

Preface to IDT Handbook

By CA Keval Mota



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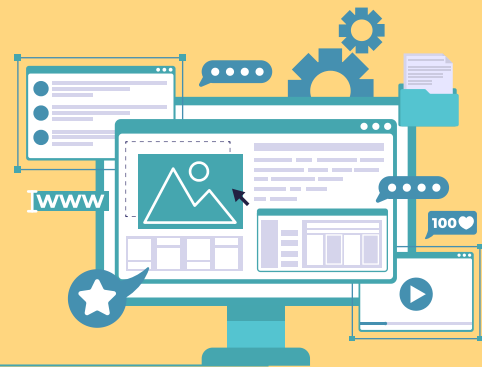
This IDT handbook is designed for CA and CMA final students, covering every provision of the law with in-depth analysis and conceptually arranged questions. The book aims not only to help students clear their exams but also to develop their critical thinking and analytical skills for a professional career. Key features include:

- Updated with amended law up to February 28, 2025 applicable for Sep 25 onwards exams
- Colorful presentation and lucid language
- Practical and theoretical questions
- Analytical and practical views of provisions
- Designed to enhance drafting skills and provide a quick reference for interviews and articleship

The author assures that the book will boost students' confidence and knowledge, and promises to share personal tips to help readers achieve their dreams.

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TIPS TO SUCCEED



TIME MANAGEMENT

- Allocate time wisely, with breaks of 10 mins after 2 hrs of study to maximize output
- Assign 1.8 minutes per mark in exams (e.g., 35 minutes for 20-mark question)
- Allocate a slot to subject rather than allocating time for a topic

1

2

STUDY TIPS

- Love your subject and analyze concepts thoroughly
- Discuss topics to broaden your mindset, but avoid over-discussion
- Work smart by prioritizing "hot topics" and allocating time accordingly
- Use ABC analysis to categorize topics by importance



EXAM STRATEGIES

3

- Enter exams with a positive mindset and confidence
- Stick to one study material and revise it multiple times
- Prepare a flexible timetable with topic-wise hours
- Apply the 60:40 rule: focus on presenting key answers well and others averagely
- Practice with test papers and solve practical sums



MINDSET AND CONFIDENCE

4

- Confidence builds up after the first revision
- Stay calm and focused during exams
- Trust in your abilities and don't get demotivated by difficult questions



ADDITIONAL TIPS

- Write valuable and concise answers, assuming a professional is reading your work
- Develop patience, humbleness, and calmness
- Give your best effort in every exam, as if it's your last chance.



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	Item	Category	Weightage (6 attempts)	Weightage (3 attempts)	Page number
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2	Charge of GST	A	5.00	6.00	024
3	Composition Scheme	C	4.00	-	062
4	Time of Supply	B	6.00	6.00	072
5	Value of Supply	A	7.00	5.00	084
6	Place of Supply	A	5.00	8.00	110
7	Input Tax Credit	A	7.00	6.00	162
8	Registration	B	4.00	-	191
9	Accounts Records	B	3.00	3.00	211
10	Documentation	C	4.00	-	215
11	Returns under GST	C	7.00	8.00	230
12	Payment of Tax	A	4.00	4.00	244
13	Refunds under GST	A	3.00	3.00	265
14	Assessment and Audit	B	6.00	8.00	285
15	Inspection Search	B	5.00	5.00	293
16	Demand and Recovery	A	5.00	6.00	301
17	Liability in Special Cases	C	5.00	6.00	314
18	Advance Ruling	C	4.00	-	318
19	Appeals and Revision	A	6.00	7.00	323
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> Chapter 1

Supply Under GST

Determining supply is essential for taxing transactions under GST.

Learning Objectives

Section 7	Meaning and Scope of Supply
Section 8	Composite and Mixed Supply
Schedule I	Activities to be treated as supply even if made without consideration
Schedule II	Activities or transactions to be treated as supply of goods or as supply of services
Schedule III	Activities or transactions which shall be treated neither as supply of goods nor as supply of services.
Related Circulars	

Taxable event is very important matter in every tax law. Its determination is most crucial for the proper implementation of any tax law. Taxable event is that on the happening of which the charge is fixed. It is that event which on its occurrence creates or attracts the liability to tax. The taxable event under GST is supply. The taxable events under the pre-GST indirect tax laws such as manufacture, sale, or provision of services shall stand subsumed in the taxable event known as 'SUPPLY OF GOODS OR SERVICES OR BOTH.'

Section 7

Scope of Supply



Supply includes various forms of supplies of goods or services such as sale, transfer, barter, exchange, licence, rental, lease or disposal **made or agreed to be made** for **CONSIDERATION** by a person in course or furtherance of **BUSINESS**.



Analysis:

- (i) **Meaning of Goods:** means any kind of movable property excl. money and security but including actionable claims, growing crops, grass and things attached to earth which are severed before contract of supply. [S. 2(52)]
- (ii) **Department Clarification:** Securities held by the holding company in the subsidiary company are neither "goods" nor "services".
It cannot be said that a service is being provided by the holding company to the subsidiary company, solely on the basis that there is a SAC entry '997171' in the scheme of classification of services mentioning; "the services provided by holding companies, i.e. holding securities of (or other equity interests in) companies and enterprises for the purpose of owning a controlling interest.", unless there is a supply of services by the holding company to the subsidiary company in accordance with section 7 of CGST Act
Thus, no GST will be levied.
- (iii) **Services means** anything other than goods, money and securities, but includes activities relating to use of money or conversion of money for which separate consideration is charged.
For example: If loan is given, then processing fees is treated as "service", if currency is exchanged, then commission charged for exchange of currency will be treated as "service".
- (iv) **Meaning of Consideration [S. 2(31) of CGST Act]:**
 - (i) It can be paid by any person.
 - (ii) It can be in kind.
 - Valuation of said supply will be done as per rule 28
 - (iii) Refundable deposits are not consideration unless appropriated for supply.

- (iv) Amount received for forbearance of any act is also a consideration.
- (v) Subsidy received from CG/SG shall not be consideration.

When an activity lacks consideration, we shall check schedule I of CGST Act. If the activity falls in the ambit of Schedule I, then it will be treated as supply even if there is no consideration.

Section 7(1)(aa) of CGST Act: Supply Between Members and Associations

Generally, members who create the club, takes services from the said club, however, such activity was ambiguous whether to be treated as supply as there exists doctrine of mutuality. **As per section 7(1)(aa) of CGST Act**, the activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa for consideration, would be treated as supply

The explanation starts with a non-obstante clause and shall therefore, shall have an overriding effect over anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority. The aforesaid explanation prevents the application of doctrine of mutuality by such person(s)

As inferred from above, the scope of supply is expanded as now services rendered by a club, association, society, or any such body (for a subscription or any other consideration) to its members constitute supply and are liable to GST.



Section 7(1)(b) of CGST Act: Import of Services for Consideration

Import of Services means, taking services from outside India, generally, in case of import of services, government cannot trace back to supplier for making payment of taxes, thus, government has developed a mechanism which is called as reverse charge mechanism, through which the person importing a service is liable to pay tax (in case of business transactions). Personal transactions are out of ambit of taxability, even if treated as supply (entry 10(a) of NN 9/2017 ITR)

As per section 7(1)(b) of CGST Act, import of services for a consideration **whether or not in the course** or furtherance of business is supply.

Activity of Import of Service without Consideration: It will fall in the ambit of Schedule I, Para 4, which states, import of services from related party for furtherance of business is a supply.

Section 7(1)(c) of CGST Act r/w Schedule I: Activities without Consideration

Thus, we studied there are 2 conditions for treating any activity as a supply viz., consideration and business purpose, however, some people may argue, that there is no consideration in transaction and we will not pay any taxes. Accordingly, government has made provisions for payment of tax by treating it as supply even if there is no consideration. The question shall arise that if there is no consideration how we will determine the value of supply. It is to be noted that VOS is determined as per rule 27/28 of CGST Rules.

Schedule I: Activities to be treated as supply even if there is no consideration

1. Permanent transfer or disposal of business assets where input tax credit has been availed on such assets:



Analysis:

- If ITC is not availed and business asset is sold free of cost, then it will not be supply
- Business asset is not defined in GST, it would mean all the assets.
- It is to be noted that the valuation of free supplies is done as per rule 27 of CGST Rules. Further, as per section 17(5) of CGST Act, when a supply is given for free, it may call for reversal of input tax credit, however, it is to be noted that any one of the provision is to be followed, i.e., reversing ITC or treating it as supply as per schedule I of CGST Act, not both of them.

2. Supply of goods or services or both between “related persons” or between “distinct persons” in the course or furtherance of business.

However, gifts not exceeding ₹ 50,000/- value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.



Analysis:

- (i) Distinct person means a person who has obtained / is required to obtain more than one registration, whether in one state / UT or more than one state / UT, shall in respect of each registration be treated as distinct person [Sec 25(4)] (Distinct person means same PAN but different GST number.)

Locations	No. of Registrations
Same state (all other than SEZ)	Min. – 1, Max – As per no. of place of business
Same state (one is SEZ)	Min – 2, Max – As per no. of Place of business
Different states	Min – 2, Max – As per No. of place of business
(Reference – Rule 11 of CGST Rules)	

MH
Location A
Location B

MH
Location C
Location D

GJ
Location E

Stock transfer to additional place of business location in a single registration would not be treated as supply. However, stock transferred to distinct person in same state, then it would be treated as supply.

Transfer of Stock taxability would be as below:

A to B	Not a supply
A to C/D/E	Supply

- (ii) The **establishment of distinct person** means if one of the entities is registered in one state and another entity is unregistered in other state then both these entities would be treated as establishment of distinct person.

- (iii) Related Circulars:

(a) Inter-state movement of modes of conveyance between distinct persons

is “not a supply” (unless for further supply). However, if given for repairs or maintenance or for carrying passengers then value of repairs or value for carrying passengers would be treated as supply.

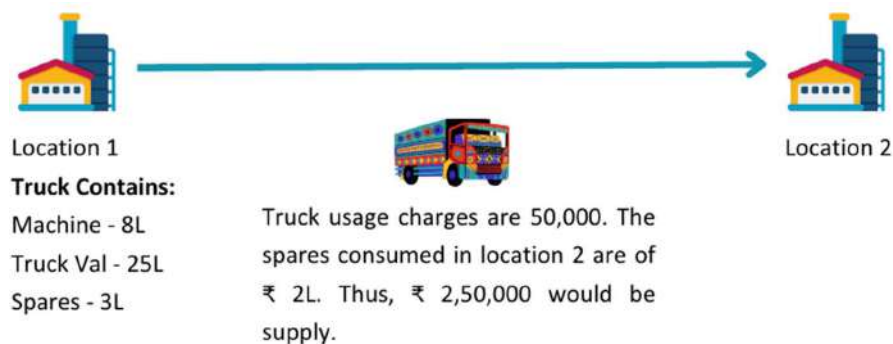
The issue of inter-state movement of goods like movement of various modes of conveyance, between distinct persons as specified in section 25(4) of the said Act, not involving further supply of such conveyance, including Trains, Buses, Trucks, Tankers, Trailers, Vessels, Containers, Aircrafts

- carrying goods or passengers or both; or
- for repairs and maintenance,

shall be treated ‘neither as a supply of goods or supply of service’ and therefore not be leviable to IGST.

**Analysis:**

Suppose a person's business is to repair an immovable plant and machinery, thus he would be required to take the set of machines, tools, spare parts etc. Thus, he develops a container truck which is given to each distinct person to carry out repairs in that particular state. The activity of sending of such container truck is treated as not a supply. However, the usage charges taken by distinct person would amount to supply. It is in between distinct person transaction that anything sent freely, shall also be treated as supply. Therefore, this circular only covers transaction between distinct persons.



The above circular is also applicable for Inter-state movement of rigs, tools & spares between distinct persons.

It is very important to note that, if truck is sent for further supply, then it shall be treated as supply.

(iv) ISD & Cross Charge:

Cross charge is not defined under GST law. It is a popular term used for charge by Head Office to Branch Offices (Distinct entities) and vice versa

Following provisions read together, triggers the Cross Charge:

- Section 9 of CGST Act levies tax on 'supply' made by taxable person
- Section 7(1)(c) deems activities listed in Schedule I to CGST Act to be supply even if made without consideration
- Entry 2 of Schedule I to CGST Act provides that supply of goods or services made between distinct persons, in the course or furtherance of business shall be treated as supply even if made without consideration

These are treated as deemed supply under Schedule I of CGST Act and is liable to GST as per Rule 28 valuation.

In case of ISD, a separate number can be obtained by Head office to distribute ITC to its branches. (to be done in detail in ITC Chapter). Any one of them can be followed.

- (v) Gifts not exceeding fifty thousand rupees in value in a financial year by an employer to an employee shall not be treated as supply of goods or services. The deemed supplies covered in this paragraph are based on a relationship between the employer and employee. The employer and employee are treated as related party for the purpose of GST.

- If gifts are given of value more than 50k then it will be treated as "supply".
- Where gifts are liable to tax under this Schedule, thus, gifts as taxable outward supplies, and therefore, credit thereon may not be required to be reversed under section 17(5)(h).

- **Taxability of perquisite [Circular No.172/04/2022-GST]:**

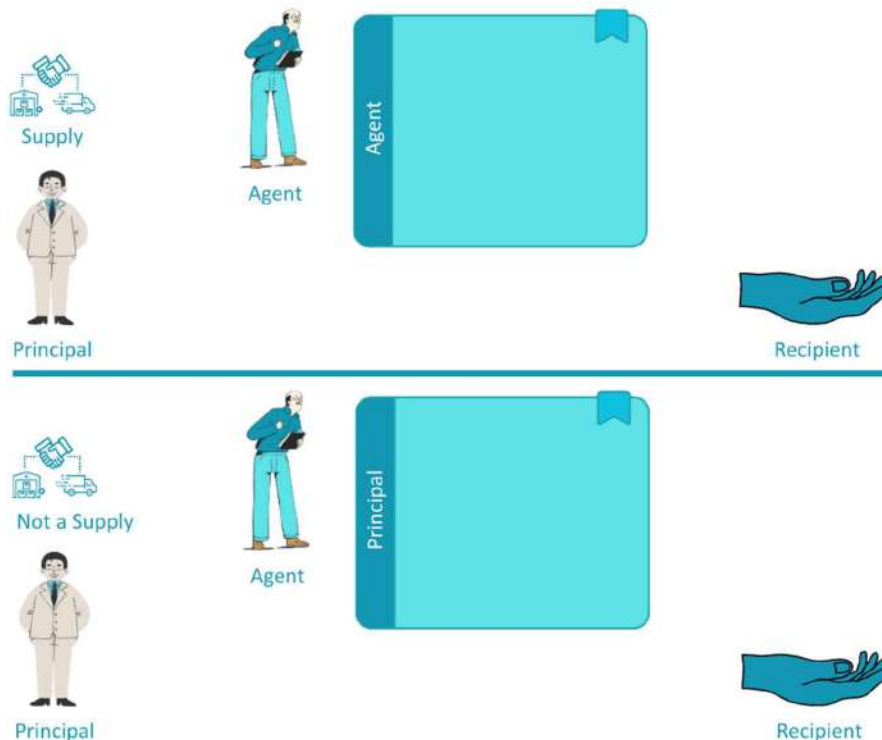
Perquisite as per employment contract: Not a supply

Perquisite not as per employment contract: Supply

Any perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are in lieu of the services provided by employee to the employer in relation to his employment. It follows therefrom that perquisites provided by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, will not be subjected to GST when the same are provided in terms of the contract between the employer and employee (Schedule III of CGST Act)

- GST shall be levied on the whole amount in case the gift amount exceeds ₹ 50,000/-.

3. Supply of Goods by principal to agent (selling agent) / agent to principal (purchasing agent)



If Agent Issues invoice in his own name to recipient – Treated as Supply between principal and agent. However, if Agent Issues invoice in name of principal – Not be treated as Supply between principal and agent.

(Delcredre agent circular covered in value of supply)

4. Import of services by a person from a related person or from any of his other establishments outside India, in the course or furtherance of business.

For instance, say A Ltd. is a holding company in USA and B Ltd., a subsidiary in India. Many business operations are centralized in the USA such as accounting, ERP and other software, servers for the backup, legal function, etc. For the purpose of this clause, the back-end support provided by the holding company to the subsidiary company in India shall be regarded as a supply

Related party includes one term i.e., members of same family.

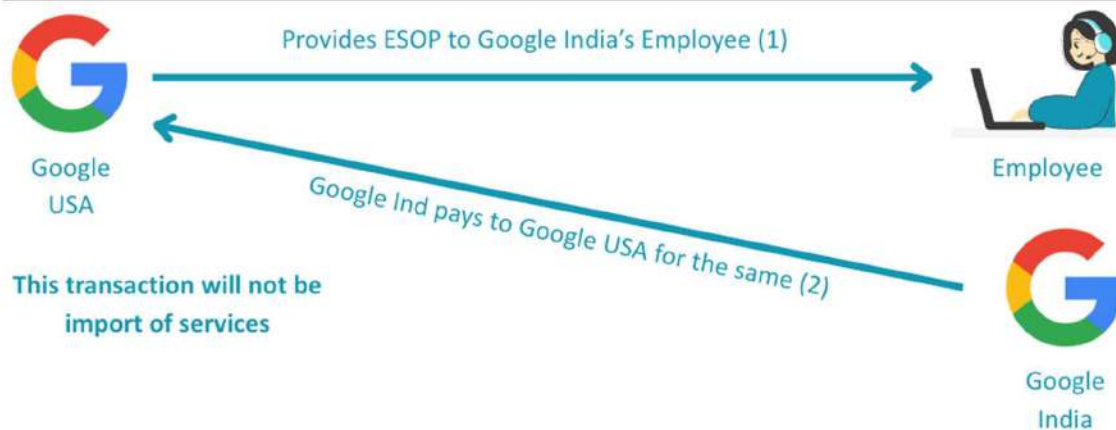
As per section 2(49) of CGST Act “family” means, –

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

Other circulars w.r.t. Schedule I Activities

CLARIFICATION ON TAXABILITY OF EMPLOYEE STOCK OPTION (ESOP)/EMPLOYEE STOCK PURCHASE PLAN (ESPP)/ RESTRICTED STOCK UNIT (RSU) PROVIDED BY A COMPANY TO ITS EMPLOYEES.

