessment Order shall be issued by Proper Officer within a period of **5 years** from the date specified under Section 44 for furnishing of the annual return for the financial year to which the tax not paid relates.

Example: If a person defaults in filing of return for any tax period falling in F.Y. 2023-24, period of 5 years shall be reckoned from the due date of filing of Annual Return for F.Y. 2023-24 i.e. 31-12-2024. Accordingly, Best judgment Assessment can be made by Proper Officer on or before 31-12-2029.

(3) Valid return furnished within 60 days of service of assessment order - Best judgment assessment shall stand withdrawn [Section 62(2)] : Where the registered person furnishes a valid return within 60 days of the service of the assessment order under Section 62(1), the said assessment order shall be deemed to have been withdrawn but the liability for payment of interest under section 50(1) or for payment of late fee under section 47 shall continue. Extension of 60 days on payment of additional late fees of ₹ 100 per day : However, where the registered person fails to furnish a valid return within 60 days of the service of the assessment order, he may furnish the same within a further period of 60 days on payment of an additional late fee of ₹ 100 for each day of delay beyond 60 days of the service of the said assessment order and in case he furnishes valid return within such extended period, the said assessment order shall be deemed to have been withdrawn, but the liability to pay interest under Section 50(1) or to pay late fee under section 47 shall continue

Standard operating procedure to be followed in case of non-filers of returns – Circular No. 129/48/2019-GST dated 24-12-2019

Section 46 of the CGST Act read with rule 68 of the CGST Rules requires issuance of a notice to a registered person who fails to furnish return u/s 39/44/45 of the CGST Act requiring him to furnish such return within 15 days. Further, section 62 of the CGST Act provides for assessment of non-filers who fail to file return u/s 39 or section 45 even after service of notice u/s 46. No separate notice is required to be issued for best judgment assessment u/s 62 if the return is not filed within 15 days of issuance of notice u/s 46.

CBIC has issued the following guidelines to ensure uniformity in the implementation of the provisions of law in relation to non-filers of returns:

(i) System generated message would be sent to all the registered persons 3 days before the due date to nudge them about the filing of return by the due date.

(ii) Once the due date for furnishing return under section 39 is over, a system generated mail/message would be sent to all the defaulters immediately after the due date to

the effect that the said registered person has not furnished his return for the said tax period; the said mail/ message is to be sent to the authorized signatory as well as the proprietor/ partner/ director/ karta, etc.

(iii) After 5 days of due date of furnishing the return, notice under section 46 shall be issued electronically to the defaulters requiring then to furnish return within 15 days.

(iv) If the return is not filed within 15 days of the said notice, the proper officer may proceed to assess the tax liability of the said defaulter u/s 62, to the best of his judgment taking into account all the relevant material which is available or which he has gathered and would issue assessment order. The proper officer would upload the summary of such order in the prescribed form.

(v) For the purpose of assessment of tax liability u/s 62, the proper officer may take into account the following

a. Details of outward supplies available in GSTR-1
b. Details of inward supplies auto-populated in GSTR-2A
c. Information available from e-way bills
d. Any other information available from any other source including inspection u/s 71 of the CGST Act

(vi) If the defaulter furnishes a valid return within 30 days of the service of assessment order u/s 62, the said assessment will be deemed to have been withdrawn.

(vii) If the said return remains unfurnished within the statutory period of 30 days from the service of assessment order u/s 62, the proper officer may initiate proceedings u/s 78 and recovery u/s 79 of the CGST Act.

Based on facts available, in some cases, the Commissioner may resort to provisional attachment to protect revenue under section 83 of the CGST Act before issuance of assessment order under section 62. Further, proper officer would initiate action under section 29(2) of the CGST Act for cancellation of registration in cases where the return has not been furnished for the period specified in section 29.

6. Explain the provisions relating to assessment of unregistered persons.

Ans: Assessment of unregistered persons [Section 63 read with Rule 100 of CGST Rules, 2017] [Inserted by the Finance (No. 2) Act, 2024 w.e.f. 01-11-2024]:

(1) Best judgment assessment of unregistered persons : Notwithstanding anything to the contrary contained in Section 73 or Section 74 or section 74A, where a taxable person–

- ✓ fails to obtain registration even though liable to do so; or
- ✓ whose registration has been cancelled under Section 29(2), for any of the following reason, namely–

(a) a registered person has contravened such provisions of the Act or the rules made thereunder as may be prescribed; or

(b) a person paying tax under composition levy under Section 10 has not furnished returns for 3 consecutive tax periods; or

(c) any registered person, other than composition supplier, has not furnished returns for a continuous period of 6 months; or

(d) any person who has taken voluntary registration under Section 25(3) has not commenced business within 6 months from the date of registration; or

(e) registration has been obtained by means of fraud, wilful misstatement or suppression of facts, but who was liable to pay tax, the proper officer may proceed to assess the tax liability of said unregistered person to the best of his judgment for the relevant tax periods.

(2) Issue of Notice [Rule 100(2)] : Before making the assessment, proper officer shall issue a notice to a taxable person containing the grounds on which the assessment is proposed to be made on best judgment basis and shall be given 15 days' time to furnish his reply, if any. The summary of the show cause notice shall be uploaded electronically in form GST DRC-01 on the common portal.

Opportunity of being heard: However, no such assessment order shall be passed without giving the person an opportunity of being heard.

(3) Time limit for Assessment Order: The assessment order shall be issued by proper officer within a period of 5 years from the due date for furnishing the annual return for the financial year to which non-payment of tax relates. The summary of the assessment order shall be uploaded electronically on the common portal in form GST DRC-07.

Example: If the liability of a person to take registration arises at any time in the F.Y. 2023-24 for the reason that his turnover crosses the prescribed threshold limit, period of 5 years shall be reckoned from the due date of filing of Annual Return for F.Y. 2023-24 i.e. 31-12-2024. Accordingly, Best judgment Assessment can be made by proper officer on or before 31-12-2029.

7. Write a brief note on Summary Assessment in certain special cases as per section 64 of the CGST Act, 2017, (4 Marks, May 2018). OR
Explain in what cases, assessment order passed by proper officer may be withdrawn under CGST Act, 2017? (5 Marks, May 2018-NS)

Ans: Summary assessment in certain special cases [Section 64 read with Rule 100 of CGST Rules, 2017] [Inserted by the Finance (No. 2) Act, 2024 w.e.f. 01-11-2024]

(1) When Summary Assessment/ Protective assessment can be made [Section 64(1)] : Summary Assessment can be initiated to protect the interest of revenue with the previous permission of Additional Commissioner/ Joint Commissioner when :

- ✓ the proper officer has evidence that a taxable person has incurred a liability to pay tax under the Act, and
- ✓ the proper officer has sufficient grounds to believe that delay in passing an assessment order may adversely affect the interest of revenue.

Taxable person not ascertainable – Person in charge of goods deemed to be the taxable person: Where the taxable person to whom the liability pertains is not ascertainable and

such liability pertains to supply of goods, the person in charge of such goods shall be deemed to be the taxable person liable to be assessed and liable to pay tax and any other amount due under this Section.

The summary of the assessment order shall be uploaded electronically on the common portal in Form GST DRC-07.

(2) Withdrawal of summary assessment order if the same is found to be errorneous : The Summary Assessment Order may be withdrawn by Additional Commissioner/ Joint Commissioner, –

(a) on an application filed by taxable person for withdrawal of the summary assessment order within 30 days from the date of receipt of order; or

(b) on his own motion, where he finds such order to be erroneous and may instead follow the procedures laid down in Section 73 or Section 74 or section 74A to determine the tax liability of such taxable person. [Section 64(2)]

AUDIT BY TAX AUTHORITIES

8. Define Audit

Ans: "Audit" means the examination of records, returns and other documents maintained or furnished by the registered person under this Act or the rules made thereunder or under any other law for the time being in force to verify the correctness of turnover declared, taxes paid, refund claimed and input tax credit availed, and to assess his compliance with the provisions of this Act or the rules made thereunder. [Section 2(13)]

9. What is the need and types of audit under GST. OR How many types of audit are prescribed under GST Act. Briefly explain each one of them. (5 Marks, Nov. 2018)

Ans: GST is a trust based taxation regime wherein the assessee is required to self-assess his returns and determine tax liability without any intervention by the tax official. Therefore a tax regime that relies on self-assessment has to put in place a robust audit mechanism to measure and ensure compliance of the provisions of law by the taxable person.

Types of Audit: GST envisages two types of Audit.

(1) Departmental Audit : The Commissioner or any officer authorised by him, can undertake audit of any registered person for such period, at such frequency and in such manner as may be prescribed.

(2) Special Audit : In Special Audit the registered person can be directed to get his records including books of account examined and audited by a chartered accountant or a cost accountant during any stage of scrutiny, inquiry, investigation or any other proceedings; depending upon the complexity of the case.

10. Explain the provisions of audit by tax authorities.

Ans: Audit by tax authorities [Section 65 read with Rule 101 of CGST Rules, 2017] [Inserted by the Finance (No. 2) Act, 2024 w.e.f. 01-11-2024]:

(1) Commissioner or authorised officer to conduct audit of registered person [Section 65(1)] : The Commissioner or any officer authorised by him, by way of a general or a specific order, may undertake audit of any registered person for a financial year or part thereof or multiples thereof.

(2) Place of audit [Section 65(2)] : The officers may conduct audit at the place of business of the registered person or in their office.

(3) 15 days prior notice for conduct of audit [Section 65(3)] : The registered person shall be informed by way of a notice not less than 15 working days prior to the conduct of audit in such manner as may be prescribed.

(4) Time period for concluding audit – 3 months [Section 65(4)] : The audit shall be completed within a period of 3 months from the date of commencement of the audit.

(5) Extension by Commissioner – For further 6 months : Where the Commissioner is satisfied that audit in respect of such registered person cannot be completed within 3 months, he may, for the reasons to be recorded in writing, extend the period by a further period not exceeding 6 months.

Explanation - "Commencement of audit" shall mean –

- ✓ the date on which the records and other documents, called for by the tax authorities, are made available by the registered person, or
- ✓ the actual institution of audit at the place of business, whichever is later.

(6) Manner of conducting audit [Rule 101] : 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.

(7) Providing necessary facilities for verification and furnishing of information [Section 65(5)]: During the course of audit, the proper officer may require the registered person,—

(i) to afford him the necessary facility to verify the books of account or other documents as he may require;

(ii) to furnish such information as he may require; and

(iii) to render assistance for timely completion of the audit.

The proper officer may inform the registered person of the discrepancies noticed, if any, as observations of 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.

(8) Findings of audit to be informed to taxable person within 30 days of audit [Section 65(6)]: The proper officer shall finalise the findings of the audit after due consideration of the reply

furnished by registered person to audit observation brought to his notice during the course of audit. 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.

(9) Tax liability identified – Initiation of action against taxable person [Section 65(7)] : Where the audit conducted under section 65(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 or section 74A.

SPECIAL AUDIT

11. Explain the provisions of Special audit.

Ans-Special audit [Section 66]: The provisions of Special Audit are as under-

Section	Particulars	Description
66(1)	Special audit if value not correctly declared/ excess input tax credit availed	Authority who can order this audit : Any officer not below the rank of Assistant Commissioner with the prior approval of the Commissioner direct such registered person by a communication in writing to get his records including books of account examined. Reasons for audit : Audit can be ordered if such officer at any stage of scrutiny, inquiry, investigation or any other proceedings before him, having regard to the nature and complexity of the case and the interest of revenue, is of the opinion that the registered person has – (i) not correctly declared the value, or (ii) availed credit which is not within the normal limits. Audit to be conducted : Audit is to conducted by a Chartered Accountant or a Cost Accountant as may be nominated by the Commissioner. ✓ "Chartered accountant" means a chartered accountant as defined in Section 2(1)(b) of the Chartered Accountants Act, 1949. [Section 2(23)] ✓ "Cost accountant" means a cost accountant as defined in Section 2(1)(b) of the Cost and Works Accountants Act, 1959. [Section 2(35)]
66(2)	Time period of audit	The chartered accountant or cost accountant so nominated shall,–

		✓ within the period of 90 days, ✓ submit a report of such audit duly signed and certified by him ✓ to the said Assistant Commissioner ✓ mentioning therein such other particulars as may be specified Extension for further period of 90 days : The Assistant Commissioner may,– ✓ on an application made to him in this behalf by— • the registered person, or • the chartered accountant or cost accountant, or ✓ for any material and sufficient reason, extend the said period by a further period of 90 days.
66(3)	Accounts to be audited even already audited	The provisions of this Section shall have effect notwithstanding that the accounts of the registered person have been audited under any other provisions of this Act or any other law for the time being in force.
66(4)	Opportunity of being heard	The registered person shall be given an opportunity of being heard in respect of any material gathered on the basis of special audit under this Section which is proposed to be used in any proceedings against him under this Act or the rules made there-under.
66(5)	Expenses to be borne by the department	The expenses of the examination and audit of records under this Section, including the remuneration of such chartered accountant or cost accountant, shall be determined and paid by the Commissioner and such determination shall be final.
66(6)	Tax liability identified – Initiation of action against taxable person	Where the special audit conducted under this Section 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.

TOPIC REFERENCER

- *Inspection, Search and Seizure*
- *Arrest and Miscellaneous Provisions*

INSPECTION, SEARCH AND SEIZURE

1. What do you mean by Inspection, Search and Seizure.

Ans: The relevant provisions are discussed as under-

(1) Meaning of Inspection : 'Inspection' is a new provision under the Act. It is a softer provision than search to enable officers to access any place of business of a taxable person and also any place of business of a person engaged in transporting goods or who is an owner or an operator of a warehouse or godown.

(2) Meaning of Search : As per the dictionary meanings and as noted in different judicial pronouncements, the term 'search', in simple language, denotes an action of a government machinery to go, look through or examine carefully a place, area, person, object etc. in order to find something concealed or for the purpose of discovering evidence of a crime. The search of a person or vehicle or premises etc. can only be done under proper and valid authority of law.

(3) Meaning of Seizure : The term 'seizure' has not been specifically defined in the GST Act. In Law Lexicon Dictionary, 'seizure' is defined as the act of taking possession of property by an officer under legal process. It generally implies taking possession forcibly contrary to the wishes of the owner of the property or who has the possession and who was unwilling to part with the possession.

During such inspection, if any goods which are liable for confiscation under the Act are found or any documents/books of accounts are found, which may be useful for the department in the proceedings for demand of tax, the officers conducting the inspection could search and seize such goods/ documents and books.

2. Write a note on power of inspection under GST law. OR Who can order for carrying out "Inspection" and under what circumstances? Can any premises be inspected by CGST officers?

Ans: Power of inspection [Section 67(1)]: The relevant provisions are discussed as under-

(1) Officers empowered to carry out inspection [Section 67 of CGST Act] : Inspection can be carried out by proper officer only upon a written authorization given by an officer of the rank of Joint Commissioner or above.

(2) Circumstances for carrying out inspection : Where the proper officer, not below the rank of Joint Commissioner, has reasons to believe that—

(a) a taxable person has—

- ✓ suppressed any transaction relating to supply of goods or services or both, or
- ✓ suppressed the stock of goods in hand, or
- ✓ claimed input tax credit in excess of his entitlement under this Act, or
- ✓ indulged in contravention of any of the provisions of this Act or the rules made thereunder to evade tax under this Act; or

(b) (i) any person engaged in the business of transporting goods, or

(ii) an owner or operator of a warehouse or a godown or any other place

is keeping goods which have escaped payment of tax or has kept his accounts or goods in such a manner as is likely to cause evasion of tax payable under this Act,

he may authorise in writing any other officer of central tax to inspect any places of business of the taxable person or the persons engaged in the business of transporting goods or the owner or the operator of warehouse or godown or any other place.

3. Who can order for search and seizure under the provisions of CGST Act? What powers can be exercised by an officer during valid search?

Ans: The relevant provisions are discussed as under-

(1) Power of Search and seizure [Section 67(2)] : Where the proper officer, not below the rank of Joint Commissioner, either pursuant to an inspection carried out under this Section or otherwise, has reasons to believe that –

- ✓ any goods liable to confiscation, or
- ✓ any documents or books or things, which in his opinion shall be useful for or relevant to any proceedings under this Act,

are secreted in any place, he—

- ✓ may authorise in writing any other officer of central tax to search and seize, or
- ✓ may himself search and seize such goods, documents or books or things.

Detention of goods which cannot be seized : Where it is not practicable to seize any such goods, the proper officer, or any officer authorized by him, may—

- ✓ serve on the owner or the custodian of the goods an order that
- ✓ he shall not remove, part with, or otherwise deal with the goods
- ✓ except with the previous permission of such officer.

Period of retention of documents and things : The documents or books or things so seized shall be retained by such officer only for so long as may be necessary for their examination and for any inquiry or proceedings under this Act.

(2) Return of documents or things not relied upon [Section 67(3)] :

- ✓ The documents, books or things seized under this section, or
- ✓ Any other documents, books or things produced by a taxable person or any other person, which have not been relied upon for the issue of notice under this Act or the rules made thereunder, shall be returned to such person within a period not exceeding 30 days of the issue of the said notice

(3) Power to seal/ break open the door etc. [Section 67(4)] : The officer authorised shall have the power to seal or break open the door of any premises or to break open any almirah, electronic devices, box, receptacle in which any goods, accounts, registers or documents of the person are suspected to be concealed, where access to such premises, almirah, electronic devices, box or receptacle is denied.

(4) Copies or extracts of seized documents can be taken by taxable person [Section 67(5)] : The person from whose custody any documents are seized under this section shall be entitled to make copies thereof or take extracts therefrom in the presence of an authorised officer at such place and time as such officer may indicate in this behalf except where making such copies or taking such extracts may, in the opinion of the proper officer, prejudicially affect the investigation.

(5) Provisional release of seized goods [Section 67(6)] : The goods so seized shall be released, on a provisional basis, upon execution of a bond and furnishing of a security, in such manner and of such quantum, respectively, as may be prescribed or on payment of applicable tax, interest and penalty payable, as the case may be.

(6) Return of goods, if no notice given within 6 months from date of seizure [Section 67(7)] : Where any goods are seized under this section and no notice in respect thereof is given within 6 months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized.

Extension by proper officer for a further period not exceeding 6 months : However, the period of 6 months may, on sufficient cause being shown, be extended by the proper officer for a further period not exceeding 6 months.

(7) Disposal of notified category of seized goods [Section 67(8)] : The Government may, having regard to –

- ✓ the perishable or hazardous nature of any goods,
- ✓ depreciation in the value of the goods with the passage of time,
- ✓ constraints of storage space for the goods, or
- ✓ any other relevant considerations,

by notification, specify the goods or class of goods which shall, as soon as may be after its seizure under this section, be disposed of by the proper officer in such manner as may be prescribed.

(8) Preparation of inventory of goods [Section 67(9)] : Where any goods, being goods specified above, have been seized by a proper officer, or any officer authorised by him, he shall prepare an inventory of such goods in such manner as may be prescribed.

(9) Applicability of provisions of the Code of Criminal Procedure, 1973 [Section 67(10)] : The provisions of the Code of Criminal Procedure, 1973, relating to search and seizure, shall, so far as may be, apply to search and seizure under this section subject to the modification that Section 165(5) of the said Code shall have effect as if for the word "Magistrate", wherever it occurs, the word "Commissioner" were substituted.

(10) Seizure of accounts, registers or documents produced before proper officer of person evading tax [Section 67(11)] : Where the proper officer has reasons to believe that any person has evaded or is attempting to evade the payment of any tax, he may, for reasons to be recorded in writing, seize the accounts, registers or documents of such person produced before him and shall grant a receipt for the same, and shall retain the same for so long as may be necessary in connection with any proceedings under this Act or the rules made thereunder for prosecution.

(11) Purchase of goods or services from business premises to check issue of tax invoice [Section 67(12)] : The Commissioner or an officer authorised by him may cause purchase of any goods or services or both by any person authorised by him from the business premises of any taxable person, to check the issue of tax invoices or bills of supply by such taxable person, and on return of goods so purchased by such officer, such taxable person or any person in charge of the business premises shall refund the amount so paid towards the goods after cancelling any tax invoice or bill of supply issued earlier.

4. Write a note on Search Warrant and its contents.

Ans: The relevant provisions are discussed as under-

(1) Search Warrant : The written authority to conduct search is generally called search warrant. The competent authority to issue search warrant is an officer of the rank of Joint Commissioner or above. A search warrant must indicate the existence of a reasonable belief leading to the search.

(2) Contents of Search Warrant: Search Warrant should contain the following details:

- ✓ the violation under the Act,
- ✓ the premise to be searched,
- ✓ the name and designation of the person authorized for search,
- ✓ the name of the issuing officer with full designation along with his round seal, date and place of issue,
- ✓ serial number of the search warrant,
- ✓ period of validity i.e. a day or two days etc.

ARREST AND MISCELLANEOUS PROVISIONS

5. What do you mean by cognizable and non cognizable offence.

Ans: The relevant provisions are discussed as under:

(1) Meaning of Cognizable Offence : Generally, cognizable offence means serious category of offences in respect of which a police officer has the authority to make an arrest without a warrant and to start an investigation with or without the permission of a court.

(2) Meaning of Non-Cognizable Offence : Non-cognizable offence means relatively less serious offences in respect of which a police officer does not have the authority to make an arrest without a warrant and an investigation cannot be initiated without a court order.

(3) Cognizable and non-cognizable offences under CGST Act : In Section 132 of CGST Act, it is provided that the offences relating to taxable goods and/or services where the amount of tax evaded or the amount of input tax credit wrongly availed or the amount of refund wrongly taken exceeds ₹ 5 crore, it shall be cognizable and non-bailable and in such cases the bail can be considered by a Judicial Magistrate only.

Other offences under the Act are non-cognizable and bailable and all arrested persons shall be **released on bail by Deputy/ Assistant Commissioner.**

6. When can the proper officer authorize 'arrest' of any person under CGST Act? OR Explain the safeguards provided under section 69 of CGST Act, 2017, to a person who is placed under arrest? (4 Marks, May 2018)

Ans: The relevant provisions are discussed as under-

(1) Officer empowered by Commissioner has power to arrest : The Commissioner is vested with the power to authorise (by an order) any CGST Officer to arrest a person, where there is a reason to believe that such person has committed the specified alleged offences.

(2) Person committing specified offences is liable to be arrested [Section 69(1)] : The person committing an offence under section 132(1)(a)/(b)/(c)/(d) and punishable under section 132(1)(i) and Section 132(1)(ii) or Section 132(2) can be arrested by a CGST officer upon authorization by the Commissioner.

This essentially means that a person can be arrested only where the tax evasion is more than ₹ 2 crore. However, the monetary limit shall not be applicable if the offences are committed again even after being convicted earlier i.e. repeat offender of the specified offences can be arrested irrespective of the tax amount involved in the case.

(3) Arrest of person in case of cognizable and non bailable offence [Section 69(2)] : Where a person is arrested under this Section for an offence specified under section 132(5) i.e. cognizable and non bailable offence, the officer authorised to arrest the person shall inform such person of the grounds of arrest and produce him before a Magistrate within 24 hours.

(4) Provisions relating to Bail in case of non-cognizable and bailable offence [Section 69(3)] : Subject to the provisions of the Code of Criminal Procedure, 1973,–

(a) Where a person is arrested under section 69(1) for any offence specified under section 132(4) i.e. non-cognizable and bailable offence, he shall be admitted to bail or in default of bail, forwarded to the custody of the Magistrate.

(b) In the case of a non-cognizable and bailable offence, the Deputy Commissioner or the Assistant Commissioner shall, for the purpose of releasing an arrested person on bail or otherwise, have the same powers and be subject to the same provisions as an officer-in-charge of a police station.

7. Explain briefly legal provisions relating to power to summon persons under the CGST Act, 2017. What are the duties of the person to whom summons has been issued?

Ans: Power to summon persons to give evidence and produce Documents [Section 70] :

(1) Proper Officer has Power to Summon Person [Section 70(1)]: The proper officer under this Act shall have power to –

- ✓ summon any person whose attendance he considers necessary
- ✓ either to give evidence or to produce a document or any other thing in any inquiry
- ✓ in the same manner, as provided in the case of a civil court under the provisions of the Code of Civil Procedure, 1908.

(2) Summoned person bound to attend and state truth [Section 70(1A)] : All persons summoned shall be bound to attend, either in person or by an authorised representative, as such officer may direct, and the person so appearing shall state the truth during examination or make statements or produce such documents and other things as may be required [Inserted by Finance (No.2) Act, 2024 w.e.f. 01-11-2024]

(3) Deemed judicial proceedings [Section 70(2)] : Every such inquiry shall be deemed to be a "judicial proceedings" within the meaning of Section 193 and Section 228 of the Indian Penal Code.

(4) Responsibilities of the person so summoned : A person who is issued summon is legally bound to attend either in person or by an authorized representative and he is bound to state the truth before the officer who has issued the summon upon any subject which is the subject matter of examination and to produce such documents and other things as may be required.

(5) Consequences of non-appearance to summons :

- ✓ Prosecution : If a person does not appear on the date when summoned without any reasonable justification, he can be prosecuted under section 174 of the Indian Penal Code (IPC). If he absconds to avoid service of summons, he can be prosecuted under section 172 of the IPC and in case he does not produce the documents or electronic records required to be produced, he can be prosecuted under section 175 of the IPC. In case he gives false evidence, he can be prosecuted under section 193 of the IPC.
- ✓ Penalty : In addition, if a person does not appear before a CGST/ SGST officer who has issued the summon, he is liable to a penalty upto ₹ 25,000 under section 122(3)(d) of the Act.

8. Write a short note on access to business premises.

Ans: Access to business premises [Section 71] :

(1) Access to business premises to inspect books of accounts, documents etc. [Section 71(1)] : Any officer under this Act, authorised by the proper officer not below the rank of Joint Commissioner,–

- ✓ shall have access to any place of business of a registered person

- ✓ to inspect books of account, documents, computers, computer programs, computer software whether installed in a computer or otherwise and such other things as he may require and which may be available at such place,
- ✓ for the purposes of carrying out any audit, scrutiny, verification and checks
- ✓ as may be necessary to safeguard the interest of revenue.

(2) Records, audit reports etc. to be submitted to auditors for scrutiny [Section 71(2)] : Every person in charge of place referred to in Section 71(1) shall, on demand, make available to –

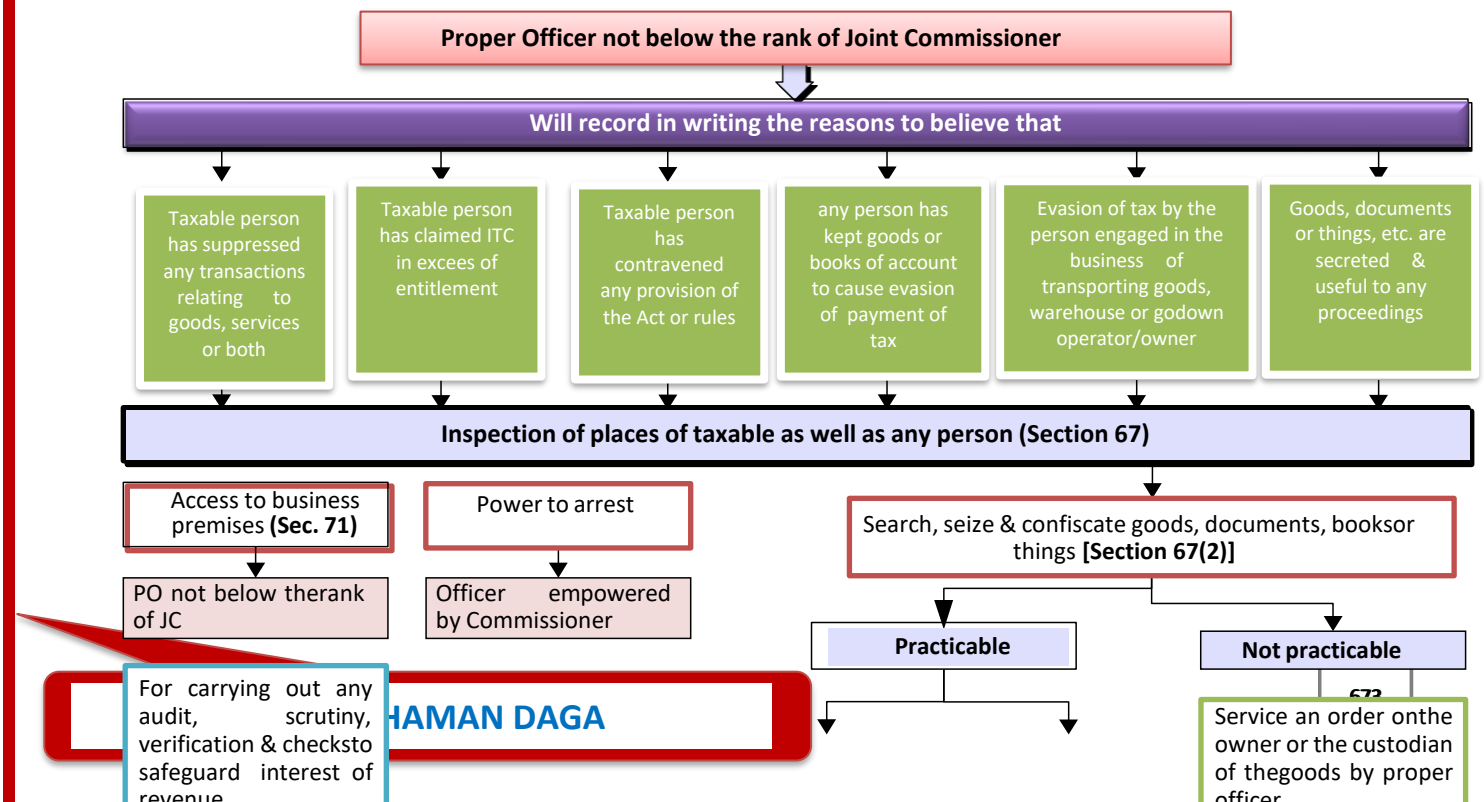
- ✓ the officer authorised under section 71(1), or
- ✓ the audit party deputed by the proper officer, or
- ✓ a cost accountant or chartered accountant nominated under section 66— the following records—

(i) records as prepared or maintained by the registered person and declared to the proper officer in such manner as may be prescribed;
(ii) trial balance or its equivalent;
(iii) statements of annual financial accounts, duly audited, wherever required;
(iv) cost audit report, if any, under section 148 of the Companies Act, 2013;
(v) the income-tax audit report, if any, under section 44AB of the Income-tax Act, 1961; and
(vi) any other relevant record.

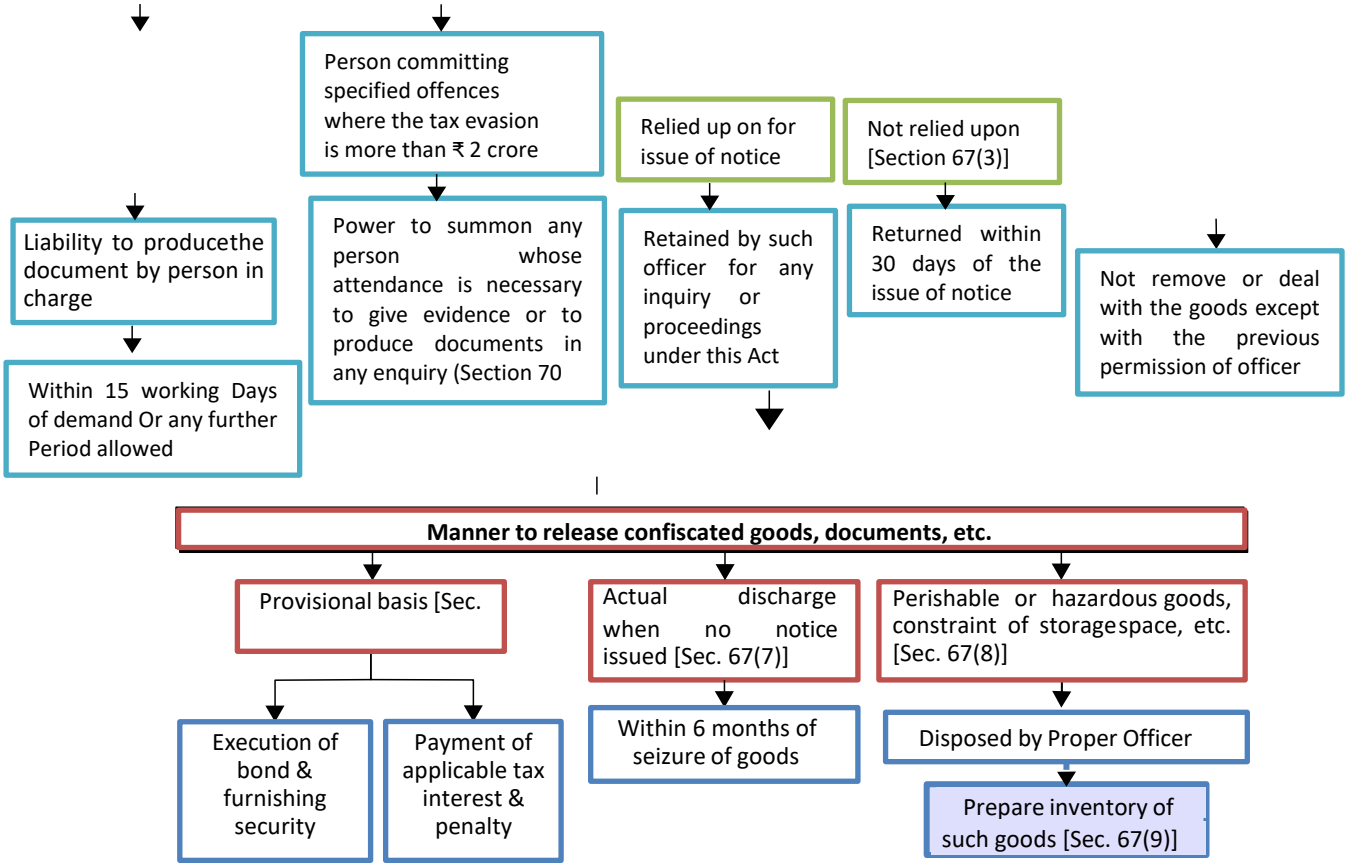
(3) Records to be made available within 15 days : Such records etc. shall be made available—

(a) for the scrutiny by the officer or audit party or the chartered accountant or cost accountant
(b) within a period not exceeding 15 working days from the day when such demand is made, or such further period as may be allowed by the said officer or the audit party or the chartered accountant or cost accountant.

The provisions relating to inspection, search and seizure have been summarised by way of a diagram to help students remember and retain the provisions in a better and effective manner:



HAMAN DAGA


Person committing specified offences where the tax evasion is more than ₹ 2 crore
Liability to producethe document by person in charge
Within 15 working Days of demand Or any further Period allowed
Power to summon any person whose attendance is necessary to give evidence or to produce documents in any enquiry (Section 70
Relied up on for issue of notice
Not relied upon [Section 67(3)]
Retained by such officer for any inquiry or proceedings under this Act
Returned within 30 days of the issue of notice
Not remove or deal with the goods except with the previous permission of officer
Manner to release confiscated goods, documents, etc.
Provisional basis [Sec.
Execution of bond & furnishing security
Payment of applicable tax interest & penalty
Actual discharge when no notice issued [Sec. 67(7)]
Within 6 months of seizure of goods
Perishable or hazardous goods, constraint of storagespace, etc. [Sec. 67(8)]
Disposed by Proper Officer
Prepare inventory of such goods [Sec. 67(9)]

TOPIC REFERENCER

- *Classes of Officers*
- *Power of Board to Issue Instructions or Directions*
- *Demands and Allied Provisions*
- *Tax Collected But Not Paid to Government*
- *Recovery of Tax and Allied Provisions*

CLASSES OF OFFICERS

1. Write a note on classes of officers under CGST Act, 2017.

Ans: Officers under this Act [Section 3]: The Government shall, by notification, appoint the following classes of officers for the purposes of this Act, namely:-

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

Excise officers deemed to officers appointed under the Act : The officers appointed under the Central Excise Act, 1944 shall be deemed to be the officers appointed under the provisions of this Act.

2. Define adjudicating authority. Adjudicating

Ans: authority [Section 2(4)]: "Adjudicating authority" means any authority, appointed or authorised to pass any order or decision under this Act, but does not include-

- ✓ Central Board of Indirect Taxes and Customs,
- ✓ Revisional Authority,
- ✓ Authority for Advance Ruling,
- ✓ Appellate Authority for Advance Ruling,
- ✓ Appellate Authority
- ✓ Appellate Tribunal and
- ✓ Authority referred to in Section 171(2) of the Act i.e. National Anti-Profiteering Authority.

3. Define (i) Proper Officer and (ii) Commissioner.

Ans: The definitions are as under-

(i) "Proper officer" in relation to any function to be performed under this Act, means the Commissioner or the officer of the central tax who is assigned that function by the Commissioner in the Board. [Section 2(91)]

(ii) "Commissioner" means the Commissioner of central tax and includes –

(a) the Principal Commissioner of central tax appointed under Section 3, and

(b) the Commissioner of integrated tax appointed under the IGST Act. [Section 2(24)]

4. Who has power to appoint officers under CGST Act, 2017.

Ans: Appointment of officers [Section 4]:

(1) Appointment by Board [Section 4(1)] : The Board may, in addition to the officers as may be notified by the Government u/s 3, appoint such persons as it may think fit to be the officers under this Act.

(2) Appointment by Authorised Officers [Section 4(2)] : Without prejudice to the provisions of Section 4(1), the Board may, by order, authorise any officer referred to in Section 3(a) to (h) to appoint officers of central tax below the rank of Assistant Commissioner of central tax for the administration of this Act.

5. Write a note on Powers of CGST officers.

Ans: Powers of officers [Section 5] :

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

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

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

(4) Appellate authority not to exercise certain powers [Section 5(4)] : An Appellate Authority shall not exercise the powers and discharge the duties conferred or imposed on any other officer of central tax.

6. Explain the provisions relating to authorisation of officers of State tax or Union territory tax as proper officer in certain circumstances.

Ans: Authorisation of officers of State tax or Union territory tax as proper officer in certain circumstances [Section 6]:

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

(2) Other provisions [Section 6(2)] : Subject to the conditions specified in the notification issued under section 6(1),—

(a) Orders under this Act to be backed by corresponding order under SGST/ UTGST Act : Where any proper officer issues an order under this Act, he shall also issue an order under the SGST Act or the UTGST Act, as authorised by the SGST Act or the UTGST Act, as the case may be, under intimation to the jurisdictional officer of State tax or Union territory tax;

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

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

7. Write a note on Delegation of powers.

Ans: Delegation of powers [Section 167]: The Commissioner may, by notification, direct that subject to such conditions, if any, as may be specified in the notification, any power exercisable by any authority or officer this Act may be exercisable also by another authority or officer as may be specified in such notification. under

8. Write a short note on: Officers to assist proper officers.

Ans: Officers to assist proper officers [Section 72]:

(1) Assistance to be provided by officers of Police, Railways, Customs etc. [Section 72(1)]: All officers of Police, Railways, Customs, and those officers engaged in the collection of land revenue, including village officers, officers of State tax and officers of Union territory tax shall assist the proper officers in the implementation of this Act.

(2) Assistance to be provided by other notified officers [Section 72(2)]: The Government may, by notification, empower and require any other class of officers to assist the proper officers in the implementation of this Act when called upon to do so by the Commissioner.

POWER OF BOARD TO ISSUE INSTRUCTIONS OR DIRECTIONS

9. Explain the provisions relating to power to issue instructions or directions.

Ans: Power to issue instructions or directions [Section 168] :

(1) Board to issue Instructions or Directions [Section 168(1)]: The Board may, –

- ✓ if it considers it necessary or expedient so to do,
- ✓ for the purpose of uniformity in the implementation of this Act,
- ✓ issue such orders, instructions or directions to the central tax officers as it may deem fit, and
- ✓ thereupon all such officers and all other persons employed in the implementation of this Act shall observe and follow such orders, instructions or directions.

(2) Reference to Commissioner under specified Sections to mean Commissioner or Joint Secretary posted in Board [Section 168(2)]: The meaning of Commissioner for the purposes of following provisions is Commissioner or Joint Secretary posted in the Board and such Commissioner or Joint Secretary shall exercise the powers specified in these said sections with the approval of the Board:

Section	Particulars
2(91)	Meaning of 'proper officer'
5(3)	Delegation of powers by Commissioner
25(9)(b)	Notification of person or class of persons for grant of Unique Identity Number
35(3)	Notification of class of taxable persons required to maintain additional accounts or documents
35(4)	Notification of class of taxable persons permitted to maintain accounts in a prescribed manner where the Commissioner considers that such persons are not in a position to keep and maintain accounts in accordance with the general provisions
37(1)	Details of outward supplies (extension of time limit)
38(2)	Details of inward supplies (extension of time limit)
39(6)	Return (extension of time limit)
44	Annual Return (extension of time limit)
52(4)	TCS monthly return (extension of time limit)
52(5)	TCS Annual Statement (extension of time limit)
143(1)	Job-work procedure (except for extension of time limit as specified in second proviso)
158(3)(l)	Exceptions to bar on disclosure of information by public servant
167	Delegation of powers

"Commissioner in the Board" means the Commissioner referred to in Section 168. [Section 2(25)]

DEMANDS AND ALLIED PROVISIONS

10. Explain briefly 'limitation period' and 'Show cause notice'.

Ans: The relevant terms are discussed as under-

(1) Limitation Period: One of the fundamental legal principles is that an element of certainty must be brought to the legal proceedings. The law of limitation is based on this principle. Any action under any law has to be taken within the limitation period prescribed otherwise uncertainty would prevail eternally.

The provisions of limitation period gain all the more importance in the legislation dealing taxes, where the tax burden is to be passed on to the next level at every stage. With indirect Therefore, a tax law must have a limitation period, beyond which demands cannot be raised. Further, while a lesser time limit is available to the Revenue to raise the demand in normal cases, it would have a longer limitation period available to raise the demand in fraud cases.

(2) Show Cause Notice (SCN): Issuance of show-cause notice is mandatory requirement for raising tax demand. In order to adhere to the principles of natural justice, before raising any tax demand, a notice has to be issued (generally referred to as Show Cause Notice), asking the person chargeable with tax to show as to why the specified amount of tax should not be demanded from him. The issuance of SCN opportunity to such person to defend himself before adjudication. cause grants an

Requirements of SCN	Reply to SCN
The requirements of a show cause notice are as follows,– (a) Show-cause notice must be issued within the specified time limit. (b) The reasons specified in show-cause notice must be specific and not vague. (c) The nature of of contravention of provisions must be specified in show-cause notice. (d) Show-cause notice must specify the charges/ allegations and grounds. (e) If any penalty is proposed to be imposed, then the same must be mentioned in show-cause notice.	The person to whom such notice has been issued can contest the demand by filing a reply to the show cause notice and also by appearing before the adjudicating authority personally. After considering the reply filed by the person as well as the submissions made during the personal hearing, the adjudicating authority shall pass a speaking order, either confirming the tax demand or dropping the same.

11. Discuss provisions of CGST, Act, 2017, which provides for determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful-misstatement or suppression of facts.

Ans: Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful-misstatement or suppression of facts [Section 73]: The relevant provisions are discussed as under –

(1) Tax determination upto FY 2023-24 covered [Section 73(12)] : The provisions of this section shall be applicable for determination of tax pertaining to the period up to F.Y. 2023-24 [Inserted by the Finance (No. 2) Act, 2024 w.e.f. 01-11-2024]

(2) Applicability [Section 73(1)]: In case –

- ✓ any tax has not been paid, or
- ✓ any tax has been short paid, or
- ✓ any tax has been erroneously refunded, or
- ✓ where input tax credit has been wrongly availed or utilised

for any reason, other than the reason of –

- ✓ fraud, or
- ✓ any wilful-misstatement, or
- ✓ suppression of facts

to evade tax, then the following provisions shall apply,-

Service of Show Cause Notice: The proper officer shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice.

The notice would specify the amount of tax along with interest payable thereon under section 50 [@ 18% p.a.] and a penalty leviable under the provisions of this Act or the rules made thereunder, liable to be paid by him. Needless to say, the notice should state the grounds based on which such demand is raised, so that the person against whom the notice is served is made aware of the basis of the demand.

(3) Time limit for issue of notice – At least 3 months Prior to Issue of Order [Section 73(2)] : The proper officer shall issue the notice under this Section at least 3 months prior to the time limit specified for passing the order determining the amount of tax, interest and any penalty payable by defaulter.

The order referred herein has to be passed within 3 years from the due date for furnishing the Annual Return for the Financial Year to which the tax not paid/short paid/ITC wrongly availed/utilised relates to or within 3 years from the date of erroneous refund.

Thus, the time-limit for issuance of SCN is 2 years and 9 months from the due date of filing Annual Return for the Financial Year to which the demand pertains or from the date of erroneous refund.

(4) Service of a Statement for Subsequent **Period** [Section 73(3)] : Where a notice has been issued for any period under section 73(1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under section 73(1), on the person chargeable with tax.

(5) Service of a statement to be deemed to be service of SCN if grounds relied upon are same as mentioned in earlier SCN [Section 73(4)] : The service of such statement shall be deemed to

be service of notice on such person under Section 73(1), subject to the condition that the grounds relied upon for such tax periods as covered in the statement are the same as are mentioned in the earlier notice

(6) Voluntary payment of tax and interest before issue of SCN/ Statement [Section 73(5)] : The person chargeable with tax may, before service of notice under Section 73(1) or, as the case may be, the statement under Section 73(3), pay on the basis of—

- ✓ his own ascertainment of such tax, or
- ✓ the tax as ascertained by the proper officer

the amount of tax along with interest payable thereon under Section 50.

Written intimation to the proper officer of such Voluntary Payment: The person, who has so paid the tax voluntarily, shall inform the proper officer of such payment in writing.

(7) No SCN would be issued in respect of the Amount so Paid [Section 73(6)] : The proper officer, on receipt of such information, shall not serve any SCN/statement in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder. Thus, the matter closes at this stage itself and no penalty is imposed on the person.

(8) SCN to be issued for recovery if amount is short paid [Section 73(7)] : Where the proper officer is of the opinion that the amount paid voluntarily falls short of the amount actually payable, he shall proceed to issue the notice in respect of such amount which falls short of the amount actually payable.

(9) If tax and interest is paid within 30 days of issue of notice – No penalty to be levied and deemed conclusion of proceedings [Section 73(8)] : Where any person chargeable with tax under Section 73(1) or Section 73(3) pays the said tax along with interest payable under section 50 within 30 days of issue of show cause notice, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded.

(10) Adjudication order with maximum penalty of 10% of tax [Section 73(9)] : The proper officer shall, after considering the representation, if any, made by person chargeable with tax, determine the amount of tax, interest and a penalty equivalent to 10% of tax or ₹ 10,000, whichever is higher, due from such person and issue an order. The summary of order shall be uploaded electronically in form GST DRC-7, specifying the amount of tax, interest and penalty payable.

(11) Time limit for issue of adjudication order - 3 years [Section 73(10)] : The proper officer shall issue the adjudication order within 3 years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within 3 years from the date of erroneous refund.

(12) Section 44 of the CGST Act stipulates that annual return for a financial year needs to be filed by 31st December of the next financial year.

(13) Penalty payable if self assessed tax is not paid within 30 days from due date [Section 73(11)]: Notwithstanding anything contained in Section 73(6) or Section 73(8), penalty under Section 73(9) shall be payable where any amount of self-assessed tax or any amount collected as

tax has not been paid within a period of 30 days from the due date of payment of such tax.

From the above, it is clear that the non-payment of self-assessed tax or the amount collected as representing the tax has been treated differently than the other short payments as referred in Section 73(1) [non-payment/ short payment of tax/ erroneous refund of tax/ wrong availment/ utilisation of input tax credit].

In case of non-payment of self-assessed tax and the amount collected as representing the tax, the only opportunity for paying the same without incurring any penalty is, if it is paid, with interest, within 30 days from the due date of payment. The option to pay such tax before issuance of SCN or within 30 days of issuance of SCN and avoid penalty consequences is not available. Penalty under section 73(9) shall be payable where any amount of self-assessed tax or any amount collected as tax has not been paid within a period of 30 days from the due date of payment of such tax.

No penalty under section 73(11) if return filed and tax paid, however penalty under section 125 can be imposed – Circular No. 76/50/2018-GST dated 31-12-2018

As per the provisions of section 73(11) of the CGST Act, penalty is payable in case self-assessed tax or any amount collected as tax has not been paid within a period of 30 days from the due date of payment of such tax.

It has been clarified that provisions of section 73(11) of CGST Act are invoked only when section 73 is invoked. In case of delay in filing return in form GSTR-3B, section 73 cannot be invoked as tax is paid along with return. In that case, penalty under section 73(11) of CGST Act cannot be imposed. However, general penalty under section 125 of CGST Act for contravention of provisions of CGST Act can be imposed after following due process of law. The maximum penalty u/s 125 is ₹ 25,000 under CGST Act plus ₹ 25,000 under SGST/UTGST Act.

12. Discuss provisions of CGST, Act, 2017, which provides for determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful- misstatement or suppression of facts. OR Discuss briefly the procedure for issue of adjudication order under section 74(9) & (11) and the time limit for passing adjudication order under section 74(10) of the CGST Act, 2017. (4 Marks, May 2018)

Ans- Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful-misstatement or suppression of facts [Section 74]:

(1) Tax determination upto FY 2023-24 covered [Section 73(12)] : The provisions of this section shall be applicable for determination of tax pertaining to the period up to F.Y. 2023-24 [Inserted by the Finance (No. 2) Act, 2024 w.e.f. 01-11-2024]

(2) Demands pertaining to fraud or any wilful-misstatement or suppression of facts [Section 74(1)] : In case—

- ✓ if any tax has not been paid, or
- ✓ if any tax has been short paid, or
- ✓ if any tax erroneously refunded, or
- ✓ where input tax credit has been wrongly availed or utilized

by reason of—

- ✓ fraud, or
- ✓ any wilful-misstatement, or
- ✓ suppression of facts

to evade tax, by any person chargeable with tax the following provisions will apply

Service of SCN : The proper officer shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon u/s 50 and a penalty equivalent to the tax specified in the notice.

The notice should state the grounds based on which such demand is raised, so that the person against whom the notice is served is made aware of the basis of the demand.

(3) Time limit for issue of notice – At least 6 months prior to issue of order [Section 74(2)] : The proper officer shall issue the notice under section 74(1) at least 6 months prior to the time limit for passing the order determining the amount of tax, interest and penalty payable by defaulter.

The said order has to be passed within 5 years from the due date for furnishing the Annual Return for the Financial Year to which the tax not paid/short paid/ITC wrongly availed/utilised relates to or within 5 years from the date of erroneous refund.

Thus, the time-limit for issuance of SCN is 4 years and 6 months from the due date of filing of Annual Return for the Financial Year to which the demand pertains or from the date of erroneous refund.

(3) Service of a statement for subsequent period [Section 74(3)] : Where a notice has been issued for any period under Section 74(1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under Section 74(1), on the person chargeable with tax.

(4) Service of a statement to be deemed to be service of SCN if grounds relied upon are same as mentioned in earlier SCN [Section 74(4)] : The service of such statement shall be deemed to be service of notice on such person, subject to the condition that the grounds relied upon in the said statement, except the ground of fraud, or any wilful misstatement or suppression of facts to evade tax, for such tax periods [as covered in the Statement] are the same as are mentioned in the earlier notice.

(5) Voluntary payment of tax and interest and penalty @ 15% of tax before issue of SCN/ Statement [Section 74(5)] : The person chargeable with tax may, before service of notice u/s 74(1), pay the amount of tax along with interest payable under Section 50 and a penalty equivalent to 15% of such tax on the basis of–

- ✓ his own ascertainment of such tax, or
- ✓ the tax as ascertained by the proper officer.

Written intimation to the proper officer of such voluntary payment : The person, who has so paid the tax voluntarily, shall inform the proper officer of such payment in writing.

(6) No SCN would be issued in respect of the amount so paid [Section 74(6)] : The proper officer, on receipt of such information, shall not serve any notice, in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder. The matter closes at this stage itself.

(7) SCN to be issued for recovery if amount is short paid [Section 74(7)] : Where the proper officer is of the opinion that the amount voluntarily paid falls short of the amount actually payable, he shall proceed to issue the notice in respect of such amount which falls short of the amount actually payable.

(8) If tax, interest and penalty @ 25% of tax is paid within 30 days of issue of notice – Deemed conclusion of proceedings [Section 74(8)] : Where any person chargeable with tax pays the said tax along with interest payable under Section 50 and a penalty equivalent to 25% of such tax within 30 days of issue of the notice, all proceedings in respect of the said notice shall be deemed to be concluded.

In other words, where such person pays the tax demanded along with interest payable under Section 50 and a penalty equivalent to 25% of such tax within 30 days of issue of SCN, all proceedings in respect of the said notice shall be deemed to be concluded.

(9) Adjudication Order [Section 74(9)] : The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order. The summary of order shall be uploaded electronically in form GST DRC-7, specifying the amount of tax, interest and penalty payable.

(10) Time limit for issue of adjudication order - 5 years from the due date for furnishing of annual return/ erroneous refund [Section 74(10)] : The proper officer shall issue the adjudication order within a period of 5 years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within 5 years from the date of erroneous refund.

Section 44 of the CGST Act stipulates that annual return for a financial year needs to be filed by 31st December of the next financial year.

(11) If tax, interest and penalty @ 50% of tax is paid within 30 days of communication of adjudication order – Deemed conclusion of proceedings [Section 74(11)] : Where any person served with an adjudication order pays the tax along with interest payable thereon under

Section 50 and a penalty equivalent to 50% of such tax within 30 days of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded.

Explanation 1 : For the purposes of Section 73 and this Section,—

(i) Criminal proceedings not barred the expression "all proceedings in respect of the said notice" shall not include proceedings under section 132;

Note: Section 132 provides for punishment for certain offences under GST law.

(ii) Conclusion against main person – Deemed conclusion of proceedings against co-noticee: where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under section 73 or Section 74, the proceedings against all the persons liable to pay penalty under section 122 and 125 are deemed to be concluded.

Meaning of Suppression [Explanation 2] : The expression "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 under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer.

The above provisions have been summarized in the following tables :

Table A

S. No.	Action by tax payer	Amount of penalty payable	
		Cases involving normal period of limitation	Cases involving extended period of limitation – Fraud etc.
1.	Tax amount, along with the interest, paid before issuance of show cause notice	No penalty and no show cause notice shall be issued	15% of the tax amount payable as penalty and show cause notice shall be not be issued
2.	Tax amount, along with the interest, paid within 30 days of issuance of show cause notice	No penalty. All proceedings deemed to be concluded	25% of the tax amount payable as penalty. All proceedings deemed to be concluded.
3.	Tax amount, along with the interest, paid within 30 days of communication of adjudication order	• 10% of the tax amount; or • ₹ 10,000, whichever is higher	50% of the tax amount payable as penalty. All proceedings deemed to be concluded.
4.	Tax amount, along with the interest, paid after 30 days of communication of adjudication order	• 10% of the tax amount; or	100% of the tax amount

		• ₹10,000, whichever is higher	

Note: The penalty shall also be not chargeable in cases where the self-assessed tax or any amount collected as tax is paid (with interest) within 30 days from the due date of payment.

S.No	Nature of case	Normal Cases	Fraud Cases
1.	Time for issuance of show cause notice	Within 2 years and 9 months from the due date of filing Annual Return for the F.Y. to which the demand pertains or from the date of erroneous refund	Within 4 years and 6 months from the due date of filing of Annual Return for the F.Y. to which the demand pertains or from the date of erroneous refund
2.	Time for issuance of adjudication order	Within 3 years from the due date of filing of Annual Return for the Financial Year to which the demand pertains or from the date of erroneous refund	Within 5 years from the due date of filing of Annual Return for the Financial Year to which the demand pertains or from the date of erroneous refund

21.11 DETERMINATION OF TAX NOT PAID OR SHORT PAID OR ERRONEOUSLY REFUNDED OR INPUT TAX CREDIT WRONGLY AVAILED OR UTILISED FOR ANY REASON PERTAINING TO FINANCIAL YEAR 2024-25 ONWARD. [SECTION 74A]

Inserted by the Finance (No. 2) Act, 2024 w.e.f. 01-11-2024.

(1) Tax determination from F.Y. 2024-25 onwards covered [Section 74A(12)] : The provisions of this section shall be applicable for determination of tax pertaining to the Financial Year 2024-25 onwards.

(2) Issuance of SCN for raising tax demands [Section 74A(1)] : Where it appears to the proper officer that –

- ✓ any tax has not been paid or
- ✓ any tax has been short paid or
- ✓ any tax has been erroneously refunded, or
- ✓ where input tax credit has been wrongly availed or utilised,

he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty leviable under the provisions of this Act or the rules made thereunder:

SCN not to be issued if tax amount is less than ₹ 1,000 : No notice shall be issued, if the tax which has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised in a financial year is less than ₹ 1,000.

(3) SCN time limit – 42 months from due date of furnishing Annual return/date of errorneous refund [Section 74A(2)] : The proper officer shall issue the notice within 42 months from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within 42 months from the date of erroneous refund.

(4) Service of a statement for subsequent period [Section 74A(3)] : Where a notice has been issued for any period, the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under section 74A(1), on the person chargeable with tax.

(5) Service of a statement deemed to be service of SCN [Section 74A(4)] : The service of such statement shall be deemed to be service of notice on such person, subject to the condition that the grounds relied upon for such tax periods are the same as are mentioned in the earlier notice.

(6) Penalty provisions [Section 74A(5)] : The penalty in case where any tax which has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised,––

(i) Non Fraud cases : for any reason, other than the reason of fraud or any wilfulmisstatement or suppression of facts to evade tax, shall be equivalent to

10% of tax due from such person or

₹ 10,000, whichever is higher.

(ii) Fraud cases : for the reason of fraud or any wilful-misstatement or suppression of facts to evade tax shall be 100% of the tax due from such person.

(7) Adjudication Order [Section 74A(6)] : The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax,interest and penalty due from such person and issue an order.

(8) Adjudication time limit - 12 months from date of SCN [Section 74A(7)] : The proper officer shall issue the adjudication order within 12 months from the date of issuance of notice.

Maximum extension in adjudication period – 6 months : However, where the proper officer is not able to issue the order within the specified period, the Commissioner, or an officer authorised by the Commissioner senior in rank to the proper officer but not below the rank of Joint Commissioner of Central Tax, may, having regard to the reasons for delay in issuance of the order, to be recorded in writing, before the expiry of the specified period, extend the said period further by a maximum of 6 months.

(9) Voluntary payment of tax and interest in non fraud cases and conclusion of proceedings [Section 74A(8)] : The person chargeable with tax where any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for any reason, other than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax, may,––

(i) before service of SCN : before service of notice, pay the amount of tax along with interest payable under section 50 of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment, and the proper officer, on receipt of such information shall not serve any notice or the statement, as the case may be, in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder;

(ii) within 60 days of SCN : pay the said tax along with interest payable under section 50 within 60 days of issue of show cause notice, and on doing so, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded.

(10) Voluntary payment and conclusion of proceedings in fraud cases [Section 74A(9)] : The person chargeable with tax, where any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilfulmisstatement or suppression of facts to evade tax, may,––

(i) Voluntary payment of tax and interest and penalty @ 15% of tax before issue of SCN : before service of notice, pay the amount of tax along with interest payable under section 50 and a penalty equivalent to 15% of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment, and the proper officer, on receipt of such information, shall not serve any notice , in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder;

(ii) Voluntary payment of tax and interest and penalty @ 25% of tax within 60 days of SCN : pay the said tax along with interest payable under section 50 and a penalty equivalent to 25% of such tax within 60 days of issue of the notice, and on doing so, all proceedings in respect of the said notice shall be deemed to be concluded;

(iii) Tax, interest and penalty @ 50% of tax is paid within 60 days of communication of adjudication order – Deemed conclusion of proceedings : pay the tax along with interest payable thereon under section 50 and a penalty equivalent to 50% of such tax within 60 days of communication of the order, and on doing so, all proceedings in respect of the said notice shall be deemed to be concluded.

(11) SCN to be issued for recovery if amount is short paid [Section 74A(10] : Where the proper officer is of the opinion that the amount paid under Section 74A(8)(i)/ under Section 74A(9)(i) falls short of the amount actually payable, he shall proceed to issue the notice in respect of such amount which falls short of the amount actually payable.

(12) Penalty payable if self assessed tax is not paid within 30 days from due date [Section 74A(11)] : Notwithstanding anything contained in Section 74A(8)(i)/(ii), penalty under Section 74A(5)(i) shall be payable where any amount of self-assessed tax or any amount collected as tax has not been paid within a period of 30 days from the due date of payment of such tax.

Explanation 1 : For the purposes of this section,––

(i) Criminal proceedings not barred : "all proceedings in respect of the said notice" shall not include proceedings under section 132;

(ii) Conclusion against main person – Deemed conclusion of proceedings against co-noticee : where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under this section, the proceedings against all the persons liable to pay penalty under sections 122 and 125 are deemed to be concluded.

Meaning of Suppression [Explanation 2] : The expression "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 under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer.

13. Explain the general provisions relating to determination of tax.

Ans: General provisions relating to determination of tax [Section 75] :

(1) Period of stay to be excluded [Section 75(1)]: Where the service of notice or issuance of order is stayed by an order of a court or Appellate Tribunal, the period of such stay shall be excluded in computing the period specified in Sections 73(2) and Section 73(10) or Sections 74(2) and Section 74(10) or section 74A(2) and section 74A(7), i.e. period for issuance of notice and issuance of adjudication order, as the case may be.

(2) In case the charges of fraud, wilful-misstatement, etc. are not established against the person to whom the notice was issued, tax to be determined treating notice for normal period of limitation [Section 75(2)]:
Where any Appellate Authority or Appellate Tribunal or court concludes that the notice issued u/s 74(1) is not sustainable for the reason that the charges of fraud or any wilful-misstatement or suppression of facts to evade tax has not been established against the person to whom the notice was issued, the proper officer shall determine the tax payable by such person, deeming as if the notice were issued u/s 73(1).

(3) Penalty payable as per non fraud cases if the charges of fraud etc. are not established [Section 75(2A)] : Where any Appellate Authority or Appellate Tribunal or court concludes that the penalty under Section 74A(5)(ii) is not sustainable for the reason that the charges of fraud or any wilful-misstatement or suppression of facts to evade tax has not been established against the person to whom the notice was issued, the penalty shall be payable by such person, under Section 74A(5)(i) i.e. penalty equivalent to 10% of tax due from such person or ₹ 10,000, whichever is higher. [Inserted by the Finance (No. 2) Act, 2024 w.e.f. 01-11-2024]

(4) Adjudication order in pursuance of Appellate Authority/ Appellate Tribunal/ Court's direction to be issued within 2 years [Section 75(3)]: Where any order is required to be issued in pursuance of the direction of the Appellate Authority or Appellate Tribunal or a court, such order shall be issued within 2 years from the date of communication of the said direction.

(5) Opportunity of being heard [Section 75(4)] : 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.

(6) Granting of time and Adjournment of hearing [Section 75(5)] : The proper officer shall, if sufficient cause is shown by the person chargeable with tax, grant time to the said person and adjourn the hearing for reasons to be recorded in writing.

Maximum adjournment – 3 times : However, such adjournment shall be granted for a maximum of 3 times to a person during the proceedings.

(7) Relevant Facts and basis of decision to be given in order [Section 75(6)] : The proper officer, in his order, shall set out the relevant facts and the basis of his decision. Thus, Adjudication order should be a speaking order.

(8) Amount of tax, interest and penalty determined cannot be in excess of amount specified in notice [Section 75(7)] : 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.

(9) Modification of tax (determined by Proper Officer) by the appellate authority/ tribunal/ court, interest and penalties to be modified accordingly [Section 75(8)] : Where the Appellate Authority or Appellate Tribunal or court modifies the amount of tax determined by the proper officer, the amount of interest and penalty shall stand modified accordingly, taking into account the amount of tax so modified.

(10) Payment of interest mandatory even if not specified in the order determining tax [Section 75(9)] : The interest on the tax short paid or not paid shall be payable whether or not specified in the order determining the tax liability.

(11) Deemed conclusion of adjudication proceedings if adjudication order not issued within 3 years/ 5 years [Section 75(10)] : The adjudication proceedings shall be deemed to be concluded, if the order is not issued within 3 years as provided for in Section 73(10) or within 5 years as provided for in Section 74(10) or within 12 months as provided for in Section 74A(7).

(12) Exclusion of certain period in computing time limit for passing Adjudication Order [Section 75(11)] : An issue on which –

- ✓ A first appellate authority has given its decision which is prejudicial to the interest of the revenue in some other proceedings and an appeal to the Appellate Tribunal against such decision is pending, then the period spent between the two dates of decision shall be excluded in computing the period of 3 years or 5 years or 12 months respectively, for issue of order.
- ✓ The Appellate Tribunal has given its decision which is prejudicial to the interest of the revenue in some other proceedings and an appeal to the High Court against such decision is pending, then the period spent between the two dates of decision shall be excluded in computing the period of 3 years or 5 years or 12 months respectively, for issue of order.
- ✓ The High Court has given its decision which is prejudicial to the interest of the revenue in some other proceedings and an appeal to the Supreme Court against such decision is

pending, then the period spent between the two dates of decision shall be excluded in computing the period of 3 years or 5 years or 12 months respectively, for issue of order.

Thus, in case of appeal filed by Department against prejudicial decision of the Appellate Authority/ Appellate Tribunal/ High Court, period between the date of decision of the higher authority and that of the lower authority to be excluded.

(13) Self assessed tax and interest thereon to be recovered as per Section 79 [Section 75(12)] : Notwithstanding anything contained in Section 73 or Section 74 or section 74A, where any amount of self-assessed tax in accordance with a return furnished under section 39 remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be recovered under the provisions of Section 79.

"Self-assessed tax" shall include the tax payable in respect of details of outward supplies furnished under section 37, but not included in the return furnished under section 39. [Explanation]

(14) Double penalty not imposable [Section 75(13)] : Where any penalty is imposed under section 73 or 74 or section 74A, no penalty for the same act or omission shall be imposed on the same person under any other provision of this Act.

Clarifications :

I) Clarification pertaining to cases where it is concluded that the notice issued u/s 74(1) not sustainable for reason that the charges of fraud etc. not been established against the noticee and tax payable being determined deeming as if the notice was issued u/s 73(1) :

In this regard, Circular No. 185/17/2022-GST dated 27-12-2022 clarifies following issues:

	Issue	Clarifications
1.	In some of the cases where the SCN has been issued by the proper officer to a noticee u/s 74(1) of CGST Act for demand of tax not paid/ short paid or erroneous refund or input tax credit wrongly availed or utilized, the appellate authority or appellate tribunal or the court concludes that the said notice is not sustainable u/s 74(1) of CGST Act for the reason that the charges of fraud or any willful-misstatement or suppression of facts to evade tax have not been established against the noticee and directs the proper officer to re- determine the amount of tax payable by the noticee, deeming the notice to have been issued	✓ Section 75(3) of CGST Act provides that an order, required to be issued in pursuance of the directions of the appellate authority or appellate tribunal or the court, has to be issued within two years from the date of communication of the said direction. ✓ Accordingly, in cases where any direction is issued by the appellate authority or appellate tribunal or the court to re-determine the amount of tax payable by the noticee by deeming the notice to have been issued u/s 73(1) of CGST Act in accordance with the provisions of section 75(2) of the said Act, the proper officer is required to issue the

	u/s 73(1) of CGST Act, in accordance with the provisions of section 75(2) of CGST Act. What would be the time period for re-determination of the tax, interest and penalty payable by the noticee in such cases?	order of re-determination of tax, interest and penalty payable within the time limit as specified in u/s 75(3) of the said Act, i.e. within a period of two years from the date of communication of the said direction by appellate authority or appellate tribunal or the court, as the case may be.
2.	How the amount payable by the noticee, deeming the notice to have been issued u/s 73(1), shall be re-computed/ redetermined by the proper officer as per provisions of Section 75(2)?	✓ In cases where the proper officer has to redetermine the amount of tax, interest and penalty payable deeming the notice to have been issued u/s 73(1) of CGST Act in terms of Section 75(2) of the said Act, the same can be re-determined for so much amount of tax short paid or not paid, or input tax credit wrongly availed or utilized or that of erroneous refund, in respect of which show cause notice was issued within the time limit as specified under section 73(2) read with Section 73(10) of CGST Act. ✓ Thus, only the amount of tax short paid or not paid, or input tax credit wrongly availed or utilized, along with interest and penalty payable, in terms of section 73 of CGST Act relating to such financial years can be redetermined, where show cause notice was issued within 2 years and 9 months from the due date of furnishing of annual return for the respective financial year. Similarly, the amount of tax payable on account of erroneous refund along with interest and penalty payable can be re-determined only where show cause notice was issued within 2 years and 9 months from the date of erroneous refund.