[CIRCULAR 213/07/2024-GST DATED 26TH JUNE, 2024]



Some of the Indian companies provide the option to their employees for allotment of securities/shares of their foreign holding company as part of the compensation package **as per terms of contract of employment**. In such cases, on exercising the option by the employees of Indian subsidiary company, the securities/shares of foreign holding company are allotted directly by the holding company to the concerned employees of Indian subsidiary company, and the **cost of such securities/shares is generally reimbursed by the subsidiary company to the holding company**.

A transaction involving transfer of ESOP/ESPP/RSU to the employees of domestic subsidiary by the foreign holding company appears to involve the following steps:

- The domestic subsidiary company gives option/ facility of ESOP/ESPP/RSU to its employees as part of compensation package as per terms of employment.
- The employees exercise their stock options, either by purchasing shares at the grant price or by holding the options until they vest.
- The foreign holding company of the domestic subsidiary company issues ESOP/ESPP/RSU, which are securities/shares listed on the foreign stock exchange, to the employees of the domestic subsidiary company.
- The foreign holding company transfers the shares directly to the employees of the subsidiary company.
- The domestic subsidiary company generally reimburses the cost of such shares to the foreign holding company on cost-to cost basis either through an actual remittance or through an equity transfer as prescribed by the relevant Indian Accounting Standard.
- The employees hold the shares and may sell them at a later date, if they so choose.

Below Clarification has been issued by CBIC:

- (i) **ESOP are “Securities”, thus not “Goods”:** Such Securities under ESOP are “securities” thus, they go out of the purview of the definition of “goods”. Therefore, in the absence of such transaction, falling under the supply of ‘goods’ or ‘services’ as per GST Act, GST is not leviable on said transaction of sale/purchase/transfer of securities/shares.
- (ii) **Employment Services:** As per Entry 1 of Schedule III of the CGST Act, the services by an employee to the employer in the course of or in relation to his employment are treated neither as supply of goods nor as supply of services. Therefore, GST is not leviable on the compensation paid to the employee by the employer as per the terms of employment contract which involve transfer of securities/shares of the foreign holding company to the employees of domestic subsidiary company.
- (iii) **Not treated as Import of Services:** Since the said reimbursement by the domestic subsidiary company to the foreign holding company is for transfer of securities/shares, which is neither in nature of goods nor services, the same cannot be treated as import of services by the domestic subsidiary company from the foreign holding company and hence, is not liable to GST under CGST Act.

- (iv) **Additional Charges taken by Foreign Holding Company:** if the foreign holding company charges any additional fee, markup, or commission from the domestic subsidiary company for issuing ESOP/ESPP/RSU to the employees of the domestic subsidiary company, then **the same shall be considered to be in nature of consideration for the supply of services of facilitating/ arranging the transaction in securities/** shares by the foreign holding company to the domestic subsidiary company. In this case, GST will be leviable on such amount of the additional fee, markup, or commission, charged by the foreign holding company from the domestic subsidiary for issuance of its securities/shares to the employees of the latter.

The GST shall be payable by the domestic holding company on reverse charge basis on such import of services from the foreign holding company. **The GST shall be payable by the domestic subsidiary company on reverse charge basis in such a case on the said import of services.**

Clarification regarding taxability of the transaction of providing loan by an overseas affiliate to its Indian affiliate or by a person to a related person [Circular 218/12/2024-GST dated 26th June, 2024]

Issue: Whether the activity of providing loans by an overseas affiliate to its Indian affiliate or by a person to a related person, **where there is no consideration in the nature of processing fee/** administrative charges/ loan granting charges etc., and the consideration is represented only by way of interest or discount, will be treated as a taxable supply of service under GST or not.

Clarification:

Indian Affiliate Provides Loan to Overseas Affiliate	Entry No. 2: Supply of Goods / Services to related person without consideration shall be analysed
Overseas Affiliate Provides Loan to Indian Affiliate	Entry No. 4: Import of Services without consideration from related party shall be analysed

The related parties do not charge any processing fees to another entity for granting of loan. Therefore, clarification is issued that if the processing fees is not charged, whether it is to be treated as supply without consideration. Following points are worth noting:

- (a) Processing/ service fee is generally charged by the bank/ financial institution from the recipient of the loan in order to cover the administrative cost of processing the loan application. An Independent Lender may charge processing fees.

- (b) However, when an entity is extending a loan to a related entity, it may not require to follow such processes as are followed by an independent lender. For example, it may not need to go through the same process of information gathering about the borrower's business, his financial standing and credibility and other details, as the required information may already be readily available within the group, or between related persons.
- (c) Further, even in case of unrelated persons, charging of processing fee is at the option of lender.
- (d) Accordingly, there is no question of levy of GST on the same by resorting to open market value for valuation of the same as per rule 28 of Central Goods and Services Tax Rules, 2017.

Thus, free of cost processing of loans by related persons will not be treated as supply even if there is no consideration. It is important to note that if related parties charge processing fees, then GST shall be payable. Further, it is to be noted that interest/discount is already exempt in terms of NN 12/2017 – CTR.

Section 7(1A) of CGST Act r/w Schedule II: Classification of Goods or Services

Classification between Goods and Services is important to understand rate of tax, time of supply, place of supply provisions. It shall be noted that, this schedule cannot treat any activity as supply. It can only decide whether an activity is supply of "goods" or "services"

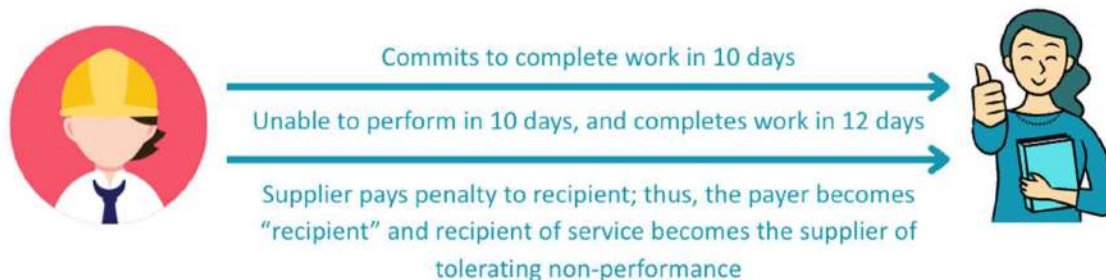
Transaction	Supply of Goods or Services
Transfer of Title of Goods	Supply of Goods
Hire Purchase	Supply of Goods
Transfer of Right in use (no title)	Supply of Services
Lease, Tenancy, letting out & Treatment or Process Relevant Circular: Tenancy Rights	Supply of Services
Assets of Business transferred	Supply of Goods
Goods held for business use put to private use	Supply of Services
Ceases to be Taxable person, stock / assets deemed to be supplied (exceptions – where business is transferred as a going concern or business is carried on by a personal representative who is deemed to be a taxable person)	Supply of Goods
Renting of immovable property, under construction building (building where part of entire consideration has been received before completion certificate or first occupation whichever is earlier)	Supply of Services
Works contract services, restaurants & outdoor catering	Supply of Services
Temporary transfer or permitting the use or enjoyment of any intellectual property right	Supply of Services
Development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software	Supply of Services
Tolerance of non-performance or agreeing to refrain from act Relevant Circular: Liquidated Damages	Supply of Services
Other circulars relating to classification of Goods or Services: (i) Printing of books or letter cards (ii) Retreading of tyres (iii) Priority sector lending certificate	

Relevant Circulars:**Transfer of Tenancy Rights (Also Known as “Pagadi” System) (Circular No. 47/21/2018-GST)**

- (i) Transfer of tenancy rights is not treated as sale of land / building and thus, is not a schedule III, and consequently consideration for the transfer shall be treated as “Supply of service.” Thus, although stamp duty is applicable on tenancy right transfer, GST shall be applicable as below:
- (ii) Transfer of tenancy rights by owner of property to incoming tenant – Commercial Property – Taxable, Residential Property – Exempt
- (iii) Transfer of tenancy rights by existing / incoming tenant to new tenant – For Both types of property – Taxable

- (iv) Services provided by outgoing tenant by way of surrendering the tenancy rights. Owner of property pays lumpsum amount as tenancy premium to outgoing tenant – For Both types of property – Taxable

Liquidated Damages (Circular 178/2022)



Transaction	Taxability
Liquidated Damages	Liquidated damages are "not a Supply" due to below mentioned reasons: • Performance is the essence of a contract • Liquidated damages are stipulated to ensure performance and to deter non-performance • Liquidated damages or penalty are not the desired outcome of the contract. • Merely flow of money are not a consideration for any supply Example: Penalty stipulated in a contract for delayed construction of houses, Liquidated damages will be a "Supply" when: • Liquidated damages are levied to achieve the object of supply. Example: Railway forfeiting amount if ticket is cancelled, Bank charging pre-payment penalty for foreclosing the loan. • These charges are to ensure supply is to happen.
Cheque Dishonour	Charges for cheque dishonour is "Not a supply," due to below: • Supplier's intention was to get cheque clear. • It is not willingness on part of the supplier to earn from cheque dishonour charges as goods have already been sold, his main income lies in sale of goods not in penal charges. • However, Late payment charges - It is an ancillary supply naturally bundled & supplied in conjunction with the principal supply, and therefore should be assessed as the principal supply.
Penalty imposed for violation of laws	"Not a Supply" • Penalties imposed for violation of laws cannot be regarded as consideration charged by Government or a Local Authority for tolerating violation of laws. Laws are not framed for tolerating their violation.

Notice pay recovery i.e., Forfeiture of salary for pre-termination	“Not a Supply” Such amounts are recovered by the employer not as a consideration for tolerating the act of such premature quitting of employment but as penalties for dissuading the non-serious employees from taking up employment and to discourage and deter such a situation
Cancellation charges	“Supply” Cancellation charges are for the costs involved in making arrangements for the intended supply. The facilitation service of allowing cancellation against payment of cancellation charges is also a natural part of this bundle.
Fixed Charges of Power	Fixed charges of power - both, minimum fixed charges and variable charges are charged for sale of electricity & are thus not taxable as electricity is exempt from GST

Section 7(2) of CGST Act r/w Schedule III: Activities to be treated as neither supply of goods nor supply of services

Schedule III regards an activity as neither “supply” of goods nor “supply” of services, meaning thereby such activities would not be a supply. Schedule III turnover shall not be included in exempt turnover. However, only Entry 5 & Entry 8(a) shall be considered as exempt turnover only for limited purpose for reversal of ITC u/s 17(3) read with rule 42 & 43.

1. Services by an employee to the employer in relation to his employment (example: Salary)

- Casual Workers under Employment are also treated as employees. Contractor of casual workers shall be liable to pay GST on billing done to client.
- Perquisites given under employment contract are not liable to GST

2. Services by any Court or Tribunal. (Court includes, District Court, High Court and Supreme Court.)

- Department clarification: GST not to be levied on fees/ penalty levied by consumer Disputes Redressal Commission [Circular 32/06/2018 GST dated 12-02-2018]

3. Functions performed by MP, MLA, person who holds any post in pursuance of provision of Constitution, duties performed by any person as a chairperson, or Member or Director in a body established by CG, SG or LA & who is not deemed as an employee before commencement of this clause.

Services by way of any activity in relation to a function entrusted to a Panchayat under article 243G/243W of the Constitution shall be neither treated as supply of goods nor be treated as supply of services.

4. **Funeral, burial, crematorium or mortuary including transportation of the deceased.**
5. **Sale of land and completed building** (Entire consideration received after CC or OC whichever is earlier)
6. **Related Circular:** Land may be sold either as it is or after some development such as levelling, laying down of drainage lines, water lines, electricity lines, etc. – Circular 177/09/2022.
Actionable claim other than **specified actionable claims** [Specified Actionable claim means betting, casino, gambling, horse racing, lottery, online money gaming – S. 2(102A) of CGST Act] [Amended by Notification No. 48/2023 – CT]
7. **Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India. (w.r.e.f. 1st July, 2017)**
8.
 - (a) Supply of warehoused goods to any person before clearance for home consumption (w.r.e.f. 1st July, 2017);
 - (b) By endorsement of documents, after goods have been dispatched from port of origin located outside India but before clearance for home consumption. (w.r.e.f. 1st July, 2017)

Taxability of Certain Transactions Relating to Import (Not for CA Inter)		
Transaction	Legal Reference	Analysis
(i) High Sea Sales (HSS)	Circular No. 33/2017 - Cus dated 1st August, 2017	Government clarified the position of levy of GST on 'HSS' vide Circular No. 33/2017-Cus dated 01.08.2017-that IGST on 'HSS' transactions of imported goods whether one or multiple, shall be levied and collected only at the time of importation i.e. when the import declarations are filed before the Customs authorities for the customs clearance purposes for the first time. Value shall be the final purchase value (not original one).
(ii) In-bond Sales (Within Warehouse)	Circular No. 46/2017-Cus dated 24th November, 2017	In respect of supply of goods within warehouse, IGST is not applicable until bill of entry for home consumption is filled.
(iii) Clarification on Levy of IGST Sale of Goods within Warehouse	Circular No. 3/1/2018-IGST, dated 25th May, 2018	IGST shall be levied and collected at the time of final clearance of the warehoused goods for home consumption i.e., at the time of filing the ex-bond bill of entry and the value addition accruing at each stage of supply shall form part of the value on which the integrated tax would be payable at the time of clearance of the warehoused goods for home consumption.

As per Notifications, service by way of grant of alcoholic liquor licence, against consideration in the form of licence fee or application fee or by whatever name it is called would also be treated as neither supply of goods nor supply of services.

9. Activity of apportionment of premium between lead insurer and co-insurer and transaction relating to ceding commission/reinsurance commission between insurer and re-insurer, to be covered under Schedule III of the CGST Act and accordingly not to be considered as a supply.

Section 8

Composite and Mixed Supplies



COMPOSITE SUPPLY:

“Composite supply” means two or more taxable supplies which are **NATURALLY BUNDLED** and supplied in conjunction with each other **ONE OF WHICH IS A PRINCIPAL SUPPLY**.

If a supply is a composite supply, rate of tax applicable to the supply shall all be as per principal supply. [S. 8(a)]. The matters such as time of supply, invoicing, place of supply, value of supply, rate of tax applicable to the supply, etc. shall all be determined in respect of that supply shall attract rate of tax of principle supply.

Examples of Composite Supply: Accommodation with breakfast; Cocktail drink being a mixture of alcohol with a non-alcoholic pre-mixed; Supply of laptop and carry case of same company; Supply of equipment and installation of the same; Supply of repair services on computer along with requisite parts comprehensive AMC.

HOW TO DETERMINE BUNDELLING

- Normal and frequent practices
- Majority of service providers providing similar bundle
- Ancillary services help in better enjoyment of main services

Relevant Circulars:

Printing of Books: [Circular No. 11/11/2017 GST]

- In the case of printing of books, annual reports etc. if content is supplied by the publisher or the person who owns the usage rights to the intangible inputs while paper is supplied by printer – Printing contract is Service.



- Whereas in cases where printed envelopes, letter cards, printed box, tissues printed with design supplied by recipient of goods, but made using physical inputs including paper belonging to the printer it would be considered as supply of goods



Process of re-treading which is a supply of service. However, Supply of re-treaded tyres is supply of goods. Re-treading of tyres – In re-treading of tyres, which is a composite supply, the predominant element is the process of re-treading which is a supply of service, and the rubber used for re-treading is an ancillary supply.

The Circular also specifies that “Value may be one of the guiding factors in this determination, but not the sole factor. The primary question that should be asked is what the essential nature of the composite supply is and which element of the supply imparts that essential nature to the composite supply.

Transportation with Insurance:

Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is the principal supply. This implies that the supply will be taxed wholly as supply of goods.

CBIC FAQ:

The GTA provides service to a person in relation to transportation of goods by road in a goods carriage, which is a composite service. The composite service may include various intermediary and ancillary services, such as, loading/unloading, packing/unpacking, transshipment and temporary warehousing, which are provided in the course of transport of goods by road. These services are not provided as independent services but as ancillary to the principal service, namely, transportation of goods by road. The **invoice issued by the GTA** for providing the said service **includes the value of intermediary and ancillary services**. In view of this, if any **intermediary and ancillary service is provided in relation to transportation of goods by road, and charges, if any, for such services are included in the invoice issued by the GTA, such service would form part of the GTA service and would not be treated as a separate supply. In fact, any service provided along with the GTA service that is part of the composite service of GTA shall be taxed along with GTA service and not as separate supplies.**

However, **if such incidental services are provided as separate services and charged separately, whether in the same invoice or separate invoices, they shall be treated as separate supplies.**

Food Supplies to In-patients:

Para 5(3) of Circular No. 32/06/2018-GST, dated 12.02.2018 clarifies that “food supplied to the in-patients as advised by the doctor/ nutritionist is a part of composite supply of health care and not separately taxable”. It also goes on to clarify further that supplies of food by hospital to patients (not admitted) or their attendants or visitors are taxable.

Activity of Bus Body Building

The activity of bus body building is a composite supply. As regards which of the components is the principal supply, the Circular directs that it be determined on the basis of facts and circumstances of each case.

Mounting of Bus Bodies (i.e., Bus Body Building): Activity of fabrication and fitting and mounting of bus bodies on chassis supplied by other party is a composite supply of service with supply of goods, i.e., bus bodies, being principal supply and same is supply of goods.

Buy 1 Get 1 Free Offers:

It may appear at first glance that in case of offers like ‘Buy One, Get One Free’, one item is being ‘supplied free of cost’ without any consideration. In fact, it is not an individual supply of free goods but a case of two or more individual supplies where a single price is being charged for the entire supply. It can at best be treated as supplying two goods for the price of one. Taxability of such supply will be dependent upon as to whether the supply is a composite supply or a mixed supply and the rate of tax shall be determined as per the provisions of section 8 of the said Act.

MIXED SUPPLY



“Mixed supply” means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person **FOR A SINGLE PRICE** where such supply **DOES NOT CONSTITUTE A COMPOSITE SUPPLY**.

If a supply is a mixed supply, then the rate of tax shall be as per product having highest rate of tax. [S. 8(b)]

Examples:

- Diwali Basket with Sweet, Cookies & Candies
- Supply of a package consisting of canned foods, sweets, chocolates, cakes, dry fruits, aerated drink and fruit juices when supplied for a single price is a mixed supply. Each of these items can be supplied separately and is not dependent on any other. It shall not be a mixed supply if these items are supplied separately. This implies that the supply will be taxed wholly as supply of those goods which are liable to the highest rate of GST.
- If a toothpaste (say for instance it is liable to GST at 12%) is bundled along with a toothbrush (say for instance it is liable to GST at 18%) and is sold as a single unit for a single price, it would be reckoned as a mixed supply. This would, therefore, be liable to GST at 18% (higher of 12% or 18% applicable to each of the goods therein).

The matters such as time of supply, invoicing, place of supply, value of supply, rate of tax applicable to the supply, etc. shall all be determined in respect of that supply which attracts the highest rate of tax

An Overview of Classes of Tests to be performed to categorize the supply as Composite or Mixed Supply:

Sr. No.	Description	Composited Supply	Mixed Supply
1.	Naturally bundled	Yes	No
2.	Each supply available for supply individually	No	Yes/No
3.	One is predominant supply for recipient	Yes	Yes/No
4.	Other supply / supplies are ancillary or they are received because of predominant supply.	Yes	No
5.	Each supply priced separately	Yes/No	No
6.	Supplied together	Yes	No
7.	All supplies can be goods	Yes	No
8.	All supplies can be services	Yes	No
9.	A combination of one / more goods and one / more services	Yes	Yes

(if a Supply is neither composite supply nor mixed supply, it will be taxable at separate rates)

Other Circulars of This Chapter

- 1. Artwork Galleries:** In case of supply by artists through galleries, there is no consideration flowing from the gallery to the artist when the art works are sent to the gallery for exhibition and therefore, the same is not a supply. It is only when the buyer selects a particular art work displayed at the gallery.
- 2. Joint Ventures:** Cash Calls by Joint Ventures to Purchase Asset is not a Supply; however, if paid as charges to member who owns such asset will be a supply of service.

Illustration A: There are 4 members in the JV including the operating member and each one contributes Rs 100 as part of their share. A total amount of Rs 400 is collected. The operating member purchases machinery for Rs 400 for the JV to be used in oil production.

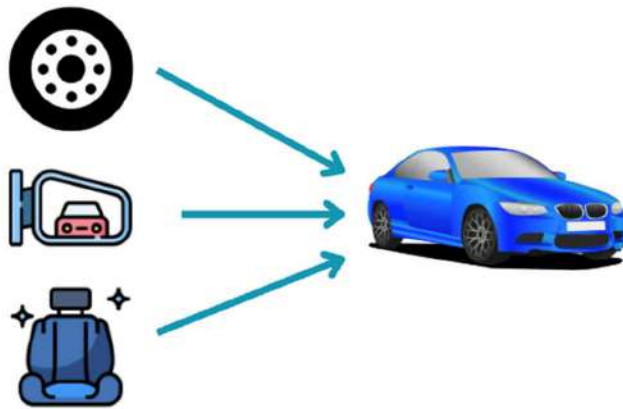
Illustration B: There are 4 members in the JV including the operating member and each one contributes Rs 100 as part of their share. A total amount of Rs 400 is collected. The operating member thereafter uses its own machine and performs exploration and production activities on behalf of the JV.

Illustration A will **not be the subject matter of GST** for the reason that the operating member is not carrying out an activity for another for consideration. In Illustration A, the money paid for purchase of machinery is merely in the nature of capital contribution and is therefore a transaction in money.

On the other hand, in Illustration B, the operating member uses its own machinery and is therefore providing 'service' within the scope of supply of CGST Act, 2017.

On the other hand, in Illustration B, the operating member uses its own machinery and is therefore providing 'service' within the scope of supply of CGST Act, 2017. This is because in this scenario, the operating member is recovering the cost appropriated towards machinery and services from the other JV members in their participating interest ratio

3. **Servicing of Cars involving Supply of Goods (Spare Parts):** Lumpsum Charged – Then 18%, Line item wise charged – Then Respective Goods rate & on service charges 18%.



Clutch	₹ 2,000
Mirror	₹ 1,500
Seats	₹ 5,000
Service Charge	₹ 1,200

In this case, separate rate will be applicable if billing is done line item wise. However, if billing is done at total figure, GST will be charged at lump sum amount @ 18%

4. **Guest Anchor Services:** - It is clarified that supply of all goods & services are taxable unless exempt or declared as 'neither a supply of goods nor a supply of service.' Services provided by the guest anchors in lieu of honorarium attract GST liability. However, guest anchors whose aggregate turnover in a financial year does not exceed Rs. 20 lakhs (Rs. 10 lakhs in case of specified Special Category States) shall not be liable to take registration and pay GST.
5. **Supply of Food in Cinema Hall:** Supply of food in cinema hall is restaurant service if they are supplied as a part of service or supplied independently of cinema service.

However, if food is included in ticket price, then it would be treated as composite supply of services.

Cinema + Food	Rate of Tax of Cinema
Food Separately Bought	Rate of Tax of Food Supplies

6. **Taxability of Derivatives fall in the definition of securities:** they are neither goods nor services and hence not liable to GST. Forward contracts - when settlement takes place by way of actual delivery of underlying commodity / currency, then such forward contract would be treated as normal supply of goods or services. When net settlement of differential of forward rate over prevailing market rate, then it is not chargeable under GST

7. **GST implication on secured debt:** Sale, purchase, acquisition or assignment of a secured debt does not constitute a transaction in money, it is in the nature of derivative and hence a security. Thus, not liable to GST
8. **GST Implication on transaction in instruments:** these transactions are like interest swaps and thus, excluded from the definition of supply since such instruments are classified as derivatives. Thus, not liable to GST.

9. COST PETROLEUM AND TAXABILITY WITH EXAMPLES

Cost petroleum incurred by mining lease holder is not a consideration for service to GOI and thus not taxable. However, cost petroleum incurred by member of joint venture on behalf of joint venture and then recovering from operating members would be a supply of services to joint venture and thus liable to GST. Further, joint venture incurring cost petroleum would not be taxable.

Examples

Case I – Mr. K wishes to explore mines thus a production sharing contract has to be entered into with Government of India. Mr. K will incur costs relating to extraction of mines and profit, royalty will be shared with GOI. The costs which are incurred by ONGC can be recovered from sales consideration. Thus, recovery of such costs is called as cost petroleum. Mr. K having to recover these costs is not be treated as K has provided services provided to GOI because they have agreement as licensor and licensee and not as joint venture. Accordingly cost petroleum would not be taxable.

Case II – Mr. K & ONGC a Joint venture firm named “ONGCK” wishes to explore mines thus a production sharing contract has to be entered into with Government of India., the terms were decided as Mr. K will incur costs relating to extraction of mines and will recover the same from Joint venture in requisite proportion. Thus, in this case it is treated as Mr. K is providing services to Joint Venture “ONGCK” and hence taxable. However, JV having incurred these costs is not treated as services provided to GOI because they have agreement as licensor and licensee and not as joint venture. Accordingly cost petroleum would not be taxable.

10. CLARIFICATION ON LEVY OF GST ON SERVICE OF DISPLAY OF NAME OR PLACING OF NAME PLATES OF THE DONOR IN THE PREMISES OF CHARITABLE ORGANISATIONS RECEIVING DONATION OR GIFTS BY INDIVIDUAL DONORS WITHOUT QUID PRO-QUO (CIRCULAR NO. 116/35/2019-GST DATED 11TH OCTOBER, 2019)

When name of donor is displayed in recipient institution's premises, which can be said to be an expression of gratitude and public recognition of donor's act of philanthropy and is not aimed at giving publicity to donor in such a manner that it would be an advertising or promotion of his business - then it can be said that there is no supply of service. Accordingly, if all the three conditions are satisfied then GST will not be levied on consideration received by charitable entity namely: -

- The gift or donation is made to a charitable organization,
- The payment has the character of gift or donation and

- The purpose is philanthropic (i.e., it leads to no commercial gain) and not advertisement.

When a person donates to charitable trust which is not philanthropic in nature, charitable trusts being supplier of services shall be liable to pay GST on the same

11. TAXABILITY OF NO CLAIM BONUS:

Where insurance claims are not claimed by insured, the insurance company provides “No claim bonus” to the insured and reduces the gross premium receivable from client.

- The receipt of No claim bonus is not supply provided by insured to the insurance company
- The insurer procures insurance policy to indemnify himself from any loss as per terms of the policy and is not under any contractual obligation not to claim insurance claim during any period covered under the policy, in lieu of NCB

12. Clarification on Taxability of Vouchers in GST [Circular No. 243/37/2024-GST dated 31st December, 2024]

ISSUE 1 -WHETHER “TRANSACTIONS IN VOUCHERS” FALLS UNDER THE CATEGORY OF SUPPLY OF GOODS AND/OR SERVICES?

From the definition of voucher under section 2(118) of CGST Act, it emerges that “voucher” may be in nature of payment instrument which creates an obligation on the supplier to accept it as a consideration or part consideration for the supply of goods and/or services. The issuance of payment instruments, including pre-paid instruments, in India is regulated by Reserve Bank of India (RBI).

The value stored on such instruments represents the value paid for by the holder, by cash, by debit to a bank account, or by credit card.

Pre-paid instrument recognized by the RBI is used as a consideration to settle an obligation, then in such cases, the voucher will **fall under the definition of “money”**. In such a case, as “money” is excluded from the definition of goods and services as provided in section 2(52) and section 2(102) of the CGST Act respectively, the transactions in voucher would be considered neither as a supply of goods nor as a supply of services.

Other than pre-paid instrument: In cases, where voucher is not covered as a pre-paid instrument recognized by RBI and hence, cannot be treated as money the voucher will be in nature of an obligation on the supplier to receive it as consideration or part consideration and assure the beneficiary/voucher holder to claim certain goods and/or services as specified on the voucher or in the related documents. In such cases, the voucher **can be considered as an “actionable claim”**. As per Schedule III, no GST shall be levied on such voucher.

Supply of underlying goods and/or services, for which vouchers are used as consideration or part consideration, **may be taxable under GST**.

ISSUE 2 - WHERE VOUCHERS ARE DISTRIBUTED THROUGH THE DISTRIBUTORS/ SUB-DISTRIBUTORS/ DEALERS ON PRINCIPAL-TO-PRINCIPAL(P2P) BASIS?

In such cases, the distributor/ dealer purchases voucher from the voucher issuer typically at a discounted rate and subsequently sells the same to the sub-distributors, corporates or end customers and generate revenue through a trading margin, which is a difference between the acquisition cost and the selling price of the vouchers by the said distributor/ dealer. In such cases, distributors/ dealers (including sub-distributors) own the vouchers and operate autonomously with full control over the process from purchase to the final sale of the vouchers to the end user.

As per section 9 (1) of CGST Act, **GST is chargeable on the supply of goods and/or services**. As the transaction in vouchers is neither supply of goods nor supply of services, therefore, pure trading of vouchers in this case would not constitute either supply of goods or supply of services. Accordingly, such **trading of vouchers would not be leviable to GST as per section 9 (1) of CGST Act**.

ISSUE 3 - WHERE VOUCHERS ARE DISTRIBUTED USING DISTRIBUTORS/ SUB-DISTRIBUTORS/ AGENTS ON COMMISSION/ FEE BASIS?

In such cases, the transactions between the voucher issuer and the distributors/ sub-distributors/ agents are on principal-agency basis. These arrangements, as per contract/agreement between distributor/sub-distributor/agents and the voucher issuer may specify a set of obligations on such agents such as marketing & promotion and other related support activities for distribution of vouchers against a commission/fee or any other amount by whatever name called, for such purpose. In such cases, distributors/sub-distributors/agents do not operate autonomously, do not own the vouchers and only act as agent of the voucher issuer.

In such cases, **GST would be payable by such distributor/sub-distributor/agent, acting as an agent of the voucher issuer, on the commission/fee** or any other amount by whatever name called, for such purpose, as a supply of services to the voucher issuer.

ISSUE 3 -WHAT WOULD BE GST TREATMENT OF ADDITIONAL SERVICES SUCH AS ADVERTISEMENT, COBRANDING, MARKETING & PROMOTION, CUSTOMIZATION SERVICES, TECHNOLOGY SUPPORT SERVICES, CUSTOMER SUPPORT SERVICES ETC?

There may be cases where additional services such as advertisement, co-branding, customization services, technology support services, customer support services, etc. are provided by either the distributor/ sub-distributor or by another person to the voucher issuer against a service fee/ service charge/ affiliate charge or any other amount, by whatever name called, as per contract/agreement between such service provider and the service recipient (voucher issuer). In such a case, **the said service fee/ service charge/ affiliate charge or other amount for supply of such additional services** to the voucher issuer as per the terms of contract/agreement, **would be liable to GST at the applicable rate in the hands of the said service provider.**

ISSUE 4 -WHAT WOULD BE THE GST TREATMENT OF UNREDEEMED VOUCHERS (BREAKAGE).

As per section 9 (1) of the CGST Act, GST is leviable only on the supply of goods and/or services. In the case of breakage, there is no redemption of voucher and there is no supply of underlying goods and/or services. Therefore, there is no supply of goods and/or services on account of such unredeemed vouchers (breakage). Also, “consideration” under GST is defined under section 2 (31) of CGST Act, in relation to the supply of goods or services or both.

As there is no underlying supply of goods and/or services in case of non-redemption of vouchers by the customer, the amount retained for unredeemed vouchers by the voucher issuer cannot be construed as consideration for any supply attributable to unredeemed vouchers (breakage) would **not be taxable** as per the provisions of section 9(1) of CGST Act.

Agreement to do or refrain from an act should not be presumed to exist. Therefore, it appears that the amount attributable to non-redemption of voucher (breakage) would not constitute as a “monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person”. Therefore, no GST appears to be payable on such amount attributable to non-redemption of voucher (breakage).

> Chapter 2

Charge of GST

In this Chapter we will learn who is responsible to pay GST to the Government.

Learning Objectives

- Charge of GST [Section 9 of CGST Act (Intra State) & Section 5 of IGST Act (Inter State)]
- Analysis of Inter-State Supply [Section 7 of IGST Act]
- Analysis of Intra-state supply [Section 8 of IGST Act]
- Supplies made in Territorial Waters of India [Section 9 of IGST Act]

Article 265 of the Constitution of India mandates that no tax shall be levied or collected except by the authority of law. The charging section is a must in any taxing statute for levy and collection of tax. In order to impose a tax, a person supplying goods or services shall be a taxable person & the supply made by him shall be taxable. In this chapter we are going to learn the nature of supply (i.e. Intra - state supplies & Inter - state supplies) & the person who is required to discharge tax to the revenue authorities.