		✓ In case, where the SCN under section 74(1) was issued for tax short paid or tax not paid or wrongly availed or utilized input tax credit beyond a period of 2 years and 9 months from the due date of furnishing of the annual return for the financial year to which such demand relates to, and the appellate authority concludes that the notice is not sustainable u/s 74(1) of CGST Act thereby deeming the notice to have been issued u/s 73 (1), the entire proceeding shall have to be dropped, being hit by the limitation of time as specified in section 73. Similarly, where SCN u/s 74(1) of CGST Act was issued for erroneous refund beyond a period of 2 years and 9 months from the date of erroneous refund, the entire proceeding shall have to be dropped. ✓ In cases, where the show cause in terms of section 74(1) of CGST Act was issued for tax short paid or not paid tax or wrongly availed or utilized input tax credit or on account of erroneous refund within 2 years and 9 months from the due date of furnishing of the annual return for the said financial year, to which such demand relates to, or from the date of erroneous refund, as the case may be, the entire amount of the said demand in the show cause notice would be covered under redetermined amount. ✓ Where the show cause notice u/s 74(1) was issued for multiple financial years, and where notice had been issued before the expiry of the time period as per Section 73(2) for one financial year but after the expiry of the said due date for the other financial years, then the

		amount payable in terms of section 73 shall be re-determined only in respect of that financial year for which show cause notice was issued before the expiry of the time period as specified in Section 73(2).

Clarification on various issues relating to applicability of demand and penalty provisions under CGST Act in respect of transactions involving fake invoices

A number of cases have been noticed where the registered persons are found to be involved in issuing tax invoice (fake invoices), without actual supply of goods or services or both, in order to enable the recipients of such invoices to avail and utilize ITC fraudulently.

Circular No. 171/03/2022 GST dated 06.07.2022 clarifies the applicability of demand and penalty provisions under the CGST Act, in respect of such transactions involving fake invoices as follows:

	Issue	Clarifications
1.	In case where a registered person "A" has issued tax invoice to another registered person "B" without any underlying supply of goods or services or both, (i) whether such transaction will be covered as supply under section 7? (ii) whether any demand and recovery can be made from 'A' in respect of the said transaction under the provisions of section 73 or section 74? (iii) (iii) whether any penal action can be taken against registered person 'A' in such cases?	Since there has only been an issuance of tax invoice by the registered person 'A' to registered person 'B' without the underlying supply of goods or services or both, therefore, such an activity does not satisfy the criteria of "supply", as defined under section 7. As there is no supply by 'A' to 'B' in respect of such tax invoice in terms of the provisions of section 7, no tax liability arises against 'A' for the said transaction, and accordingly, no demand and recovery is required to be made against 'A' under the provisions of section 73/section 74 in respect of the same. Besides, no penal action under the provisions of section 73/section 74 is required to be taken against 'A' in respect of the said transaction. The registered person 'A' shall, however, be liable for penal action under section 122(1)(ii) for issuing tax invoices without actual supply of goods or services or both.
2.	A registered person "A" has issued tax invoice to another registered person "B"	Since the registered person 'B' has availed and utilized fraudulent ITC on the basis

	without any underlying supply of goods or services or both. 'B' avails ITC on the basis of the said tax invoice. B further issues invoice along with underlying supply of goods or services or both to his buyers and utilizes ITC availed on the basis of the above mentioned invoices issued by 'A', for payment of his tax liability in respect of his said outward supplies. Whether 'B' will be liable for the demand and recovery of the said ITC, along with penal action, under the provisions of section 73/ section 74 or any other provisions of the CGST Act.	of the said tax invoice, without receiving the goods or services or both, in contravention of the provisions of section 16(2)(b), he shall be liable for the demand and recovery of the said ITC, along with penal action, under the provisions of section 74, along with applicable interest under provisions of section 50. Further, as per provisions of section 75(13), if penal action for fraudulent availment or utilization of ITC is taken against 'B' under section 74, no penalty for the same act, i.e. for the said fraudulent availment or utilization of ITC, can be imposed on 'B' under any other provisions of the CGST Act, including under section 122.
3.	A registered person 'A' has issued tax invoice to another registered person 'B' without any underlying supply of goods or services or both. 'B' avails ITC on the basis of the said tax invoice and further passes on the said ITC to another registered person 'C' by issuing invoices without underlying supply of goods or services or both. Whether 'B' will be liable for the demand and recovery and penal action, under the provisions of section 73 or section 74 or any other provisions of the CGST Act.	In this case, the ITC availed by 'B' in his electronic credit ledger on the basis of tax invoice issued by 'A', without actual receipt of goods or services or both, has been utilized by 'B' for passing on of ITC by issuing tax invoice to 'C' without any underlying supply of goods or services or both. As there was no supply of goods or services or both by 'B' to 'C' in respect of the said transaction, no tax was required to be paid by 'B' in respect of the same. The ITC availed by 'B' in his electronic credit ledger on the basis of tax invoice issued by 'A', without actual receipt of goods or services or both, is ineligible in terms of section 16(2)(b). In this case, there was no supply of goods or services or both by 'B' to 'C' in respect of the said transaction and also no tax was required to be paid in respect of the said transaction. Therefore, in these specific cases, no demand and recovery of either input tax credit

		wrongly/ fraudulently availed by 'B' in such case or tax liability in respect of the said outward transaction by 'B' to 'C' is required to be made from 'B' under the provisions of section 73/section 74. However, in such cases, 'B' shall be liable for penal action both under section 122(1)((ii) and section 122(1)(vii), for issuing invoices without any actual supply of goods and/or services as also for taking/ utilizing input tax credit without actual receipt of goods and/or services.

The fundamental principles that have been outlined in the above scenarios may be adopted to decide the nature of demand and penal action to be taken against a person for such unscrupulous activity. Actual action to be taken against a person will depend upon the specific facts and circumstances of the case which may involve a complex mixture of above scenarios or even may not be covered by any of the above scenarios.

Any person who has retained the benefit of transactions specified under section 122(1A), and at whose instance such transactions are conducted, shall also be liable for penal action under section 122(1A).

It may also be noted that in such cases of wrongful/ fraudulent availment or utilization of ITC, or in cases of issuance of invoices without supply of goods or services or both, leading to wrongful availment or utilization of ITC or refund of tax, provisions of section 132 may also be invokable, subject to conditions specified therein, based on facts and circumstances of each case.

TAX COLLECTED BUT NOT PAID TO GOVERNMENT

15. Explain the provisions of tax collected but not paid to Government as per Section 76 of CGST Act, 2017.

Ans: Tax collected but not paid to Government [Section 76]: The relevant provisions are discussed as under –

(1) Obligation of person who has collected amount representing tax to deposit the same to Government [Section 76(1)]: Notwithstanding anything to the contrary contained in any order or direction of any Appellate Authority or Appellate Tribunal or court or in any other provisions of this Act or the rules made thereunder or any other law for the time being in force, –

- ✓ 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.

Thus, the provisions of this Section are based on the principle that nobody should be unjustly enriched in the name of Revenue. If any amount is collected in the name of tax, the same must be deposited with the Government.

(2) Issuance of SCN for payment of such amount and imposition of penalty equivalent to such amount [Section 76(2)] : Where any amount is required to be paid to the Government under this Section, and which has not been so paid,—

- ✓ the proper officer may serve on the person liable to pay such amount
- ✓ a notice 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 equivalent to the amount specified in the notice should not be imposed on him under the provisions of this Act.

(3) Issuance of order by Proper Officer [Section 76(3)] : The proper officer shall, after considering the representation, if any, made by such person, determine the amount due from such person and thereupon such person shall pay the amount so determined. The summary of order shall be uploaded electronically in form GST DRC-7, specifying the amount of tax, interest and penalty payable.

(4) Interest also payable on such amount [Section 76(4)] : Such person shall in addition to paying the said amount determined by proper officer also be liable to pay interest thereon at the rate specified under Section 50 from the date such amount was collected by him to the date such amount is paid by him to the Government.

(5) Opportunity of Being Heard [Section 76(5)] : An opportunity of hearing shall be granted where a request is received in writing from the person to whom the notice was issued to show cause.

(6) Time limit of passing order – 1 year from date of Issue of Notice [Section 76(6)] : The proper officer shall issue an order within one year from the date of issue of the notice.

(7) Period of stay to be excluded [Section 76(7)] : Where the issuance of order is stayed by an order of the court or Appellate Tribunal, the period of such stay shall be excluded in computing the period of one year.

(8) Relevant Facts and basis of decision to be given in order [Section 76(8)] : The proper officer, in his order, shall set out the relevant facts and the basis of his decision.

(9) Adjustment of amount to be adjusted against tax payable [Section 76(9)] : The amount paid to the Government under Section 76(1) or Section 76(3) shall be adjusted against the tax payable, if any, by the person in relation to the supplies referred to in Section 76(1).

(10) Refund of Surplus Amount [Section 76(10)] : Where any surplus is left after the adjustment under Section 76(9), the amount of such surplus shall either be credited to the Consumer Welfare Fund or refunded to the person who has borne the incidence of such amount.

(11) Application for refund by person who has borne incidence of such amount [Section 76(11)] : The person who has borne the incidence of the amount, may apply for the refund of the same in accordance with the provisions of Section 54.

16. Explain the procedural compliances relating to issuance of notice and order for demands of amounts payable under the CGST Act, 2017

Ans: Notice and order for demand of amounts payable under the Act [Rule 142 of the CGST Rules, 2017] [Inserted vide Notification No. 20/2024-CT dated 08-10-2024 w.e.f. 01-11-2024]: The relevant provisions are as under –

(1) Summary of notice and statement to be furnished electronically [Rule 142(1)] : The proper officer shall serve, along with the —

(a) notice issued under section 52 or section 73 or section 74 or section 74A section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130, a summary thereof electronically in FORM GST DRC-01,

(b) statement under section 73(3) or section 74(3) or section 74A(3), a summary thereof electronically in FORM GST DRC-02, specifying therein the details of the amount payable.

(2) Communication of amount payable before service of notice [Rule 142(1A)] : The proper officer shall, before service of notice to the person chargeable with tax, interest and penalty, under Section 73(1) or Section 74(1) or section 74A(1), as the case may be, shall communicate the details of any tax, interest and penalty as ascertained by the said officer, in Part A of FORM GST DRC-01A

(3) Information to the Proper officer of tax and interest payment and issuance of acknowledgment [Rule 142(2)] : Where, before the service of notice or statement, the person chargeable with tax makes payment of the tax and interest in accordance with the provisions of section 73(5) or Section 74A(8)(i), as the case may be, or tax, interest and penalty in accordance with the provisions of Section 74(5) or Section 74A(9)(i) or, as the case may be, tax, interest and penalty in accordance with the provisions of section 74(5), or where any person makes payment of tax, interest, penalty or any other amount due in accordance with the provisions of the Act whether on his own ascertainment or, as communicated by the proper officer under rule 142(1A), he shall inform the proper officer of such payment in FORM GST DRC-03 and the proper officer shall issue an acknowledgement, accepting the payment made by the said person in FORM GST DRC-04 [substituted vide notification no. 12/2024-CT dated 10/7/2024]

(4) Information of partial payment and filing of submissions against proposed liability [Rule 142(2A)] : Where the person referred to in rule 142(1A) has made partial payment of the amount communicated to him or desires to file any submissions against the proposed

liability, he may make such submission in Part B of FORM GST DRC-01A and thereafter the proper officer may issue an intimation in Part-C of FORM GST DRC-01A, accepting the payment or the submissions or both, as the case may be, made by the said person [substituted vide notification no. 12/2024-CT dated 10/7/2024]

(5) Credit of the amount paid in electronic liability register [Rule 142(2B)] : Where an amount of tax, interest, penalty or any other amount payable by a person under section 52 or section 73 or section 74 or section 74A or section 74A or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130, has been paid by the said person through an intimation in FORM GST DRC-03 under Rule 142(2), instead of crediting the said amount in the electronic liability register in FORM GST PMT-01 against the debit entry created for the said demand, the said person may file an application in FORM GST DRC-03A electronically on the common portal, and the amount so paid and intimated through FORM GST DRC-03 shall be credited in Electronic Liability Register in FORM GST PMT-01 against the debit entry created for the said demand, as if the said payment was made towards the said demand on the date of such intimation made through FORM GST DRC-03.

However, where an order in FORM GST DRC-05 has been issued in terms of Rule 142(3) concluding the proceedings, in respect of the payment of an amount in FORM GST DRC-03, an application in FORM GST DRC-03A cannot be filed by the said person in respect of the said payment.

(6) Intimation to proper officer of payment of demand and issuance of order of conclusion of proceedings [Rule 142(3)] : Where the person chargeable with tax makes payment of tax and interest under Section 73(8) or under section 74A(8)(ii), as the case may be, or tax, interest and penalty under section 74(8) or under section 74A(9)(ii), as the case may be, within the period specified therein, or where the person concerned makes payment of the amount referred to in section 129(1) within 7 days of the notice issued under section 129(3) but before the issuance of order thereunder, he shall intimate the proper officer of such payment in FORM GST DRC-03 and the proper officer shall issue an intimation in FORM GST DRC-05 concluding the proceedings in respect of the said notice.

(7) Furnishing of reply to notice [Rule 142(4)] : The representation referred to in section 73(9) or section 74(9) or section 76(3) or section 74A(6) or the reply to any notice issued under any section whose summary has been uploaded electronically in FORM GST DRC-01 under rule 142(1) shall be furnished in FORM GST DRC-06.

(8) Summary of order [Rule 142(5)] : A summary of the order issued under section 52 or section 62 or section 63 or section 64 or section 73 or section 74 or section 74A or section 75 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130 shall be uploaded electronically in FORM GST DRC-07, specifying therein the amount of tax, interest and penalty, as the case may be, payable by the person concerned.

(9) Order to be recovery notice [Rule 142(6)] : The order referred to in rule 142(5) shall be treated as the notice for recovery.

(10) Summary of rectification or withdrawal order [Rule 142(7)] : Where a rectification of the order has been passed in accordance with the provisions of section 161 or where an order uploaded on the system has been withdrawn, a summary of the rectification order or of the withdrawal order shall be uploaded electronically by the proper officer in FORM GST DRC-08.

17. Explain the manner of giving intimation of amounts liable to be recovered under section 79 of the Act.

Ans: Intimation of certain amounts liable to be recovered under section 79 of the Act [Rule 142B]:

(1) Intimation of amount recoverable: Where, in accordance with section 75 read with rule 88C, or otherwise, any amount of tax or interest has become recoverable u/s 79 and the same has remained unpaid, the proper officer shall intimate, electronically on the common portal, the details of the said amount in FORM GST DRC-01D, directing the person in default to pay the said amount, along with applicable interest, or, as the case may the amount of interest, within 7 days of the date of the said intimation. The said amount shall be posted in Part-II of Electronic Liability Register in FORM GST PMT-01.

(2) Intimation to be treated as notice of recovery: The intimation shall be treated as the notice for recovery.

(3) Manner of recovery of unpaid amount: Where any amount of tax or interest remains unpaid on the expiry of the period specified in the said intimation, the proper officer shall proceed to recover the amount that remains unpaid in accordance with the provisions of rule 143 or rule 144 or rule 145 or rule 146 or rule 147 or rule 155 or rule 156 or rule 157 or rule 160.

18. Write a note on tax wrongfully collected and paid to Central Government or State Government.

Ans: Tax wrongfully collected and paid to Central Government or State Government [Section 77] :

(1) CGST and SGST/ UTGST paid instead of IGST- Refund of CGST and SGST/ UTGST [Section 77(1)] : A registered person who has paid the Central tax and State tax or, as the case may be, the central tax and the Union territory tax on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall be refunded the amount of taxes so paid in such manner and subject to such conditions as may be prescribed..

(2) IGST paid instead of CGST and SGST/UTGST – No interest on CGST and SGST/UTGST [Section 77(2)] : A registered person who has paid integrated tax 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 central tax and State tax or, as the case may be, the central tax and the Union territory tax payable.

(3) Manner of claiming refund u/s 77 [Rule 89(1A)] : Any person, claiming refund under section 77 of any tax paid by him, in respect of a transaction considered by him to be an intra-State supply, which is subsequently held to be an inter-State supply, may, before the expiry of a period of 2 years from the date of payment of the tax on the inter-State supply, file an application electronically in FORM GST RFD-01 through the common portal.
However, the said application may, as regard to any payment of tax on inter-State supply before 24-09-2022, be filed before the expiry of a period of 2 years from the date on which this sub-rule comes into force.

RECOVERY OF TAX AND ALLIED PROVISIONS

19. Explain the provisions of Initiation of recovery proceedings.

Ans: Initiation of recovery proceedings [Section 78] :

(1) Recovery Proceedings: The recovery proceedings are final steps towards the realisation of any tax or amount, which has been confirmed as payable after following the due process of adjudication by the proper officer.

(2) If demand not paid within 3 months from service of order – Recovery proceedings to be initiated : 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.

(3) Proper officer may require payment of amount prior to expiry of 3 months to protect interest of revenue: Where the proper officer considers it expedient in the interest of revenue, he may, for reasons to be recorded in writing, require the said taxable person to make such payment within such period less than a period of 3 months as may be specified by him.

20. What are the modes by which recovery of tax can be made under CGST Act, 2017.

Ans: Recovery of tax [Section 79]: Where any amount payable by a person to the Government under any of the provisions of this Act or the rules made thereunder is not paid, the proper officer shall proceed to recover the amount by one or more of the following modes, namely:-

(A) MODES OF RECOVERY :

(1) Recovery by deduction from any money owed [Section 79(1)(a) read with Rule 143] : The proper officer may deduct or may require any other specified officer to deduct the amount so payable from any money owing to such person [referred as 'defaulter'] which may be under the control of the proper officer or such other specified officer.

Specified officer shall mean any officer of the Central Government or a State Government or the Government of a Union territory or a local authority, or of a Board or Corporation or a

company owned or controlled, wholly or partly, by the Central Government or a State Government or the Government of a Union territory or a local authority.

(2) Recovery by sale of goods under the control of proper officer [Section 79(1)(b) read with Rule 144] :

(a) Detention and sale of goods : The proper officer may recover or may require any other specified officer to recover the amount so payable from a defaulter by detaining and selling any goods [through a process of auction, including e-auction] belonging to such person which are under the control of the proper officer or such other specified officer.

(b) Preparation of inventory and estimation of market value : The proper officer shall prepare an inventory and estimate the market value of such goods and proceed 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.

(c) Cancellation of auction, if defaulter pays dues : Where the defaulter pays the amount under recovery, including any expenses incurred on the process of recovery, before the issue of the notice for auction, the proper officer shall cancel the process of auction and release the goods.

(3) Garnishee proceedings – Recovery from a third person [Section 79(1)(c) read with Rule 145] :

(a) Notice to Garnishee : The proper officer may, by a notice in prescribed form, in writing, require any other person:

- ✓ from whom money is due/may become due to such person or
- ✓ who holds/may subsequently hold money for/on account of such person to pay to the Government
- ✓ 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, so much of the money as is sufficient to pay the amount due from such person or the whole of the money when it is equal to or less than that amount.

(b) Compliance of Notice : Every person to whom the notice is issued hereunder shall be bound to comply with such notice.

(c) Recovery can be made from post office, banking company or an insurer : 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.

(d) Non compliance of notice – Garnishee deemed to be defaulter : In case the person to whom notice is issued hereunder, fails to make the payment in pursuance thereof to the Government, he shall be deemed to be a defaulter in respect of the amount specified in the notice and all the consequences of this Act or the rules made thereunder shall follow.

(e) Revocation of notice or extension of time : The officer issuing such notice may, at any time, amend or revoke the notice or extend the time for making any payment in pursuance of the notice.

(f) Garnishee discharged from defaulter's liability to the extent of such payment : Any person making any payment in compliance with the notice issued hereunder shall be deemed to have made the payment under the authority of the person in default.
Further, 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 person in default to the extent of the amount specified in the receipt.

(g) Garnishee personally liable if payment is made to defaulter : Any person discharging any liability to the person in default 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 person in default for tax, interest and penalty, whichever is less.

(h) Garnishee not personally liable if he shows that he did not owe to defaulter : Where a person on whom a notice is served hereunder proves to the satisfaction of the officer issuing the notice that:

- ✓ the money demanded/any part thereof was not due to the person in default or
- ✓ he did not hold any money for/on account of the person in default, at the time the notice was served on him, nor is the money demanded or any part thereof, likely to become due to the said person/be held for/on account of such person, nothing contained in this section shall be deemed to require the person on whom the notice has been served to pay to the Government any such money or part thereof.

(i) Certificate : Where the third person makes the payment of the amount specified in the notice, the proper officer shall issue a certificate in prescribed form to the third person clearly indicating the details of the liability so discharged.

(4) Recovery by sale of movable/immovable property [Section 79(1)(d) read with Rules 147, 148, 149, 150 & 154] :

(a) Collection by distrain and detention of any movable or immovable property : The proper officer 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 such person, and detain the same until the amount payable is paid; and 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 [through auction including e-auction] 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 such person. [Section 79(1)(d)]

(b) Preparation of list of defaulters movable/ immovable property and their attachment/ seizure : The proper officer shall prepare a list of movable and immovable property belonging to the defaulter, estimate their value as per the prevalent market price and issue an order of attachment or distraint and a notice for sale prohibiting any

transaction with regard to such movable and immovable property as may be required for the recovery of the amount due.

In case of attachment/distraint of –	
an immovable property	order shall be affixed on the property till the confirmation of sale
a movable property	proper officer shall seize the property and take its custody.

(c) All taxes payable by Person Getting Title : Stamp duty/any other tax/fee payable on transfer of such property shall be paid by the transferee to the Government.

(d) Attachment of debts, shares etc. : Any property in 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/in the custody of any Court shall be attached in the manner provided in Rule 151.

(e) Investigation of objections against attachment/ postponement of sale, if claim made that property cannot be attached/ Rejection of claim : Where any claim is preferred/any objection is raised with regard to the attachment/ distraint of any property by a person claiming that he had some interest in/was in possession of, the property in question, proper officer shall investigate the same and postpone the sale till such time. If proper officer finds merit in his claims/objection upon investigation, proper officer will release the property, wholly or partly. Otherwise, the proper officer will reject the claim and proceed with the process of sale through auction.

(f) Auction cancelled if dues are paid by defaulter : Where the defaulter pays the amount under recovery, including any expenses incurred on the process of recovery, before the issue of the notice for auction, the proper officer shall cancel the process of auction and release the goods.

(g) Disposal of proceeds of sale of goods and movable or immovable property : The amounts so realised from the sale of goods, or conveyance or movable or immovable property, for the recovery of dues from a defaulter or for recovery of penalty payable under section 129(3) shall–

i) first, be appropriated against the administrative cost of the recovery process;

ii) next, be appropriated against the amount to be recovered or to the payment of the penalty payable u/s 129(3), as the case may be;

iii) next, be appropriated against any other amount due from the defaulter under the CGST Act or the IGST Act or the UTGST Act or any of the SGST Act and the rules made thereunder; and

iv) the balance, if any, shall be credited to the electronic cash ledger of the owner of the goods or conveyance as the case may be, in case the person is registered under the Act, and where the said person is not required to be registered under the Act, the said amount shall be credited to the bank account of the person concerned;

v) Where it is not possible to pay the balance of sale proceeds, to the person concerned within a period of 6 months from the date of sale of such goods or conveyance or such further period as the proper officer may allow, such balance of sale proceeds shall be deposited with the Fund.

(h) Sale through broker in case of securities etc. : Where the property to be sold is a negotiable instrument or a share in a corporation, the proper officer 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.

(i) Prohibition against bidding or purchase by Officer : Any officer/other person who has a duty to perform in connection with such sale will not acquire any interest in property sold. [Rule 148]

(j) Prohibition against sale on Holidays : No such sale will take place on Sundays/other general holidays recognized by Government. [Rule 149]

(k) Assistance by Police : Proper officer may seek assistance from jurisdictional police station. [Rule 150]

(5) Recovery as arrears of land revenue – Certification Proceedings [Section 79(1)(e) read with Rule 155] : The proper officer may prepare a certificate in prescribed form signed by him specifying the amount due from such person and send it to the Collector of the district in which such person owns any property or resides or carries on his business or to any officer authorised by the Government and the said Collector or the said officer, on receipt of such certificate, shall proceed to recover from such person the amount specified thereunder as if it were an arrear of land revenue.

(6) Recovery as fine imposed by Magistrate [Section 79(1)(f) read with Rule 156] : Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the proper officer may file an application to the appropriate Magistrate in prescribed form to recover from the person concerned the amount specified thereunder and such Magistrate shall proceed to recover from such person amount specified thereunder as if it were a fine imposed by him.

(7) 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 proper officer shall send a request to the said court and the court shall, subject to the provisions of the Code of Civil Procedure, 1908, execute the attached decree, and credit the net proceeds for settlement of the amount recoverable. [Rule 146]

(8) Recovery through surety : 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. [Rule 157]

(9) Recovery from company in liquidation : Where the company is under liquidation as specified in Section 88, 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 prescribed form. [Rule 160]

(B) OTHER PROVISIONS GOVERNING RECOVERY OF TAX :

(1) Recovery of amount specified in bond [Section 79(2)] : Where the terms of any bond or other instrument executed under this Act or any rules or regulations made thereunder provide that any amount due under such instrument may be recovered in the manner laid down in Section 79(1), the amount may, without prejudice to any other mode of recovery, be recovered in accordance with the provisions of that section.

(2) SGST/UTGST Officer may also recover CGST dues from defaulter and credit the same to Central Government [Section 79(3)] : Where any amount of tax, interest or penalty is payable by a person to the Government under any of the provisions of this Act or the rules made thereunder and which remains unpaid, the proper officer of State tax or Union territory tax, during the course of recovery of said tax arrears, may recover the amount from the said person as if it were an arrear of State tax or Union territory tax and credit the amount so recovered to the account of the Government.

(3) Apportionment of amount collected to State/ Central Government [Section 79(4)] : Where the amount recovered under Section 79(3) is less than the amount due to the Central Government and State Government, the amount to be credited to the account of the respective Governments shall be in proportion to the amount due to each such Government.

(4) Recovery of tax dues can be made from establishment with separate registration with same PAN [Explanation] : The word person shall include "distinct persons" as referred to in Section 25(4)/(5). Thus, recovery can be made from distinct person located in other States/UTs in order to ensure speedy recovery from the other establishments of the registered person.

21. Explain the procedure of recovery of penalty by sale of goods or conveyance detained or seized in transit?

Ans: Recovery of penalty by sale of goods or conveyance detained or seized in transit [Rule 144A]: The procedure is as under-

(1) Preparation of inventory and estimation of market value of goods : Where the person transporting any goods or the owner of such goods fails to pay the amount of penalty under section 129(1) within 15 days from the date of receipt of the copy of the order passed under section 129(3), the proper officer shall proceed for sale or disposal of the goods or conveyance so detained or seized by preparing an inventory and estimating the market value of such goods or conveyance.

Reduction of time period : Where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of 15 days may be reduced by the proper officer.

(2) Sale through auction/e-auction : The said goods or conveyance shall be sold through a process of auction, including e-auction, for which a notice shall be issued in FORM GST DRC 10 clearly indicating the goods or conveyance to be sold and the purpose of sale.
Auction cancelled if dues are paid by defaulter : Where the person transporting said goods or the owner of such goods pays the amount of penalty under section 129(1), including any expenses incurred in safe custody and handling of such goods or conveyance, but before the issuance of notice as stated above, the proper officer shall cancel the process of auction and release such goods or conveyance.

(3) Last date for bid submission : The last day for submission of bid or the date of auction shall not be earlier than 15 days from the date of issue of the notice referred above.
Where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of 15 days may be reduced by the proper officer.

(4) Pre-Bid deposit : The proper officer 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 returned to the unsuccessful bidders, forfeited in case the successful bidder fails to make the payment of the full amount, as the case may be.

(5) Notice to successful bidder for making payment : The proper officer shall issue a notice to the successful bidder in FORM GST DRC-11 requiring him to make the payment within a period of 15 days from the date of auction.

(6) Reduction of time period : Where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of 15 days may be reduced by the proper officer.

(7) Transfer of possession and ownership : On payment of the full bid amount, the proper officer shall transfer the possession and ownership of the said goods or conveyance to the successful bidder and issue a certificate in FORM GST DRC-12.

(8) Re-auction : The proper officer shall cancel the process and proceed for re-auction where no bid is received or the auction is considered to be non-competitive due to lack of adequate participation or due to low bids.

(9) Stay of recovery proceedings : Where an appeal has been filed by the person, the proceedings for recovery of penalty by sale of goods (except goods of perishable or hazardous nature) or conveyance detained or seized in transit under this rule shall be deemed to be stayed.

Clarification the legal position of voluntary payment of taxes during the course of inspection, search or on investigation [Instruction No. 01/2022-23 dated 25-05-2022]
Recovery of taxes not paid or short paid, can be made under the provisions of section 79 only after following due legal process of issuance of notice and subsequent confirmation of demand by issuance of adjudication order.

Therefore, there may not arise any situation where "recovery" of the tax dues has to be made by the tax officer from the taxpayer during the course of search, inspection or investigation, on account of any issue detected during such proceedings.
However, the law does not bar the taxpayer from voluntarily making payment of any tax liability ascertained by him or the tax officer in respect of such issues, either before or during the course of such proceedings or subsequently. The tax officer should however, inform the taxpayers regarding the provisions of voluntary tax payments.

22. Whether the payment of tax dues can be made in installments?

Ans: Payment of tax and other amount in instalments [Section 80]:

(1) Extension of time or payment in installments on application of taxable person :

- ✓ On an application filed by a taxable person,
- ✓ the Commissioner may, for reasons to be recorded in writing,
  - (a) extend the time for payment, or
  - (b) allow payment of any amount due under this Act, by such person in monthly instalments not exceeding 24,
- ✓ subject to payment of interest under section 50 and subject to such conditions and limitations as may be prescribed.

Self Assessed tax – benefit of extension/ instalment is not available : However, the extension and instalments shall not be allowed for the amount due as per the liability self-assessed in any return.

(2) Default in instalment - All outstanding instalments shall become due on date of such default : 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.

23. Explain the provisions relating to payment of tax and other amounts in instalments.

Ans: Payment of tax and other amounts in instalments [Rule 158]:

(1) Application for Deferred Payment/ Payment in Instalments : A taxable person, seeking extension of time for the payment of taxes or any amount due under the Act or for allowing payment of such taxes or amount in instalments, shall furnish an application for the same in prescribed form.

Calling of report by Commissioner from jurisdictional officer seeking financial ability of applicant : On receipt of application, the Commissioner shall call for a report from the jurisdictional officer about the financial ability of the taxable person to pay the said amount.

(2) Order for acceptance of application and allowing for deferred payment/ payment in instalments : Commissioner may, upon consideration of the same, for reasons to be recorded in writing, extend the time for payment or allow payment of any amount due under this Act, 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 under Section 50 and subject to such conditions and limitations as may be prescribed.

(3) Deferred payment/payment in instalments – When not allowed [Rule 158(3)] : The facility shall not be allowed where—

(a) the taxable person has already defaulted on the payment of any amount under CGST/IGST/ UTGST Act, 2017 or any of the SGST Act, 2017, for which the recovery process is on;

(b) the taxable person has not been allowed to make payment in instalments in the preceding financial year under the CGST/IGST/UTGST Act, 2017 or any of the SGST Act, 2017;

(c) the amount for which instalment facility is sought is less than ₹ 25,000.

24. Discuss the validity as well as consequences of the alienation of property of a business by any person during the pendency of a proceeding under CGST Act.

Ans: Transfer of property to be void in certain cases [Section 81]: The relevant provisions are discussed as under

(1) Transfer or charge to be void: Where a person, –

- ✓ A after any amount has become due from him,
- ✓ creates a charge on or parts with the property belonging to him or in his possession
- ✓ by way of sale, mortgage, exchange, or any other mode of transfer whatsoever of any of his properties
- ✓ 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.

Certain charge or transfer not regarded as void : Such charge or transfer shall not be void if it is made –

- ✓ for adequate consideration,
- ✓ in good faith and
- ✓ without notice of the pendency of such proceedings under this Act or without notice of such tax or other sum payable by the said person, or with the previous permission of the proper officer.

25. Write a note on: Tax to be first charge on property.

Ans: Tax to be first charge on property [Section 82]: The relevant provisions are discussed as under–

- ✓ Notwithstanding anything to the contrary contained in any law for the time being in force,
- ✓ save as otherwise provided in the Insolvency and Bankruptcy Code, 2016,
- ✓ any amount payable by a taxable person or any other person on account of tax, interest or penalty which he is liable to pay to the Government shall be a first charge on the property of such taxable person or such person.

26. Write a note on Provisional attachment to protect revenue in certain cases.

Ans: Provisional attachment to protect revenue in certain cases [Section 83] : The relevant provisions et discussed as under-

(1) Provisional attachment during pendency of proceedings [Section 83(1)] : Where,–

- ✓ after the initiation of any proceeding under Chapter XII, Chapter XIV or Chapter XV,
- ✓ the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue it is necessary so to do, he may,
- ✓ by order in writing, attach provisionally, any property, including bank account, belonging to –
  - (a) the taxable person; or
  - (b) any person specified in 122(1A),
- ✓ in such manner as may be prescribed.

(2) Period for which Provisional Attachment shall remain in force – ONE Year [Section 83(2)]: Every such provisional attachment shall cease to have effect after the expiry of a period of one year from the date when provisional attachment order is made under this Section.

27. Explain the manner of Provisional attachment of property.

Ans: Provisional attachment of property [Rule 159]: The relevant provisions are as under-

(1) Order for Provisional attachment of property [Rule 159(1)] : Where the Commissioner decides to attach any property, including bank account in accordance with the provisions of Section 83, he shall pass an order in to that effect mentioning therein, the details of property which is attached.