Section Referencer

CGST Act		IGST Act	
Section	Description	Section	Description
9(1) r/w Article 366(12A)	Central Tax (CGST) shall be levied on Intra-state supplies other than alcoholic liquor for human consumption <i>[CGST Rate cannot exceed 20%. Thus, Total GST Rate on any product cannot exceed 40%]</i>	5(1) r/w Article 366(12A)	Integrated Tax (IGST) shall be levied on Inter-state supplies other than alcoholic liquor for human consumption <i>[IGST Rate cannot exceed 40%.]</i>
9(2) r/w Article 279A(5)	CGST shall be levied on intra-supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel with effect from such date as may be notified.	5(2) r/w Article 279A(5)	IGST shall be levied on inter-supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel with effect from such date as may be notified.
9(3) r/w Ntfn. 13/2017 - CT(R)	Reverse charge mechanism - Services	5(3) r/w Ntfn. 10/2017 - IT(R)	Reverse charge mechanism - Services (1 Service extra - Import of Services)
9(4)	Purchase by promoters/builders from unregistered person to attract CGST in specified manner.	5(4)	Purchase by promoters/builders from unregistered person to attract IGST in specified manner.
9(5) r/w Ntfn 17/2017 - CT(R)	E-commerce operator (ECO) to be deemed supplier in below cases - Passenger transport service - Hotel Accommodation & Utility services when such hotel or utility	5(5) r/w Notification 14/2017 - IT(R)	E-commerce operator (ECO) to be deemed supplier in below cases - Passenger transport service - Hotel Accommodation & Utility services when such hotel or

CGST Act		IGST Act	
Section	Description	Section	Description
	service provider is unregistered.		utility service provider is unregistered
		7	Inter-state Supply
		8	Intra-state supply
		9	Supply in Territorial Waters

Charging Section 9 of CGST Act

Overview of Charging Section:

Section	Brief Overview
9(1)	Supplier shall be liable to pay tax on intra state supplies except on alcohol
9(2)	Petroleum products out of ambit of GST
9(3)	Reverse charge mechanism i.e., Recipient liable to pay tax
9(4)	Not in Syllabus for CA Exams Purchase made by promoters from unregd. persons
9(5)	Specified Services on which E – commerce operator is liable to pay tax

Section 9(1) & 9(2): CGST on Intra-state Supply except Petroleum Products & Alcoholic Liquor for Human Consumption

Charging Sec: Subject to S. 9(2) (Petroleum products), CGST shall be levied on all Intra-State supplies, except on the supply of alcoholic liquor for human consumption Undenatured extra neutral alcohol (ENA) or rectified spirit used for manufacturing alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding 20% (CGST + SGST together or IGST shall not exceed 40%), shall be payable by Taxable person

Taxable person [S. 2(107) of CGST Act]:

- ❖ Registered person or,
- ❖ Person liable for registration (*person becomes liable for registration on crossing of specific turnover limit*)



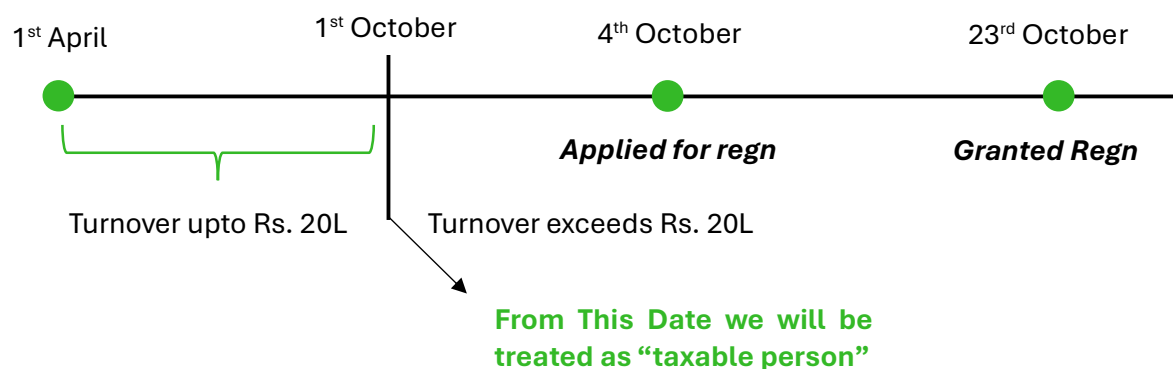
Analysis:

- (i) **Sequence of Sections:** It shall be noted that section 9(3) and 9(5) are specific sections, meaning thereby, if a person is liable to pay tax under those sections, he shall pay accordingly. However, if he does not fall in the ambit of those sections, he

shall be liable to pay tax as per 9(1) [Intra state supplies] or 5(1) [Inter-state supplies] provided he is a taxable person.

(ii) Taxable person:

(a) Liable for registration



In this situation, we can issue revised tax invoice to customers for supplies made during 1st October to 23rd October within 1 month of date of grant of registration i.e., 23rd November in this case.

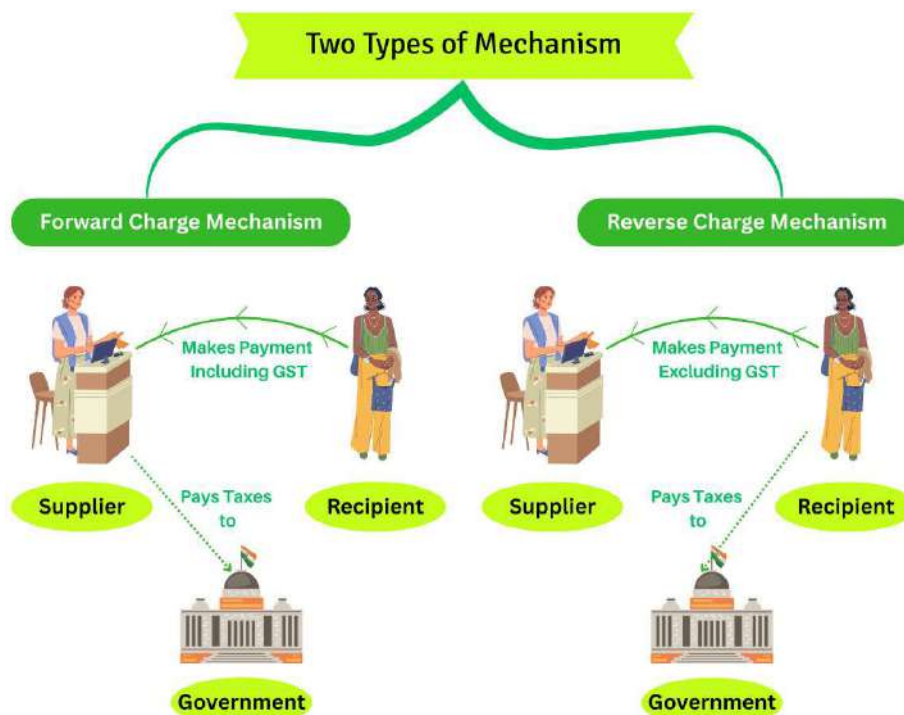
(b) Already registered person:

A person who has already taken GST registration (without crossing limits), shall be liable to pay tax w.e.f. sales made from date grant of registration.

- (iii) Value of Supply:** GST shall be paid on value of supply as per section 15 of CGST Act and rules made thereunder.
- (iv) Maximum rate** of CGST is 20% and SGST is also 20%, thus on any product GST cannot exceed 40%. IGST maximum rate 40%.
- (v) Petroleum Products:** Petroleum products as per section 9(2) of CGST Act are out of ambit of GST, which are petroleum crude, natural gas, aviation turbine fuel, Highspeed diesel oil, motor spirit.
- (vi) ENA and rectified spirits:** Undenatured extra neutral alcohol (ENA) or rectified spirit is used for manufacturing alcoholic liquor for human consumption has been excluded from the purview of GST w.e.f. 1st November, 2025. Earlier only alcoholic liquor for H.C. was out of ambit of GST, however, now the substance which is used to make such liquor is also kept out of ambit. It is important to note that there is no constitutional amendment made in such regard, however, directly the provisions of section 9 of CGST Act and 5 of IGST Act have been amended, giving rise to further litigation in future. **[Notification No. 17/2024–Central Tax dated 27th September, 2024 w.e.f. 1st November, 2024]**

Section 9(3): Reverse Charge Mechanism**Introduction to Reverse Charge Mechanism:**

- ❖ Normally GST is paid to government by supplier however in certain cases when supplier is not capable enough to pay GST, government asks recipient to pay GST that is called as reverse charge mechanism.
- ❖ Government asks supplier to pay GST because, suppliers are less in number and recipients are more in number. However, in case of reverse charge mechanism we would be able to see exactly opposite of this i.e., in reverse charge services recipients would be lesser in number and suppliers would be more in number.
- ❖ It is very important to note that reverse charge is applicable only in case of specific services which are notified by government.
- ❖ In case where reverse charge mechanism is not applicable then (instead of recipient) supplier shall be liable to pay tax under forward charge provided he is a taxable person.
- ❖ Furthermore, it is very important that reverse charge will be only applicable when supply is taxable that means if the supply is exempt then no GST is to be paid so the question of GST does not arise.



Important Points for Reverse Charge Mechanism

- (i) **Mandatory Registration:** - All taxpayers (recipients) required to pay tax under reverse charge (as specified by notification discussed below) have to mandatorily obtain registration and the threshold exemption (of outward supplies) is not applicable on them. [S. 24 of CGST Act]
- (ii) **Compulsory Cash Payment:** - Payment of taxes under Reverse Charge cannot be made with utilisation of Input Tax Credit and has to be made in Cash. As per Section 49B of CGST Act, output tax shall be paid by utilising input tax credit. [S. 2(82) r/w 49B]

Output Tax excludes reverse charge liability: As per section 2(82) of CGST Act, "output tax" in relation to a taxable person, means the tax chargeable under this Act on taxable supply of goods or services or both made by him or by his agent but **excludes tax payable by him on reverse charge basis.**

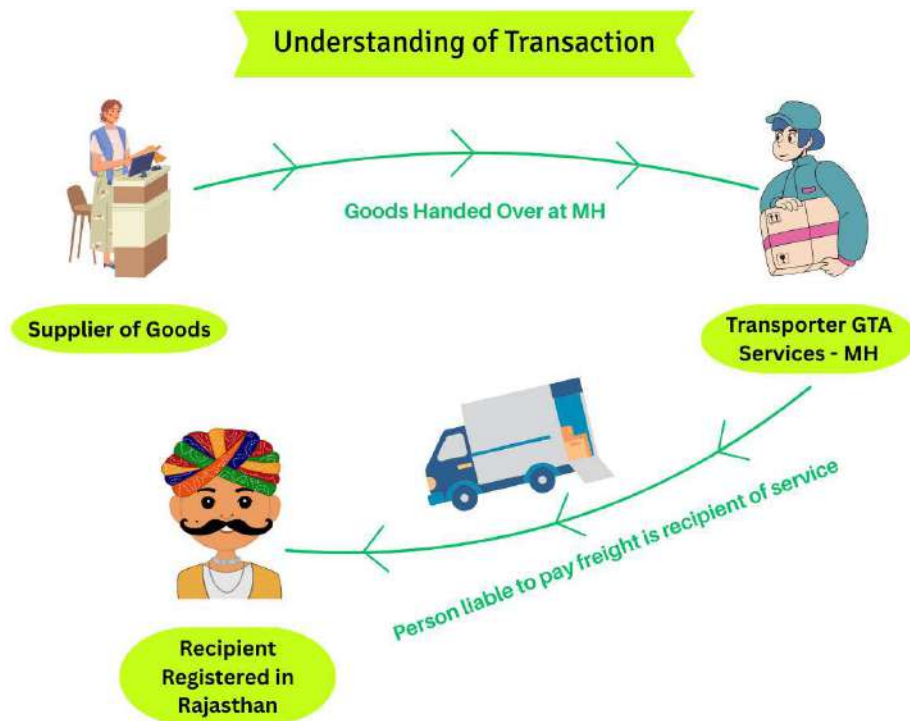
Thus, reverse charge liability has to be paid in cash only.

- (iii) **ITC will be available in same month:** It is very important to note that ITC will be available to the recipient in the month in which such services are taken and not in the month in which such tax is paid. Let us take one example to understand this concept if a recipient has taken services in the month of March and pays GST on 20th April, he would be entitled to claim ITC in the month of March GSTR 3B.

Now let us understand the logic of the same in case of forward charge mechanism we had taken services in the month of March however our supplier deposits tax in the month of April but still the recipient takes it in the month of March GSTR 3B in the same way RCM works.

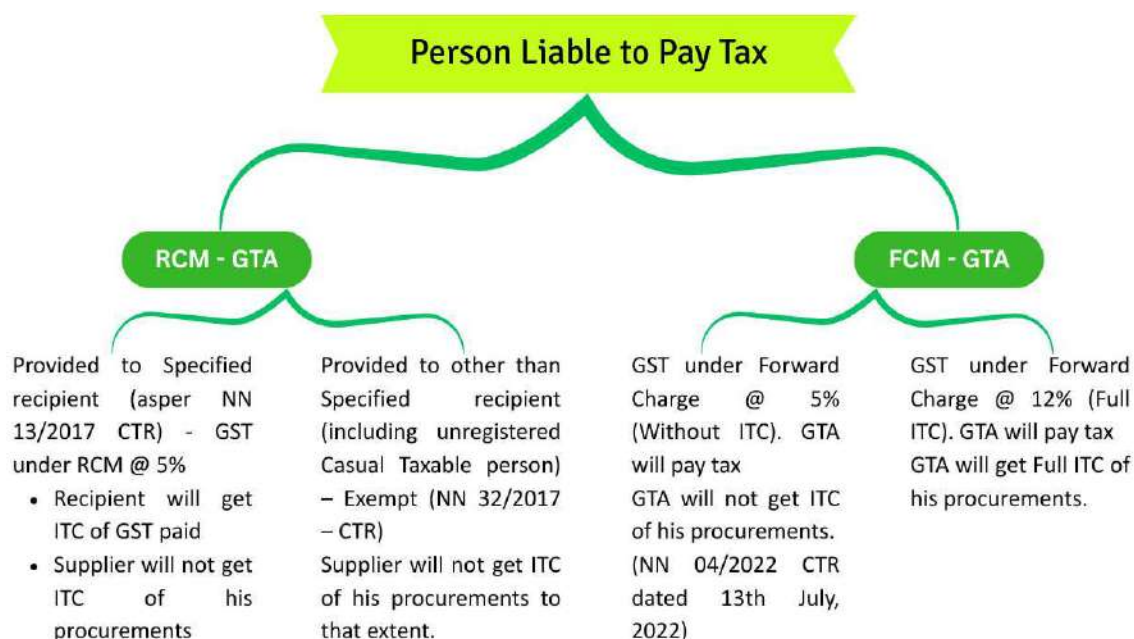
Government has notified 16 different services on which reverse charge mechanism will be applicable that too only when it is provided by **specified supplier** mentioned in notification 13/2017 – CTR and **to specified recipient which is mentioned in that particular notification**. However, if any of the criteria does not meet it will not be taxable under reverse charge it will be taxable under forward charge or it will be exempt.

(1) Goods Transport Agency Service provider [Entry No. 1]: -



Recipient for GTA Services: - The person who pays or is liable to pay freight for the transportation of goods by road in goods carriage, located in the taxable territory shall be

treated as the person who receives the service for the purpose of this notification. (Explanation to notification 13/2017 – CTR)



Specified Service	Supplier	Recipient
Supply of Services by a goods transport agency (GTA) in respect of transportation of goods by road Notes: - This entry shall not apply to services provided by a goods transport agency, by way of transport of goods in a goods carriage by road, to, - a) a department, or Establishment of the b) Central Government or State Government or Union territory; or local authority c) Governmental agencies, Who have taken registration to deduct tax u/s 51 of CGST Act. The above services are exempt as per notification 12/2017 – CT(R) (GTA is person who issues consignment note)	Goods Transport Agency (GTA) Notes: - GST will be paid by specified recipient @ 2.5% CGST, 2.5% SGST (or IGST @ 5%)	a) Factory registered under Factories Act, 1948; or b) Society registered under the Societies Registration Act, 1860 or under any other law or c) Co-operative society established under any law; or d) Person registered under GST e) Body corporate f) Partnership firm (incl. LLP) whether registered or not under any law including association of persons; or g) Casual taxable person; located in the taxable territory.

Notes: -

(i) Meaning of GTA: “Goods transportation agency means any person who provides service in relation to transportation of goods **by road** and **issues consignment note**, by whatever name called.” Thus, GTA is any person who:

- ❖ Provides service in relation to transport of goods by road and
- ❖ Issues a consignment note by whatever name called.