(2) Copy of attachment order to be sent to concerned authorities for encumbrance [Rule 159(2)]: The Commissioner shall send a copy of the order of attachment in FORM GST DRC-22 to the concerned Revenue Authority or Transport Authority or any such Authority to place encumbrance on the said movable or immovable property, which shall be removed only on the written instructions from the Commissioner to that effect or on expiry of a period of one year from the date of issuance of provisional attachment order, whichever is earlier, the person whose property is being attached under section 83. and a copy of such order shall also be sent to

(3) Release of perishable or hazardous goods on payment of Specified Amount [Rule 159(3)] : Where the property attached is of perishable or hazardous nature, and if the person, whose property has been attached, pays –

(a) an amount equivalent to the market price of such property, or
(b) the amount that is or may become payable by such person,
whichever is lower,
then such property shall be released forthwith, by an order, on proof of payment.

(4) Disposal of goods on failure to make payment of Specified Amount [Rule 159(4)] : Where such person fails to pay the amount in respect of the said property of perishable or hazardous nature, the Commissioner may dispose of such property and the amount realized thereby shall be adjusted against the tax, interest, penalty, fee or any other amount payable by the such person.

(5) Objection against attachment [Rule 159(5)] : Any person whose property is attached may, file an objection in FORM GST DRC-22A to the effect that the property attached was or is not liable to attachment, and the Commissioner may, after affording an opportunity of being heard to the person filing the objection, release the said property by an order.

(6) Release of property when objections are sustainable [Rule 159(6)] : The Commissioner may, upon being satisfied that the property was, or is no longer liable for attachment, release such property by issuing an order.

28. Explain the manner of Attachment of debts and shares, etc.

Ans: Attachment of debts and shares, etc. [Rule 151] :

(1) Attachment of debt/ share/ movable property not in possession of defaulter [Rule 151(1)] : 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 prescribed form 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 proper officer;
(b) in the case of a share, the person in whose name the share may be standing from transferring the same or receiving any dividend thereon;
(c) in the case of any other movable property, the person in possession of the same from giving it to the defaulter.

(2) Service of attachment order [Rule 151(2)] : A copy of such order shall be affixed on some conspicuous part of the office of the proper officer, 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.

(3) Payment by debtor to proper officer – Deemed payment to defaulter [Rule 151(3)] : A debtor, prohibited, may pay the amount of his debt to the proper officer, and such payment shall be deemed as paid to the defaulter.

29. Explain the manner of attachment of property in custody of courts or Public Officer.

Ans: Attachment of property in custody of courts or Public Officer [Rule 152]: Where the property to be attached is in the custody of any court or Public Officer, the proper officer shall send the

order of attachment to such court or officer, requesting that such property, and any interest or dividend becoming payable thereon, may be held till the recovery of the amount payable.

30. Explain the manner of attachment of interest in partnership.

Ans: Attachment of interest in partnership [Rule 153]:

(1) Manner of attachment of interest in partnership [Rule 153(1)]: Where the property to be attached consists of an interest of the defaulter, being a partner, in the partnership property, the proper officer may make an order charging the share of such partner in the partnership property and profits with payment of the amount due under the certificate, and may, by the same or subsequent order, appoint a receiver of the share of such partner in the profits, whether already declared or accruing, and of any other money which may become due to him in respect of the partnership, and direct accounts and enquiries and make an order for the sale of such interest or such other order as the circumstances of the case may require.

(2) Rights of other partners [Rule 153(2)]: The other partners shall be at liberty at any time to redeem the interest charged or, in the case of a sale being directed, to purchase the same.

31. Explain the provisions with regard to Continuation and validation of certain recovery proceedings.

Ans: Continuation and validation of certain recovery proceedings [Section 84]:

(1) Applicability : Where—

- ✓ any notice of demand in respect of Government dues (i.e. any tax, penalty, interest or any other amount payable under this Act) is served on taxable person or any other person; and
- ✓ any appeal, revision application is filed or other proceedings are initiated in respect of such Government dues.

(2) Issuance of fresh notice when government dues are enhanced and continuation of recovery proceedings of earlier demand as per earlier notice : Where such Government dues are enhanced in such appeal, revision or other proceedings,–

- ✓ 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 in relation to such Government dues as are covered by the notice of demand served upon him before the disposal of such appeal, revision or other proceedings;
- ✓ may, without the service of any fresh notice of demand, be continued from the stage at which such proceedings stood immediately before such disposal.

(3) Issuance of fresh notice not necessary when government dues are reduced and continuation of recovery proceedings of amount reduced : 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 demand served upon him prior to the disposal of such appeal, revision or other proceedings may be continued in relation to the amount so reduced from the stage at which such proceedings stood immediately before such disposal.

Note

LIABILITY IN CASE OF TRANSFER OF BUSINESS

1. Write a short note on liability in case of transfer of business.
If a taxable person with pending tax dues, transfers his business to another person, what would happen to the tax dues?

Ans: Liability in case of transfer of business [Section 85]:

(1) Liability arising prior to transfer – Joint and several liability of transferor and transferee [Section 85(1)] :

- ✓ Where a taxable person, liable to pay tax under this Act, transfers his business in whole or in part, by sale, gift, lease, leave and license, hire or in any other manner whatsoever,
- ✓ the taxable person and the person to whom the business is so transferred shall, jointly and severally, be liable wholly or to the extent of such transfer, to pay the tax, interest or any penalty due from the taxable person upto the time of such transfer, whether such tax, interest or penalty has been determined before such transfer, but has remained unpaid or is determined thereafter.

(2) Liability arising post transfer – Transferee liable for tax dues [Section 85(2)] : Where the transferee of a business carries on such business either in his own name or in some other name, he shall be liable to pay tax on the supply of goods or services or both effected by him with effect from the date of such transfer.

Further, if he is a registered person under this Act, apply within the prescribed time for amendment of his certificate of registration.

2. Explain the provisions of liability of agent and principal under Section 86 of CGST Act, 2017.

Ans: Liability of agent and principal [Section 86]: Where an agent supplies or receives any taxable goods on behalf of his principal, such agent and his principal shall, jointly and severally, be liable to pay the tax payable on such goods under this Act.

LIABILITY IN CASE OF AMALGAMATION OR MERGER OF COMPANIES OR COMPANIES IN LIQUIDATION

3. Explain the provisions of liability in case of amalgamation or merger of companies under Section 87 of Act, 2017. CGST

Ans: Liability in case of amalgamation or merger of companies [Section 87] :

(1) Tax liability on transactions between the effective date of amalgamation/ merger and date of order (Tribunal/ Court/ CG) for amalgamation or merger of companies – Such companies to be treated as different taxable person till the date of order [Section 87(1)] : When –

- ✓ two or more companies are amalgamated or merged in pursuance of an order of court or of Tribunal or otherwise and
- ✓ the order is to take effect from a date earlier to the date of the order and

- ✓ any two or more of such companies have supplied or received any goods or services or both to or from each other during the period commencing on the date from which the order takes effect till the date of the order, then, such transactions of supply and receipt shall be included in the turnover of supply or receipt of the respective companies and they shall be liable to pay tax accordingly.

(2) Such companies to be distinct companies and RC of the said companies to be cancelled with effect from the date of order [Section 87(2)] : Notwithstanding anything contained in the said order, for the purposes of this Act, the said two or more 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.

4. Explain the provisions of Liability in case of company in liquidation. OR Explain the provisions relating to liability for GST in case of company in liquidation (Section 88 of the CGST Act, 2017). (5 Marks, May 2018-NS)

Ans: Liability in case of company in liquidation [Section 88]:

(1) Intimation by liquidator of a company of his appointment to Commissioner [Section 87(1)]: When any company is being wound up whether under the orders of a court or Tribunal or otherwise, every person appointed as receiver of any assets of a company (hereafter in this section referred to as the "liquidator"), shall, within 30 days after his appointment, give intimation of his appointment to the Commissioner.

(2) Commissioner to notify the amount due from such company [Section 87(2)] : The Commissioner shall—

- ✓ after making such inquiry or calling for such information as he may deem fit,
- ✓ notify the liquidator within 3 months from the date on which he receives intimation of the appointment of the liquidator,
- ✓ the amount which in the opinion of the Commissioner would be sufficient to provide for any tax, interest or penalty which is then, or is likely thereafter to become, payable by the company.

(3) Private company in liquidation - Director liable [Section 88(3)] : When any private company is wound up and any tax, interest or penalty determined under this Act on the company for any period, whether before or in the course of or after its liquidation, 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 tax, interest or penalty.

Exceptions : The director of a private company shall not be held liable if 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.

LIABILITY OF DIRECTORS, PARTNERS, TRUSTEES, GUARDIANS ETC.

5. What is the liability of directors of private company ?

Ans: Liability of directors of private company [Section 89] :

(1) Directors jointly and severally liable in case tax dues cannot be recovered from company [Section 89(1)] : Notwithstanding anything contained in the Companies Act, 2013, where any tax, interest or penalty due from a private company in respect of any supply of goods or services or both for any period cannot be recovered, then, every person who was a director of the private company during such period shall, jointly and severally, be liable for the payment of such tax, interest or penalty.

Exceptions : The director of a private company shall not be held liable if he proves that the nonrecovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

(2) Liability dispensed off on conversion of private company into a Public Company [Section 89(2)] : Where a private company is converted into a public company and the tax, interest or penalty in respect of any supply of goods or services or both for any period during which such company was a private company cannot be recovered before such conversion, then, nothing contained in Section 89(1) shall apply to any person who was a director of such private company in relation to any tax, interest or penalty in respect of such supply of goods or services or both of such private company.

Directors liable for Personal Penalty : However, nothing contained in this provision shall apply to any personal penalty imposed on such director.

6. Explain the liability of partners of firm to pay tax. OR Discuss the liability of the retiring partner of a firm to pay any tax, interest or penalty, if any, leviable on the firm under CGST/IGST/SGST Act. (2 Marks, Nov. 2018-OS)

Ans: Liability of partners of firm to pay tax [Section 90]:

(1) Firm and all partners of firm jointly and severally liable : Notwithstanding any contract to the contrary and any other law for the time being in force, where any firm is liable to pay any tax, interest or penalty under this Act, the firm and each of the partners of the firm shall, jointly and severally, be liable for such payment.

(2) Intimation of retirement of partner to the Commissioner : Where any partner retires from the firm, he or the firm, shall intimate the date of retirement of the said partner to the Commissioner by a notice in that behalf in writing and such partner shall be liable to pay tax, interest or penalty due up to the date of his retirement whether determined or not, on that date.

(3) Intimation not given within one month of retirement – Liability of retiring partner continues : If no such intimation is given within one month from the date of retirement, the liability of such partner under the first proviso shall continue until the date on which such intimation is received by the Commissioner.

7. Explain the provisions of Liability of guardians, trustees, etc.

Ans: Liability of guardians, trustees, etc. [Section 91]:

(1) Business carried on for the benefit of a minor or incapacitated person – Guardian/ Trustee/ Agent liable : In respect of business carried on behalf or for the benefit of a minor or incapacitated person (by the following persons who carry on such business) then, such persons will be liable to tax:

- ✓ Guardian; or
- ✓ Trustee; or
- ✓ Agent.

(2) Guardian, trustee or agent liable in like manner as minor or other incapacitated person liable : The tax, interest, penalty or any other dues which such person will be liable to, are the amounts which are recoverable from the minor or any such incapacitated person and which are levied, assessed in the hands of guardian, trustee or agent.

(3) Dues recoverable from agent etc. as if major or capacitated person carried on business : The dues are recoverable from the guardian, trustee or agent in respect of business of the minor or other incapacitated person by treating them as major or capacitated person, who is conducting the business for himself.

8. Explain the provisions of Liability of Court of Wards, etc.

Ans: Liability Of Court Of Wards, Etc. [SECTION 92]: Where the estate or any portion of the estate of a taxable person owning a business in respect of which any tax, interest or penalty is payable under this Act is under the control of–

- ✓ the Court of Wards,
- ✓ the Administrator General,
- ✓ the Official Trustee, or

any receiver or manager (including any person, whatever be his designation, who in fact manages the business) appointed by or under any order of a court,

the tax, interest or penalty shall be levied upon and be recoverable from such Court of Wards, Administrator General, Official Trustee, receiver or manager.

Tax, interest or penalty shall be levied and recoverable 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.

SPECIAL PROVISIONS REGARDING LIABILITY TO PAY TAX, INTEREST OR PENALTY IN CERTAIN CASES

9. Explain the Special provisions regarding liability to pay tax, interest or penalty in certain cases.

Ans: Special provisions regarding liability to pay tax, interest or penalty in certain cases [Section 93]:

(1) Liability in case of death of individual [Section 93(1)]: Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, where a person, liable to pay tax, interest or penalty under this Act, dies, then—

a) In case of continuation of business - person who continues the business liable : If a business carried on by the person is continued after his death by—

- ✓ his legal representative, or
- ✓ any other person,

such legal representative or other person, shall be liable to pay tax, interest or penalty due from such person under this Act.

b) In case of discontinuation of business before or after his death – Legal representative liable - liability limited to the extent of estate of deceased : If the business carried on by the person is 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 to which the estate is capable of meeting the charge,
- ✓ the tax, interest or penalty due from such person under this Act,
- ✓ whether such tax, interest or penalty has been determined before his death but has remained unpaid or is determined after his death.

(2) Partition of HUF or AOP – Members or group of members Jointly or Severally Liable [Section 93(2)] : Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016,

- ✓ where a taxable person, liable to pay tax, interest or penalty under this Act, is a Hindu Undivided Family or an association of persons and
- ✓ the property of the HUF or the AOP is partitioned amongst the various members or groups of members,
- ✓ then, each member or group of members shall, jointly and severally, be liable to pay the tax, interest or penalty due from the taxable person under this Act
- ✓ up to the time of the partition
- ✓ whether such tax, penalty or interest has been determined before partition but has remained unpaid or is determined after the partition.

(3) Dissolution of firm – Partners at the time of dissolution shall be jointly and severally liable [Section 93(3)] : Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, where a taxable person, liable to pay tax, interest or penalty under this Act, is a firm, and the firm is dissolved, then, every person who was a partner shall, jointly and severally, be liable to pay the tax, interest or penalty due from the firm under this Act up to the time of dissolution whether such tax, interest or penalty has been determined before the dissolution, but has remained unpaid or is determined after dissolution.

(4) Termination of Guardianship or Trusteeship - Ward or the beneficiary shall be liable [Section 93(4)] : Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, where a taxable person liable to pay tax, interest or penalty under this Act,–

- ✓ is the guardian of a ward on whose behalf the business is carried on by the guardian; or

✓ is a trustee who carries on the business under a trust for a beneficiary,

then, if the guardianship or trust is terminated, the ward or the beneficiary shall be liable to pay the tax, interest or penalty due from the taxable person upto the time of the termination of the guardianship or trust, whether such tax, interest or penalty has been determined before the termination of guardianship or trust but has remained unpaid or is determined thereafter.

10. Explain the provisions of liability in case of discontinuance of business carried on by firm/AOP/HUF .

Ans-Liability in other cases [Section 94]:

(1) Liability of partners of firm or members of AOP or HUF on discontinuation of business [Section 94(1)] : Where a taxable person is a firm or an association of persons or a Hindu Undivided Family and such firm, association or family has discontinued business –

(a) the tax, interest or penalty payable under this Act by such firm, association or family up to the date of such discontinuance may be determined as if no such discontinuance had taken place; and

(b) every person who, at the time of such discontinuance, was a partner of such firm, or a member of such association or family, shall, notwithstanding such discontinuance, jointly and severally, be liable for the payment of tax and interest determined and penalty imposed and payable by such firm, association or family, whether such tax and interest has been determined or penalty imposed prior to or after such discontinuance and subject as aforesaid, the provisions of this Act shall, so far as may be, apply as if every such person or partner or member were himself a taxable person.

(2) Liability of partners of firm or members of AOP in case of change in constitution of firm/ AOP [Section 94(2)] : Where a change has occurred in the constitution of a firm or an association of persons, the partners of the firm or members of association, 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 tax, interest or penalty due from such firm or association for any period before its reconstitution.

(3) Discontinuance to include dissolution of firm or association and partition in case of HUF [Section 94(3)] : The provisions of Section 94(1) shall, so far as may be, apply where the taxable person, being a firm or association of persons is dissolved or where the taxable person, being a Hindu Undivided Family, has effected partition with respect to the business carried on by it and accordingly references in that sub-section to discontinuance shall be construed as reference to dissolution or to partition.

Explanation: For the purposes of this Chapter, —

(i) "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.

TOPIC REFERENCER

- *Detention, Seizure and Release of Goods and Conveyances in Transit*
- *Confiscation of Goods or Conveyances and Levy of Penalty*
- *Offences and Prosecution*
- *Compounding of Offences*
- *Ethics under GST*

PENALTY FOR CERTAIN OFFENCES

1. What is penalty and prosecution.

Ans-Penal the genume tex important aspects of any legal framework to ensure efficient enforcement of laws and to motivate the to the make the required compliances. The word "penalty" has not been defined in judicial pronouncements CGST Act, but and penalty as: principies of jurisprudence have laid down the nature of a

- ✓ a temporary punishment or a sum of money imposed by statute, to be paid as punishment for the commission of a certain offence;
- ✓ a punishment imposed by law or contract for doing or failing to do something that was the duty of a party to do.

'Offence' in general means a violation/breach of law that is punishable under law by way of penalties, fines, imprisonment, or other legal actions based on the severity of the violation. Generally, the quantum of penalty to be levied depends upon the intention of person committing the offence A person with a evade payment of taxes will be subjected to higher amount of penalty whereas a relatively less amount of penalt will be levied for non-fraudulent offences. fraudulent intention to It is important to note that in certain specified cases of levy of penalty, the presence of mens rea is a pre-requisite. The term "mens rea" is a Latin legal phrase that means "guilty mind" or culpable mental state. "Mens" means "mind," and "rea" means "guilty" or "crime" It refers to a mental state,

intention, or knowledge of a person when he commits an offence. 'Prosecution' is the institution or commencement of legal proceeding, the process of exhibiting formal charges against the offender. Section 198 of the Criminal Procedure Code defines

"prosecution" as the institution and carrying on of the legal proceedings against a person. Further, to institute the prosecution, offences are classified into cognizable (serious category of offences) and non-cognizable offences (relatively less serious category of offences). C ognizable offences are non-bailable offences and non-cognizable offences are bailable offences.

2. What are of offences which may be committed by a taxable person liable to penalty? What is the quantum of penalty for an offence mentioned under section?

Ans-penalty for certain offences [Section 122]:

(1) Types of Offence [Section 122(1)]: Where a taxable person who commits the following offence shall be liable to penalty—

(i) supplies any goods or services or both without issue of any invoice or issues an incorrect or false invoice with regard to any such supply;

(ii) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act or the rules made there-under;

(iii) collects any amount as tax but fails to pay the same to the Government beyond a period of 3 months from the date on which such payment becomes due;

(iv) collects any tax in contravention of the provisions of this Act but fails to pay the same to the Government beyond a period of 3 months from the date on which such payment becomes due;

(v) fails to deduct the tax in accordance with the provisions of Section 51(1), or deducts an amount which is less than the amount required to be deducted, or where he fails to pay to the Government under Section 51(2) thereof, the amount deducted as tax;

(vi) fails to collect tax in accordance with the provisions of Section 52(1), or collects an amount which is less than the amount required to be collected or where he fails to pay to the Government the amount collected as tax under Section 52(3);

(vii) takes or utilises input tax credit without actual receipt of goods or services or both either fully or partially, in contravention of the provisions of this Act or the rules made there-under;

(viii) fraudulently obtains refund of tax under this Act;

(ix) takes or distributes input tax credit in contravention of Section 20, or the rules made thereunder;

(x) falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information or return with an intention to evade payment of tax due under this Act;

(xi) is liable to be registered under this Act but fails to obtain registration;

(xii) furnishes any false information with regard to registration particulars, either at the time of applying for registration, or subsequently;

(xiii) obstructs or prevents any officer in discharge of his duties under this Act;

(xiv) transports any taxable goods without the cover of documents as may be specified in this behalf;

(xv) suppresses his turnover leading to evasion of tax under this Act;

(xvi) fails to keep, maintain or retain books of account and other documents in accordance with the provisions of this Act or the rules made there-under;

(xvii) fails to furnish information or documents called for by an officer in accordance with the provisions of this Act or the rules made there-under or furnishes false information or documents during any proceedings under this Act;

(xviii) supplies, transports or stores any goods which he has reasons to believe are liable to confiscation under this Act;

(xix) issues any invoice or document by using the registration number of another registered person;

(xx) tampers with, or destroys any material evidence or document;

(xxi) disposes off or tampers with any goods that have been detained, seized, or attached under this Act,

Quantum of Penalty: He shall be liable to pay a penalty of—

- ₹ 10,000, or
- an amount equivalent to any of the following (applicable as the case may be)

✓ the tax evaded, or

✓ the tax not deducted under section 51 or short deducted or deducted but not paid to the Government, or

✓ tax not collected under section 52 or short collected or collected but not paid to the Government, or

✓ input tax credit availed of or passed on or distributed irregularly, or

✓ the refund claimed fraudulently,

whichever is higher.

(2) Penal provisions for the actual perpetrators who used to retain the benefit of the transaction conducted by someone else [Section 122(1A)] : Any person who retains the benefit of any of the following transaction—

(i) supplies any goods or services or both without issue of any invoice or issues an incorrect or false invoice with regard to any such supply;

(ii) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act or the rules made there-under;

(iii) takes or utilises input tax credit without actual receipt of goods or services or both either fully or partially, in contravention of the provisions of this Act or the rules made there-under;

(iv) takes or distributes input tax credit in contravention of Section 20, or the rules made thereunder;

and at whose instance such transaction is conducted, shall be liable to a penalty.

Quantum of Penalty : He shall be liable to pay a penalty of an amount equivalent to the tax evaded or input tax credit availed of or passed on.

(3) Penalty on E- Commerce Operator [Section 122[(1B)]: Any electronic commerce operator, who is liable to collect tax at source under section 52 [Amended by the Finance (No.2) Act, 2024 w.e.f. 01-10-2023]

(i) allows a supply of goods or services or both through it by an unregistered person other than a person exempted from registration by a notification issued under this Act to make such supply;

(ii) allows an inter-State supply of goods or services or both through it by a person who is not eligible to make such inter-State supply; or

(iii) fails to furnish the correct details in the GSTR-8 statement of any outward supply of goods effected through it by a person exempted from obtaining registration under this Act,

shall be liable to pay a penalty of

(a) ₹ 10,000, or

(b) an amount equivalent to the amount of tax involved had such supply been made by a registered person other than a person paying tax under section 10,

whichever is higher.

(4) Supplies on which tax has not been paid or short-paid or erroneously refunded, or where the ITC has been wrongly Availed or Utilised [Section 122(2)] :

Any registered person—

- ✓ who supplies any goods or services or both on which any tax has not been paid or short-paid or erroneously refunded, or
- ✓ where the input tax credit has been wrongly availed or utilised,—

Amount of Penalty :

(a)	For any reason, other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax	Shall be liable to a penalty for an amount equal to– ✓ ₹ 10,000; or ✓ 10% of the tax due from such person, whichever is higher.
(b)	For reason of fraud or any wilful misstatement or suppression of facts to evade tax	Shall be liable to a penalty for an amount equal to– ⌑ ₹ 10,000; or ⌑ 100% of the tax due from such person, whichever is higher.

(5) Penalty for any person other than the taxable person [Section 122(3)] : Any person who—

(a) aids or abets any of the offences specified in clauses (i) to (xxi) of Section 122(1);

(b) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with any goods which he knows or has reasons to believe are liable to confiscation under this Act or the rules made there-under;

(c) receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reasons to believe are in contravention of any provisions of this Act or the rules made there-under;

(d) fails to appear before the officer of central tax, when issued with a summon for appearance to give evidence or produce a document in an inquiry;

(e) fails to issue invoice in accordance with the provisions of this Act or the rules made there-under or fails to account for an invoice in his books of account, shall be liable to a penalty which may extend to ₹ 25,000.

Note: Provisions of offences and penalties under CGST Act have also been made applicable to IGST Act vide section 20 of the IGST Act. Further, in cases where the penalty is leviable under the CGST Act and the SGST Act/UTGST Act, the penalty leviable under the IGST Act shall be the sum total of the said penalties. It may be noted that the penalties payable by a registered person for the specified offences are with reference to only the CGST Act. An equal amount of penalty would be payable by such person under the respective SGST/UTGST Act as well.

3. Explain the penal provisions for failure to furnish information return.

Ans: Penalty for failure to furnish information return [Section 123]: If a person who is required to furnish an information return under Section 150 fails to do so within the period specified in the notice issued under Section 150(3) thereof, the proper officer may direct that such person shall be liable to pay a penalty of ₹ 100 for each day of the period during which the failure to furnish such return continues.

Maximum Penalty: The penalty imposed under this section shall not exceed ₹ 5,000.

4. What fine and penalty can be imposed on a person who fails to furnish statistics. Explain the provisions of general penalty.

Ans: The fine which can be imposed if any person fails to furnish statistics-

(1) Fine for failure to furnish statistics [Section 124]: If any person required to furnish any information or return under Section 151 ,-

(a) without reasonable cause fails to furnish such information or return as may be required under that section, or

(b) wilfully furnishes or causes to furnish any information or return which he knows to be false,

(c) he shall be punishable with a fine which may extend to ₹ 10,000 and in case of a continuing offence to a further fine which may extend to ₹ 100 for each day after the first day during which the offence continues subject to a maximum limit of ₹ 25,000.

(2) General penalty [Section 125] : Any person, who contravenes any of the provisions of this Act or any rules made thereunder for which no penalty is separately provided for in this Act, shall be liable to a penalty which may extend to ₹ 25,000.

5. What are the general disciplines to be followed while imposing penalties? penalty is

Ans: General disciplines related to penalty [Section 126]: The levy of regime which is based on jurisprudence, principies of natural justice and principles subject to a certain disciplinary governing international trade and agreements.

(1) No penalty to be imposed for Minor Breaches [Section 126(1)] : No penalty shall be imposed by any officer under this Act for

- ✓ minor breaches of tax regulations , or
- ✓ procedural requirements of the law, or
- ✓ any omission or mistake in documentation which is easily rectifiable.

Explanation:

(a) a breach shall be considered a 'minor breach' if the amount of tax involved is less than ₹ 5,000;

(b) an omission or mistake in documentation shall be considered to be easily rectifiable if the same is an error apparent on the face of record.

(2) Penalty to be commensurate with severity of breach [Section 126(2)] : The penalty imposed under this Act shall depend on the facts and circumstances of each case and shall be commensurate with the degree and severity of the breach.

(3) Opportunity of Being Heard [Section 126(3)] : No penalty shall be imposed on any person without giving him an opportunity of being heard i.e. issue of SCN and proper hearing in the matter, affording an opportunity to the person proceeded against is must to rebut the allegations levelled against him.

(4) Penalty order to clearly specify the Nature of Breach [Section 126(4)] : The officer under this Act shall while imposing penalty in an order for a breach of any law, regulation or procedural requirement, specify the nature of the breach and the applicable law, regulation or procedure under which the amount of penalty for the breach has been specified.

(5) Voluntary disclosure to be a mitigating factor when Quantifying a Penalty [Section 126(5)] When a person voluntarily discloses to an officer under this Act the circumstances of a breach of the tax law, regulation or procedural requirement prior to the discovery of the breach by the officer under this Act, the proper officer may consider this fact as a mitigating factor when quantifying a penalty for that person.

(6) Non applicability in case of penalty of Fixed Amount or Fixed Percentage [Section 126(6)] : The provisions of this section shall not apply in such cases where the penalty specified under this Act is either a fixed sum or expressed as a fixed percentage.

6. Write a note on Power to impose penalty in certain cases.

Ans: Power to impose penalty in certain cases [Section 127] : A person who is not covered by any proceeding under the following provisions, namely:-

(i) Assessment of non-filers of Returns, under Section 62

(ii) Assessment of unregistered persons, under Section 63

(iii) Summary Assessment under Section 64

(iv) Determination under Section 73 of tax not paid or short paid or erroneously refunded or ITC wrongly availed or utilized for any reason other than fraud or any willful misstatement or suppression of facts

(v) Determination under Section 74 of tax not paid or short paid or erroneously refunded or ITC wrongly availed or utilized by reason of fraud or any willful misstatement or suppression of facts

(vi) Determination u/s 74A of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason pertaining to Financial Year 2024-25 onward. [Inserted by the Finance (No. 2) Act, 2024 w.e.f. 01-11-2024]

(vii) Detention, seizure and release of goods and conveyances in transit under Section 129

(viii) Confiscation of goods or conveyances and levy of penalty under Section 130 and proper officer is of the view that such person is liable to a penalty, he may issue an order levying such penalty after giving a reasonable opportunity of being heard to such person. Thus, separate notice and order will be issued for imposition of penalty if offence not covered under any of the provisions listed above.

7. Explain the provisions relating to waiver of penalty or fee.

Ans: Power to waive penalty or fee or both [Section 128]: The Government may, by notification, waive in part or full, any penalty referred to in Section 122 or 123 or 125 or any late fee referred to in Section 47 for-

- ✓ such class of taxpayers, and
- ✓ under such mitigating circumstances as may be specified therein,

on the recommendations of the Council.

WAIVER OF INTEREST OR PENALTY OR BOTH RELATING TO DEMANDS RAISED UNDER SECTION 73, FOR CERTAIN TAX PERIODS. [SECTION 128A] [Inserted by the Finance (No. 2) Act, 2024 w.e.f. 01-11-2024]

(1) On payment of tax demands pertaining to period 01-07-2017 to 31-03-2020 - Interest and penalty waived: Where any amount of tax is payable by a person chargeable with tax in accordance with, –

(a) a notice issued under section 73(1) or a statement issued under section 73(3), and where no order under section 73(9) has been issued; or

(b) an order passed under section 73(9), and where no order under section 107(11) or section 108(1) has been passed; or

(c) an order passed under section 107(11) or section 108(1), and where no order under section 113(1) has been passed,

pertaining to the period from 1st July, 2017 to 31st March, 2020, or a part thereof, and the said person pays the full amount of tax payable as per the notice or statement or the order referred above, as the case may be, on or before the date, as may be notified by the Government on the recommendations of the Council, no interest under section 50 and penalty under this Act, shall be payable and all the proceedings in respect of the said notice or order or statement, as the case may be, shall be deemed to be concluded, subject to such conditions as may be prescribed.

Where a notice has been issued under section 74(1), and an order is passed or required to be passed by the proper officer in pursuance of the direction of the Appellate Authority or Appellate Tribunal or a court in accordance with the provisions of section 75(2), the said notice or order shall be considered to be a notice or order for this section.

Additional amount of tax determined by Appellate forum or revisionsary authority to be deposited : The conclusion of the proceedings under this sub-section, in cases where an application is filed under section 107(3) or under section 112(3) or an appeal is filed by an officer of central tax under section 117(1) or under section 118(1) or where any proceedings are initiated under section 108(1), against an order referred to in clause (b) or clause (c) or against the

directions of the Appellate Authority or the Appellate Tribunal or the court referred to in the first proviso, shall be subject to the condition that the said person pays the additional amount of tax payable, if any, in accordance with the order of the Appellate Authority or the Appellate Tribunal or the court or the Revisional Authority, as the case may be, within 3 months from the date of the said order:

No refund of interest and penalty deposited: Where such interest and penalty has already been paid, no refund of the same shall be available.

(2) Non applicability in case of errorneous refund : Nothing contained in Section 128A(1) shall be applicable in respect of any amount payable by the person on account of erroneous refund.

(3) Non applicability in case of pending appeal/ writ petitions : Nothing contained in Section 128A(1) shall be applicable in respect of cases where an appeal or writ petition filed by the said person is pending before Appellate Authority or Appellate Tribunal or a court, as the case may be, and has not been withdrawn by the said person on or before the notified date.

(4) Appeal barred : Where any amount specified above has been paid and the proceedings are deemed to be concluded, no appeal under section 107(1) or section 112(1) shall lie against an order referred to in Section 128A(1)(b)/(c), as the case may be.

DETENTION, SEIZURE AND RELEASE OF GOODS AND CONVEYANCES IN TRANSIT

8. What action can be taken for transportation of goods without valid documents or attempted to be removed without proper record in books?

Ans: Detention, seizure and release of goods and conveyances in transit [Section 129] : Where any person—

- ✓ transports any goods, or
- ✓ stores any goods

while they are in transit—

- ✓ in contravention of the provisions of this Act or the rules made there-under, then— –
  - all such goods, and
  - conveyance used as a means of transport for carrying the said goods, and
  - documents relating to such goods and conveyance,
- ✓ shall be liable to detention or seizure.

Release of detained or seized Goods/ Conveyance : The detained or seized goods or conveyance shall be released—

(a) When owner of goods COMES FORWARD for payment of penalty [Section 129(1)(a)]:

Taxable goods	CGST/SGST/UTGST Law	IGST Law
	Penalty equal to 200% of tax payable	Penalty equal to 200% of IGST Law tax payable
Exempted goods	Lower of the following:	Lower of the following:

	✓ 2% of the value of goods or ✓ ₹25,000	✓ 4% of the value of goods or ✓ ₹50,000

(b) When owner of goods DOES NOT COME FORWARD for payment of penalty [Section 129(1)(b)]:

Taxable goods	Penalty equal to higher of the following ✓ 50% of the value of goods or ✓ 200% of the tax payable on such goods	Penalty equal to 200% of IGST Law tax payable ✓ 100% of the value of goods or ✓ 200%of the IGST payable on such goods
Exempted goods	Lower of • 5% of value of goods tax • ₹25,000	Lowe of – ✓ 10% of the value of goods:or ✓ ₹50,000

It is important to note that the goods, conveyance and/or documents may also be released on furnishing security equivalent to amount payable in the above table.

It may be noted that the penalty payable under section 129 is with reference to only the CGST Act. An equal amount of penalty is payable under the respective SGST/UTGST Act as well.
Similarly, under IGST Act, penalty payable will be sum of penalty payable under the CGST Act and penalty payable under SGST/UTGST Act.

(3) Issuance of notice and passing of penalty order [Section 129(3)]: The proper officer detaining or seizing goods or conveyance shall issue a notice within 7 days of such detention or seizure, specifying the penalty payable, and thereafter, pass an order within a period of 7 days from the date of service of such notice, for payment of penalty as specified above.

(4) Opportunity of being heard [Section 129(4)]: No penalty shall be determined u/s 129(3) without giving the person concerned an opportunity of being heard.