Consignment note is a document which contains below particulars:

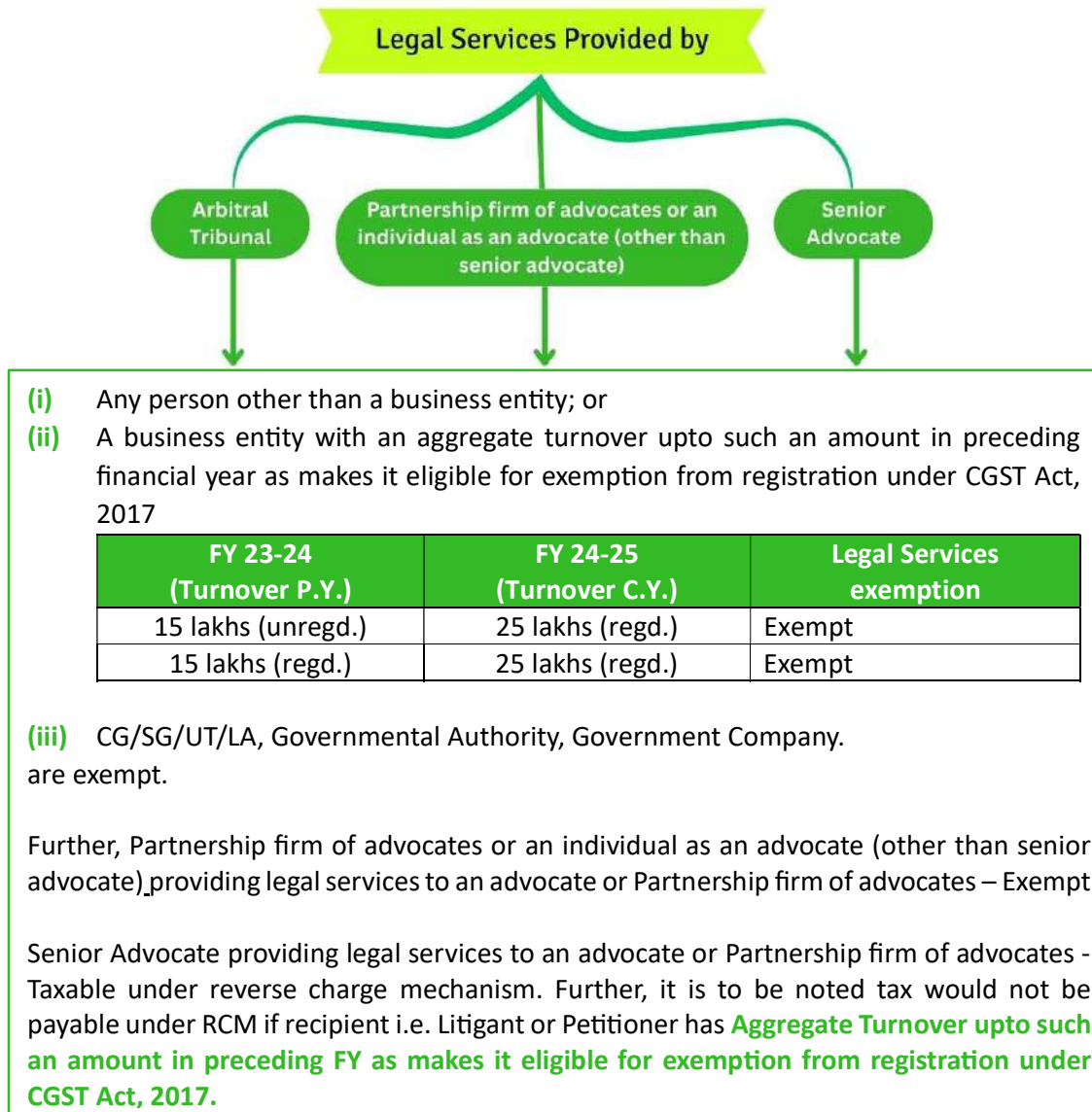
- ❖ Name of the consignor and consignee,
- ❖ Registration number of the goods carriage in which the goods are transported,
- ❖ Details of the goods transported,
- ❖ Details of the place of origin and destination,
- ❖ Person liable for paying tax whether consignor, consignee, or the goods transport agency

(ii) Specified supplier to unspecified recipient is exempt (NN 32/2017 – CTR)

(iii) Services taken by Notified Deductors: As per section 51 of CGST Act govt has notified certain deductors to deduct tax at source. Generally, such persons are government department, local authority, statutory body established by government etc. Such notified deductors when they provide any service it is generally exempt. However, if they avail some service, it may be taxable. Accordingly, government has provided that if notified deductors take some service which are taxable under reverse charge then such itself would be exempt from tax.

(2) Legal Services [Entry No. 2 & 3]:-

Exemption:



CHARGEABILITY

Service	Supplier	Recipient
2) Legal Services supplied by an individual advocate, a senior advocate or firm of advocates by way of representational services before any court, tribunal or authority.	An individual advocate including a Senior advocate or firm of advocates.	Any business entity located in the taxable territory having turnover of more than such amount in PFY as it becomes ineligible for exemption from registration (E. 45 of NN 12/2017 r/w NN 21/2019 – CTR)
3) Legal Services by Arbitral Tribunal	Arbitral tribunal.	

Notes: -

(i) **RCM Applicability:** Legal services provided by an individual advocate including a Senior advocate or firm of advocates or Arbitral Tribunal to registered business entity located in the taxable territory would be chargeable to tax under reverse charge (**E. 45 of NN 12/2017 r/w NN 21/2019 – CTR**).

(3) Sponsorship Services [Entry No. 4]

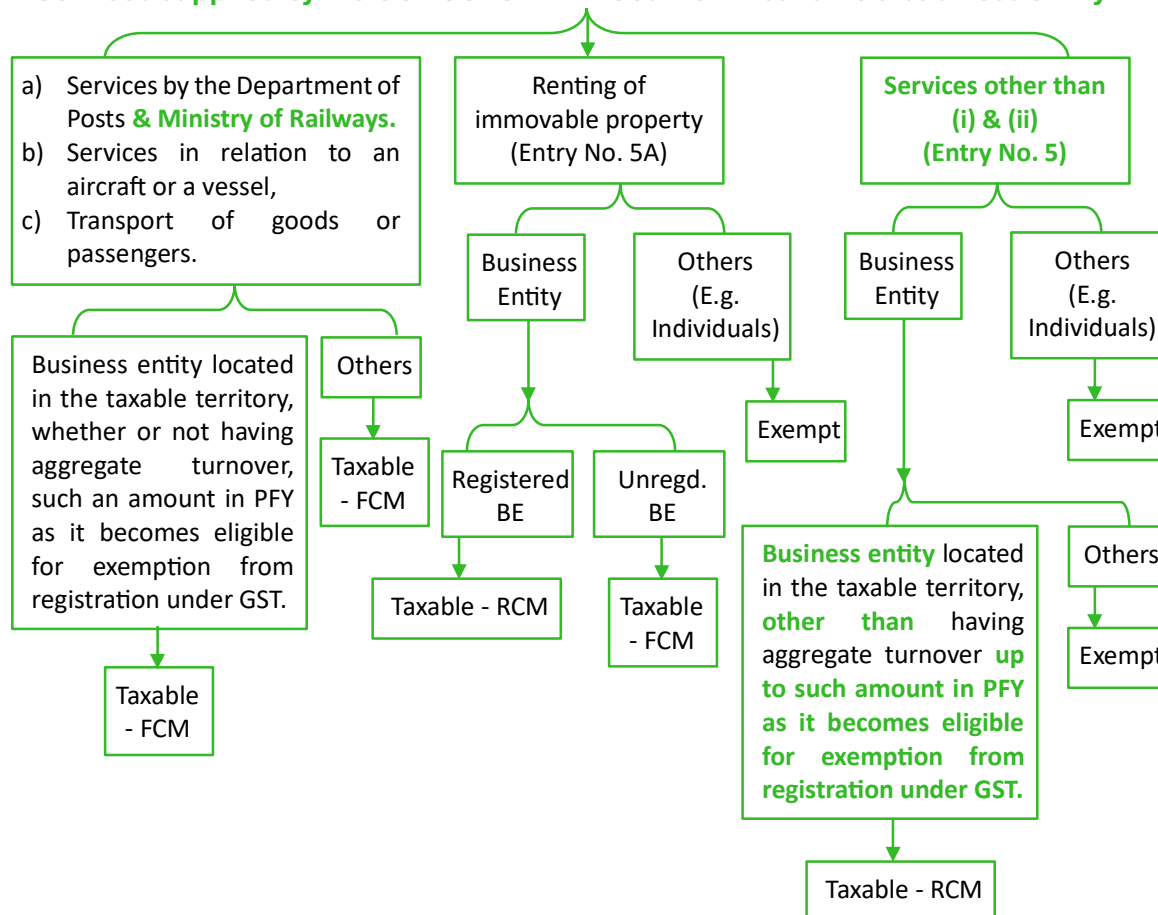
Service	Supplier	Recipient
Sponsorship Services	Any person other than a body corporate	Body corporate or partnership firm located in the taxable territory.

Notes: -

- ❖ The one who sponsors is termed as “recipient.”
- ❖ **Limited Liability Partnership (LLP)** is included in the definition of partnership firm.
- ❖ Example: Miss Shinu Ambani provides Sponsorship services to Indian Cricket Love Academy, LLP; in this case, Shinu Ambani is supplier of service, as words “provides sponsorship services” is given.

(4) Government Services [Entry No. 5 & 5A]**Exemption:**

Services supplied by the CG / SG/ UT/ LA / Court or Tribunal to a business entity



Service	Supplier	Recipient
5) Services supplied by the CG / SG/ UT/ LA or Court or Tribunals to a business entity excluding, - a) Renting of immovable property, b) Services by the Department of posts & Ministry of Railways (Indian Railways) c) Services in relation to an aircraft or a vessel, d) Transport of goods or passengers.	CG / SG / UT / LA	Any business entity located in the taxable territory having aggregate turnover more than such amount in PFY as it becomes ineligible for exemption from registration under GST. (Sr. No. 7 of NN 12/2017 r/w NN 21/2019 – CTR) [In case of (b), (c), (d) – Service provider i.e. CG/SG/UT/LA will always levy tax under FCM] [No exemptions in regards to (b), (c), (d)]
5A. Renting of immovable property by CG/SG/UT/LA or Court or Tribunals [Inserted vide NN 3/2018 – Central Tax (Rate) dated January 25, 2018)	CG/SG/UT/LA	Person registered under GST. (If Renting of Immovable property is provided to unregistered business – Service provider will levy tax on FCM) (If provided to other than BE - Exempt)
5AA. Service by way of renting of residential dwelling to a registered person.	Any person	Any registered person.
5AB. Service by way of renting of any property other than residential dwelling (Commercial properties like godown, warehouse)	Unregd. Person	Any registered person other than a person who has opted to pay tax under composition levy.



Analysis:

(i) Analysis of Entry 5AA: Exemption w.r.t. Renting of residential dwelling for residence:

As per exemption notification 12/2017 CTR, “Services by way of renting of residential dwelling for use as residence “except where the residential dwelling is rented to a registered person” [NN 04/2022 CTR]

Explanation 1. For the purpose of exemption under this entry, this entry shall cover services by way of renting a residential dwelling to a registered person where:

- The registered person is the proprietor of a proprietorship concern and rents the residential dwelling in his personal capacity for use as his own residence; and
- such renting is on his own account and not that of the proprietorship concern.

Explanation 2.: Nothing contained in this entry shall apply to: accommodation services for students in student residences; accommodation services provided by hostels, camps, paying guest accommodations, and the like.

It means, if a proprietor has taken property on rent for his personal purpose, no GST is payable under RCM. However, accommodation services for students in student residences; accommodation services provided by hostels, camps, paying guest accommodations, and the like will be taxable.

New Exemption w.e.f. 15th July, 2024: Further, new exemption entry 12AA has been inserted in Notification No.12/2017-CT (Rate) as under w.e.f. 15.7.2024 exempting supply of the accommodation service

- Having a value less than or equal to Rs. 20,000 per person per month; and
- Said accommodation service was supplied for a minimum continuous period of 90 days.

(5) Transfer of Development rights or FSI (Floor Space Index) for Construction of Project [Entry No. 5B]

Service	Supplier	Recipient
Services supplied by way of Transfer of Development rights or FSI for Construction of Project	Any person	Promoter

(6) Long-Term Lease [Entry No. 5C]

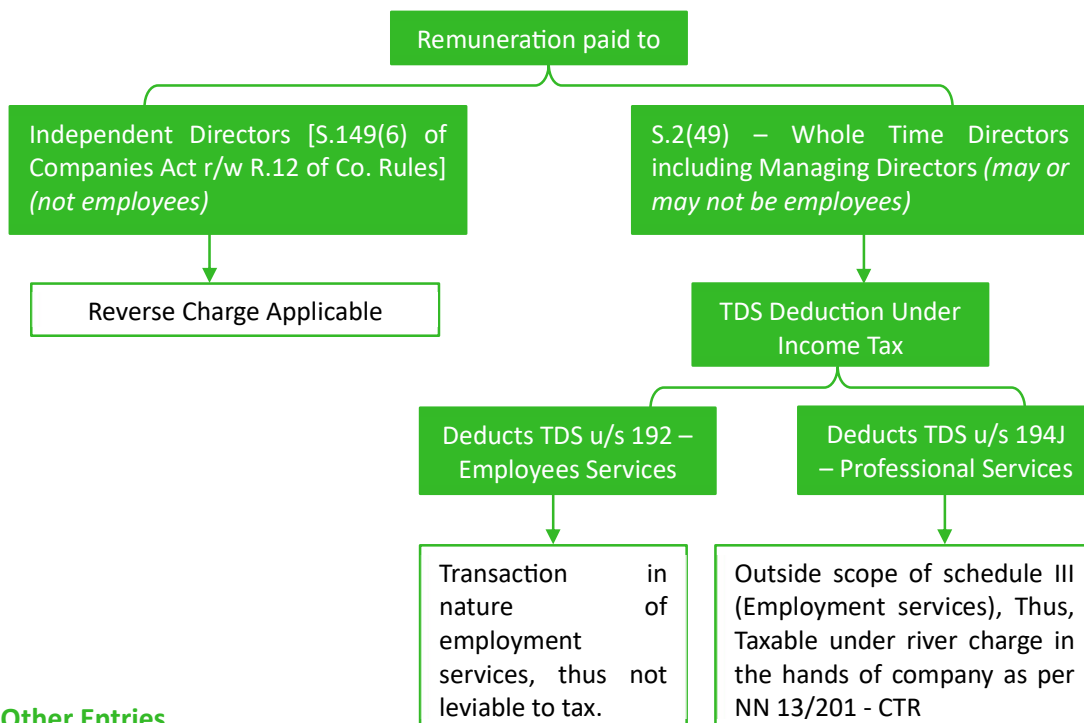
Service	Supplier	Recipient
Services supplied by way of Long-Term Lease (>30 years) against consideration as upfront amount such as premium, salami etc.	Any person	Promoter

(7) Director Services [Entry No. 6]

Service	Supplier	Recipient
Director of a company or a body corporate to the said company or the body corporate. (Only Part Time Directors Covered, as whole-time directors are employees)	A director of a company or a body corporate	The company or a body corporate located in the taxable territory.

(Sitting fees are always taxable under reverse charge as they are paid in the nature of professional services)

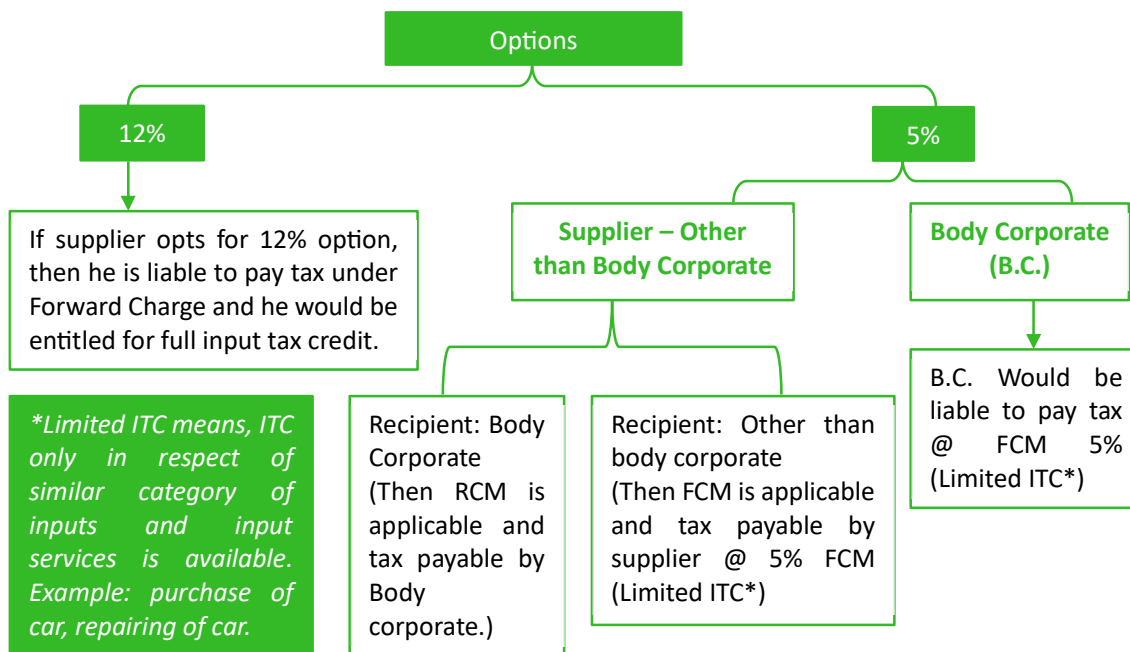
- ❖ It is clarified that services supplied by a director of a company or body corporate to the company or body corporate in his PRIVATE OR PERSONAL CAPACITY such as services supplied by way of renting of immovable property to the company or body corporate are NOT TAXABLE UNDER RCM. Only those services supplied by director of company or body corporate, which are supplied by him as or in the CAPACITY OF DIRECTOR of that company or body corporate shall be TAXABLE UNDER RCM.