(5) Deemed conclusion of proceedings [Section 129(5)] : On payment of amount referred in Section 129(1), all proceedings in respect of the notice specified in Section 129(3) shall be deemed to be concluded.

(6) Failure to pay penalty within 15 days of order – goods/ conveyance to be sold [Section 129(6)] : Where the person transporting any goods or the owner of such goods fails to pay the amount of penalty within 15 days from the date of receipt of the copy of the penalty order, the goods or conveyance so detained or seized shall be liable to be sold or disposed of otherwise, in such manner and within such time as may be prescribed, to recover the penalty payable.

Release of conveyance : The conveyance shall be released on payment by the transporter of penalty or ₹ 1,00,000, whichever is less:

Reduction of time period : Where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of 15 days may be reduced by the proper officer.

It has been clarified vide Circular No. 76/50/2018-GST dated 31-12-2018 that if the invoice or any other specified document is accompanying the consignment of goods, then either the consignor or the consignee should be deemed to be the owner. If the invoice or any other specified document is not accompanying the consignment of goods, then in such cases, the proper officer should determine who should be declared as the owner of goods.

CONFISCATION OF GOODS OR CONVEYANCES AND LEVY OF PENALTY

9. Explain the provisions relating to confiscation of goods or conveyances and levy of penalty.

Ans: Confiscation of goods or conveyances and levy of penalty [Section 130] :

(1) Specified Contraventions [Section 130(1)] : Where any person—

i) supplies or receives any goods in contravention of any of the provisions of this Act or the rules made there-under with intent to evade payment of tax; or

ii) does not account for any goods on which he is liable to pay tax under this Act; or

iii) supplies any goods liable to tax under this Act without having applied for registration; or

iv) contravenes any of the provisions of this Act or the rules made there-under with intent to evade payment of tax; or

v) uses any conveyance as a means of transport for carriage of goods in contravention of the provisions of this Act or the rules made there-under unless the owner of the conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance, then, all such goods or conveyances shall be liable to confiscation and the person shall be liable to penalty u/s 122.

(2) Option to pay in lieu of confiscation - Redemption Fine [Section 130(2)] : Whenever confiscation of any goods or conveyance is authorised by this Act, the officer adjudging it shall give to the owner of the goods an option to pay in lieu of confiscation, such fine as the said officer thinks fit.

Maximum amount of Redemption Fine : Such fine leviable shall not exceed the market value of the goods confiscated, less the tax chargeable thereon.

Aggregate amount of fine and penalty – Cannot be less than 100% of tax payable : The aggregate of such fine and penalty leviable shall not be less than the amount of penalty equal to 100% of the tax payable on such goods.

Redemption fine in case of conveyance used for the carriage of the goods or passengers for hire : Where any such conveyance is used for the carriage of the goods or passengers for hire, the owner of the conveyance shall be given an option to pay in lieu of the confiscation of the conveyance a fine equal to the tax payable on the goods being transported thereon.

(3) Opportunity of being heard [Section 130(4)] : No order for confiscation of goods or conveyance or for imposition of penalty shall be issued without giving the person an opportunity of being heard.

(4) On confiscation – Title vests in Government [Section 130(5)]: Where any goods or conveyance are confiscated under this Act, the title of such goods or conveyance shall thereupon vest in the Government.

(5) Taking and holding possession of confiscated things [Section 130(6)] : The proper officer adjudging confiscation shall take and hold possession of the things confiscated and every officer of Police, on the requisition of such proper officer, shall assist him in taking and holding such possession.

(6) Disposal of confiscated goods or conveyance [Section 130(7)] : The proper officer may, after satisfying himself that the confiscated goods or conveyance are not required in any other proceedings under this Act and after giving reasonable time not exceeding 3 months to pay fine in lieu of confiscation, dispose of such goods or conveyance and deposit the sale proceeds thereof with the Government.

(7) Confiscation or penalty not to interfere with other punishments [Section 131] : Without prejudice to the provisions contained in the Code of Criminal Procedure, 1973, no confiscation made or penalty imposed under the provisions of this Act or the rules made there-under shall prevent the infliction of any other punishment to which the person affected thereby is liable under the provisions of this Act or under any other law for the time being in force.

OFFENCES AND PROSECUTION

10. Explain the provisions for punishment for certain offences. OR What are cognizable and non-cognizable offences u/s 132 of CGST Act, 2017? (4 Marks: May 2018 & Jan.

Ans: Punishment for certain offences [Section 132] [Amended by Finance Act, 2023 w.e.f. 01-10-2023]:

(1) Type of Offences [Section 132(1)] : Whoever commits, or causes to commit and retain the benefits arising out of, any of the following offences :

(a) supplies any goods or services or both without issue of any invoice, in violation of the provisions of this Act or the rules made thereunder, with the intention to evade tax;

(b) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment or utilisation of input tax credit or refund of tax;

(c) avails input tax credit using the invoice or bill referred to in clause (b) or fraudulently avails input tax credit without any invoice or bill;

(d) collects any amount as tax but fails to pay the same to the Government beyond a period of 3 months from the date on which such payment becomes due;

(e) evades tax or fraudulently obtains refund and where such offence is not covered under clauses (a) to (d);

(f) falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information with an intention to evade payment of tax due under this Act;

(g) obstructs or prevents any officer in the discharge of his duties under this Act;

(h) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with, any goods which he knows or has reasons to believe are liable to confiscation under this Act or the rules made thereunder;

(i) receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reasons to believe are in contravention of any provisions of this Act or the rules made thereunder;

(j) tampers with or destroys any material evidence or documents;

(k) fails to supply any information which he is required to supply under this Act or the rules made thereunder or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information; or

(l) attempts to commit, or abets the commission of any of the offences mentioned in clauses (a) to (f) and clauses (h) and (i) of this section2

(2) Punishment : The punishment for the above offences is as under,–

Offence Involving –	Amount Involved (in ₹)	Punishment (Imprisonment minimum 6 months in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court and extending to -)
Tax evaded or input tax credit wrongly availed or utilised or refund wrongly taken	Exceeds ₹ 500 lakh	5 Years and with fine
	Exceeds ₹ 200 lakhs but does not exceed ₹ 500 lakh	3 Years and with fine
Tax evaded or ITC wrongly availed or utilised or refund wrongly taken in respect of	Exceeds ₹ 100 lakh but does not exceed ₹ 200 lakh	1 Years and with fine

offence specified in Section 132(1)(b)		
Commits or abets in falsification or substitution of financial records or producing fake accounts, documents or furnishes any false information with an intention to evade payment of tax;		6 months or with fine or with both
For second and every subsequent offence under Section 132	No limit	5 Years and with fine

(3) Non-cognizable and bailable offence – All offences where the evasion of tax does not exceed ₹ 5 crore [Section 132(4)] : Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences under this Act, except the offences referred to in Section 132(5) shall be non-cognizable and bailable.

(4) Cognizable and non-bailable offence – All offences where the evasion of tax exceeds ₹ 5 crore [Section 132(5)] : The offences specified in Section 132(1)(a)/(b)/(c)/(d) and if amount exceeds ₹ 5 crore shall be cognizable and non-bailable.

Thus, the following offences, where amount of tax evaded or input tax credit wrongly availed or utilised or refund wrongly taken exceeds ₹ 5 crore are cognizable and non-bailable :

(a) supplies any goods or services or both without issue of any invoice, in violation of the provisions of this Act or the rules made thereunder, with the intention to evade tax;

(b) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment or utilisation of input tax credit or refund of tax;

(c) avails input tax credit using the invoice or bill referred to in clause (b) or fraudulently avails input tax credit without any invoice or bill;

(d) collects any amount as tax but fails to pay the same to the Government beyond a period of 3 months from the date on which such payment becomes due.

Thus, the above provisions can be summarized as under :

	Points of Distinction	Cognizable Offence	Non-cognizable Offence
1.	Meaning	Generally, as per Cr. PC, cognizable offence means serious category of offences in respect of which a police officer has the authority to make an	Non-cognizable offence means relatively less serious offences in respect of which a police officer does not have the authority to make an

		arrest without a warrant and to start an investigation with or without the permission of a court. However, GST being a special legislation, only the officers, duly empowered under the Act can act as above.	arrest without a warrant and an investigation cannot be initiated without a court order, except as may be authorized under special legislation.
2.	Classification of offence as Cognizable or NonCognizable	Following offences, where amount of tax evaded or input tax credit wrongly availed or utilised or refund wrongly taken exceeds ₹ 5 crores, namely (a) Supply of any goods or services or both without issue of any invoice, in violation of the provisions of this Act or the rules made thereunder, with the intention to evade tax; (b) Issue of any invoice or bill without supply of goods or services or both in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment or utilisation of input tax credit or r efund of tax; (c) avails input tax credit using the invoice or bill referred to in clause (b) or fraudulently avails input tax credit without any invoice or bill; (a) (d) Collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on	All offences specified under section 132 except the offences that are cognizable and nonbailable offence.

		which such payment becomes due;	
3.	Bailable/NonBailable	Non-Bailable	Bailable

(5) Sanction of Commissioner [Section 132(6)] : A person shall not be prosecuted for any offence under this section except with the previous sanction of the Commissioner. "Tax" shall include the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or refund wrongly taken under the provisions of this Act, the SGST Act, the IGST Act or the UTGST Act and cess levied under the GST (Compensation to States) Act. [Explanation]

11. Explain the provisions relating to liability of officers and certain other persons.

Ans: Liability of officers and certain other persons [Section 133] :

(1) Wilful disclosure of any information or the contents of any return [Section 133(1)] : Where

- ✓ any person engaged in connection with the collection of statistics u/s 151 or compilation or computerisation thereof, or
- ✓ if any officer of central tax having access to information specified u/s 150(1), or
- ✓ if any person engaged in connection with the provision of service on the common portal or the agent of common portal

wilfully discloses any information or the contents of any return furnished under this Act or rules made thereunder otherwise than—

- ✓ in execution of his duties under the said sections, or
- ✓ for the purposes of prosecution for an offence under this Act or under any other Act for the time being in force,

he shall be punishable with—

- ✓ imprisonment for a term which may extend to 6 months, or
- ✓ with fine which may extend to ₹ 25,000, or
- ✓ with both.

(2) Previous Sanction [Section 133(2)] : A person shall be prosecuted for any offence under this section –

(a) In case of Government Servant - With the previous sanction of Government only;

(b) In case of person other than Government Servant - With the previous sanction of Commissioner only.

12. Write a note on Cognizance of offences.

Ans: Cognizance of offences [Section 134]: No court shall take cognizance of any offence punishable under this Act or the rules made thereunder except with the previous sanction of the Commissioner, and no court in to that of a Magistrate of the First Class, shall try any such offence.

13. What is culpable mental state? Is 'Mens Rea' an essential precondition for imposition of penalty?

Ans: Presumption of culpable mental state [Section 135] :

(1) "Culpable mental state" includes intention, motive, knowledge of a fact, and belief in, or reason to believe, a fact. While committing an act, a "culpable mental state" is a state of mind wherein—

- ✓ the act is intentional;
- ✓ the act and its implications are understood and controllable;
- ✓ the person committing the act was not coerced and even overcomes hurdles to the act committed;
- ✓ the person believes or has reasons to believe that the act is contrary to law.

(2) Presumption of criminal or guilty mind unless otherwise proved : In any prosecution for an offence under this Act which requires a culpable mental state on the part of the accused, the Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

A fact is said to be proved only when the Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

(3) Mens Rea : Presence of guilty mind (mens rea) is an essential ingredient of any criminal offence, unless statute clearly excludes "Mens rea" in the commission of an offence. "Mens rea" is not essential for imposing penalty in departmental adjudication unless specified in the Act.

14. Write a note on "Relevancy of statements under certain circumstances" under CGST Act, 2017.

Ans: Relevancy of statements under certain circumstances [Section 136]:

Statement made and signed by a person on appearance in response to any summons issued u/s 70 Valid in Prosecution Proceedings : A statement made and signed by a person on appearance in response to any summons issued under Section 70 during the course of any inquiry or proceedings under this Act shall be relevant, for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains,–

(a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable; or

(b) when the person who made the statement is examined as a witness in the case before the court and the court is of the opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interest of justice.

15. Examine the following with reference to the CGST Act, 2017 : Whether criminal prosecution would lie against a company before court of law? Or Where an offence under the GST law is committed by a taxable person being a trust, who are deemed to be guilty of the offence and under what circumstances? When do

the relevant provisions become inapplicable in respect of individuals concerned with the trust? (4 Marks, Nov. 2018-OS)

Ans: Offences by companies [Section 137]:

(1) Person in charge as well as Company liable for Offence [Section 137(1)] : Where an offence committed by a person under this Act is a company,—

(a) every person who, at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of business of the company,

(b) as well as the company,

shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(2) Liability of Director/ Manager/ Secretary/ Other Officer [Section 137(2)] : Where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any negligence on the part of,—

(a) any director,

(b) manager,

(c) secretary, or

(d) other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(3) Offences by LLP/ Firm/ HUF/ Trust - Partner or Karta or Managing Trustee liable [Section 137(3)] : Where an offence under this Act has been committed by a taxable person being a partnership firm or a Limited Liability Partnership or a Hindu Undivided Family or a trust, the partner or karta or managing trustee shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly and the provisions of Section 137(2) shall, mutatis mutandis, apply to such persons.

(4) Person not liable in certain cases [Section 137(4)] : Nothing contained in this section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

Explanation:

i) "Company" means a body corporate and includes a firm or other association of individuals; and

ii) "Director", in relation to a firm, means a partner in the firm.

COMPOUNDING OF OFFENCES

16. Explain the provisions relating to compounding of offences.

Ans: Compounding of offences [Section 138] [Amended by Finance Act, 2023 w.e.f 01-10-2023]:

(1) Compounding of offences by the Commissioner [Section 138(1)] : Any offence under this Act may, either before or after the institution of prosecution, be compounded by the Commissioner on payment, by the person accused of the offence, to the Central Government or the State Government, as the case be, of such compounding amount in such manner as may be prescribed.

Cases, where compounding is not possible : The following offences cannot be compounded—

(a) Offence specified in Section 132(1)(a) to (f), (h), (i),and (l), if the person charged with offence had been allowed to compound earlier in respect of any of the said offences;
(b) Aiding/abetting offences specified in Section 132(1)(a) to (f), if the person charged with offence had been allowed to compound earlier in respect of any of the said offences;4
(c) a person who has been accused of committing an offence under section 132(1)(b);
(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 Section 132(1)(g)/(j)/(k); and
(f) any other class of persons or offences as may be prescribed.

(2) Compounding not to affect proceedings instituted under other law : Any compounding allowed under the provisions of this section shall not affect the proceedings, if any, instituted under any other law.

Tax/ Interest/ Penalty to be paid before compounding : Compounding shall be allowed only after making payment of tax, interest and penalty involved in such offences.

(3) Compounding amount [Section 138(2)]: The amount for compounding of offences under this section shall be such as may be prescribed, subject to—

- ✓ The minimum amount is not less than 25% of tax involved,
- ✓ The maximum amount is not more than than 100% of tax involved.

(4) Abatement of proceedings and non initiation of criminal proceedings [Section 138(3)] : On payment of such compounding amount as may be determined by the Commissioner, no further proceedings shall be initiated under this Act against the accused person in respect of the same offence and any criminal proceedings, if already initiated in respect of the said offence, shall stand abated.

17. Explain The Procedure For Compounding Of Offences

Ans- Procedure For Compounding Of Offences [Rule 162]:

(1) Application for compounding of offence : An applicant may, either before or after the institution of prosecution, make an application in prescribed form to the Commissioner for compounding of an offence.

(2) Calling of report by the Commissioner : On receipt of the application, the Commissioner shall call for a report from the concerned officer with reference to the particulars furnished in the application, or any other information, which may be considered relevant for the examination of such application.

(3) Allowing or rejection of compounding application : The Commissioner, after taking into account the contents of the said application, may, by order, on being satisfied that the applicant has cooperated in the proceedings before him and has made full and true disclosure of facts relating to the case, allow the application indicating the compounding amount and grant him immunity from prosecution or reject such application within 90 days of the receipt of the application.

(4) Compounding Amount : The Commissioner shall determine the compounding amount under sub-rule (3) as per the Table below:-

	Offence	Compounding amount if offence is punishable u/s 132(1)(i)	Compounding amount if offence is punishable u/s 132(1)(ii)
1.	Offence specified in section 132(1)(a)/(c)/ (d)/(e) of the Act	Up to 75% of the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken, subject to minimum of 50% of such amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken.	Up to 60% of the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken, subject to minimum of 40% of such amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken.
2.	Offence specified in section 132(1)(f)/(h)/(i) of the Act	Amount equivalent to 25% of tax evaded.	Amount equivalent to 25% of tax evaded
3.	Attempt to commit the offences or abets the commission of offences mentioned in clause (a), (c) to (f) and clauses (h) and (i) of sub-section (1) of section 132 of the Act	Amount equivalent to 25% of such amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken.	Amount equivalent to 25% of such amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken.

However, where the offence committed by the person falls under more than one category specified in the Table above, the compounding amount, in such case, shall be the amount determined for the offence for which higher compounding amount has been prescribed.

(5) Opportunity of Being Heard : The application shall not be decided without affording an opportunity of being heard to the applicant and recording the grounds of such rejection.

(6) Tax interest and penalty to be paid before application is allowed : The application shall not be allowed unless the tax, interest and penalty liable to be paid have been paid in the case for which the application has been made.

(7) Payment of compounding amount within 30 days of compounding order : The applicant shall, within a period of 30 days from the date of the receipt of the order, pay the compounding amount as ordered by the Commissioner and shall furnish the proof of such payment to him.

(8) Compounding order to be void on non payment of compounding amount : In case the applicant fails to pay the compounding amount within the time specified above, the compounding order shall be vitiated and be void.

(9) Withdrawal of immunity : Immunity granted to a person may at any time be withdrawn by the Commissioner, if he is satisfied that such person had, in the course of the compounding proceedings, concealed any material particulars or had given false evidence.

Thereupon such person may be tried for the offence with respect to which immunity was granted or for any other offence that appears to have been committed by him in connection with the compounding proceedings and the provisions the Act shall apply as if no such immunity had been granted.

ETHICS UNDER GST

18. What do you mean by Ethics. Explain the Role of Chartered Accountant in ensuring ethics under GST

Ans: The relevant aspects are as under –

(1) Meaning of Ethics : The Oxford Dictionary defines the term "Ethics" as the moral principle that governs a person's behavior or how an activity is conducted. Ethics provides a framework for distinguishing between right and wrong, guiding decision making, and determining what is considered morally acceptable in a given context. Ethics are fundamental to the effective functioning of any taxation system; this also holds true for the Goods and Services Tax (GST) regime in India. Ethical conduct contributes to increased regulatory compliance and reduced tax evasion which in turn leads to increased Government revenue collection. This tax revenue can be used for public welfare and development projects. It also helps in creating a fair, transparent, and trustworthy tax environment and reduces uncertainty that supports economic growth and development. Unethical practices like issuing bogus invoice without underlying supply, wrongful availment of ITC, etc. not only undermine the tax revenues, but also create an uneven playing field for honest taxpayers. Ethical behavior may also reduce tax-related disputes and litigations.

(2) Role of Chartered Accountant in ensuring ethics under GST : The professional behaviour of a Chartered Accountant is governed by a set of ethical guidelines and principles - known

as Code of Ethics - laid down by the ICAI. Every Chartered Accountant has to abide by this code of ethics. It encourages the Chartered Accountants to be honest, fair, and professional in their working and advocates to follow the rules to ensure that they are doing the right thing for their clients and the public at large.

The fundamental principles are: integrity, objectivity, professional competence and due care, confidentiality, and professional behaviour.

The Chartered Accountants Act, 1949 prescribes the disciplinary action if a Chartered Accountant is found guilty of any Professional or Other Misconduct (as defined in Schedules to the Chartered Accountants Act).

A Chartered Accountant in practice would be deemed to be guilty of professional misconduct under clause (7) of Part I of the Second Schedule to the Chartered Accountant Act, 1949, if he does not exercise due diligence, or is grossly negligent in the conduct of his professional duties.

Further, as per clause (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949, a chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he fails to obtain sufficient information which is necessary for expression of an opinion or its exceptions are sufficiently material to negate the expression of an opinion.

Further, a Chartered Accountant needs to follow ethical conduct while discharging his professional duties under the Goods and Services Tax (GST) law, namely, compliance functions, furnishing certifications/ reports and advisory roles, by adhering to a set of principles and practices that promote integrity, transparency, and compliance. He should maintain professional knowledge and skill at the level required to ensure that a client or employer receives competent professional service based on latest applicable positions of GST law. In case of any violation of law in performing the compliance, certifications/reporting and advisory functions, he shall also be liable to applicable penalty and prosecution (in some cases) under GST law. Chartered Accountants play a crucial role in ensuring GST compliance within their clients' organizations. This involves assisting in the process of obtaining registration, structuring the transactions and conditions stipulated in agreements for making /receiving supply, optimizing tax positions, ensuring the necessary GST compliances including e-way bill, payment of taxes, TDS/TCS compliances, compliances with anti-profiteering provisions and timely filing of periodic returns.

Generally, Chartered Accountants are responsible for ensuring the maintenance of accurate and detailed records of all GST-related transactions. This includes invoices, receipts, and other relevant documents. Such meticulous record-keeping is a legal requirement as well as an ethical duty of the Chartered Accountant.

Another major responsibility of a Chartered Accountant in the realm of GST is to act as a tax advisor to their clients. This entails a comprehensive understanding of the client's business operations and goals.

Chartered Accountants must assess the impact of GST on various aspects of the business, including supply chain, pricing strategies and financial reporting.

A Chartered Accountant, who holds a certificate of practice and who has not been debarred from practice, can also appear on behalf of his client before a GST officer, GST Appellate Authority or GST Appellate Tribunal in connection with any proceedings under GST law, as an authorised representative of the client.

Furthermore, Chartered Accountants play a vital role in the GST ecosystem by providing certifications that affirm compliance with GST laws and regulations. These certifications are mandatory in specific situations and are required to ensure compliance with GST regulations.

They primarily aim at curbing the unethical practices and preventing the leakage of revenue. Thus, it is the duty of every Chartered Accountant to exercise utmost care and due diligence while granting these certifications.

While providing said certification, the Chartered Accountant has to comply with the ethical requirements of the Code of Ethics issued by the ICAI, the relevant applicable requirements of the Standard on Quality Control (SQC-1), Quality Control for Firms that Perform Audits and Reviews of Historical Financial Information, and Other Assurance and Related Services Engagements.

19. Explain the certifications/reports required to be furnished by a Chartered Accountant under GST law.

Ans- (i) Certification of the amount of ITC claimed at the time of registration/voluntary registration or switching to regular tax paying status or coming into tax-paying status [Section 18(1) read with rule 40]

The credit on inputs held in stock and contained in semi-finished goods or finished goods held in stock and capital goods at the time of registration/voluntary registration or coming into regular tax/taxpaying status is available in the following manner:

Section No.	Persons eligible to take credit	Goods entitled to ITC	
		Inputs held in stock/ capital goods	as on
(1)	(2)	(3)	(4)
18(1)(a)	Person who has applied for registration within 30 days from the date on which he becomes liable to registration and has been granted such registration	Inputs held in stock and inputs contained in semifinished or finished goods held in stock	The day immediately preceding the date from which he becomes liable to pay tax

18(1)(b)	Person who is not required to register, but obtains voluntary registration	Inputs held in stock and inputs contained in semifinished or finished goods held in stock	The day immediately preceding the date of registration
18(1)(c)	Registered person who ceases to pay composition tax and switches to regular scheme	Inputs held in stock and inputs contained in semifinished or finished goods held in stock and capital goods	The day immediately preceding the date from which he becomes liable to pay tax under regular scheme
18(1)(d)	Registered person whose exempt supplies become taxable supplies	Inputs held in stock and inputs contained in semifinished or finished goods held in stock relatable to such exempt supply and capital goods exclusively used for such exempt supply	The day immediately preceding the date from which such supply becomes taxable

In all the above cases, the registered person has to make an electronic declaration in Form ITC-01 on the common portal, clearly specifying the details relating to the inputs held in stock, inputs contained in semi-finished or finished goods held in stock and capital goods on the days mentioned in column (4) of table above. The declaration is to be filed within 30 days (extendable by Commissioner/Commissioner of State GST/Commissioner of UTGST) from the date when the registered person becomes eligible to avail ITC. If the claim of ITC pertaining to CGST, SGST/UTGST, IGST put together exceeds ₹ 2,00,000, the declaration needs to be certified by a practicing Chartered Accountant or Cost Accountant. A Chartered Accountant is required to examine the books of accounts and other relevant documents/ records of the taxpayer and to provide a reasonable assurance that the amounts declared in the Form GST ITC-01 have been accurately drawn from the books of accounts and other relevant documents/ records of the taxpayer and is claimed as ITC.

ii) Certification that the sale, merger, demerger, amalgamation, lease or transfer of business done with a specific provision for the transfer of liabilities [Section 18(3) read with rule 41]

In case of sale, merger, demerger, amalgamation, transfer or change in ownership of business etc., the ITC that remains unutilized in the electronic credit ledger of the registered person

can be transferred to the new entity, provided there is a specific provision for transfer of liabilities in such change of constitution. The registered person should furnish the details of change in constitution in Form ITC-02 on the common portal. Further, he needs to submit a certificate from practicing Chartered Accountant or Cost Accountant certifying that the change in constitution has been done with a specific provision for transfer of liabilities.

A Chartered Accountant is required to examine the books of accounts and other relevant documents/ records of the taxpayer and to provide a reasonable assurance that the sale, merger, demerger, amalgamation, lease or transfer or business has been done with a specific provision for the transfer of liabilities.

iii) Certification that in case of refund claim exceeding ₹ 2 lakh by the applicant, there is no unjust enrichment [Section 54 read with rule 89(2)(m)]

A certificate in Annexure 2 of Form GST RFD-01 is to be issued by a Chartered accountant or Cost Accountant to the effect that the incidence of tax, interest or any other amount claimed as refund has not been passed on to any other person (i.e., there is no unjust enrichment in the case of the applicant) in a case where the amount of refund claimed exceeds ₹ 2 lakh.

The certification by the Chartered Accountant should be based on meticulous examination of the books of accounts and other relevant documents/records supporting the refund claim thereby providing a reasonable assurance that the incidence of tax, interest or any other amount claimed as refund, has not been passed on to any other person.

(iv) Certification of the amount of ITC to be reversed on cancellation of registration or on switching to composition levy/ exit from taxpaying status, in respect of inputs for which tax invoices are not available [Section 29(5)/section 18(4) read with rule 44(5)]

Section 29(5) requires reversal of ITC on cancellation of registration of a registered person. Similarly, section 18(4) requires reversal of ITC when a registered person who has availed ITC switches to composition levy or when his supplies get wholly exempted from tax.

ITC on inputs should be reversed proportionately on the basis of corresponding invoices on which credit had been availed on such inputs. If invoices are not available, ITC can be reversed on the basis of the prevailing market price of such goods on the date of switch over/exemption/cancellation of registration. The details so furnished on the basis of prevailing market value need to be duly certified by a practicing Chartered Accountant or Cost Accountant.

The certification by the Chartered Accountant should be based on meticulous examination of the books of accounts and other relevant documents/ records of the taxpayer thereby providing a reasonable assurance as regards the correctness of the quantum of the amount of ITC to be reversed in case where the tax invoices related to the inputs held in stock are not available.

(v) Audit report under section 66

Section 66 provides that if at any stage of scrutiny, inquiry, investigation or any other proceedings before him, any officer not below the rank of Assistant Commissioner, having regard to the nature and complexity of the case and the interest of revenue, is of the opinion that –

- ✓ the value (of goods and/or services) has not been correctly declared; or
- ✓ the credit availed is not within the normal limits, he may, with the prior approval of the Commissioner, issue a direction to the registered person to get his records including books of account examined and audited by a Chartered Accountant or a Cost Accountant as may be nominated by the Commissioner and specified in the said direction.

The Chartered Accountant or Cost Accountant shall submit a report of such audit duly signed and certified by him within the period of 90 days to the said Assistant Commissioner mentioning therein such other particulars as may be specified.

The Assistant Commissioner may extend the said period 90 days by a further period of 90 days–

- ✓ on an application made to him in this behalf by the registered person or the Chartered Accountant or Cost Accountant; or
- ✓ for any material and sufficient reason

The expenses of the examination and audit of records including the remuneration of such Chartered Accountant or Cost Accountant, shall be determined and paid by the Commissioner and such determination shall be final. On conclusion of special audit, the registered person shall be informed of the findings of special audit.

Upon the conclusion of special audit under section 66, the registered person is communicated the proposed tax, interest and other liabilities, if any, along with the audit findings and the registered person is called upon to discharge the liabilities.

In case the registered person discharges the liabilities as proposed, no further action is taken. Otherwise, the authorities may initiate the proceedings against the registered person under sections 73 or 74 for determination of the tax liability of the person audited.

A Chartered Accountant must approach the Special Audit with an unbiased and impartial mindset, free from any external influences or conflicts of interest. This ensures that the audit findings are based on factual evidence and professional judgment, rather than personal biases. He should first go through the terms of reference provided by the GST authorities to understand the scope and objectives of the special audit. This document outlines the specific areas and tax periods to be audited. He should conduct a comprehensive review of all relevant documents, including financial statements, invoices, transaction records, and any other documentation provided by the taxpayer. This ensures that the audit findings are based on accurate and reliable information. He should take steps to identify and mitigate any potential conflicts of interest that may arise during the special audit. This includes refraining from engaging in any activities or relationships that could compromise their objectivity or independence. If a conflict of interest does arise, it should be promptly disclosed to the relevant parties.

Apart from the aforesaid specific roles defined in the GST Law for Chartered Accountants, there may be specific scenarios where the attested documents, certificates issued by the Chartered Accountants are relied during the proceedings under GST Law by the tax authorities and also judicial forums, as a general practice while dealing with the GST Law related disputes.

Note

TOPIC REFERENCER

- *Appeals to Appellate Authority*
- *Revisional Authority and its Powers*
- *Constitution of Appellate Tribunal*
- *Appeals to Appellate Tribunal*
- *Orders of Appellate Tribunal*
- *Authorised Representative*
- *Appeal to High Court*
- *Appeal to Supreme Court*

APPEALS TO APPELLATE AUTHORITY

1. Write a brief note on Right of appeal under GST Law,

Ans-Tax law recognizes that on any given set of facts and laws, there can be different opinions or viewpoints. Hence, it is likely that the taxpayer may not agree with the "adjudication order" so passed by the tax officer. It is equally possible that the Department may itself not be in agreement with the adjudication order in some cases. It is for this reason that the statute provides further channels of appeal, to both sides.

However, since the right to appeal is a statutory right, the statute also places reasonable fetters on the exercise of that right. The time limits prescribed by the statute for filing of appeals and the requirement of pre-deposit of a certain sum before the appeal can be heard by the competent authority are examples of such fetters on the statutory right. India has adopted a dual GST i.e., to say every supply attracting the levy will be leviable to both CGST and SGST. So, this does not mean that if a taxpayer is aggrieved by any such transaction, he will have to approach both the authorities for exercising his right of appeal.

The Act makes provisions for cross empowerment between CGST and SGST/UTGST officers so as to ensure that if a proper officer of one Act (say CGST) passes an order with respect to a transaction, he will also act as the proper officer of SGST for the same transaction and issue the order with respect to the CGST as well as the SGST/UTGST component of the same transaction.

The Act also provides that where a proper officer under one Act (say CGST) has passed an order, any appeal/ review/ revision/ rectification against the said order will lie only with the proper officers of that Act only (CGST Act). So also, if any order is passed by the proper officer of SGST, any appeal/ review revision/ rectification will lie with the proper officer of SGST only. Chapter XVIII [Sections 107 to 121] of the CGST Act supplemented with Chapter XIII [Rules 108 to 116] of the CGST Rules prescribe the provisions relating to appeals and revision. State GST laws also prescribe identical provision relating to appeals.

2. What do you mean by: (i) Appellate Authority; (ii) Appellate Tribunal; (iii) Authorised representative.

Ans: The relevant definitions are as under-

(1) "Appellate Authority" means an authority appointed or authorised to hear appeals as referred to in Section 107. [Section 2(8))

(2) "Appellate Tribunal" means the Goods and Services Tax Appellate Tribunal constituted under Section 109.[Section 2(9)]

(3) "Authorised representative" means the representative as referred to in Section 116. [Section 2(15)]

Brief Chart Showing Appellate Mechanism Under GST

Description	Appellate Authority	Revisional Authority	Appellate Tribunal	High Court	Supreme Court
Section	107	108	112	117	118
Appeal can be filed against	Order of Adjudicating Authority	Suo Motu revision	Against order of: a) Appellate Authority or b) Revisional Authority	Order of State bench of Tribunal (If case involves substantial question of law)	Order of Principal Bench of Tribunal and against orders of HC if HC certifies fit case for appeal to SC
Departmental Appeal	Department can file appeal after review by Commissioner	Not Applicable	Department can file appeal on review by Commissioner	Order of State bench of Tribunal (If cas Tribunal (If case involves substantial question of law)	Order of Principal bench of Tribunal and against orders of HC if HC certifies fit case for appeal to SC
Place of supply matters	Appealable	Revision power extends	Principal bench of Tribunal can hear	No	Yes
Other matters	Appealable	Revision power extends	State bench of Tribunal can hear	Yes	Yes

Appeal Fee	Nil	Not applicable	₹ 1,000 per lakh of tax or ITC subject To maximum of ₹ 25,000	-	-
Time limit to file appeal	3 months + 1 month extension	Power exercisable only after 6 months but within 3 years from date of order [if no appeal filed]	3 months + 3 month extension	Within 180 days + condonation of delay without time limit	As per Code of Civil Procedure, 1908.
Pre-deposit [Mandatory]	100% of admitted due (with interest/ penalty) + 10% of disputed tax (before interest/ penalty) subject to maximum of ₹ 50 crores. [₹ 25 crores CGST and ₹ 25 crores SGST]	Not applicable	100% of admitted due (with interest/ penalty) + Additional 20% of disputed tax (before interest/ penalty) subject to maximum of ₹ 100 crores. [₹ 50 crores CGST and ₹ 50 crores SGST]	All tax dues is required to be deposited	All tax dues is required to be deposited
If assessee wins	Deposit refunded with interest	Not applicable	Pre-deposit refunded with interest	Sums to be refunded	Sums to be refunded

3. Explain the provisions relating to Appeals to Appellate Authority under CGST Act, 2017. OR Explain briefly the provisions regarding mandatory pre-deposit to be made before filing an appeal before Appellate Authority as per CGST Act, 2017. (2 Marks, May 2018)

Ans – Appeals To Appellate Authority [Section 107]: The relevant provisions are discussed as under–

(A) Appeal to Appellate Authority by the Aggrieved Person :

(i) Orders appealable to Appellate Authority [Section 107(1) read with Rule 109A of CGST Rules, 2017] : Any person aggrieved by any decision or order passed under this Act or the SGST Act or the UTGST Act by an adjudicating authority may appeal to Appellate Authority as under:

Adjudicating authority who passed decision or order –	Appellate Authority to whom Appeal is to be filed –
Deputy Commissioner or Assistant Commissioner or Superintendent	Any officer not below the rank of Joint Commissioner (Appeals)
Additional Commissioner or Joint Commissioner	Commissioner (Appeals)

(ii) Time limit for filing appeal – 3 Months [Section 107(4)] : A person aggrieved by any decision/order of an Adjudicating Authority can file an appeal before the Appellate Authority within 3 months from the date of communication of such decision/order.