**(8) Other Entries**

Service	Supplier	Recipient
7. Services supplied by an insurance agent to any person carrying on insurance business.	An Insurance agent	Any person carrying on insurance business, located in the taxable territory.
8. Recovery agent Services to a banking company or a financial institution or a NBFC	A recovery agent	Banking company or a financial Institution or a NBFC, located in the taxable territory.
9. Supply of services by a Music composer, photographer, artist or the like by way of transfer or permitting the use or enjoyment of a copyright relating to original, dramatic, musical or artistic works to a music company, producer or the like.	Music composer, photographer, artist, or the like	Music company, producer or the like, located in the taxable territory.
9A. Supply of services by an author by way of transfer or permitting the use or enjoyment of a copyright covered under clause Copyright Act, 1957 relating	Author	Publisher located in the taxable territory provided: - Author can pay under Forward Charge Mechanism if author

Service	Supplier	Recipient
to original literary works to a publisher.		obtains registration under GST and declares in Annexure to pay tax under section 9(1) of CGST Act. Note: - The said option cannot be withdrawn within a period of 1 year from the date of exercising such option
10. Supply of services by the members of Overseeing Committee to Reserve Bank of India	Members of Overseeing Committee constituted by the RBI	RBI
11. Services by Direct Selling Agents (DSAs)	Individual DSAs other than a body corporate, partnership or limited liability partnership firm	A banking company or a non-banking financial company, located in the taxable territory. (Financial Institutions not covered)
12. Services by Business facilitator (BF can refer clients, and facilitate the bank to carry out its transactions, but cannot transact on behalf of the bank)	Business facilitator (BF)	A banking company, located in the taxable territory (Financial Institutions & NBFC not covered)
13. Services by agent of business correspondent (BC are permitted to carry out transactions on behalf of the bank as agents)	An agent of business correspondent	A business correspondent, located in the taxable territory.
14. Security services (services provided by way of supply of security personnel) provided to a registered person: - As per NN 29/2018 – CTR This entry not applicable to i. Persons which have taken registration under GST for deducting TDS u/s 51 of CGST Act & not for effecting any taxable supply	Any person other than a body corporate	A registered person, located in the taxable territory. (If composition person is recipient the service will be taxable under forward charge)

Service	Supplier	Recipient
ii. Composition person (S. 10)		
15. Services provided by way of renting of any motor vehicle designed to carry passengers where the <u>cost of fuel is included in the consideration</u> charged from the service recipient, provided to a body Corporate. [Refer Detailed Analysis in Note (i)]	Any person, other than a body corporate who supplies the service to a body corporate and does not issue an invoice charging central tax at the rate of 6 per cent to the service Recipient.	Any body corporate located in the taxable territory. [Notification No. 22/2019- Central Tax (Rate) dated 30th September, 2019 w.e.f. 1st October, 2019 as amended vide Notification No. 29/2019 Dated 31st December, 2019; clarified vide circular No. 130/49/2019-GST dated 31st December, 2019]
16. Services of lending of securities under Securities Lending Scheme, 1997 ("Scheme") of Securities and Exchange Board of India ("SEBI"), as amended. [Refer Detailed Analysis in Note (ii)]	Lender i.e. a person who deposits the securities registered in his name or in the name of any other person duly authorised on his behalf with an approved intermediary for the purpose of lending under the Scheme of SEBI	Borrower i.e. a person who borrows the securities under the Scheme through an approved intermediary of SEBI." (w.e.f. 1st October, 2019)

Notes: -**(i) Taxability of Renting of Motor Vehicle under reverse charge:**

The circular highlights the difference between passenger transport and renting of motor vehicle to tax under reverse charge. The quick recap of the said point is as below:

Nature of billing	Taxability
Motor vehicle is hired for a period of “time,” during which the motor vehicle shall be at the disposal of the body corporate.	Reverse charge mechanism will be applicable as it will be “Renting of motor vehicle.”
Motor vehicle taken as passenger transport service for specific journeys or voyages and does not take vehicle on rent for any particular period of time	Reverse charge mechanism will not be applicable as it is passenger transport service and not renting of motor vehicle service.

EXERCISE ON ENTRY 14 AND 15**Entry 14: Security Services**

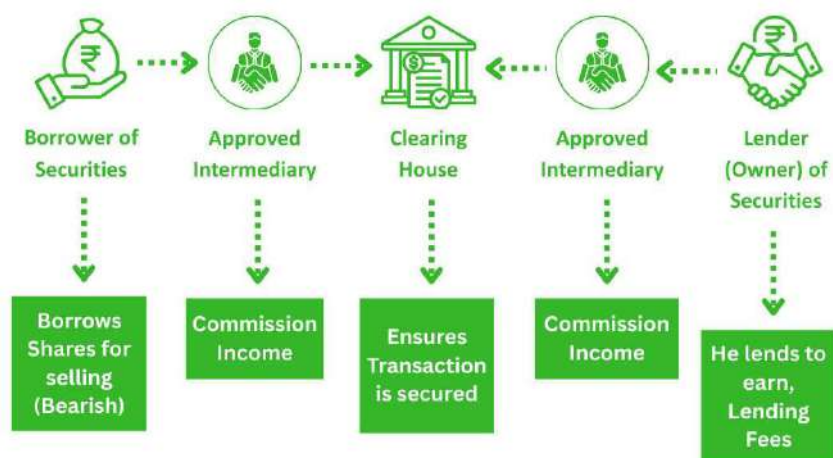
Supplier Name	Supplier T.O. (in lakhs)	Recipient Name	Recipient Regn Status	Taxability (Refer Last Page for ans.)
A Ltd.	25	B & Co.	Regd.	
A & Co.	32	B Ltd.	Unregd.	
A & Co.	13	B & Co.	Regd.	
A & Co.	12	B & Co.	Regd.	

Entry 15: Renting of Motor Vehicle

Option	Supplier Name	Supplier T.O. (in lakhs)	Recipient Name	Recipient Regn Status	Taxability (Refer Last Page for ans.)
5%	A Ltd.	25	B & Co.	Regd.	
5%	C Ltd.	18	B Ltd.	Regd.	
12%	A & Co.	12	B Ltd.	Regd.	
5%	A & Co.	13	B & Co.	Unregd.	
5%	A & Co.	22	B Ltd.	Regd.	
5%	A & Co.	18	B Ltd.	Unregd.	
-	A & Co.	13	C Ltd.	Unregd.	

(ii) Taxability of lending & borrowing of securities under Securities Lending Scheme, 1997 under RCM w.e.f. 1st October, 2019 (Circular No. 119/38/2019-GST dated 11th October, 2019 r/w Notification No. 22/2019 – CTR dated 30th September, 2019)

Introduction to this Scheme: -



Flow of Transactions: -

- ❖ If Lender has 5,000 shares of Reliance, & the prevalent market price is ₹ 850, the borrower wants to sell Reliance shares as he feels the prices are going to fall.
- ❖ Borrower approaches his approved Intermediary, as in market if he goes to buy, he will get shares at 850, however lender will give the same shares on lending fees.
- ❖ Thus, Borrower will borrow the shares for 6 months (say).
- ❖ Borrower will sell the shares at ₹ 850 in the market, thus, will get the consideration of ₹ 42,50,000
- ❖ After 6 months he will buy the shares from market at ₹ 800 (say), he would earn profit of ₹ 50 per share i.e. ₹ 2,50,000/-.
- ❖ Borrower will pay lending fees to lender ₹ 60,000/- (say) & Intermediary commission of ₹ 42,500/-
- ❖ Borrower had earned Net profit of ₹ 1,47,500/-

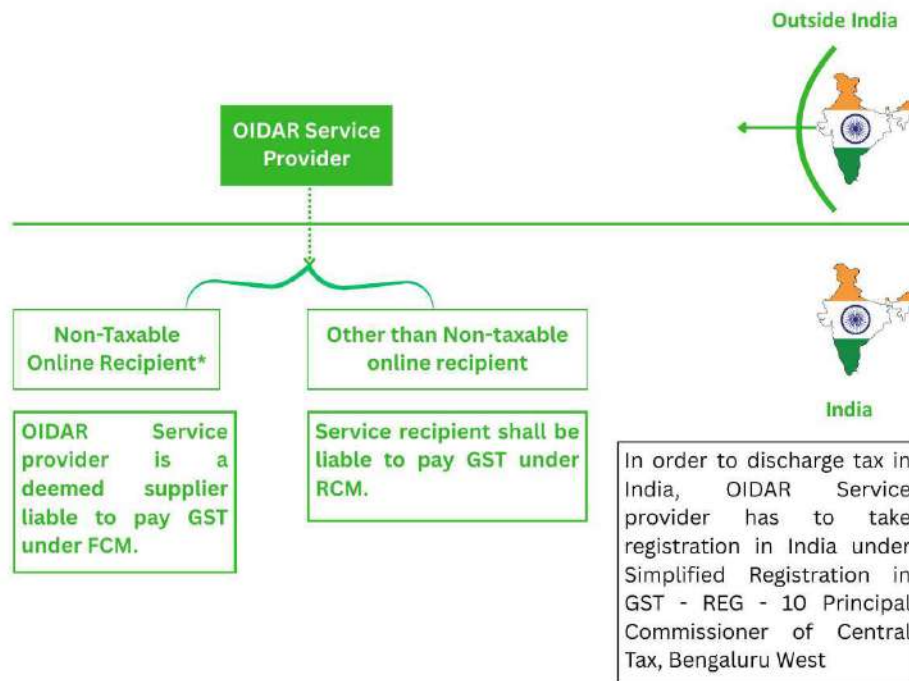
The taxability can be better understood with the below table 1.1: -

Person	Consideration	Remarks
Lender	Lending Fees	Taxable under reverse charge mechanism and shall be payable by borrower.
Intermediary	Commission or Fee	Taxable under forward charge mechanism and shall be payable by intermediary.

Following additional category of supply of services is listed under Notification No. 10/2017-Integrated Tax (Rate) vide Section 5(3) of IGST Act on which GST shall be paid by the recipient on RCM basis.

Specified Service	Supplier	Recipient
Service supplied by any person who is located in a non-taxable territory to any person other than non-taxable online recipient.	Any person located in a non-taxable territory.	Any person located in the taxable territory other than non-taxable online recipient.

Thus, import of services will attract reverse charge mechanism.



"Non-taxable online recipient" means any unregistered person receiving online information and database access or retrieval services located in taxable territory. (TDS deductor shall be deemed to be unregistered person)

**REVERSE CHARGE MECHANISM – IN RESPECT OF
SPECIFIED GOODS**

Sr. No.	Tariff Item	Description of Goods	Specified Supplier	Specified Recipient
1	0801	Cashew Nuts, not shelled or peeled 	Agriculturist	Any registered persons
2	14049010	Bidi Wrapper Leaves (tendu) 	Agriculturist	Any registered persons
3	2401	Tobacco Leaves 	Agriculturist	Any registered persons
3A	33012400 33012510 33012520 33012530 33012540 33012590	Following Essential Oils other than those of citrus food namely: - Of Peppermint Of other mints: Spearmint oil (ex-mentha spicata), Water Mint Oil, Horse Mint Oil, Bergamot Oil, Mentha Arvensis 	Any Unregistered person	Any registered persons

Sr. No.	Tariff Item	Description of Goods	Specified Supplier	Specified Recipient
4	5004 to 5006	Silk Yarn 	Any person who manufactures silk Yarn from Raw silk or silk worm cocoons for supply of silk yarn	Any registered persons
4A	5201	Raw cotton	Agriculturist	Any registered persons
5	-	Supply of Lottery	SG/UT/LA	Lottery Distributor or selling agent
6	Any Chapter	Used, seized vehicles and confiscated goods, old and used goods, waste and scrap	CG (Excluding Ministry of Railways), SG, UT, LA	Any registered persons
7	Any Chapter	Priority Sector Lending Certificate	Any registered persons	Any registered persons
8	Chapter 72 to Chapter 81 (w.e.f. 10 th October, 2024)	Metal Scrap	Unregistered person	Registered person

Analysis on Priority Sector Lending Certificate:

Priority Sector Lending Certificates (PSLCs) are tradable certificates issued against priority sector loans of banks so as to enable banks to achieve their specified target and sub-targets for priority sector lending through purchase of these instruments in the event of a shortfall and at the same time incentivizing the surplus banks to lend more to these sectors.

Since, levy of GST is on supply of goods or services or both, it needs to be understood whether PSLC's can be termed as "Goods" or "Services" in order to attract levy. As per section 2(52) of CGST act, goods mean every kind of movable property other than money and securities but includes actionable claims, growing crops and things attached to earth or forming part of earth

From the definition of securities, it can be said that these certificates cannot be called as 'securities' to be kept out of purview of GST.

Example -

- Say, as per RBI Circular, 40% of Loan Port Folio shall constitute the loans to be given to agricultural sector. Bank A has given 50% of Loans to Agriculturists, however, Bank B was only able to give 30% of Loans to Agriculturist. If Bank B could not fulfil the

target by a specific date, penalty would be imposed. Accordingly, Bank B visits E - Kuber platform.

- (ii) RBI will issue PSLC to Bank A for 10% of excess loan given to agriculture sector. The said PSLC is regd. on E - Kuber platform where Bank B can purchase by paying charges.
- (iii) Here, Bank B shall purchase PSLC so as to meet RBI Guidelines.
- (iv) Neither Bank B does not know from which Bank he has purchased the PSLC, nor Bank A would come to know to whom the said PSLC has been sold. In view of this issue, tax liability is casted upon the recipient of goods (PSLC) to pay tax under RCM

Solution of Exercise Posted Above

Entry 14: Security Services

Supplier Name	Supplier T.O. (in lakhs)	Recipient Name	Recipient Regn Status	Taxability
A Ltd.	25	B & Co.	Regd.	FCM
A & Co.	32	B Ltd.	Unregd.	FCM
A & Co.	13	B & Co.	Regd.	RCM
A & Co.	12	B & Co.	Regd.	Exempt

Entry 15: Renting of Motor Vehicle Solution

Option	Supplier Name	Supplier T.O. (in lakhs)	Recipient Name	Recipient Regn Status	Taxability
5%	A Ltd.	25	B & Co.	Regd.	FCM
5%	C Ltd.	18	B Ltd.	Regd.	FCM
12%	A & Co.	12	B Ltd.	Regd.	FCM
5%	A & Co.	13	B & Co.	Unregd.	FCM
5%	A & Co.	22	B Ltd.	Regd.	RCM
5%	A & Co.	18	B Ltd.	Unregd.	RCM
-	A & Co.	13	C Ltd.	Unregd.	RCM

Section 9(5): Services on which E – Commerce Operator is liable to pay tax

Meaning of E-commerce Operator: - It includes every person who, directly or indirectly, owns, operates or manages a digital/ electronic facility or platform for supply of goods or services or both. Supply of goods or services through own website is not called as e - commerce operator. While an aggregator only connects the customer with the supplier/ service provider, an e-commerce operator facilitates the entire process of the supply of goods/ provision of service. Aggregators operates as an agent. Thus, our attention shall be invited to Schedule I to CGST Act, 2017 which states that supply of goods by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal is supply even if it is without consideration.

Specified Services where ECO is liable to pay tax: - As per section 9(5) of CGST Act, The Government may, on the recommendations of the Council, by notification, specify categories of services the CGST 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 **as if** he is the supplier liable for paying the tax in relation to the supply of such services.

Notified Services: - Following categories of services as notified through Notification No. 17/2017 – Central Tax Rate (CTR) and Notification No. 14/2017 - ITR by the central government and the tax on supply of such services shall be paid by the e-commerce operator and all the provisions of GST shall apply on the e-commerce operator.

[1] Passenger Transportation Services: -

(i) **ANY MOTOR VEHICLE EXCEPT OMNIBUS:** Services by way of transportation of passengers by a radio-taxi, motorcab, maxicab and motor cycle (NN 17/2017 CTR), or ANY OTHER MOTOR VEHICLE EXCEPT OMNIBUS – **ALWAYS ECO will be liable to pay Tax.**

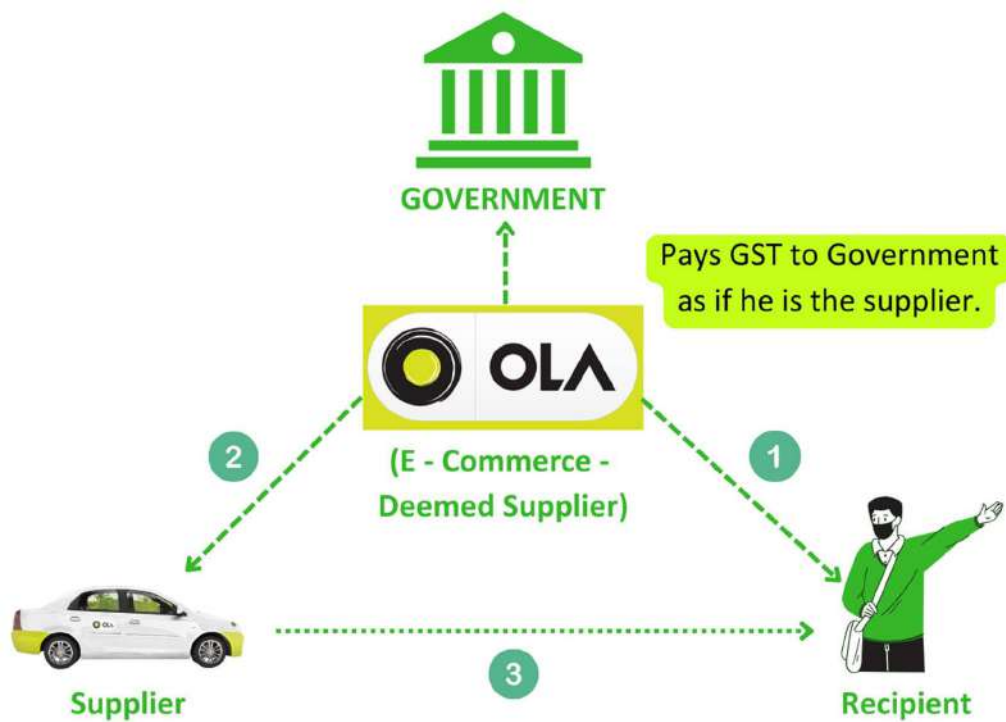
(ii) TRANSPORTATION OF PASSENGER THROUGH OMNIBUS:

Where the person supplying such service through electronic commerce operator is a company (body corporate), then body corporate would be liable to pay tax, otherwise, ECO would be liable to pay tax.

Explanation: “Company” has the same meaning as assigned to it in section 2(20) of the Companies Act, 2013 For this purpose: -

- ❖ “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);
- ❖ “maxicab”, “motorcab” and “motor cycle” shall have the same meanings as assigned to them respectively in clauses (22), (25) and (26) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988).

1. Passenger Transportation



Similar provisions are there in IGST Act vide Section 5(5) r/w Notification 14/2017 - IT(R).

[2] Hotel Accommodation [Notification 17/2017 - CTR]:

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 under sub-section (1) of section 22 of the said Central Goods and Services Tax Act.

Notes: -

- (i) **Examples:** Examples of such service providers are OYO, Make My Trip, etc. who are majorly involved in providing services by way of accommodation in hotels, guest house, clubs, etc.

Pictorial View

CASE WHERE HOTEL BOOKED THROUGH MAKE MY TRIP IS REGISTERED UNDER GST

Note: Similar Provision are applicable when utility services are provided through E-Commerce operators. E.g. Urban Clap

CASE WHERE HOTEL BOOKED THROUGH MAKE MY TRIP IS NOT REGISTERED UNDER GST

Note: Similar Provision are applicable when utility services are provided through E-Commerce operators. E.g. Urban Clap

[3] House Keeping & other utility services: -

Where 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 under sub- section 22(1) of the said Central Goods and Services Tax Act, the tax thereon shall be payable by electronic commerce operator.

[4] Restaurant services

Supply of restaurant service other than the services supplied by restaurant, eating joints etc. located at premises having hotel accommodation charges declared tariff $\geq$ Rs. 7,500 per day (Inserted vide Notification No. 17/2021-CTR & ITR) – Always ECO shall be liable to pay tax. (E.g., Swiggy Zomato) (w.e.f. 1st January, 2022)

Certain clarifications on Newly Inserted 9(5) Entries (Supply through Swiggy / Zomato Etc.)
[Circular 167/23/2021]

Query	Clarification	Query	Clarification
Do ECO have to collect TCS on restaurant services post 1 st January	No, 'restaurant service' has been notified under section 9(5), GST shall be payable by ECO, when supplied through registered / unregd entity	ITC Eligibility to ECO	ECO shall not be required to reverse ITC on account of restaurant services on which it pays GST in terms of section 9(5). GST on restaurant services has to be paid in cash only

Query	Clarification	Query	Clarification
Reqmt of Separate registration for providing restaurant services	No, separate registration is not required	Invoice	Invoice shall be issued by ECO to customers in such cases
Addition in whose turnover	A.T.O shall include the aggregate value of supplies made by the restaurant through ECOs	Reporting	Restaurants shall report in exempt supplies, ECO shall report in taxable supplies.

Scenario when ECO is not in Taxable Territory [Proviso to Section 9(5)]

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. **Further 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.**

Availment of ITC for Hotels with specified premises [No. 05/2025- Central Tax (Rate) 16th January, 2025; w.e.f. 1st April, 2025]

Govt. has notified that hotels with room tariffs exceeding ₹7,500 per day will be categorized as 'specified premises,' with their restaurant services attracting an 18% GST rate with an input tax credit (ITC). For restaurants outside these premises, the GST rate will be 5% without ITC.

Under the updated law, the hotels can voluntarily opt in for the 'specified premises' category if the room tariff does not cross ₹7,500 in the previous fiscal year, with the declaration staying valid until the establishment opts out of the same.

Amendment shall provide the hotels with the choice to show their premises as 'Specified Premises', enabling restaurants in these hotels to take 18% GST with ITC on restaurant services.

Clarification on usage of ITC to pay liability u/s 9(5) of CGST Act [Circular No. 240/34/2024-GST dated 31st December, 2025]:

ITC reversal not required:

- ❖ ECOs are not required to reverse ITC on inputs and input services used for supplies covered under Section 9(5) of the CGST Act (e.g., notified services such as transportation, housekeeping, hotel, etc.).
- ❖ The principle outlined in the earlier circular for restaurant services applies equally to other notified services under Section 9(5).

Payment of tax in cash:

- ❖ The ITC availed by ECOs cannot be utilized for discharging the tax liability under Section 9(5).
- ❖ Tax liabilities for supplies under Section 9(5) must be paid in cash via the electronic cash ledger.

However, the ITC can be utilized for discharging tax liabilities related to the ECO's own services, such as platform fees or commissions.

1. ANALYSIS OF INTER-STATE SUPPLY [SECTION 7 OF IGST ACT]

[1] Inter State Supply of Goods [S. 7(1) of IGST Act]

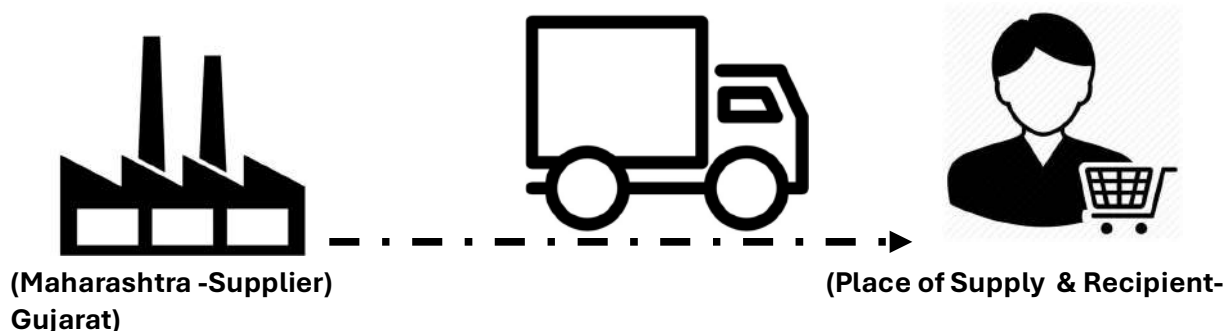
Where the movement of goods is within India and where the **location of the supplier and the place of supply** is in -

- two different States;
- two different Union territories; or
- a State and a Union territory,

shall be treated as a supply of goods in the course of inter- State trade or commerce i.e. Inter-state supplies

Notes: -

- (i) **Analysis of Location of Supplier of Goods: -** It shall be noted that location of the supplier of goods have not been defined in GST Law (Location of the supplier of service is defined). The place where goods are situated would represents the location of supplier (of goods). The location of supplier is therefore the physical point where the goods are situated under the control of the person wherever registered. Further, careful attention shall be given to the definition of place of business. As per clause (a) of Section 2(85) of CGST Act, **“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 is a place of business”**. In GST what we register is place of business, thus, such locations would be registered.
- (ii) **Place of Supply: -** The second factor which would help us in determining nature of supply is place of supply of goods. Place of supply for goods is given in section 10 of IGST Act (*to be learnt in Place of Supply Chapter*). Basically for current discussion we will understand it as destination of goods is the place of supply. Since GST is destination based consumption tax, in most of the cases, destination / consumption state would be regarded as place of supply.



Other Miscellaneous Examples: -

Location of Supplier	Place of Supply	Interstate (Yes or No)
Maharashtra	Gujrat	Yes
Daman Diu	Andaman	Yes
Maharashtra	Daman Diu	Yes
Maharashtra	Maharashtra	No

[2] Import of “Goods” - Interstate supply [Section 7(2) of IGST Act]

Supply of goods imported into the territory of India, till they cross the customs frontiers of India, shall be considered as supply of goods in the course of inter-State trade or commerce.

- (i) **Meaning of Import of Goods:** - Import of goods, means bringing goods into India from a place outside India. Thus, all imports shall be deemed as inter-State supplies and accordingly IGST shall be levied on the imported goods in addition to the applicable custom duties. IGST under section 3(7) of Customs Tariff Act, 1975 shall be chargeable on goods imported into India. (Charge is discussed in section 5 of IGST Act).

[3] Inter-state Supply of Services other than Import & Export of Services [Section 7(3) of IGST Act]

Where the supplier of service & recipient of service are located in India and where the location of the supplier and the place of supply are in -

- two different States;
- two different Union territories; or
- a State and a Union territory,

shall be treated as a supply of services in the course of inter - state trade or commerce i.e. Inter-state supplies.

Location of Supplier (Registered State of supplier)	Place of Supply	Interstate (Yes or No)
Maharashtra	Gujrat	Yes
Daman Diu	Andaman	Yes
Maharashtra	Daman Diu	Yes

Example - An entity registered in Delhi, avails professional services from CA located in Maharashtra.

[4] Import of Services – Interstate Supply [Section 7(4) of IGST Act]

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 i.e. Inter-state supplies. As per section 2(11) of IGST Act, 2017, “import of services” means the supply of any service, where -

- the supplier of service is located outside India;
- the recipient of service is located in India; and
- the place of supply of service is in India.

(Refer detailed discussion in supply chapter)

Example - A business imported advisory services from consultants located outside India.

[5] Other Categories of Inter-state supplies [Section 7(5) of IGST Act]

As per section 7(5), Supply of goods or services or both –

(a) When the supplier is located in India and the place of supply is outside India – Interstate Supply;

When supplier of goods or services is located in India and place of supply is outside India, the same would be termed as Inter-state supply. However, in order to be treated as export of goods or export of services it has to fulfil other conditions as prescribed in IGST Act.

Export of Goods: As per section 2(5) of IGST Act, export of goods means taking goods out of India to a place outside India.

Export of Services: As per section 2(6) of IGST Act, a supply of service shall be treated as exported when below conditions are cumulatively satisfied.

- (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 RBI.
- (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;

By virtue of this section read with place of supply provisions, it can be inferred that all exports of goods or services are inter-state supplies.

(Note: Export of goods & services are zero rated supplies as per section 16 of IGST Act.)

(b) to or by a Special Economic Zone developer or a Special Economic Zone unit – Interstate Supply

Detailed Analysis

Sr. No.	Transaction	Section	Analysis
1	Supply of "Goods" to SEZ	Section 16 of IGST Act	Inter-state supply, such transaction is a zero rated supply, supplier supplying goods to SEZ can claim refund of tax. Further, SEZ is not required to pay tax on the same as zero rating benefit shall be extended to SEZ so as to maintain essence of law.
2	Supply of "Services" to SEZ <i>(Note: Services supplied to SEZ would not be taxable under reverse charge mechanism, since the supply itself is zero rated, no tax shall be payable. Further, in GST there is no mechanism prescribed for SEZ to claim refund)</i>	Section 16 of IGST Act	Inter-state, such transaction is a zero rated supply, supplier supplying services to SEZ can claim refund of tax. Further, SEZ is not required to pay tax on the same as zero rating benefit shall be extended to SEZ so as to maintain essence of law.
3	Goods imported into SEZ	Section 53 of SEZ Act, 2005 read with Notification No. 64/2017 Cus dated 5 th July, 2017	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
4	Supply of Goods by SEZ to DTA	Section 30 of SEZ Act, 2005	Goods removed from SEZ to DTA are liable to custom duty and integrated tax (IGST) according to provisions as stated in SEZ Act and Customs Tariff Act.
5	Supply of Services by SEZ to DTA		Supply of services by SEZ to DTA will be liable to IGST. Zero rating is only when supplied to SEZ, however, when services are supplied by SEZ, they are taxable as there is no exemption in this regard.
6	Import of Services by SEZ from outside India for authorised operations	Notification 18/2017 - IT (R) dated 5 th July, 2017	Government has exempted services imported by a unit or a developer in the Special Economic Zone for authorised operations, from levy of IGST.
7	Supplies by SEZ to SEZ		Supplies by SEZ to SEZ would not be taxable in India, since as per SEZ Act, SEZ is treated as region located outside India, further, SEZ Act

Sr. No.	Transaction	Section	Analysis
			prevails all other laws. Thus, supply by SEZ to SEZ would not be liable to GST (<i>nor be treated as export</i>).

(c) Residual Provision - Supply in the taxable territory not being intra-State supply is an Inter State supply

This is a residuary clause and shall cover all supplies in taxable territory which are neither covered under any provisions [enumerated above] determining inter-State supplies nor are intra-State supplies.

Example: Supply of services by Intermediary located in India for foreign principle, the place of supply would be India as per section 13(8) of IGST Act, however, since recipient being outside India, the same cannot be treated as Intra-state supply [Section 8(2)]. Thus, it would be treated as inter-state supply, the place of supply shall be put as 99999 in GSTR 1.

2. ANALYSIS OF INTRA-STATE SUPPLY [SECTION 8 OF IGST ACT]

[1] Intra-state supply of goods [Section 8(1) of IGST Act read with Section 15 of IGST Act]

Where movement of goods is within India, and where the location of the supplier and the place of supply of goods are in the same state or same Union territory shall be treated as intra-State supply.

Exceptions to Section 8(1) [Proviso to Section 8(1) of IGST Act]

- (i) Supply of goods to or by a Special Economic Zone developer or a Special Economic Zone unit;
- (ii) Goods imported into the territory of India till they cross the customs frontiers of India; or
- (iii) Supplies made to a tourist referred to in section 15.

Notes: -

- (i) **Tourists & Inter-state supply:** - As per section 15 of IGST Act, 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.

Explanation to Section 15- For the purposes of this section, the term “tourist” means a person not normally resident in India, who enters India for a stay of not more than six months for legitimate non-immigrant purposes.

[2] Intra-state supply of services [Section 8(2) of IGST Act]

Where location of supplier & location of recipient is in India and supply of services where the location of the supplier and the place of supply of services are in the same State or same Union territory **shall be treated as intra-State supply**.

As per proviso to Section 8(2), intra-State supply of “services” shall not include supply of services to or by a Special Economic Zone developer or a Special Economic Zone unit. Thus, services supplied by or to SEZ would always be treated as inter-state supplies.

(Note - Goods excluded 3 items however, services exclude only one item)

Establishment of Distinct persons: -The two explanations provided in Section 8 are significant as the concept of distinct persons in Section 25(4) and (5) of the CGST Act is further clarified in stating that the following will also be distinct persons, namely: -

- establishment in India and an establishment outside India;
- establishment in a State or UT and an establishment outside that State or UT;
- establishment in a State or UT and any other establishment (registered separately) in the same State or UT.

Establishment’ may be interpreted as being similar to ‘fixed establishment’ which is defined in this Act in identical manner with the definition in section 2(50) of CGST Act. It refers to it being “a place with sufficient degree of permanence and suitable structure to supply services or to receive and use the services”.

As per Section 2(7) of IGST Act, “fixed establishment” means a place (other than the registered place of business) which is characterised by a sufficient degree of permanence and suitable structure in terms of human and technical resources to supply services or to receive and use services for its own needs.

As per explanation 2 to Section 8, 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.

(This explanation is valid for IGST Act wherever applicable)

Examples of Intra-state supplies: -

- (i) Services being provided by a Chartered Accountant located in Delhi to a company in Delhi is an intra - state supply of service.
- (ii) Services of stock audit provided to Registered person of Telangana, by CA of Maharashtra by visiting to its location, even if he has visited to Telangana, it is called as Inter-state supply.
(Place of supply provision will make this concepts clearer)

Department Clarification

Issue: - Services of short-term accommodation, conferencing, banqueting etc. provided to a SEZ developer/SEZ unit – shall be considered as Inter-state supply [Circular No. 48/22/2018 GST dated 14th June, 2018]

It is an established principle of interpretation of statutes that in case of an apparent conflict between two provisions, the specific provision shall prevail over the general provision. Accordingly, it will be an inter-state supply.

3. SUPPLY MADE IN TERRITORIAL WATERS OF INDIA [SECTION 9 OF IGST ACT]

Section 9 of the IGST Act provides that where the location of the supplier is in the territorial waters, it shall be deemed that location of such supplier is in the coastal State or Union Territory where the **nearest point of the appropriate baseline is located**. Similarly, in case where the place of supply is in territorial waters, the place of supply shall be deemed to be in the coastal State or Union Territory where the nearest point of the appropriate baseline is located.

4. CHARGING SECTION FOR INTER STATE SUPPLIES (SEC 5 OF IGST ACT)

Inter - state Supplies [Section 5(1) of IGST Act]: - As section 9(1) of CGST Act (& SGST Act) is a charging section of intra - state supplies, Section 5(1) is a charging section for inter - state supplies. The provisions of section 5 of IGST Act are exactly similar of section 9 of CGST Act. Further, IGST Rate on any inter-state supplies cannot be more than 40% on value of supply. IGST is sum total of CGST & SGST.

By Virtue of NN 03/2023 IT the supply of online money gaming shall be treated as the goods however, on import of which GST shall be collected as per section 5(1) of IGST Act (not as per customs). Supply of online money gaming is goods as it is defined in the definition of specific actionable claims (S. 2(102A) of CGST Act)

Sale of Petroleum products - Inter - state - to be taxed from date notified later [Section 5(2) of IGST Act]: - The central tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from date notified later.

Import of Goods into India - IGST Levied u/s Customs Act not under IGST Act [Proviso to Section 5(1)]: - Proviso to section 5(1) makes a very important exception in respect of “goods imported into India”. Import of goods is defined in section 2(10) in a manner identical with the definition under Customs Act in section 2(23). The important exception made under the proviso is the carve out from the levy under section 5 supplies involving import of goods and place such

transactions under Customs Act and not under IGST Act. In other words, goods imported into India will be liable to IGST but not under IGST Act instead under section 3(7) of Customs Tariff Act.