(iii) Condonation of delay in filing appeal upto ONE Month : The Appellate Authority can condone the delay in filing of appeal by 1 month if it is satisfied that there was sufficient cause for such delay.

(iv) Form for appeal to Appellate Authority by the Aggrieved Person [Section 107(3)] : The appeal to the Appellate Authority shall be filed in GST APL-01 either electronically and a provisional acknowledgement shall be issued to the appellant immediately.

Manual Filing of appeal : An appeal to the Appellate Authority may be filed manually in FORM GST APL-01, along with the relevant documents, only if-

(a) the Commissioner has so notified, or

(b) the same cannot be filed electronically due to non-availability of the decision or order to be appealed against on the common portal,

and in such case, a provisional acknowledgement shall be issued to the appellant immediately.

(v) Order uploaded on common portal – date of provisional acknowledgement – date of filing appeal : Where the decision or order appealed against is uploaded on the common portal, a final acknowledgement, indicating appeal number, shall be issued in FORM GST APL-02 by the Appellate Authority or an officer authorised by him in this behalf and the date of issue of the provisional acknowledgement shall be considered as the date of filing of appeal.

(vi) Certified copy of impugned order submitted within 7 days of Filing Appeal if impugned order not uploaded on common portal – date of provisional acknowledgement – date of filing appeal : Where the decision or order appealed against is not uploaded on the common portal, the appellant shall submit a self-certified copy of the said decision or

order within a period of 7 days from the date of filing of FORM GST APL-01 and a final acknowledgement, indicating appeal number, shall be issued in FORM GST APL-02 by the Appellate Authority or an officer authorised by him in this behalf, and the date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal.Where the said self-certified copy of the decision or order is not submitted within a period of 7 days from the date of filing of **FORM GST APL-01**, the date of submission of such copy shall be considered as the date of filing of appeal.

(vii) Admitted tax and 10% of disputed tax subject to maximum of ₹ 25 crores to be deposited before filing appeal [Section 107(6)] : No appeal shall be filed under Section 107(1), unless the appellant has paid—

(a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and

(b) a sum equal to 10% of the remaining amount of tax in dispute arising from the said order subject to a maximum of ₹ 25 crore, in relation to which the appeal has been filed.

(viii) Appeal against seizure order – Pre-deposit of 25% penalty to be made : No appeal shall be filed against an order u/s 129(3), unless a sum equal to 25% of the penalty has been paid by the appellant.

On pre-deposit of tax – Recovery Proceedings to be Stayed [Section 107(7)] : Where the appellant has paid the amount under Section 107(6), the recovery proceedings for the balance amount shall be deemed to be stayed.

(B) Application before Appellate Authority by the Department :

(i) Orders against which the review application can be filed by Commissioner before the Appellate Authority [Section 107(2) read with Rule 109A of CGST Rules, 2017] : The Commissioner may on his own motion, or upon request from the SGST/UTGST Commissioner, call for and examine the record of any proceedings in which an adjudicating authority has passed any decision or order under CGST Act or the SGST Act or the UTGST Act, for the purpose of satisfying himself as to the legality or propriety of the said decision or order; and may, by order direct any officer subordinate to him, to apply to the Appellate Authority as under:

Adjudicating authority who passed decision or order –	Appellate Authority to whom Application is to be filed –
Deputy Commissioner or Assistant Commissioner or Superintendent	Any officer not below the rank of Joint Commissioner (Appeals)
Additional Commissioner or Joint Commissione	Commissioner (Appeals)

(ii) Time limit for filing review application – 6 Months [Section 107(4)] : The Commissioner may, by order, direct any officer subordinate to him to apply to the Appellate Authority within 6 months from the date of communication of the decision/order for the

determination of such points arising out of the said decision/order as may be specified him.

Condonation of delay in filing application upto ONE Month : The Appellate Authority can condone the delay in filing of application by 1 month if it is satisfied that there was sufficient cause for such delay.

(iii) Form for Application [Rule 109(1)] : The application shall be made in GST APL-03 either electronically.

Manual filing : An appeal to the Appellate Authority may be filed manually in FORM GST APL-03, along with the relevant documents, only if

- ✓ the Commissioner has so notified, or
- ✓ the same cannot be filed electronically due to non-availability of the decision or order to be appealed against on the common portal, and in such case, a provisional acknowledgement shall be issued to the appellant immediately

(iv) Submission of certified copies of Impugned Order [Rule 109(2)] : A certified copy of the decision or order appealed against shall be submitted within 7 days of the filing the application and an appeal number shall be generated by the Appellate Authority or an officer authorised by him in this behalf.

(v) Application filed in pursuance of review order – Regarded as Departmental Appeal [Section 107(3)] : Such application shall be dealt with by the Appellate Authority as if it were an appeal made against the decision/order of the adjudicating authority.

(vi) Pre-deposit not Required : There is no requirement of making a pre-deposit in case of departmental appeal.

(C) Appeal process to be followed by Appellate Authority :

(i) Opportunity of Being Heard [Section 107(8)] : The Appellate Authority shall give an opportunity to the appellant of being heard.

(ii) Granting of time and adjournment of hearing [Section 107(9)] : The Appellate Authority may, if sufficient cause is shown at any stage of hearing of an appeal, grant time to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing.

Maximum adjournment - 3 Times : Adjournment shall not be granted more than 3 times to a party during hearing of the appeal.

(iii) Additional grounds can be admitted [Section 107(10)] : The Appellate Authority may, at the time of hearing of an appeal, allow an appellant to add any ground of appeal not specified in the grounds of appeal, if it is satisfied that the omission of that ground from the grounds of appeal was not wilful or unreasonable.

(iv) Appellate Order [Section 107(11)] : The Appellate Authority shall,—

- ✓ after making such further inquiry as may be necessary,
- ✓ pass such order, as it thinks just and proper
- ✓ confirming, modifying or annulling the decision or order appealed against

- ✓ but shall not refer the case back to the adjudicating authority that passed the said decision or order.

Order enhancing any fee/ penalty/ redemption fine/ reducing refund – Only when appellant allowed to show cause : An order—

- ✓ enhancing any fee or penalty or fine in lieu of confiscation, or
- ✓ confiscating goods of greater value, or
- ✓ reducing the amount of refund or input tax credit

shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed order.

Order enhancing tax – SCN to be issued as per Section 73/ 74 of the Act : Where the Appellate Authority is of the opinion that any tax has not been paid or short-paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised, no order requiring the appellant to pay such tax or input tax credit shall be passed unless the appellant is given notice to show cause against the proposed order and the order is passed within the time limit specified under Section 73 or Section 74.

(v) Appellate order to be in writing and contents of order [Section 107(12)] : The order of the Appellate Authority disposing of the appeal—

- ✓ shall be in writing and
- ✓ shall state— –
  - the points for determination,
  - the decision thereon, and

  the reasons for such decision.

  Thus, order in Appeal shall be a speaking order.

(vi) Time limit for disposal of appeal – ONE Year [Section 107(13)] : The Appellate Authority shall, where it is possible to do so, hear and decide every appeal within a period of 1 year from the date on which it is filed.

(vii) Stay period to be Excluded : Where the issuance of order is stayed by an order of a court or Tribunal, the period of such stay shall be excluded in computing the period of 1 year.

(viii) Communication of order passed by Appellate Authority [Section 107(14)] : On disposal of the appeal, the Appellate Authority shall communicate the order passed by it to—

- ✓ the appellant,
- ✓ the respondent, and
- ✓ to the adjudicating authority.

(vii) Communication to Jurisdictional Commissioner [Section 107(15)] : A copy of the order passed by the Appellate Authority shall also be sent to the jurisdictional Commissioner or the authority designated by him in this behalf and the jurisdictional Commissioner of State tax or Commissioner of Union Territory Tax or an authority designated by him in this behalf.

(viii) Order to be Final and Binding [Section 107(16)] : Every order passed under this section shall, subject to the provisions of Section 108 or Section 113 or Section 117 or Section 118 be final and binding on the parties.

(D) Withdrawal of Appeal [Rule 109C] : The appellant may, at any time before issuance of show cause notice under section 107(11) or before issuance of the appellate order, whichever is earlier, in respect of any appeal filed in FORM GST APL-01 or FORM GST APL-03, file an application for withdrawal of the said appeal by filing an application in FORM GST APL-01/03W.

Withdrawal subject to approval of Appellate authority : Where the final acknowledgement in FORM GST APL-02 has been issued, the withdrawal of the said appeal would be subject to the approval of the appellate authority and such application for withdrawal of the appeal shall be decided by the appellate authority within 7 days of filing of such application.

Fresh Appeal to be filed within time limit : Any fresh appeal filed by the appellant pursuant to such withdrawal shall be filed within the time limit specified in Section 107(1)/(2), as the case may be.

REVISIONAL AUTHORITY AND ITS POWERS

4. Write a brief note on Revisional Authority and its powers.

Ans: The relevant provisions are discussed as under-

(A) "Revisional Authority" means an authority appointed or authorised for revision of decision or orders as referred to in Section 108. [Section 2(99)]

The CBIC vide Notification No. 05/2020–CT, dated 13-01-2020 has authorised—

(a) the Principal Commissioner or Commissioner of Central Tax for decisions or orders passed by the Additional or Joint Commissioner of Central Tax; and

(b) the Additional or Joint Commissioner of Central Tax for decisions or orders passed by the Deputy Commissioner or Assistant Commissioner or Superintendent of Central Tax, as the Revisional Authority under section 108 of the said Act.

(B) Powers of Revisional Authority [Section 108] :

(1) Revision of orders prejudicial to Interest of Revenue [Section 108(1)] : Subject to the provisions of Section 121 and any rules made thereunder,—

✓ the Revisional Authority may, –

- on his own motion, or
- upon information received by him, or
- on request from the SGST/UTGST Commissioner,
- call for and examine the record of any proceedings, and
- if he considers that any decision or order passed under the CGST Act/ SGST Act/UTGST Act by any officer subordinate to him
- is erroneous in so far as—

- it is prejudicial to the interest of revenue, and
- is illegal or improper, or
- has not taken into account certain material facts,—
  - whether available at the time of issuance of the said order or not or
  - in consequence of an observation by the Comptroller and Auditor General of India,

✓ he may, if necessary,—

- stay the operation of such decision or order for such period as he deems fit,
- and after giving the person concerned an opportunity of being heard, and
- after making such further inquiry as may be necessary,
- pass such order, as he thinks just and proper, including enhancing or modifying or annulling the said decision or order.

For the purposes of this section, the term,—

✓ "Record" shall include all records relating to any proceedings under this Act available at the time of examination by the Revisional Authority.

✓ "Decision" shall include intimation given by any officer lower in rank than the Revisional Authority.

(2) No revision in Certain Cases [Section 108(2)] : The Revisional Authority shall not exercise any power under this section, if—

(a) the order has been subject to an appeal under Section 107 (i.e. Appellate Authority) or Section 112 (i.e. Appellate Tribunal) or Section 117 (High Court) or Section 118 (Supreme Court); or

(b) the period of 6 months (from the date of communication of order) has not yet expired or more than 3 years have expired after the passing of the decision/order sought to be revised; or

(c) the order has already been taken for revision under this section at an earlier stage; or

(d) the order sought to be revised is a revisional order in the first place.

Revision on points which has not been Raised and Decided in Appeal : The Revisional Authority may pass an order on any point which has not been raised and decided in an appeal before the expiry of –

✓ a period of 1 year from the date of the order in such appeal or

✓ a period of 3 years from the date of initial order,

whichever is later.

Thus, revision cannot be under taken unless time limit to file appeal has expired. Revision order cannot be further revised. Same order cannot be revised twice.

(3) Revisional order to be Final and Binding [Section 108(3)] : Every revision order shall be, subject to further appeal to the Tribunal, High Court or Supreme Court, be final and binding on the parties.

(4) Exclusion of Time [Section 108(4)] : If the said decision or order involves an issue—

- ✓ On which the Appellate Tribunal has given its decision in some other proceedings and an appeal to the High Court against such decision of the Appellate Tribunal is pending,—
- ✓ the period spent between the date of the decision of the Appellate Tribunal and the date of the decision of the High Court shall be excluded in computing the period of limitation of 3 years where proceedings for revision have been initiated by way of issue of a notice under this section.
- ✓ On which the High Court has given its decision in some other proceedings and an appeal to the Supreme Court against such decision of the High Court is pending,—
  The period spent between the date of the decision of the High Court and the date of the decision of the Supreme Court shall be excluded in computing the period of limitation of 3 years where proceedings for revision have been initiated by way of issue of a notice under this section.

(5) Stay period to be Excluded [Section 108(5)] : Where the issuance of an order under Section 108(1) is stayed by the order of a court or Appellate Tribunal, the period of such stay shall be excluded in computing the period of limitation referred to in Section 108(2)(b) i.e. 3 years.

(6) Notice to person and order of revisional authority in case of revision [Rule 109B] :

- ✓ Where the Revisional Authority decides to pass an order in revision under section 108 which is likely to affect the person adversely, the Revisional Authority shall serve on him a notice in FORM GST RVN-01 and shall give him a reasonable opportunity of being heard.
- ✓ The Revisional Authority shall, along with its order u/s 108(1), issue a summary of the order in FORM GST APL-04 clearly indicating the final amount of demand confirmed.

CONSTITUTION OF APPELLATE TRIBUNAL

5. Write a brief note on Constitution of Appellate Tribunal and Benches thereof.

Ans: Constitution of Appellate Tribunal and Benches thereof [Section 109] [Inserted by the Finance (No. 2) Act, 2024 w.e.f. 27-09-2024]:

(1) Goods and Services Tax Appellate Tribunal (GSTAT) to be constituted for hearing appeals against the orders passed by the Appellate Authority or the Revisional Authority [Section 109(1)] : The Government shall, on the recommendations of the Council, by notification, establish with effect from such date as may be specified therein, an Appellate Tribunal known as the Goods and Services Tax Appellate Tribunal for hearing appeals against the orders passed by the Appellate Authority or the Revisional Authority or for conducting an examination or adjudicating the cases referred to in Section 171(2)[Profiteering cases], if so notified under the said section

(2) Benches of GSTAT [Section 109(2)] : The jurisdiction, powers and authority conferred on the Appellate Tribunal shall be exercised by the Principal Bench and the State Benches.

(3) Location and Constitution of Principal Bench [Section 109(3)] : The Government shall, by notification, constitute a Principal Bench of the Appellate Tribunal at New Delhi which

shall consist of the President, a Judicial Member, a Technical Member (Centre) and a Technical Member (State).

(4) Constitution of State Bench [Section 109(4)] : On the request of the State, the Government may, by notification, constitute such number of State Benches at such places and with such jurisdiction as may be recommended by the Council, which shall consist of two Judical Members, a Technial Member (Centre) and a Technical Member (State).

(5) Hearing of appeals [Section 109(5)] : The Principal Bench and the State Bench shall hear appeals against the orders passed by the Appellate Authority or the Revisional Authority:

Appeal relating to place of supply to be heard by Principal bench : In the cases in which any one of the issues involved relates to the place of supply, shall be heard only by the Principal Bench.

Principal Bench to adjudicate Profiteering cases – The matters referred to in Section 171(2) i.e. Profiteering cases shall be examined or adjudicated only by the Principal Bench

Notified cases to be heard by Principal Bench: The Government may, on the recommendations of the Council, notify other cases or class of cases which shall be heard only by the Principal Bench

(6) Transfer of Cases amongst Benches [Section 109(6)] : Subject to the provisions of Section 109(5) the President shall, from time to time, by a general or special order, distribute the business of the Appellate Tribunal among the Benches and may transfer cases from one Bench to another.

(7) Vice president of state bench [Section 109(7)] : The senior-most Judicial Member within the State Benches, as may be notified, shall act as the Vice-President for such State Benches and shall exercise such powers of the President as may be prescribed, but for all other purposes be considered as a Member.

(8) Single member bench to hear appeal if amount involved does not exceed ₹ 50 lakhs [Section 109(8)] : Appeals, where the tax or input tax credit involved or the amount of fine, fee or penalty determined in any order appealed against, does not exceed ₹ 50 lakh and which does not involve any question of law may, with the approval of the President, and subject to such conditions as may be prescribed on the recommendations of the Council, be heard by a single Member, and in all other cases, shall be heard together by one Judicial Member and one Technical Member.

(9) Difference in opinion – Decision by Majority [Section 109(9)] : If, after hearing the case, the Members differ in their opinion on any point or points, such Member shall state the point or points on which they differ, and the President shall refer such case for hearing,—

(a) where the appeal was originally heard by Members of a State Bench, to another Member of a State Bench within the State or, where no such other State Bench is available within the State, to a Member of a State Bench in another State;

(b) where the appeal was originally heard by Members of the Principal Bench, to another Member from the Principal Bench or, where no such other Member is available, to a Member of any State Bench,

(c) and such point or points shall be decided according to the majority opinion including the opinion of the Members who first heard the case.

(10) Transfer of members of Benches [Section 109(10)] : The Government may, in consultation with the President, for the administrative efficiency, transfer Members from one Bench to another Bench.

However, a Technical Member (State) of a State Bench may be transferred to a State Bench only of the same State in which he was originally appointed, in consultation with the State Government.

(11) Defect/ Vacancy in bench – Not to Invalidate the Proceedings [Section 109(11)] : No act or proceedings of the Appellate Tribunal shall be questioned or shall be invalid merely on the ground of the existence of any vacancy or defect in the constitution of the Appellate Tribunal.

6. Explain the procedure before Appellate Tribunal.

Ans: Procedure before Appellate Tribunal [Section 111] :

(1) Power to regulate its Own Procedure [Section 111(1)] : The Appellate Tribunal while disposing of any proceedings before it or an appeal before it shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and shall have power to regulate its own procedure.

(2) Appellate Tribunal have same powers of Civil Court [Section 111(2)] : The Appellate Tribunal shall, for the purposes of discharging its functions under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, namely:

(a) summoning and enforcing the attendance of any person and examining him on oath;
(b) requiring the discovery and production of documents;
(c) receiving evidence on affidavits;
(d) subject to the provisions of Sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or a copy of such record or document from any office;
(e) issuing commissions for the examination of witnesses or documents;
(f) dismissing a representation for default or deciding it ex parte;
(g) setting aside any order of dismissal of any representation for default or any order passed by it ex parte; and
(h) any other matter which may be prescribed.

(3) Enforcement of orders of Appellate Tribunal [Section 111(3)] : Any order made by the Appellate Tribunal may be enforced by it in the same manner as if it were a decree made by a court in a suit pending therein, and it shall be lawful for the Appellate Tribunal to send for execution of its orders to the court within the local limits of whose jurisdiction,—

(a) in the case of an order against a company, the registered office of the company is situated; or

(b) in the case of an order against any other person, the person concerned voluntarily resides or carries on business or personally works for gain.

(4) Proceedings deemed to be Judicial Proceedings [Section 111(4)] : All proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228, and for the purposes of Section 196 of the Indian Penal Code, and the Appellate Tribunal shall be deemed to be civil court for the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

APPEALS TO APPELLATE TRIBUNAL

7. Explain the provisions relating to Appeals to Appellate Tribunal.
OR Explain briefly the provisions regarding mandatory pre-deposit to be made before filing an appeal before Tribunal as per CGST Act, 2017. (2 Marks May 2018)

Ans: Appeals to Appellate Tribunal [Section 112] :

(A) Appeal by the Aggrieved Person :

i) Orders Appealable to Appellate Tribunal [Section 112(1)] : Any person aggrieved by an order passed against him u/s 107 (i.e. Appellate Authorities order) i.e. or Section 108 (i.e. Revisionary Authorities order) of this Act or the SGST Act or the UTGST Act may appeal to the Appellate Tribunal against such order.

ii) Time limit for filing appeal – 3 months [Section 112(6)] : The appeal can be filed before the Appellate Tribunal within 3 months from the date on which the order sought to be appealed against is communicated to the person preferring the appeal or the date, as may be notified by the Government, on the recommendations of the Council, for the purpose of filing application before the Appellate Tribunal under this Act, whichever is later,

iii) Condonation of delay in filing appeal – Further period of 3 months : The Tribunal can condone the delay of up to 3 months beyond the specified time period of 3 months, if it is satisfied that there was sufficient cause for the delay.

iv) Form for filing Appeal [Section 112(7)] : The appeal shall be filed in GST APL-05 either electronically or otherwise as may be notified by the Registrar on the common portal and a provisional acknowledgement shall be issued to the appellant immediately. The provisions of date of filing appeal are same as that of filing appeal to Appellate authority.

v) Fees of filing appeal - ₹ 1,000 per lakh of tax or ITC subject to maximum of ₹ 25,000 : The fees for filing of appeal or restoration of appeal shall be ₹ 1,000 for every ₹ 1 lakh of tax or input tax credit involved or the difference in tax or input tax credit involved or the amount of fine, fee or penalty determined in the order appealed against, subject to a maximum of ₹ 25,000.

vi) Discretionary power of GSTAT to refuse to admit appeal if amount does not exceed ₹ 50,000 [Section 112(2)] : The Appellate Tribunal may, in its discretion, refuse to admit any such appeal—

✓ where the tax or input tax credit involved, or

- ✓ the difference in tax or input tax credit involved, or
- ✓ the amount of fine, fee or penalty determined by such order,

does not exceed ₹ 50,000.

vii) Admitted dues and 20% of disputed tax subject to maximum of ₹ 50 crores to be deposited before filing appeal [Section 112(8)] : No appeal shall be filed u/s 112(1), unless the appellant has paid—

(a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him, and

(b) a sum equal to 10% of the remaining amount of tax in dispute, in addition to the amount paid under Section 107(6), arising from the said order subject to a maximum of ₹ 20 crore, in relation to which the appeal has been filed. [Substituted by the Finance (No. 2) Act, 2024 w.e.f. 01-11-2024. Prior to substitution it was : 20% , Substituted by the Finance (No. 2) Act, 2024 w.e.f. 01-11-2024. Prior to substitution it was : ₹ 25 crores.]

On pre-deposit of tax – Recovery proceedings to be stayed [Section 112(9)] : Where the appellant has paid the amount as per Section 112(8), the recovery proceedings for the balance amount shall be deemed to be stayed till the disposal of the appeal.

(B) Departmental Appeal :

(i) Orders Appealable to Appellate Tribunal [Section 112(3)] : The Commissioner may,—

- ✓ on his own motion, or
- ✓ upon request from the SGST/UTGST Commissioner,
- ✓ call for and examine the record of any order passed by— –
  - Appellate Authority, or
  - Revisional Authority under CGST Act or the SGST Act or the UTGST Act
  - for the purpose of satisfying himself as to the legality or propriety of the said order and
  - may, by order,
  - direct any officer subordinate to him to apply to the Appellate Tribunal.

i) Time limit for filing Application – 6 months : The Commissioner may, by order, direct any officer subordinate to him to apply to the Appellate Tribunal within 6 months from the date on which the said order has been passed or the date, as may be notified by the Government, on the recommendations of the Council, for the purpose of filing application before the Appellate Tribunal under this Act, whichever is later, for determination of such points arising out of the said order as may be specified him.

Condonation of delay in filing application – Further period of 3 months : The Tribunal can condone the delay of up to 3 months beyond the specified time period of 6 months, if it is satisfied that there was sufficient cause for the delay.

ii) Form for filing application : The application shall be made in GST APL-07 either electronically or otherwise on the common portal.

iii) Application to be treated as Departmental Appeal [Section 112(4)] : Where in pursuance of an order u/s 112(3) the authorised officer makes an application to the Appellate Tribunal, such application shall be dealt with by the Appellate Tribunal as if it were

an appeal made against the order u/s 107(11) or u/s 108(1) and the provisions of this Act shall apply to such application, as they apply in relation to appeals filed u/s 112(1).

iv) Pre-deposit not required : There is no requirement of making a pre-deposit in case of departmental appeal.

(C) Other Aspects :

i) Memorandum of cross objections to be filed within 45 days [Section 112(5)] : On receipt of notice that an appeal has been preferred under this section, the party against whom the appeal has been preferred may, notwithstanding that he may not have appealed against such order or any part thereof, file, within 45 days of the receipt of notice, a memorandum of cross-objections, verified in the prescribed manner, against any part of the order appealed against and such memorandum shall be disposed of by the Appellate Tribunal, as if it were an appeal presented within the time specified in Section 112(1).

ii) Application for rectification, restoration etc. to be accompanied by Prescribed Fees [Section 112(10)] : Every application made before the Appellate Tribunal,—

(a) in an appeal for rectification of error or for any other purpose; or

(b) for restoration of an appeal or an application,

shall be accompanied by such fees as may be prescribed.

The fees for restoration of appeal shall be ₹ 1,000 for every ₹ 1 lakh of tax or input tax credit involved or the difference in tax or input tax credit involved or the amount of fine, fee or penalty determined in the order appealed against, subject to a maximum of ₹ 25,000.

There shall be no fee for application made before the Appellate Tribunal for rectification of errors referred to in Section 112(10).

Extension of the last date for filing of appeals before the GST Appellate Tribunal against orders of Appellate Authority on account of non-constitution of benches of the Appellate Tribunal. – Order No. 09/2019-CT, dated 03-12-2019

1) The appellate tribunal has not been constituted and therefore the appeal cannot be filed within three months from the date on which the order sought to be appealed against is communicated.

2) The Central Government for the removal of difficulties, has issued the said order by which is is clarified that for the purpose of calculating

(a) the "3 months from the date on which the order sought to be appealed against is communicated to the person preferring the appeal" in section 112(1), the start of the 3 months period shall be considered to be the later of the following dates:

i) date of communication of order; or

ii) the date on which the President or the State President, as the case may be, of the Appellate Tribunal after its constitution under section 109, enters office;

(b) the "6 months from the date on which the said order has been passed" in section 112(3), the start of the 6 months period shall be considered to be the later of the following dates:

i) date of communication of order; or
ii) the date on which the President or the State President, as the case may be, of the Appellate Tribunal after its constitution under section 109, enters office.

24.8 APPEAL TO THE APPELLATE TRIBUNAL [RULE 110][Inserted by Notification No. 12/2024-CT dated 10-07-2024]

(1) An appeal to the Appellate Tribunal u/s 112(1) shall be filed in FORM GST APL-05, along with the relevant documents, electronically and provisional acknowledgement shall be issued to the appellant immediately.

However, an appeal to the Appellate Tribunal may be filed manually in FORM GST APL-05, along with the relevant documents, only if the Registrar allows the same by issuing a special or general order to that effect, subject to such conditions and restrictions as specified in the said order, and in such case, a provisional acknowledgement shall be issued to the appellant immediately.

(2) A memorandum of cross-objections to the Appellate Tribunal, if any, shall be filed electronically in FORM GST APL-06.

However, the memorandum of cross-objections may be filed manually in FORM GST APL-06, only if the Registrar allows the same by issuing a special or general order to that effect, subject to such conditions and restrictions as specified in the said order.

(3) The appeal and the memorandum of cross objections shall be signed in the manner specified in rule 26.

(4) Where the order appealed against is uploaded on the common portal, a final acknowledgement, indicating appeal number, shall be issued in FORM GST APL-02 on removal of defects, if any, and the date of issue of the provisional acknowledgement shall be considered as the date of filing of appeal.

However, where the order appealed against is not uploaded on the common portal, the appellant shall submit or upload, as the case may be, a self-certified copy of the said order within a period of 7 days from the date of filing of FORM GST APL-05 and a final acknowledgement, indicating appeal number, shall be issued in FORM GST APL-02 on removal of defects, if any, and the date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal.

Where the said self-certified copy of the order is submitted or uploaded after a period of 7 days from the date of filing of FORM GST APL-05, a final acknowledgement, indicating appeal number, shall be issued in FORM GST APL-02 on removal of defects, if any, and the date of submission or uploading of such self-certified copy shall be considered as the date of filing of appeal.

The appeal shall be treated as filed only when the final acknowledgement, indicating the appeal number, is issued. [Explanation]

(5) The fees for filing of appeal or restoration of appeal shall be ₹ 1,000 for every ₹ 1,00,000 of tax or input tax credit involved or the difference in tax or input tax credit involved or the

amount of fine, fee or penalty determined in the order appealed against, subject to a maximum of ₹ 25,000 and a minimum of ₹ 5,000.

The fees for filing of an appeal in respect of an order not involving any demand of tax, interest, fine, fee or penalty shall be ₹ 5,000.

(6) There shall be no fee for application made before the Appellate Tribunal for rectification of errors referred to in section 112(10).

24.9 APPLICATION TO THE APPELLATE TRIBUNAL [RULE 111] [Inserted by Notification No. 12/2024-CT dated 10-07-2024]

(1) An application to the Appellate Tribunal under section 112(3) shall be filed in Form GST APL-07, along with the relevant documents, electronically and a provisional acknowledgement shall be issued to the appellant immediately.

However, an application to the Appellate Authority may be filed manually in FORM GST APL-07, along with the relevant documents, only if the Registrar allows the same by issuing a special or general order to that effect, subject to such conditions and restrictions as specified in the said order, and in such case, a provisional acknowledgement shall be issued to the appellant immediately.

(2) A memorandum of cross-objections to the Appellate Tribunal under section 112(5), if any, shall be filed electronically in FORM GST APL-06.

However, the memorandum of cross-objections may be filed manually in FORM GST APL-06, only if the Registrar allows the same by issuing a special or general order to that effect, subject to such conditions and restrictions as specified in the said order.

(3) The appeal and the memorandum of cross objections shall be signed in the manner specified in rule 26.

(4) Where the order appealed against is uploaded on the common portal, a final acknowledgement, indicating appeal number, shall be issued in FORM GST APL-02 on removal of defects, if any, and the date of issue of the provisional acknowledgement shall be considered as the date of filing of appeal.

However, where the order appealed against is not uploaded on the common portal, the appellant shall submit or upload, as the case may be, a self-certified copy of the said order within a period of seven days from the date of filing of FORM GST APL-07 and a final acknowledgment, indicating appeal number shall be issued in Form GST APL-02 on removal of defects, if any, and the date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal.

Where the said self-certified copy of the order is submitted or uploaded after a period of seven days from the date of filing of FORM GST APL-07, a final acknowledgement, indicating appeal number, shall be issued in FORM GST APL-02 on removal of defects, if any, and the date of submission or uploading of such self-certified copy shall be considered as the date of filing of appeal.

The appeal shall be treated as filed only when the final acknowledgement, indicating the appeal number, is issued. [Explanation 1]

For the purposes of rule 110 and 111, 'Registrar' shall mean a Registrar appointed by the Government for this purpose, and shall include Joint Registrar, Deputy Registrar and Assistant Registrar. [Explanation 2]

24.10 WITHDRAWAL OF APPEAL OR APPLICATION FILED BEFORE THE APPELLATE TRIBUNAL [RULE 113A] [Inserted by Notification No. 12/2024-CT dated 10-07-2024]

The appellant may, at any time before the issuance of the order under section 113(1), in respect of any appeal filed in FORM GST APL-05 or any application filed in FORM GST APL-07, file an application for withdrawal of the said appeal or the application, as the case may be, by filing an application in FORM GST APL-05/07W.

However, where the final acknowledgment in FORM GST APL-02 has been issued, the withdrawal of the said appeal or the application, as the case may be, would be subject to the approval of the Appellate Tribunal and such application for withdrawal of the appeal or application, shall be decided by the Appellate Tribunal within 15 days of filing of such application.

Any fresh appeal or application, as the case may be, filed by the appellant pursuant to such withdrawal shall be filed within the time limit specified in section 112(1)/(3), as the case may be.

8. In what circumstances additional evidence can be produced by an appellant before the Appellate Authority or the Appellate Tribunal. OR
Rule 112 of the CGST Rules lays down that the appellant shall not be allowed to produce before the Appellate authority (AA) or the Tribunal any evidence, whether oral or documentary, other than the evidence produced by him during the course of the proceedings before the adjudicating authority or, as the case may be, the AA. What are the exceptional circumstances specified in the rule where the production of additional evidence will
be allowed? Can AA or the Tribunal direct production of any document or examination of any witness? (5 Marks, Nov. 2018 -NS)

Ans: Production of additional evidence before the Appellate Authority or the Appellate Tribunal [Rule 112]:

(1) General bar on production of additional evidences [Rule 112(1)] : The appellant shall not be allowed to produce before the Appellate Authority or the Appellate Tribunal any evidence, whether oral or documentary, other than the evidence produced by him during the course of the proceedings before the adjudicating authority or, as the case may be, the Appellate Authority except in the following circumstances, namely:

(a) Refusal by lower authority – where the adjudicating authority or, as the case may be, the Appellate Authority has refused to admit evidence which ought to have been admitted; or

(b) Appellant could not furnish evidence due to sufficient cause despite demanded by lower authority – where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the adjudicating authority or, as the case may be, the Appellate Authority; or

(c) Appellant could not furnish evidence which is relevant to any ground of appeal – where the appellant was prevented by sufficient cause from producing before the adjudicating authority or, as the case may be, the Appellate Authority any evidence which is relevant to any ground of appeal; or

(d) Lower authority did not allow opportunity to appellant to adduce evidence – where the adjudicating authority or, as the case may be, the Appellate Authority has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

(2) Reasons for Admission to be Recorded in Writing [Rule 112(2)] : No evidence shall be admitted unless the Appellate Authority or the Appellate Tribunal records in writing the reasons for its admission.