Section 5(3): Reverse Charge Mechanism:

Following additional category of supply of services is listed under Notification No. 10/2017- Integrated Tax (Rate) vide Section 5(3) of IGST Act on which GST shall be paid by the recipient on RCM basis.

Specified Service	Supplier	Recipient
Service supplied by any person who is located in a non-taxable territory to any person other than non-taxable online recipient (Refer Note (i) Below)	Any person located in a non-taxable territory.	Any person located in the taxable territory other than non-taxable online recipient.

(i) Analysis of Import of Services: -

As per Entry 1 of Notification 10/2017 – IT(R), service supplied by any person who is located in a non-taxable territory (Outside India) to any person **other than** non-taxable online recipient. It would be worth noting that who shall be considered as Non-taxable online recipient.

Non-Taxable Online recipient means any unregistered person receiving online information and database access or retrieval services located in taxable territory.

In simple words, if a person located outside India provides services to unregistered person located in India tax would be under FCM.

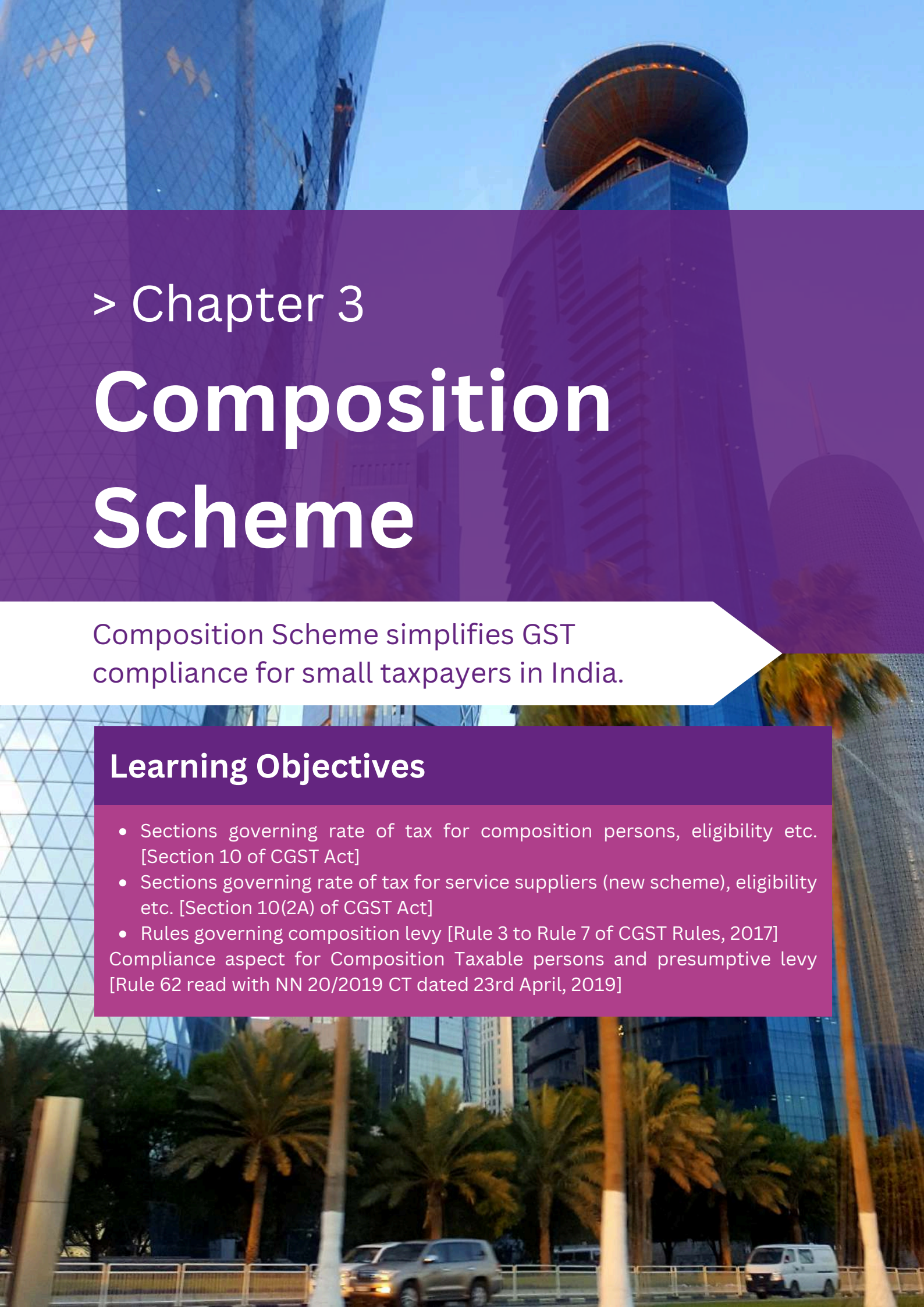
It is quite interesting to note that we have learnt in supply chapter that import of services for consideration whether or not for furtherance or in course of business would be treated as supply. On conjoint reading of Section 7 of CGST Act, read with entry no. 1 of Notification 10/2017 – IT(R) it brings us to conclusion that Import of services for consideration for furtherance or in course of business would be taxable under RCM. However, it had left us with a question that how GST will be paid on import of services for consideration for personal purposes.

It is pertinent to note entry no. 10(a) of Notification 9/2017 – Integrated Tax Rate (ITR) which is reproduced below for your ready reference.

Sr. No.	Services	Tax Rate
10	Services received from a provider of service located in a non- taxable territory by: - a) the Central Government, State Government, Union territory, a local authority, a governmental authority or an individual in relation to any purpose other than commerce, industry or any other business or profession This exemption would not apply for: - - Online information and database access or retrieval services (to be learnt in Place of supply) (Relevant Extract is reproduced)	Nil

Thus, it is very clear from above that even if import of services for consideration for personal purposes would be a supply but no tax would be payable (except OIDAR services & transportation of vessel).

We know that a person who has to pay GST under reverse charge has to take compulsory registration as per section 24 of CGST Act, 2017. Thus, it can be inferred that person importing services for personal purposes would not be liable to pay GST and accordingly no registration shall be taken.



> Chapter 3

Composition Scheme

Composition Scheme simplifies GST compliance for small taxpayers in India.

Learning Objectives

- Sections governing rate of tax for composition persons, eligibility etc. [Section 10 of CGST Act]
 - Sections governing rate of tax for service suppliers (new scheme), eligibility etc. [Section 10(2A) of CGST Act]
 - Rules governing composition levy [Rule 3 to Rule 7 of CGST Rules, 2017]
- Compliance aspect for Composition Taxable persons and presumptive levy [Rule 62 read with NN 20/2019 CT dated 23rd April, 2019]

Backdrop of Composition Scheme

Composition scheme is designed for small taxpayers to reduce their compliance burden. In GST once threshold u/s 22 is crossed, there comes 2 options for registration, normal or composition. In Normal scheme tax rate is higher, however ITC is allowed (subject to cond.). However, in composition scheme tax rate is lower but ITC cannot be availed. Most Importantly, tax cannot be collected from recipient.

Any person may avail composition scheme so as to **lower down its compliance aspect & pay tax at a nominal rate**. Further, composition person has to pay tax on quarterly basis by filing statement in form CMP 08 & file return annually in form GSTR 4, which reduces compliance aspect to a greater extent. It shall be noted that this scheme is an optional scheme available to eligible taxable person. In this chapter we are going to learn the following: -

Below is the analysis of beneficial scheme:

Supplier	We	Recipient	
8,000 1440 9,440	Normal Scheme Cost: 8,000 Profit: 2,000 Rs. 10,000 GST: 1,800 Rs. 11,800	Business (Normal) Cost: 10,000	Business will prefer
8,000 1440 9,440	Normal Scheme Cost: 8,000 Profit: 2,000 Rs. 10,000 GST: 1,800 Rs. 11,800	Consumer Cost: 11,800	
8,000 1440 9,440	Composition Scheme Cost: 9,440 Profit: 2,000 Rs. 11,440	Business Cost: 11,440	
8,000 1440 9,440	Composition Scheme Cost: 9,440 Profit: 2,000 Rs. 11,440	Consumer Cost: 11,440	Consumer will prefer

Aggregate Turnover (Section 10(1) of CGST Act)

Composition scheme is mainly intended to benefit small taxpayers. Govt. classifies small taxpayers with respect to their aggregate turnover in preceding financial year.

According to section 10(1) of CGST Act, composition scheme is available only to such persons whose **aggregate turnover** in preceding financial year **does not exceed Rs. 1.5 crores / 75 lakhs** (Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Uttarakhand) in preceding financial year (subject to certain conditions as discussed in subsequent paras). (As amended vide Notification 14/2019 – CT dated 7th March, 2019 w.e.f. 1st April, 2019) **(CODE: TSUNAM3)**

Notes: -

Analysis of Aggregate Turnover for Eligibility: - Aggregate Turnover of “Preceding Financial” Year for Determining Eligibility (not for payment of tax). (Aggregate Turnover shall be computed on all India PAN Basis)

Provision	Description
SECTION 2(6) OF CGST ACT	INCLUSIONS
	Value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis)
	Exempt Supplies (Non-GST, Nil Rated & Wholly exempted supplies)
	Exports of goods or services or both
	Inter-State supplies of persons having the same Permanent Account Number.
	To be computed on all India PAN Basis
Explanation 1 to section 10 of CGST Act.	First Supplies - Value of supplies made by such person from the 1 st day of April of a financial year up to the date when he becomes liable for registration.
SECTION 2(6) OF CGST ACT	EXCLUSIONS
	Central tax, State tax, Union territory tax, integrated tax and cess
Explanation 1 to section 10 of CGST Act.	Exempt supply by way of extending deposit, loan, advance where consideration is represented by interest or discount.

For the purposes of computing aggregate turnover of a person for determining his eligibility to pay tax under this section, the expression “aggregate turnover” shall include the value of supplies made by such person from the 1st day of April of a financial year up to the date when he becomes liable for registration. [Explanation 1 to section 10(1) of CGST Act.]

INTERLINKING: If composition person takes security services from other than body corporate, then reverse charge would not apply (Refer – Charge of GST Chapter)

(Most Commonly Asked Doubt - Why Inter-state supplies are added, when composition person is ineligible to do inter-state supplies)

Answer: - The data for computation of aggregate turnover shall be taken of preceding financial year. Thus, in preceding financial year, he might undertake inter-state supplies (by getting himself compulsorily registered under normal provisions). Once a person **becomes eligible** to opt for composition scheme, he shall not effect inter-state supplies, however there is no bar in him doing so in preceding financial year.

PERSONS INELIGIBLE TO OPT FOR COMPOSITION SCHEME [SECTION 10(2) OF CGST ACT]

In every Law, there are certain restrictions for availing beneficial schemes. Similarly, in composition scheme, the registered person shall not be engaged in certain type of supplies so as to enable himself for concessional scheme. The said restriction is mentioned in Section 10 of CGST Act. As per said section, the registered person shall be eligible to opt under this scheme if: -

- (a) Save as provided in sub-section (1), he is not engaged in the supply of services [Substituted w.e.f. 01-02-2019 vide N. No.2/2019-CT dt. 29-01-2019 clause (a) by CGST (Amendment) Act, 2018, vide Ministry of Law and Justice Notification dt. 29-08-2018]**

Notes: -

This clause states that a person who is engaged in supply of services (other than restaurant services & outdoor catering services) cannot opt for composition scheme. The composition scheme is basically for

- ❖ Manufacturer – Supplier
- ❖ Trader
- ❖ Restaurant & Outdoor catering service provider.

(RESTAURANT SERVICE PROVIDERS CAN OPT FOR COMPOSITION SCHEME)

Thus, any supplier other than above 3 would not be eligible to opt for the scheme. Service suppliers being other than restaurant & catering would not be eligible to opt.

However, understanding the needs of trade & industry, govt. has allowed suppliers to provide nominal services (other than restaurant service provider) along with other eligible supplies which is explained as below: -

- (i) Limit upto which services (other than restaurant & outdoor catering services) can be provided [Proviso 2 to Section 10(1)]: -**

A person who opts to pay tax under composition scheme may supply services (other than restaurant & outdoor catering services), of value not exceeding

- 10% of Turnover in a State or Union territory in the preceding financial year or,

- ₹ 5,00,000.
whichever is higher [Proviso 2 to Section 10(1)].

As per Explanation to Section 10, in order to calculate 10% of “turnover in state or union territory”, the value of exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount shall not be considered [Explanation to Section 10(1)]

For example: - Mr. A, a trader had turnover in state of Rs. 14,79,500 in preceding financial year, which includes interest earned of Rs. 4,00,000/-; how much services can be provided in current financial year.

Mr. A can provide services upto,
Rs. 1,07,950/- {[14,79,500 (-) 4,00,000] x 10%}
Rs. 5,00,000/-

whichever is higher i.e., Rs. 5,00,000/-. Mr. A can provide services (other than restaurant & outdoor catering) upto Rs. 5,00,000/- in current financial year along with trading of goods.

- (b) He is not engaged in making any supply of goods or services which are not leviable to tax under this Act.

Notes: -

- (i) **Meaning of term “not leviable to tax”:-**

The term “not leviable to tax” would here mean non-taxable supplies which are specified in Section 9(1) & 9(2) of CGST Act i.e., Petroleum crude, natural gas, aviation turbine fuel, HSD, motor spirit, Alcoholic liquor for human consumption.

- (ii) **Supply of taxable goods along with non-taxable goods: -**

It is quite obvious that these products do not attract GST, hence question of registration does not arise. However, if a person has mixed turnover from normal supplies along with 9(1) & 9(2) products, he would be ineligible to opt for composition scheme. It shall be noted that there is **NO RESTRICTION IN PROVIDING OTHER EXEMPT SUPPLIES** but there is **RESTRICTION IN PROVIDING NON-TAXABLE SUPPLIES** like petroleum products and liquor for human consumption.

- (c) He is not engaged in making any inter-State outward supplies of goods or services;

Notes: -

- (i) **Analysis of “Inter-state Outward supplies”:-**

There is stringent restriction on making of inter-state outward supplies. Inter-state outward supplies would mean a transaction wherein location of supplier & place of supply is in different state or different union territory or one state and another UT. Thus, a composition person would be a supplier of goods or services in its own state. However, it is worth noting that **HE CAN PURCHASE GOODS OR SERVICES**

FROM ANOTHER STATE. Inter-state supply is mentioned in section 7 of IGST Act, 2017.

In view of aforementioned discussions,

- Supplier exporting goods or services;
 - Supplier transferring / supplying goods or services to its branch outside the state
 - Supplier of goods or services to SEZ
- cannot opt for composition scheme

(d) he is not engaged in making any supply of services through an electronic commerce operator (ECO) who is required to collect tax at source under section 52

Notes: -

(i) Person can supply goods through ECO under composition scheme on satisfaction of certain conditions:

- (a) 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
- (b) The electronic commerce operator shall not allow any inter-State supply of goods through it by the said person;
- (c) The electronic commerce operator shall collect tax at source Section 52(1) of CGST 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
- (d) 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.

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.

[ECO would be liable to collect tax at source if consideration is collected by him from customer on supplies other than 9(5) of CGST Act / 5(5) of CGST Act. If consideration on a transaction is directly collected by supplier, then ECO shall not be liable to collect tax at source.]

(e) he is not a manufacturer of such goods as may be notified by the Government on the recommendations of the Council

Notes: -

The scheme is available to manufacturer supplier, however, below manufacturers (not traders) would be ineligible to opt for composition scheme.

(i) Such notified manufacturers are

Sr. No.	Classification	Description
1	2105 00 00	Ice cream and other edible ice, whether or not containing cocoa
2	2106 90 20	Pan masala
3	24	Tobacco and manufactured tobacco substitutes
4	2202 10 10	Aerated Waters [Inserted vide Notification 43/2019 CT dated 30 th September, 2019]
4	6815	Fly ash bricks; Fly ash aggregates; Fly ash blocks
5	6901 00 10	Bricks of fossil meals or similar siliceous earths
6	6904 10 00	Building bricks
7	6905 10 00	Earthen or roofing tiles

(ii) It is relevant to note that only manufacturers are not eligible to opt for this scheme, **TRADERS OF THESE PRODUCTS CAN OPT FOR COMPOSITION SCHEME**

(f) **he is neither a casual taxable person nor a non-resident taxable person**
[Ins. w.e.f. 01-01-2020 (vide N.No.01/2020-CT dt. 01-01-2020) by the Finance (No. 2) Act, 2019 (S. 93) dt. 01-08-2019; earlier it was in rules]

Notes: -

(i) **Meaning of Casual Taxable Person (CTP): -**

A person would be regarded as a casual taxable person if he undertakes supply of goods or services or both occasionally, and not on a regular basis in the course or furtherance of a "business" that exists either as principal or agent or in any other capacity in a State/ Union Territory where he has no fixed place of business.

Thus, a trader, businessman, service provider, etc. in one state undertaking occasional transactions like supplies made in trade fairs in another State would be treated as a 'casual taxable person' in that other state and will have to obtain registration in that capacity and pay tax. E.g., A jeweller carrying on a business in Mumbai, who conducts an exhibition-cum-sale in Delhi where he has no fixed place of business, would be treated as a 'casual taxable person' in Delhi.

It is to be noted that, in order to be a CTP, a business in host state shall be normally registered and occasionally (like exhibitions) such person shall undertake supply in any other state.

(ii) **Non - resident taxable person (N RTP): -**

The meaning of the