(3) Opportunity to department to Cross Examine or to Rebut Evidence [Rule 112(3)] : The Appellate Authority or the Appellate Tribunal shall not take any evidence produced 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; or

(b) to produce any evidence or any witness in rebuttal of the evidence produced by the appellant.

(4) Appellate bodies can direct for production of Documents/ Examination of any Witness [Rule 112(4)] : Nothing contained in this rule shall affect the power of the Appellate Authority or the Appellate Tribunal to direct the production of any document, or the examination of any witness, to enable it to dispose of the appeal.

ORDERS OF APPELLATE TRIBUNAL

9. How does the Appellate Tribunal decide an appeal ? Also discuss the power of the Appellate Tribunal to rectify any mistake apparent from record.

Ans: Orders of Appellate Tribunal [Section 113] :

(1) Orders of Appellate Tribunal [Section 113(1)] : The Appellate Tribunal may,—

- ✓ after giving the parties to the appeal an opportunity of being heard,
- ✓ pass such orders thereon as it thinks fit,
- ✓ confirming, modifying or annulling the decision or order appealed against, or
- ✓ may refer the case back to the Appellate Authority, or the Revisional Authority or to the original adjudicating authority,—
  - with such directions as it may think fit, –

- for a fresh adjudication or decision
- after taking additional evidence, if necessary.

(2) Granting of time and adjournment [Section 113(2)] : The Appellate Tribunal may, if sufficient cause is shown, at any stage of hearing of an appeal, grant time to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing.
Adjournment not more than 3 times : Adjournment shall not be granted more than 3 times to a party during hearing of the appeal.

(3) Rectification of mistake within 3 Months [Section 113(3)] : The Appellate Tribunal 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 it on its own accord, or –
- is brought to its notice by—
  - the Commissioner or SGST/UTGST Commissioner, or
  - the other party to the appeal

✓ within a period of 3 months from the date of the order.

Opportunity of being heard – Before increasing the liability or reducing refund : No amendment which has the effect of enhancing an assessment or reducing a refund or input tax credit or otherwise increasing the liability of the other party, shall be made, unless the party has been given an opportunity of being heard.

(4) Time limit for disposal of appeal - If possible within ONE year from the date on which such appeal is filed [Section 113(4)] : The Appellate Tribunal shall, as far as possible, hear and decide every appeal within a period of 1 year from the date on which it is filed.

(5) Communication of order [Section 113(5)] : The Appellate Tribunal shall send a copy of every order passed under this section to the –

i) Appellate Authority or the Revisional Authority, or the original adjudicating authority,
ii) appellant and
iii) the jurisdictional Commissioner or the Commissioner of State tax or the Union territory tax.

(6) Final fact finding authority [Section 113(6)] : Save as provided in Section 117 or Section 118, orders passed by the Appellate Tribunal on an appeal shall be final and binding on the parties.

10. Explain the provisions of Interest on refund of amount paid for admission of appeal.

Ans: Interest On Refund Of Amount Paid For Admission Of Appeal [Section 115]: Where an amount paid by the appellant under Section 107(6) or Section 112(8) is required to be refunded consequent to any order of the Appellate Authority or of the Appellate Tribunal, interest at the rate specified under Section 56 shall be payable in respect of such refund from the date of payment of the amount till the date of refund of such amount.

AUTHORISED REPRESENTATIVE

11. State the provisions in the CGST Act, 2017 which govern the appearance by an authorised representative and the qualifications for such a person.[Section 116]:

Ans: Appearance by Authorised Representative [Section 116(1)]: Any person who is entitled or required to appear before –

(1) Appearance by Authorised Representative [Section 116(1)] : Any person who is entitled or required to appear before—

- ✓ an officer appointed under this Act, or
- ✓ the Appellate Authority, or
- ✓ the Appellate Tribunal

in connection with any proceedings under this Act,—

- ✓ otherwise than when required under this Act to appear personally for examination on oath or affirmation,
- ✓ may subject to the other provisions of this section, appear by an authorised representative.

(2) Person who can act as Authorised Representative [Section 116(2)] : "Authorised representative" shall mean a person authorised by the person referred to in Section 116(1) to appear on his behalf, being—

(a) his relative or regular employee; or

(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; or

(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; or

(d) a retired officer of the Commercial Tax Department of any State Government or Union territory or of the Board who, during his service under the Government, had worked in a post not below the rank than that of a Group-B Gazetted officer for a period of not less than 2 years.

Department officials – barred upto 1 year after retirement or resignation : Such officer shall not be entitled to appear before any proceedings under this Act for a period of 1 year from the date of his retirement or resignation; or

(e) any person who has been authorised to act as a goods and services tax practitioner on behalf of the concerned registered person.

(3) Person who cannot act as authorised representative [Section 116(3)] : No person,—

(a) who has been dismissed or removed from Government service shall be qualified to represent any person for all times; or

(b) who is convicted of an offence connected with any proceedings under this Act, the SGST Act, the IGST Act or the UTGST Act, or under the existing law or under any of the Acts passed by a State Legislature dealing with the imposition of taxes on sale of goods or supply of goods or services or both; shall be qualified to represent any person for all times.

(c) who is found guilty of misconduct by the prescribed authority shall be qualified to represent any person for all times.

(d) who has been adjudged as an insolvent shall be qualified to represent any person for the period during which the insolvency continues.

(4) Person disqualified under SGST/UTGST Act – Deemed disqualification under CGST Act : Any person who has been disqualified under the provisions of the SGST Act or the UTGST Act shall be deemed to be disqualified under this Act.

APPEAL TO HIGH COURT

12. What are the orders that are appealable to the High Court? Can the delay in filing an appeal be condoned by the High Court?

Ans: Appeal to High Court [Section 117] :

(1) Appealable order before High Court [Section 117(1)] : Any person aggrieved by any order passed by the State Bench of the Appellate Tribunal may file an appeal to the High Court and the High Court may admit such appeal, if it is satisfied that the case involves a substantial question of law.

(2) Time limit and fees for filing appeal [Section 117(2)] : An appeal shall be filed within a period of 180 days from the date on which the order appealed against is received by the aggrieved person and it shall be in such form, verified in such manner as may be prescribed. Condonation of delay in filing appeal : The High Court may entertain an appeal after the expiry of the said period if it is satisfied that there was sufficient cause for not filing it within such period.

(3) Form of Appeal : The appeal shall be filed in GST APL 08.

(4) Formulation and Hearing on substantial question of law [Section 117(3)] : Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question and the appeal shall be heard only on the question so formulated, and the respondents shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question.

Any other question of law may be heard : However, nothing in this section shall be deemed to take away or abridge the power of the court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question.

(5) Decision on question law and its Judgment [Section 117(4)] : The High Court shall decide the question of law so formulated and deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit.

(6) Issues that can be decided [Section 117(5)] : The High Court may determine any issue which— (a) has not been determined by the Tribunal (State Bench); or (b) has been wrongly determined by the Tribunal (State Bench), by reason of a decision on such question of law.

(7) At least 2 Judge bench to hear Appeal [Section 117(6)] : Where an appeal has been filed before the High Court, it shall be heard by a Bench of not less than two Judges of the High Court, and shall be decided in accordance with the opinion of such Judges or of the majority, if any, of such Judges.

(8) Decision by majority or reference to Additional Judges [Section 117(7)] : Where there is no such majority, the Judges shall state the point of law upon which they differ and the case shall, then, be heard upon that point only, by one or more of the other Judges of the High Court and such point shall be decided according to the opinion of the majority of the Judges who have heard the case including those who first heard it.

(9) Effect to be given to High Court Judgment [Section 117(8)] : Where the High Court delivers a judgment in an appeal filed before it under this section, effect shall be given to such judgment by either side on the basis of a certified copy of the judgment.

(10) Provisions of CPC to Apply [Section 117(9)] : Save as otherwise provided in this Act, the provisions of the Code of Civil Procedure, 1908, relating to appeals to the High Court shall, as far as may be, apply in the case of appeals under this section.

(11) Pre-deposit of tax dues : Pre-deposit of all tax dues is required to be made; otherwise the inherent powers of the High Court have to be invoked for obtaining a stay pending disposal of the appeal.

APPEAL TO SUPREME COURT

13. What are the orders that are appealable to Supreme Court under the CGST Act, 2017?

Ans: Appeal to Supreme Court [Section 118]:

(1) Matters in which Appeal lies [Section 118(1)] : An appeal shall lie to the Supreme Court—

(a) from any order passed by the Principal Bench of the Appellate Tribunal; or

(b) from any judgment or order passed by the High Court in an appeal made under Section 117 in any case which, on its own motion or on an application made by or on behalf of the party aggrieved, immediately after passing of the judgment or order, the High Court certifies to be a fit one for appeal to the Supreme Court.

Note: The Principal Bench of the Tribunal has jurisdiction to entertain appeal if the dispute or one of the issues in dispute involves place of supply.

(2) Provisions of the Code of Civil Procedure, 1908 to apply [Section 118(2)] : The provisions of the Code of Civil Procedure, 1908, relating to appeals to the Supreme Court shall, so far as may be, apply in the case of appeals under this section as they apply in the case of appeals from decrees of a High Court.

(3) Effect to be given to Supreme Court Judgment [Section 118(3)] : Where the judgment of the High Court is varied or reversed in the appeal, effect shall be given to the order of the Supreme Court in the manner provided in Section 117 in the case of a judgment of the High Court.

14. Whether the appellant is required to pay sums due to as per order of Appellate Tribunal even if he has filed an appeal to High Court or Supreme Court.

Ans: Sums due to be paid notwithstanding appeal, etc. [Section 119]: Notwithstanding that an appeal has been preferred to the High Court or the Supreme Court, sums due to the Government as a result of an order passed the Principal Bench of the Appellate Tribunal or an order passed by by the State Benches of the Appellate Tribunal or an order passed by the High Court, as the case may be, shall be payable in accordance with the order so passed.

15. Explain the jurisdiction of civil court to decide any issues under the Act.

Ans: Bar on jurisdiction of civil courts [Section 162]: Save as provided in Sections 117 and 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.

16. Write a note on the provisions relating to non-filing of appeals/revisions etc. by the Department.

Ans: Appeal not to be filed in certain cases [Section 120]:

(1) Fixation of monetary limits for regulating the filing of appeal etc. [Section 120(1)] : The Board may, on the recommendations of the Council, from time to time, issue orders or instructions or directions fixing such monetary limits, as it may deem fit, for the purposes of regulating the filing of appeal or application by the officer of the central tax under the provisions of this Chapter.

(2) Central tax Officer may file appeal etc. in any other case [Section 120(2)] : Where, in pursuance of the orders or instructions or directions issued under Section 120(1), the officer of the central tax has not filed an appeal or application against any decision or order passed under the provisions of this Act, it shall not preclude such officer of the central tax from filing appeal or application in any other case involving the same or similar issues or questions of law.

(3) No contention of consent by Central tax Officer [Section 120(3)] : Notwithstanding the fact that no appeal or application has been filed by the officer of the central tax pursuant to the orders or instructions or directions issued under Section 120(1), no person, being a party in appeal or application shall contend that the officer of the central tax has acquiesced in the decision on the disputed issue by not filing an appeal or application.

(4) GSTAT/ Court shall have regard to the circumstances in which appeal etc. is not filed [Section 120(4)] : The Appellate Tribunal or court hearing such appeal or application shall have regard to the circumstances under which appeal or application was not filed by the officer of the central tax in pursuance of the orders or instructions or directions issued under Section 120(1).

Fixing monetary limits for filing appeals or applications by the Department before GSTAT, High Courts and Supreme Court. – Circular No. 207/1/2024-GST dated 26-06-2024

(1) In exercise of the powers conferred by Section 120 of the CGST Act read with section 168 of the CGST Act, the Board, on the recommendations of the GST Council, fixes the following monetary limits below which appeal or application or Special Leave Petition, as the case may be, shall not be filed by the Central Tax officers before Goods and Service Tax Appellate Tribunal (GSTAT), High Court and Supreme Court under the provisions of CGST Act, subject to the exclusions mentioned in para 4 below:

Appellate Forum	Monetary Limit (amount involved in ₹)
GSTAT	20,00,000/-
High Court	1,00,00,000/-
Supreme Court	2,00,00,000/-

(2) While determining whether a case falls within the above monetary limits or not, the following principles are to be considered:

	Where the dispute pertains to-	Amount to be considered while applying the monetary limit for filing appeal.
(i)	tax (with or without penalty and/or interest),	the aggregate of the amount of tax in dispute (including CGST, SGST/UTGST, IGST and Compensation Cess) only
(ii)	demand of interest only	the amount of interest
(iii)	imposition of penalty only	the amount of penalty
(iv)	imposition of late fee only	the amount of late fee
(v)	demand of interest, penalty and/or late fee (without involving any disputed tax amount)	the aggregate of amount of interest, penalty and late fee
(iv)	erroneous refund,	the amount of refund in dispute (including CGST, SGST/UTGST, IGST and Compensation Cess)
(vii)	Monetary limit shall be applied on the disputed amount of tax/ interest/ penalty/ late fee, as the case may be, in respect of which appeal or application is contemplated to be filed in a case.	
(viii)	In a composite order which disposes more than one appeal/demand notice, the monetary limits shall be applicable on the total amount of tax/ interest/ penalty/ late fee, as the case may be, and not on the amount involved in individual appeal or demand notice.	

(3) EXCLUSIONS

Monetary limits specified above for filing appeal or application by the department before GSTAT or High Court and for filing Special Leave Petition or appeal before the Supreme Court shall be applicable in all cases, except in the following circumstances where the decision to file appeal shall be taken on merits irrespective of the said monetary limits:

(i) Where any provision of the CGST Act or SGST/UTGST Act or IGST Act or GST (Compensation to States) Act has been held to be ultra vires to the Constitution of India; or
(ii) Where any Rules or regulations made under CGST Act or SGST/UTGST Act or IGST Act or GST (Compensation to States) Act have been held to be ultra vires the parent Act; or
(iii) Where any order, notification, instruction, or circular issued by the Government or the Board has been held to be ultra vires of the CGST Act or SGST/UTGST Act or IGST Act or GST (Compensation to States) Actor the Rules made thereunder; or
(iv) Where the matter is related to

(a) Valuation of goods or services; or
(b) Classification of goods or services; or
(c) Refunds; or
(d) Place of Supply; or
(e) Any other issue,

which is recurring in nature and/or involves interpretation of the provisions of the Act /the Rules/ notification/circular/order/instruction etc; or
(v) Where strictures/adverse comments have been passed and/or cost has been imposed against the Government/Department or their officers; or
(vi) Any other case or class of cases, where in the opinion of the Board, it is necessary to contest in the interest of justice or revenue.

(4) It is pertinent to mention that an appeal should not be filed merely because the disputed tax amount involved in a case exceeds the monetary limits fixed above. Filing of appeal in such cases is to be decided on merits of the case. The officers concerned shall keep in mind the overall objective of reducing unnecessary litigation and providing certainty to taxpayers on their tax assessment while taking a decision regarding filing an appeal.

17. What are the decisions and orders against which no appeal can be filed.

Ans: Non-appealable decisions and orders [Section 121]: Notwithstanding anything to the contrary in any provisions of this Act, no appeal shall lie against any decision taken or order passed by an officer of central tax if such decision taken or order passed relates to any one or more of the following matters, namely: -

(a) an order of the Commissioner or other authority empowered to direct transfer of proceedings from one officer to another officer; or
(b) an order pertaining to the seizure or retention of books of account, register and other documents; or
(c) an order sanctioning prosecution under this Act; or
(d) an order passed under Section 80.

18. Is any fees is payable to obtain copies of order under the Act.

Ans: Levy of fee [Section 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 such fee as may be prescribed.

TOPIC REFERENCER

- *Advance Ruling*
- *Procedure for Advance Ruling*
- *Provisions for Appeals Against Order of AAR*
- *Applicability of Advance Ruling*

ADVANCE RULING

1. What is the role of Advance Ruling.

Ans: An advance ruling helps the applicant in planning his activities which are liable for payment of GST, well in advance. It also brings certainty in determining the tax liability, as the ruling given by the Authority for Advance Ruling is binding on the applicant as well as Government authorities. Further, it helps in avoiding long drawn and expensive litigation at a later date. Seeking an advance ruling is inexpensive and the procedure is simple and expeditious. It thus provides certainty and transparency to a taxpayer with respect to an issue which may potentially cause a dispute with the tax administration. A legally constituted body called Authority for Advance Ruling (AAR) can give a binding ruling to an applicant who is a registered taxable person or is liable to be registered. The advance ruling given by the AAR can be appealed before an Appellate authority for Advance Ruling (AAAR). There are time lines prescribed for passing an order by AAR and by AAAR.

Objectives for setting up Advance Ruling Mechanism : The broad objectives for setting up a mechanism of Advance Ruling are –

- ✓ provide certainty in tax liability in advance in relation to an activity proposed to be undertaken by the applicant;
- ✓ attract Foreign Direct Investment (FDI);.
- ✓ reduce litigation;
- ✓ pronounce ruling expeditiously in a transparent and inexpensive manner.

2. What do you understand by Advance Ruling and Applicant under the CGST Act, 2017?

Ans: The relevant provisions are discussed as under-

(1) "Advance ruling" means a decision provided by the AAR or the AAAR to an applicant on matters or on questions specified in Section 97(2) or Section 100(1), in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant. [Section 95(a)]

(2) "Applicant" means any person registered or desirous of obtaining registration under this Act. [Section 95(c)]

3. Write a note on the following-

(i) Authority for Advance Ruling (AAR)

(ii) Appellate Authority for Advance Ruling (AAAR)

Ans - Authority for Advance Ruling (AAR) [Section 96] : Subject to the provisions of this Chapter, for the purposes of this Act, the AAR constituted under the provisions of a SGST Act or UTGST Act shall be deemed to be the Authority for Advance Ruling (AAR) in respect of that State or Union territory.

Qualification and appointment of members of the Authority for Advance Ruling [Rule 103] : The Government shall appoint officers not below the rank of Joint Commissioner as member of the Authority for Advance Ruling.

Appellate Authority for Advance Ruling [Section 99] : Subject to the provisions of this Chapter, for the purposes of this Act, the Appellate Authority for Advance Ruling (AAAR) constituted under the provisions of a SGST Act or a UTGST Act shall be deemed to be the AAAR in respect of that State or Union territory.

4. Discuss briefly provisions of CGST Act, 2017 regarding questions for which advance ruling can be sought. (4 Marks, May 2018)

Ans: Questions for which advance ruling can be sought [Section 97(2)]: Advance Ruling can be sought for the following questions -

(a) classification of any goods or services or both;

(b) applicability of a notification issued under provisions of this Act;

(c) determination of time and value of supply of goods or services or both;

(d) admissibility of input tax credit of tax paid or deemed to have been paid;

(e) determination of the liability to pay tax on any goods or services under the Act;

(f) whether applicant is required to be registered under the Act;

(g) whether any particular thing done by the applicant with respect to any goods or services amounts to or results in a supply of goods or services, within the meaning of that term.

Note :

(1) AAR can take issue relating to place of supply : The Kerala High Court in Sutherland Mortgage Services Inc. v. PCCC, CGST & CEx. [2020] 35 GSTL 40 (Ker.) has held that AAR can take question relating to place of supply. The issue relating to determination of place of supply, which is one of the crucial issues to be determined as to whether or not it fulfils the definition of place of service, would also come within the ambit of the larger of issue of "determination of liability to pay tax on any goods or services or both" as envisaged in Section 97(2)(e) of the CGST Act. Thus, AAR has jurisdiction to address issue relating to place of supply.

(2) Liability to deduct TDS cannot be decided by AAR : In Kandla Port Trust (Deendayal Port Trust), In re [2018] 98 taxmann.com 139 (AAR-Gujarat), it was held that Issue as to

'whether applicantport trust is liable to deduct TDS under section 51' does not fall in category of section 97(2) of CGST Act, 2017.

(3) Recipient of goods or services cannot apply for advance ruling : Recipient of goods or services cannot apply for advance ruling where tax is payable by supplier and there is no reverse charge – Visvesvaraya National Institute of Technology, Nagpur, In re [2018] 69 GST 621 (AAR).

PROCEDURE FOR ADVANCE RULING

5. Briefly explain the procedure to be followed by the Authority for Advance Ruling on receipt of application for Advance Ruling under section 98 of CGST Act, 2017. (5 Marks, Nov. 2018-NS)

Ans: The relevant provisions are discussed as under-

(1) Application for advance ruling [Section 97(1) read with Rule 102 of CGST Rules, 2017] : An applicant desirous of obtaining an advance ruling may make an application in such form and manner as may be prescribed and accompanied by fee of ₹ 5,000, stating the question on which the advance ruling is sought.

(2) Authority forwards copy of Application to Officer and Calls for Records [Section 98(1)] : On receipt of an application, the AAR shall cause a copy thereof to be forwarded to the concerned officer and, if necessary, call upon him to furnish the relevant records.

However, where any records have been called for by the AAR in any case, such records shall, as soon as possible, be returned to the said concerned officer.

(3) Acceptance or Rejection of application [Section 98(2)] : The AAR may, after examining the application and the records called for and after hearing the applicant or his authorised representative and the concerned officer or his authorised representative, by order, either admit or reject the application.

Application not to be allowed in pending cases or already decided matters : The AAR shall not admit the application where the question raised in the application is already pending or decided in any proceedings in the case of an applicant under any of the provisions of this Act.

Opportunity of Being Heard : No application shall be rejected unless an opportunity of hearing has been given to the applicant. Reasons for Rejection : Where the application is rejected, the reasons for such rejection shall be specified in the order.

(4) Copy of Order to be Communicated [Section 98(3)] : A copy of every order made shall be sent to the applicant and to the concerned officer.

(5) Examination of material & pronouncement of Ruling [Section 98(4)] : Where an application is admitted, the AAR shall,—

✓ after examining such further material as may be placed before it – –

- by the applicant, or
- obtained by the AAR, and

- ✓ after providing an opportunity of being heard— –
  - to the applicant or his authorised representative as well as
  - to the concerned officer or his authorised representative,
- ✓ pronounce its advance ruling on the question specified in the application.

(6) Difference in opinion - Reference to the Appellate Authority on points of difference [Section 98(5)] : Where the members of the AAR differ on any question on which the advance ruling is sought, they shall state the point or points on which they differ and make a reference to the AAAR for hearing and decision on such question.

(7) Ruling to be pronounced within 90 Days [Section 98(6)] : The AAR shall pronounce its advance ruling in writing within 90 days from the date of receipt of application.

(8) Copy of final order to be sent to Applicant and GST Officer [Section 98(7)] : A copy of the advance ruling pronounced by the AAR duly signed by the members and certified in such manner as may be prescribed shall be sent to the applicant, the concerned officer and the jurisdictional officer after such pronouncement.

PROVISIONS FOR APPEALS AGAINST ORDER OF AAR

6. What are the provisions for appeals against order of AAR?
OR Briefly explain whether an appeal could be filed before the Appellate Authority against order of Authority for Advance Ruling (AAR) with reference to section 100 and 101 of the CGST Act, 2017. (4 Marks, May 2019)

Ans: Appeal to Appellate Authority [Section 100]: The relevant provisions are discussed as under-

(1) Appeal by aggrieved person [Section 100(1)] : If the applicant is aggrieved with the finding of the AAR, he can file an appeal with AAAR.

Similarly, if the concerned or jurisdictional officer of CGST/SGST/UTGST does not agree with the finding of AAR, he can also file an appeal with AAAR.

The word concerned officer of CGST/SGST means an officer who has been designated by the CGST/SGST administration in regard to an application for advance ruling. In normal circumstances, the concerned officer will be the officer in whose jurisdiction the applicant is located. In such cases the concerned officer will be the jurisdictional CGST/SGST officer.

(2) Time limit – 30 days [Section 100(2)] : Every appeal shall be filed within a period of 30 days from the date on which the ruling sought to be appealed against is communicated to the concerned officer, the jurisdictional officer and the applicant.

(3) Condonation of delay upto 30 days : The AAAR may, if it is satisfied that the appellant was prevented by a sufficient cause from presenting the appeal within the said period of 30 days, allow it to be presented within a further period not exceeding 30 days.

(4) Prescribed form and fees [Section 100(3)] : Every appeal under this section shall be filed in prescribed form and accompanied by fees of ₹ 10,000 if appeal is filed by the applicant.

7. Explain the procedure in appeal to be followed by the Appellate authority.

Ans : Orders of Appellate Authority [Section 101]:

(1) Order of AAAR [Section 101(1)] : The AAAR may, after giving the parties to the appeal or reference an opportunity of being heard, pass such order as it thinks fit, confirming or modifying the ruling appealed against or referred to.

(2) Time limit of disposal of appeal – 90 days [Section 101(2)] : The order shall be passed within a period of 90 days from the date of filing of the appeal u/s 100 or a reference under Section 98(5).

(3) No advance ruling when members of the AAAR differ in opinion [Section 101(3)] : Where the members of the AAAR 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.

(4) Communication of advance ruling pronounced by AAAR [Section 101(4)] : A copy of the advance ruling pronounced by the AAAR duly signed by the Members and certified in such manner as may be prescribed shall be sent to the applicant, the concerned officer, the jurisdictional officer and to the AAR after such pronouncement.

8. Can the AAR & AAAR order for rectification of mistakes in the ruling?

Ans: Rectification of advance ruling [Section 102]:

(1) Rectification of error – Within 6 months from the date of order : The AAR or the AAAR may—

- ✓ amend any order passed by it under Section 98 or Section 101,
- ✓ so as to rectify any error apparent on the face of the record,
- ✓ if such error—
  - is noticed by the AAR or the AAAR on its own accord, or –
  - is brought to its notice by the concerned officer, the jurisdictional officer, the applicant, or the appellant,
- ✓ within a period of 6 months from the date of the order.

(2) Opportunity of Being Heard : No rectification which has the effect of enhancing the tax liability or reducing the amount of admissible input tax credit shall be made unless the applicant or the appellant has been given an opportunity of being heard.

APPLICABILITY OF ADVANCE RULING

9. Explain the provisions relating to applicability of advance ruling.

Ans: Applicability of advance ruling [Section 103]:

(1) Advance ruling to be binding on the applicant and Jurisdictional Officer [Section 103(1)] : The advance ruling pronounced by the AAR or the AAAR shall be binding only—

- ✓ on the applicant who had sought it;
- ✓ in respect of any matter referred to in Section 97(2) for advance ruling;

- ✓ on the concerned officer or the jurisdictional officer in respect of the applicant.

(2) Inapplicability – If law or Facts Change [Section 103(1)] : The advance ruling shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.

10. When does an advance ruling held to be void ab-initio?

Ans: Advance ruling to be void in certain circumstances [Section 104]:

- ✓ Advance ruling to be void if obtained by fraud or suppression of material facts or misrepresentation of facts [Section 104(1)] : Where the AAR or the AAAR finds—
- ✓ that advance ruling pronounced by it under Section 98(4) or under Section 101(1),
- ✓ has been obtained by the applicant or the appellant by fraud or suppression of material facts or misrepresentation of facts,
- ✓ it may,–
  - by order,
  - declare such ruling to be void ab-initio, and
- ✓ thereupon all the provisions of this Act or the rules made thereunder shall apply
- ✓ to the applicant or the appellant as if such advance ruling had never been made.

Opportunity of Being Heard [Explanation] : No order shall be passed unless an opportunity of being heard has been given to the applicant or the appellant.

The period beginning with the date of such advance ruling and ending with the date of order shall be excluded while computing the period specified in Sections 73(2) and Section 73(10) or Sections 74(2) and Section 74(10) or section 74A(2) and section 4A(7). [Inserted by the Finance (No. 2) Act, 2024 w.e.f. 1-11-2024]

Communication of copy of order [Section 104(2)] : A copy of the order made under Section 104(1) shall be sent to the applicant, the concerned officer and the jurisdictional officer

11. State the powers and procedure of the AAR and AAAR.

Ans: The relevant provisions are discussed as under-

(1) Powers of Authority and Appellate Authority [Section 105] :

(i) AAR/ AAAR to have same powers of Civil Court for Certain Matters [Section 105(1)] : The AAR or the AAAR 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
d) compelling production of books of account and other records, have all the powers of a civil court under the Code of Civil Procedure, 1908.

(ii) AAR/ AAAR deemed to be Civil Court [Section 105(2)] : The AAR or the AAAR 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 AAR or the

AAAR 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.

(2) Procedure of Authority and Appellate Authority [Section 106] : The AAR or the AAAR shall, subject to the provisions of this Chapter, have power to regulate its own procedure.

Note

TOPIC REFERENCER

- *Presumption as to Documents in Certain Cases*
- *Goods and Services Tax Compliance Rating Other Miscellaneous Provisions*
- *Anti-Profiteering Measure*
- *IGST Act, 2017 - Other Provisions:*
- *Administration, Apportionment of Tax and Settlement of Funds*
- *Application of Provisions of CGST Act, 2017*

PRESUMPTION AS TO DOCUMENTS IN CERTAIN CASES

1. Write note on presumption as to documents in certain cases under CGST law.

Ans: Presumption as to documents in certain cases [Section 144]: Where any document-

(i) is produced by any person under this Act or any other law for the time being in force; or

(ii) has been seized from the custody or control of any person under this Act or any other law for the time being in force; or

(iii) has been received from any place outside India in the course of any proceedings under this Act or any other law for the time being in force, and such document is tendered by the prosecution in evidence against him or any other person who is tried jointly with him, the court shall—

(a) unless the contrary is proved by such person, presume—

- ✓ the truth of the contents of such document;
- ✓ that the signature which purports to be in the handwriting of any particular person is in that person's handwriting and in the case of a document executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested;

(b) admit the document in evidence notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence.

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

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

2. Write a note on admissibility of micro films, facsimile copies of documents and computer printouts as documents and as evidence.

Ans: Admissibility of micro films, facsimile copies of documents and computer printouts as documents and as evidence [Section 145]:

(1) Micro films, Facsimile copies and Computer printouts deemed to Document and admissible as evidence [Section 145(1)]: The following shall be deemed as 'documents' –

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

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

(c) A facsimile copy of a document;

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

(e) A statement contained in a document and included in a printed material produced by a computer;

(f) Information stored electronically in any device or media, including any hard copies made of such information.

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

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

(2) Certificate to be evidence [Section 145(2)] : In any proceedings under this Act or the rules made thereunder, where it is desired to give a statement in evidence by virtue of this section, a certificate,—

(a) identifying the document containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer, shall be evidence of any matter stated in the certificate.

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

3. Write a note on Common Portal.

Ans: Common Portal [Section 146]: The Government may, –

- ✓ on the recommendations of the Council,
- ✓ notify the Common Goods and Services Tax Electronic Portal for— –
  - facilitating registration,
  - payment of tax,

- furnishing of returns,
- computation and settlement of integrated tax,
- electronic way bill and
- for carrying out such other functions and for such purposes as may be prescribed.

"www.gst.gov.in" and "www.ewaybillgst.gov.in" have been notified as Common GST Electronic Portal. – Notification No. 9/2018–CT dated 23-01-2018 w.e.f. 16-01-2018 The Central Government has notified www.gst.gov.in as the Common GST Electronic Portal for facilitating registration, payment of tax, furnishing of returns, computation and settlement of integrated tax and www.ewaybillgst.gov.in as the Common GST Electronic Portal for furnishing electronic way bill.

Explanation:

(1) "www.gst.gov.in" means the website managed by the GST Network, a company incorporated under the provisions of Section 8 of the Companies Act, 2013.

(2) "www.ewaybillgst.gov.in" means the website managed by the National Informatics Centre, Ministry of Electronics & Information Technology, Government of India.

Further, Invoice Registration Portal (IRP) is the website for uploading/reporting of e-invoices by the notified persons for whom e-invoicing is mandatory.

4. Write a note on Special procedure for certain processes.

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

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

GOODS AND SERVICES TAX COMPLIANCE RATING

5. Write a note on Goods and services tax compliance rating.

Ans: Goods and services tax compliance rating [Section 149];

(1) GST compliance rating score to be assigned to registered person : Every registered person may be assigned a goods and services tax compliance rating score by the Government based on his record of compliance with the provisions of this Act.

(2) GST compliance rating score to be determined on basis of prescribed parameters : The goods and services tax compliance rating score may be determined on the basis of such parameters as may be prescribed.

(3) Periodic updation of GST compliance rating score : The goods and services tax compliance rating score may be updated at periodic intervals and intimated to the registered person and also placed in the public domain in such manner as may be prescribed.

A prospective client will be able to see the compliance ratings of suppliers and take a decision as to whether to deal with a particular supplier or not. This will create healthy competition amongst taxable persons.

OTHER MISCELLANEOUS PROVISIONS

6. Write a note on power to call for information.

Ans: Power to call for information [Section 151]: The Commissioner or an officer authorised by him may, by an order, direct any person to furnish information relating to any matter dealt with in connection with this within such time, in such form, and in such manner, as may be specified therein. Act,

7. Explain the provisions on bar on disclosure of information.

Ans: Bar on disclosure of information [Section 152]:

(1) Bar on publication and use of information furnished under section 150/151 relating to a particular person : No information with respect to any matter given for the purposes of Section 150 or Section 151 shall,—

- ✓ without the previous consent in writing of the concerned person or his authorised representative,
- ✓ be published in such manner so as to enable such particulars to be identified as referring to a particular person.

No such information shall be used for the purpose of any proceedings under this Act without giving an opportunity of being heard to the person concerned.

(2) Non applicability i.e. Reporting in Exceptional Circumstances : No restriction shall apply to the publication of any information relating to a class of dealers or class of transactions, if in the opinion of the Commissioner, it is desirable in the public interest, to publish such information.

8. Can Officers under CGST Act, 2017 take assistance from an expert. Discuss.

Ans: Taking assistance from an expert [Section 153]: Any officer not below the rank of Assistant Commissioner may, having regard to the nature and complexity of the case and the interest of revenue, take assistance of any expert at any stage of scrutiny, inquiry, investigation or any other proceedings before him.

9. Write a note on Power to take samples.

Ans: Power to take samples [Section 154]: The Commissioner or an officer authorised by him may take samples of goods from the possession of any taxable person, where he considers it necessary, and provide a receipt for any samples so taken.

10. Which persons can be deemed to be public servants.

Ans: Persons deemed to be public servants [Section 156]: All persons discharging functions under this Act shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code. This implies that all officers shall be governed by the provisions of Indian Penal Code, wherever so applicable.

11. Write a note on Protection of action taken under this Act.

Ans: Protection of action taken under this Act [Section 157]:

(1) Protection to members of Appellate Tribunal : No suit, prosecution or other legal proceedings shall lie against the President, State President, Members, officers or other employees of the Appellate Tribunal or any other person authorised by the said Appellate Tribunal for anything which is in good faith done or intended to be done under this Act or the rules made there-under.

(2) Protection to officers under the Act : No suit, prosecution or other legal proceedings shall lie against any officer appointed or authorised under this Act for anything which is done or intended to be done in good faith under this Act or the rules made there-under.
Thus, this section makes the above authorities immune from personal liability for decisions, acts, or omissions that are made within the scope of their official duties, and not made in a wanton or reckless manner.

12. Can a public servant disclose information relating to persons. Discuss.

Ans: Disclosure of information by a public servant [Section 158]: Section 158 lays down the provisions for disclosure of information as also maintaining the confidentiality of the same and related penal provisions in the event of contravention of the same.

(1) Information/ Documents to be treated as Confidential [Section 158(1)] : The following shall be treated as confidential :
   (a) all particulars contained in any statement made, return furnished or accounts or documents produced in accordance with the Act, or
   (b) all particulars contained in any **record of evidence** given in the course of any proceedings under the Act (other than proceeding before a Criminal Court), or
   (c) all particulars contained in any record of any proceedings under the Act.

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

(3) Non Applicability [Section 158(3)] : Nothing contained in this section shall apply to the disclosure of,–

(a) For prosecution : Any particulars in respect of any statement, return, accounts, documents, evidence, affidavit or deposition, for the purpose of any prosecution under the Indian Penal Code or the Prevention of Corruption Act, 1988, or any other law for the time being in force; or

(b) For carrying out the objects of the Act : Any particulars to the Central Government or the State Government or to any person acting in the implementation of this Act, for the purposes of carrying out the objects of this Act; or

(c) For service of notice or recovery of demand : Any particulars when such disclosure is occasioned by the lawful exercise under this Act of any process for the service of any notice or recovery of any demand; or

(d) For furnishing to Court in a proceeding where Government is a party : Any particulars to a civil court in any suit or proceedings, to which the Government or any authority under this Act is a party, which relates to any matter arising out of any proceedings under this Act or under any other law for the time being in force authorising any such authority to exercise any powers there-under; or

(e) For audit of tax receipts or refunds : Any particulars to any officer appointed for the purpose of audit of tax receipts or refunds of the tax imposed by this Act; or

(f) For inquiry into the conduct of GST officer : Any particulars where such particulars are relevant for the purposes of any inquiry into the conduct of any officer appointed or authorised under this Act, to any person or persons appointed as an inquiry officer under any law for the time being in force; or

(g) For enabling levy/ realisation of any tax or duty : Any such particulars to an officer of the Central Government or of any State Government, as may be necessary for the purpose of enabling that Government to levy or realise any tax or duty; or

(h) By lawful exercise of powers : Any particulars when such disclosure is occasioned by the lawful exercise by a public servant or any other statutory authority, of his or its powers under any law for the time being in force; or

(i) For inquiry into a charge of misconduct by any professional : Any particulars relevant to any inquiry into a charge of misconduct in connection with any proceedings under this Act against a practising advocate, a tax practitioner, a practising cost accountant, a practising chartered accountant, a practising company secretary to the authority empowered to take disciplinary action against the members practising the profession of a legal practitioner, a cost accountant, a chartered accountant or a company secretary, as the case may be; or

(j) For data entry on automated system : Any particulars to any agency appointed for the purposes of data entry on any automated system or for the purpose of operating, upgrading or maintaining any automated system where such agency is contractually bound not to use or disclose such particulars except for the aforesaid purposes; or

(k) For any other law : Any particulars to an officer of the Government as may be necessary for the purposes of any other law for the time being in force; or

(l) In public interest : Any information relating to any class of taxable persons or class of transactions for publication, if, in the opinion of the Commissioner, it is desirable in the public interest, to publish such information.

13. Explain the statutory provisions relating to consent based sharing of information furnished by taxable person as provided in Section 158A of the CGST Act, 2017.

Ans: Consent based sharing of information furnished by taxable person [Section 158A]:

(1) Information that can be shared : Notwithstanding anything contained in sections 133, 152 and 158, Consent based the following details furnished by a registered person may be shared by the common portal with such other systems as may be notified by the Government, in taxable person. such manner and subject to such conditions as may be prescribed, namely: –

(a) particulars furnished in the application for registration under section 25 or in the return filed under section 39 or under section 44;

(b) the particulars uploaded on the common portal for preparation of invoice, the details of outward supplies furnished under section 37 and the particulars uploaded on the common portal for generation of documents under section 68;

(c) such other details as may be prescribed.

(2) Persons from whom consent to be obtained: The consent shall be obtained, of–

(a) the supplier, in respect of details furnished above; and

(b) the recipient, in respect of details furnished under Section 158A(1)(b)/(c)only where such details include identity information of the recipient, in such form and manner as may be prescribed.

(3) Government/ Common portal not liable for sharing of Information : No action shall lie against the Government or the common portal with respect to any liability arising consequent to information shared under this section and there shall be no impact on the liability to pay tax on the relevant supply or as per the relevant return.

(4) Advantages : This provision can be helpful in many cases as follows –

(a) where the recipient of goods or services wants to confirm whether supplier of goods or services has filed returns and has paid the tax. This is because if the supplier does not pay tax, recovery can be made from recipient. In such cases, after obtaining consent from supplier, the recipient can check whether supplier as filed returns and paid taxes, before releasing his payment. At present, there is no mechanism by which recipient can know whether supplier has paid the taxes and filed returns.

(b) This provision will also be helpful to buyer for vendor registration, rating of vendors and verifying credentials of vendors.

(c) Suppliers of goods and services can judge credit worthiness of recipient, before extending him credit.

(d) Bankers can use this provision while making assessment of loan applications.

The Central Government vide Notification No 33/2023–CT dated 31-07-2023 w.e.f. 01-10-2023 has notified "Account Aggregator" and (ii) "Public Tech Platform for Frictionless Credit" as the systems with which information may be shared by the common portal based on consent under Section 158A of the CGST Act, 2017.

"Account Aggregator" means a non-financial banking company which undertakes the business of an Account Aggregator in accordance with the policy directions issued by the Reserve Bank of India under section 45JA of the Reserve Bank of India Act, 1934 and defined as such in the Non-Banking Financial Company - Account Aggregator (Reserve Bank) Directions, 2016.

"Public Tech Platform for Frictionless Credit" means an enterprise-grade open architecture information technology platform, conceptualised by the Reserve Bank of India as part of its "Statement on Developmental and Regulatory Policies" dated the 10th August, 2023 and developed by its wholly owned subsidiary, Reserve Bank Innovation Hub, for the operations of a large ecosystem of credit, to ensure access of information from various data sources digitally and where the financial service providers and multiple data service providers converge on the platform using standard and protocol driven architecture, open and shared Application Programming Interface (API) framework. [Notification No. 06/2024-CT, 22-02-2024]

14. Explain the procedure of Consent based sharing of information.

Ans: Consent based sharing of information[Rule 163] [Inserted vide Notification No.12/2024-CT w.e.f. 10-07-2024]; The procedure is as under –

(1) Consent of registered person to be obtained by requesting system for sharing of information: Where a registered person opts to share the information furnished in—
   (a) FORM GST REG-01 as amended from time to time;
   (b) return in FORM GSTR-3B for certain tax periods;
   (c) FORM GSTR-1 as amended in FORM GSTR-1A if any, for certain tax periods, pertaining to invoices, debit notes and credit notes issued by him, as amended from time to time, with a requesting system referred to in Section 158A(1), the requesting system shall obtain the consent of the said registered person for sharing of such information and shall communicate the consent along with the details of the tax periods, where applicable, to the common portal.

(2) Consent by registered person : The registered person shall give his consent for sharing of information under Rule 158A(1)(c) only after he has obtained the consent of all the recipients, to whom he has issued the invoice, credit notes and debit notes during the said tax periods, for sharing such information with the requesting system and where he provides his consent, the consent of such recipients shall be deemed to have been obtained.

(3) Common portal to share the information : The common portal shall communicate the information with the requesting system on receipt from the said system –
   (a) the consent of the said registered person, and

(b) the details of the tax periods or the recipients, as the case may be, in respect of which the information is required.

15. Write a note on Publication of information in respect of persons in certain cases.

Ans-Publication of information in respect of persons in certain cases [Section 159]:

(1) Power of publication [Section 159(1)]: If the Commissioner, or any other officer authorised by him in this behalf, is of the opinion that it is necessary or expedient in the public interest to publish the name of any person and any other particulars relating to any proceedings or prosecution under this Act in respect of such person, it may cause to be published such name and particulars in such manner as it thinks fit.

(2) No publication till appeal disposed off or time limit for filing Appeal not Expired [Section 159(2)]: No publication under this section shall be made in relation to any penalty imposed under this Act until the time for presenting an appeal to the Appellate Authority under Section 107 has expired without an appeal having been presented or the appeal, if presented, has been disposed of.

(3) Publication of name of directors, partners, etc. [Explanation]: In the case of firm, company or other association of persons, the names of the partners of the firm, directors, managing agents, secretaries and treasurers or managers of the company, or the members of the association, as the case may be, may also be published if, in the opinion of the Commissioner, or any other officer authorised by him in this behalf, circumstances of the case justify it.

16. What are the grounds when Assessment proceedings, etc., may not be regarded as invalid.

Ans: Assessment proceedings, etc., not to be invalid on certain grounds [Section 160]:

(1) Assessment, re-assessment, etc. not to be invalid on Procedural Infractions [Section 160(1)] : No assessment, re-assessment, adjudication, review, revision, appeal, rectification, notice, summons or other proceedings (herein after referred as proceedings)—

- ✓ done, accepted, made, issued, initiated, or
- ✓ purported to have been done, accepted, made, issued, initiated

in pursuance of any of the provisions of this Act—

- ✓ shall be invalid, or
- ✓ deemed to be invalid

merely by reason of any mistake, defect or omission therein, if such proceedings are in substance and effect in conformity with or according to the intents, purposes and requirements of this Act or any existing law.

(2) Notice etc. deemed to be valid in Certain Circumstances [Section 160(2)] : 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 earliest proceedings commenced, continued or finalised pursuant to such notice, communication or order.

17. Explain the provisions relating to rectification of errors apparent on the face of record. OR Explain the provisions relating to rectification of error apparent on the face of record under section 161 of the CGST Act, 2017. (5 Marks, May 2019)

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

Documents covered u/s 161	✓ Decision ✓ Order ✓ Any notice ✓ Certificate ✓ Any other document
Rectifying Authority	Any authority who has passed or issued any decision or order or notice or certificate or any other document may rectify any error which is apparent on the face of record in such documents.
Type of mistakes or errors which can be rectified	Errors or mistakes which are apparent on the face of record may be rectified. Rectification can only be of error apparent from record. It is a settled law that a decision on a debatable point of law is not a mistake apparent from the record.
When does the Authority rectify the mistakes/errors	The authority may rectify the mistake/error : ✓ suo moto ✓ when such error or mistake is brought to its notice by a GST officer ✓ when such error or mistake is brought to notice by the affected person within a period of 3 **months** from the date of issue of such decision or order or notice or certificate or any other document, as the case may be.
Time limit for rectification	No rectification can be done after a period of 6 months from the date of issue of such decision/order/notice/certificate/any other document. However, such time limit does not apply in cases where the rectification is purely in the nature of correction of a clerical or arithmetical error or mistake, arising from any accidental slip or omission.
Hearing if rectification goes adverse to assessee	Principles of natural justice should be followed by the authority carrying out such rectification, if such rectification adversely affects any person.

18. Explain the Power of Government to make rules.

Ans: Power of Government to make rules [Section 164/ Section 22 of IGST Act, 2017]:

(1) Rules on recommendation of GST Council : The Government may, on the recommendations of the Council, by notification, make rules for carrying out the provisions of this Act.

(2) All prescribed Matters Covered : The Government may make rules for all or any of the matters which by this Act are required to be, or may be, prescribed or in respect of which provisions are to be or may be made by rules.

(3) Retrospective Effect to Rules : The 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 on which the provisions of this Act come into force.

(4) Penalty upto ₹ 10,000 : The rules may provide for a penalty not exceeding ₹ 10,000 for committing breach of any rule.

19. Explain the power of Board to make regulations.

Ans: Power to make regulations [Section 165/ Section 23 of IGST Act, 2017]: The Board may, by notification, make regulations consistent with this Act and the rules made thereunder to carry out the provisions of this Act.

20. Explain the provisions relating to Laying of rules, regulations and notifications.

Ans: Laying of rules, regulations and notifications [Section 166/ Section 24 of IGST Act, 2017]:

- ✓ 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, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid –
- ✓ If both Houses agree— –
  - in making any modification in the rule or regulation or in the notification, or
  - that the rule or regulation or the notification 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.

However, 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

21. Explain the manner of service of notice.

Ans: Service of notice in certain circumstances [Section 169] :

(1) Manner of service [Section 169(1)] : Any decision, order, summons, notice or other communication under this Act or the rules made thereunder shall be served by any one of the following methods, namely:—

(a) by giving or tendering it directly or by a messenger including a courier to the addressee or the taxable person or to his manager or authorised representative or an advocate or a tax practitioner holding authority to appear in the proceedings on behalf of the taxable person or to a person regularly employed by him in connection with the business, or to any adult member of family residing with the taxable person; or

(b) by registered post or speed post or courier with acknowledgement due, to the person for whom it is intended or his authorised representative, if any, at his last known place of business or residence; or

(c) by sending a communication to his e-mail address provided at the time of registration or as amended from time to time; or

(d) by making it available on the common portal; or

(e) by publication in a newspaper circulating in the locality in which the taxable person or the person to whom it is issued is last known to have resided, carried on business or personally worked for gain; or

(f) if none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence and if such mode is not practicable for any reason, then by affixing a copy thereof on the notice board of the office of the concerned officer

(2) Deemed date of service [Section 169(2)] : Every decision, order, summons, notice or any communication shall be deemed to have been served on the date on which it is tendered or published or a copy thereof is affixed in the manner provided in Section 169(1).

(3) Deemed service in case of registered post or speed post [Section 169(3)] : When such decision, order, summons, notice or any communication is sent by registered post or speed post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by such post in transit unless the contrary is proved.

22. Explain the provisions of Rounding off of tax, etc.

Ans: Rounding off of tax, etc. [Section 170] : The principle of rounding off laid out in Section 170 applies to-

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

Rounding off principle :

Amount contains part of a rupee consisting of paise, and such part is 50 paise or more	Increase to ₹ 1

Amount contains part of a rupee consisting of paise, and such part is less than 50 paise	Ignore such part

23. Write a note on Removal of difficulties.

Ans: Removal of difficulties [Section 172/ Section 25 of IGST Act, 2017]:

(1) General or special order to be made for removal of difficulties : If any difficulty arises in giving effect to any provisions of this Act, the Government may, on the recommendations of the Council, by a general or a special order published in the Official Gazette, 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.

Time limit of making order – 5 years from the date of commencement of the Act : No such order shall be made after the expiry of a period of 5 years from the date of commencement of this Act.

(2) Order to be laid in Parliament : Every order made under this section shall be laid, as soon as may be, after it is made, before each House of Parliament.

24. What Acts shall be repealed on commencement of CGST Act, 2017.

Ans: Repeal and saving [Section 174]:

(1) Amendment of Act 32 of 1994 [Section 173] : Chapter V of the Finance Act, 1994 laid down the provisions for service tax. Since service tax has been subsumed in GST, such provisions are no more required and hence have been omitted, and are not in force.

(2) Repealed Acts [Section 174(1)] : The following legislations shall stand repealed from July 1, 2017 i.e., the date of commencement of the CGST Act:

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

(3) Effect of Repeal [Section 174(2)] : The repeal of the said Acts and the amendment of the Finance Act, 1994 (hereafter referred to as "such amendment" or "amended Act", as the case may be) to the extent mentioned in the Section 173(1) shall not—

(a) No new effect – revive anything not in force or existing at the time of such amendment or repeal; or

(b) No effect on previous position – affect the previous operation of the amended Act or repealed Acts and orders or anything duly done or suffered there-under; or

(c) No effect on rights or liabilities under previous law – affect any right, privilege, obligation, or liability acquired, accrued or incurred under the amended Act or repealed Acts or orders under such repealed or amended Acts.
However, any tax exemption granted as an incentive against investment through a notification shall not continue as privilege if the said notification is rescinded on or after the appointed day; or

(d) No effect on tax etc. due under previous law – 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 amended Act or repealed Acts; or

(e) No effect on legal proceedings and tax, penalty etc. under previous law – affect any investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and any other legal proceedings or recovery of arrears or remedy in respect of any such duty, tax, surcharge, penalty, fine, interest, right, privilege, obligation, liability, forfeiture or punishment, as aforesaid, and any such investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and other legal proceedings or recovery of arrears or remedy may be instituted, continued or enforced, and any such tax, surcharge, penalty, fine, interest, forfeiture or punishment may be levied or imposed as if these Acts had not been so amended or repealed;

(f) No effect on any appellate proceeding under previous law – affect any proceedings including that relating to an appeal, review or reference, instituted before on, or after the appointed day under the said amended Act or repealed Acts and such proceedings shall be continued under the said amended Act or repealed Acts as if this Act had not come into force and the said Acts had not been amended or repealed.

(4) Effect on General Clauses Act [Section 174(3)] : The mention of the particular matters referred to in Sections 174(1) and (2) shall not be held to prejudice or affect the general application of Section 6 of the General Clauses Act, 1897 with regard to the effect of repeal.

25. Explain the provisions relating to Power of Government to extend time limit is special circumstances as per the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020.

Ans: Power of Government to extend time limit in special circumstances [Section 168A]: The provisions relating to Power of Government to extend time limit is special circumstances as per the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 are as under—

(1) Extension of time limit due to force majeure : Notwithstanding anything contained in this Act, the Government may, on the recommendations of the Council, by notification, extend the time limit specified in, or prescribed or notified under, this Act in respect of actions which cannot be completed or complied with due to force majeure.

(2) Retrospective effect : The power to issue notification under section 168A(1) shall include the power to give retrospective effect to such notification from a date not earlier than the date of commencement of this Act.

"Force majeure" means a case of war, epidemic, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature or otherwise affecting the implementation of any of the provisions of this Act.

ANTI-PROFITEERING MEASURE

26. Write a brief note on Background of anti-profiteering measures and need thereof.

Ans: The brief note on Background of anti-profiteering measures and need thereof is as under-

(1) Background of Anti-Profiteering Measures: Anti-profiteering measures have been incorporated under GST laws to control prices of goods and/or services due to implementation of single tax system (GST) in the country. The burden of indirect taxation ultimately falls on the consumers. It is expected that the GST regime will result in an increased flow of input tax credit. In such a scenario, the concern that benefit of such increased input tax credit may not be passed on by certain entities to the consumers is not unreasonable.

(2) Need for anti-profiteering measures in India : With learning experiences of other countries GST law makers in India has taken extra precaution and incorporated the clause of anti-profiteering measures under GST laws to control rise in prices of goods and/or services after implementation of new tax regime (CGST) in the country.

The very objective of anti-profiteering measures to provide benefit of GST to the consumers in terms of reduced prices and not allow more profit margin to the businessmen in the cost of rise in prices of goods and/or services resulting inflation in the country. This will also help in instilling confidence in the citizens.

27. Write a note on Anti-profiteering measure.

Ans: Anti-profiteering measure [Section 171]:

(1) Benefit of reduction in tax rates to be passed on to Recipients [Section 171(1)] : Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices.

(2) Constitution of Authority [Section 171(2)] : The Central Government may, on recommendations of the Council, by notification, constitute an Authority, or empower an existing Authority constituted under any law for the time being in force, to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.

However, the Government may by notification, on the recommendations of the Council, specify the date from which the said Authority shall not accept any request for examination

as to whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him [Inserted by the Finance (No. 2) Act, 2024 w.e.f. 27-09-2024]

"Request for examination" shall mean the written application filed by an applicant requesting for examination as to whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him. [Explanation 1]

For the purposes of this section, the expression "Authority" shall include the "Appellate Tribunal. [Explanation 2]

The Central Government vide Notification No. 19/2024-CT dated 30-09-2024, has notified 01-04-2025 as the date from which the Authority shall not accept any request for examination as to whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by that registered person. [Inserted by the Finance (No. 2) Act, 2024 w.e.f. 27-09-2024]

(3) Powers and functions as Prescribed [Section 171(3)] : The Authority shall exercise such powers and discharge such functions as may be prescribed.

(4) Penalty for Profiteering – 10% of the amount profiteered [Section 171(3A)] : Where the Authority after holding examination comes to the conclusion that any registered person has profiteered, such person shall be liable to pay penalty equivalent to 10% of the amount so profiteered.

However, no penalty shall be leviable if the profiteered amount is deposited within 30 days of the date of passing of the order by the Authority.

"Profiteered" shall mean the amount determined on account of not passing the benefit of reduction in rate of tax on supply of goods or services or both or the benefit of input tax credit to the recipient by way of commensurate reduction in the price of the goods or services or both.

28. With reference to anti (iii) profiteering explain the meaning of following terms: (i) Authority (ii) Committee Interested party (iv) Screening Committee.

Ans-

i) "Authority" means the Authority notified u/s 171(2) of the Act [Competition Commission of India established u/s 7(1) of the Competition Act, 2002 has been notified vide Notification No. 23/2022–CT, dated 23-11-2022 w.e.f. 01-12-2022]

[Principal Bench of the Appellate Tribunal has been notified w.e.f. 01-10-2024 vide Notification No.18/2024–CT dated 30-09-2024 to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in

a commensurate reduction in the price of the goods or services or both supplied by that registered person.]

ii) "Committee" means the Standing Committee on Anti-profiteering constituted by the Council in terms of Rule 123(1) of these rules.

iii) "Interested party" includes –

(a) suppliers of goods or services under the proceedings;

(b) recipients of goods or services under the proceedings; and

(c) any other person alleging, under rule 128(1), that a registered person has not passed on the benefit of reduction in the rate of tax on any supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices.

(iv) "Screening Committee" means the State level Screening Committee constituted in terms of Rule 123(2) of these rules.

29. Write a note on constitution of Standing Committee on Anti-profiteering and State level Screening Committee.

Ans: Constitution of the Standing Committee on Anti-Profiteering and State level Screening Committees[Rule 123 of CGST Rules, 2017]:

(1) Constitution of the Standing Committee on Anti-Profiteering : The Council may constitute a Standing Committee on Anti-profiteering which shall consist of such officers of the State Government and Central Government as may be nominated by it.

(2) Constitution of State level Screening Committee : A State level Screening Committee shall be constituted in each State by the State Governments which shall consist of—

(a) one officer of the State Government, to be nominated by the Commissioner, and

(b) one officer of the Central Government, to be nominated by the Chief Commissioner.

30. What are the functions of the Authority? (5 Marks, Nov. 2018-NS)

Ans: Functions of the Authority [Rule 127 of CGST Rules, 2017]: The authority shall discharge the following functions, namely, -

(1) Determination whether tax reduction benefits passed on to Recipients : Determine whether any reduction in the rate of tax on any supply of goods or services or the benefit of input tax credit has been passed on to the recipient by way of commensurate reduction in prices.

(2) Identification of registered persons who has not passed the Benefits : To identify the registered person who has not passed on the benefit of reduction in the rate of tax on supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices.

(3) Passing of Relevant Order : To order,—

(a) reduction in prices;

(b) return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest @ 18% from the date of collection of the higher amount till the date of the return of such amount or recovery of the amount

not returned, as the case may be, in case the eligible person does not claim return of the amount or is not identifiable, and depositing the same in the Consumer Welfare Fund;

(c) imposition of penalty as specified in the Act; and

(d) cancellation of registration under the Act.

(4) to furnish a performance report to the Council by the 10th day of the close of each quarter.

31. Explain the procedure to be followed by the Authority.

Ans: The following procedure is followed by the Authority –

(1) Examination by the State Level Screening Committee : All applications from interested parties on issues of local nature shall first be examined by the State Level Screening Committee within a period of 2 months from the date of the receipt of a written application or within such extended period not exceeding a further period of 1 month for reasons to be recorded in writing as may be allowed by the Authority.

On being satisfied that the supplier has not passed on the benefit, the Screening Committee will forward the application with its recommendations to the Standing Committee on Anti-profiteering.

(2) Reference to DG Anti-profiteering : If the Standing Committee is satisfied that there is a prima facie evidence to show that the supplier has not passed on the benefit, it shall refer the matter to the Director General of Anti-profiteering for a detailed investigation within 2 months from the date of receipt of a written application (further extendable up to 1 month for reasons to be recorded in writing as may be allowed by the Authority).

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

Evidences presented before it to be given to other interested parties : The evidence or information presented to the Director General of Anti-profiteering by one interested party can be made available to the other interested parties, participating in the proceedings. The evidence provided will be kept confidential and the provisions of Section 11 of the Right to Information Act, 2005, shall apply mutatis mutandis to the disclosure of any information which is provided on a confidential basis.

Cooperation with other agencies or statutory Authorities : The Director General of Antiprofiteering can seek opinion of any other agency or statutory authorities in the discharge of his duties.

The Director General of Anti-profiteering, or an officer authorised by him will have the power to summon any person either to give evidence or to produce a document or any other thing. He will also have same powers as that of a civil court and every such inquiry will be deemed to be a judicial proceeding.

Completion of investigation within 6 months or within extended period 3 months and furnishing of Investigation report to the Authority : The Director General of Anti-profiteering

will complete the investigation within a period of 6 months or within such extended period not exceeding a further period of 3 months for reasons to be recorded in writing as may be allowed by the Authority. Upon completion of the investigation, the Director General of Anti-profiteering will furnish to the Authority, a report of its findings along with the relevant records.

32. Write a note on orders of authority. (5 Marks, Dec. 2021)

Ans: The relevant provisions are discussed as under-

(1) Order of the Authority : Where the Authority determines that a registered person has not passed on the benefit of the reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices, the Authority may order—

(a) reduction in prices;

(b) return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest @ 18% from the date of collection of the higher amount till the date of the return of such amount or recovery of the amount including interest not returned, as the case may be;

(c) the deposit of an amount equivalent to 50% of the amount determined under the above clause along with interest @ 18% from the date of collection of the higher amount till the date of deposit of such amount in the Fund constituted under section 57 and the remaining 50% of the amount in the Fund constituted under section 57 of the GST Act, 2017 of the concerned State, where the eligible person does not claim return of the amount or is not identifiable;

(d) imposition of penalty as specified under the Act; and

(e) cancellation of registration under the Act.

"Concerned State" means the State in respect of which the Authority passes an order. [Explanation]

(2) Reference to DG Anti-profiteering for further investigation : If the report of the Director General of Anti-profiteering recommends that there is contravention or even non-contravention of the provisions of Section 171 or these rules, but the Authority is of the opinion that further investigation or inquiry is called for in the matter, it may, for reasons to be recorded in writing, refer the matter to the Director General of Anti-profiteering to cause further investigation or inquiry in accordance with the provisions of the Act and these rules. Where upon receipt of the report of the Director General of Anti-profiteering, the Authority has reasons to believe that there has been contravention of the provisions of section 171 in respect of goods or services or both other than those covered in the said report, it may, for reasons to be recorded in writing, within 6 months, direct the Director General of Anti-profiteering to cause investigation or inquiry with regard to such other goods or services or both, in accordance with the provisions of the Act and these rules. The

investigation or enquiry shall be deemed to be a new investigation or enquiry and all the provisions of rule 129 shall mutatis mutandis apply to such investigation or enquiry.

(3) Other Aspects : The following are noteworthy in this regard—

- ✓ Any order passed by the Authority shall be immediately complied with by the registered person failing which action shall be initiated to recover the amount.
- ✓ The Authority will pass order within 6 months from the date of the receipt of the report from the Director General of Anti-profiteering.
- ✓ The Authority may seek the clarification, if any, from the Director General of Anti Profiteering on the report submitted by him.
- ✓ An opportunity of being heard will be given, if the interested parties request for it in writing.
- ✓ Period of interest will be calculated from the date of collection of higher amount till the date of return of such amount.
- ✓ If the eligible person (i.e., the buyer) does not claim the return or the person is unidentifiable then the amount must be deposited to the Consumer Welfare Fund along with applicable interest.

IGST ACT, 2017 - OTHER PROVISIONS

ADMINISTRATION, APPORTIONMENT OF TAX AND SETTLEMENT OF FUNDS

33. Explain the provisions relating to Appointment of officers and Authorisation of officers of State tax or Union territory tax as proper officer in certain circumstances under IGST Act, 2017.

Ans: The relevant provisions are as under-

(1) Appointment of officers [Section 3 of IGST Act, 2017] : The Board may appoint such central tax officers as it thinks fit for exercising the powers under this Act.

(2) Authorisation of officers of State tax or Union territory tax as proper officer in certain circumstances [Section 4 of IGST Act, 2017] : The officers appointed under the SGST Act or the UTGST Act are authorised to be the proper officers for the purposes of this Act, subject to such exceptions and conditions as the Government shall, on the recommendations of the Council, by notification, specify.

34. Explain the provisions relating to apportionment of IGST and settlement of funds.

Ans: Apportionment of tax and settlement of funds [Section 17 of IGST Act, 2017]:

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

Therefore, it becomes necessary to apportion IGST into components that can be transferred to CGST account and SGST account of the State Governments concerned.

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

(2) Supplies in respect of which the IGST shall be apportioned : Section 17(1) lays down that in respect of the IGST paid on the following supplies of goods and/or services, the IGST shall be apportioned :

(a) inter-State supply to an unregistered person or to a registered person paying tax under composition scheme;

(b) inter-State supply where the registered person is not eligible for input tax credit;

(c) inter-State supply made in a financial year to a registered person, where he does not avail of the input tax credit within the specified period and thus the tax remains in the integrated tax account after expiry of the due date for furnishing of annual return for such year in which the supply was made;

(d) import by an unregistered person or by a registered person paying tax under composition scheme;

(e) import where the registered person is not eligible for input tax credit;

(f) import made in a financial year by a registered person, where he does not avail of the said credit within the specified period and thus the tax remains in the integrated tax account after expiry of the due date for furnishing of annual return for such year in which the supply was received.

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

(3) Methodology of apportionment : The IGST paid on the supplies mentioned above shall be apportioned as under :

(i) IGST equivalent to the CGST shall be apportioned to the Central Government [Section 17(1)] : The amount of tax calculated at the rate equivalent to the CGST on similar intra-State supply shall be apportioned to the Central Government.

(ii) Balance IGST equivalent to the SGST/ UTGST shall be apportioned to the State Government/ Union Territory [Section 17(2)] : The balance amount of IGST remaining in the integrated tax account shall be apportioned to the State where such supply takes place and to the Central Government if such supply takes place in a Union territory.

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

Taxable person making such supplies is not identifiable : If the taxable person making such supplies is not identifiable, the said balance amount shall be apportioned to all

States and the Central Government in proportion to the amount collected as SGST/UTGST by the respective State/the Central Government during the immediately preceding financial year.

The amount not apportioned under Section 17(1) and Section 17(2) may, for the time being, on the recommendations of the Council, be apportioned @ 50% to the Central Government and 50% to the State Governments or the Union territories, as the case may be, on ad hoc basis and shall be adjusted against the amount apportioned under the said sub-sections.

(iii) Apportionment of interest, penalty and compounding amount [Section 17(3)] : The interest, penalty and compounding amount realised in connection with the IGST shall also be apportioned in the similar manner.

(iv) Transfer of taxes [Section 17(4)] : The Central Government shall transfer the amount apportioned to it to the CGST account or UTGST account, as the case may be and the amount apportioned to the State Government(s) to the SGST account of the respective States.

(4) Refund of IGST to any person to be reduced from apportioned amount [Section 17(5)] : Any integrated tax apportioned to a State or, as the case may be, to the Central Government on account of a Union territory, if subsequently found to be refundable to any person and refunded to such person, shall be reduced from the amount to be apportioned under this section, to such State, or Central Government on account of such Union territory, in such manner and within such time as may be prescribed.

APPLICATION OF PROVISIONS OF CGST ACT, 2017

35. What provisions of CGST Act, 2017 are applicable to IGST Act, 2017.

Ans: Application of provisions of Central Goods and Services Tax Act [Section 20 of IGST Act, 2017]: Subject to the provisions of this Act and the rules made thereunder, the provisions of Central Goods and Services Tax Act relating to, –

a) scope of supply;
b) composite supply and mixed supply;
c) time and value of supply;
d) input tax credit;
e) registration;
f) tax invoice, credit and debit notes;
g) accounts and records;
h) returns, other than late fee
i) payment of tax;
j) tax deduction at source;
k) collection of tax at source;
l) assessment;
m) refunds;

n) audit;
o) inspection, search, seizure and arrest;
p) demands and recovery;
q) liability to pay in certain cases;
r) advance ruling;
s) appeals and revision
t) presumption as to documents;
u) offences and penalties;
v) job work;
w) electronic commerce;
x) transitional provisions; and
y) miscellaneous provisions including the provisions relating to the imposition of interest and penalty, shall, mutatis mutandis, apply, so far as may be, in relation to integrated tax as they apply in relation to central tax as if they are enacted under this Act.

Modifications of certain provisions of CGST Act, 2017 :

(1) TDS @ 2% : In the case of tax deduction at source, the deductor shall deduct tax at the rate of 2% from the payment made or credited to the supplier.

(2) TCS @ 2% : In the case of tax collection at source, the operator shall collect tax at such rate not exceeding 2%, as may be notified on the recommendations of the Council, of the net value of taxable supplies [TCS @ 1% has been notified vide Notification No. 02/2018-IT dated 20-09-2018]

(3) Value of supply to include Other Taxes : 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.

(4) IGST Penalty = CGST Penalty Plus SGST/ UTGST Penalty : In cases where the penalty is leviable under the Central Goods and Services Tax Act and the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, the penalty leviable under this Act shall be the sum total of the said penalties.

(5) Ceiling limit of pre-deposit for filing Appeal : Where the appeal is to be filed before the Appellate Authority or the Appellate Tribunal, the maximum amount payable shall be ₹ 40 crore and ₹ 40 crore respectively. [Inserted by the Finance (No. 2) Act, 2024 w.e.f. 1-11-2024]

Note: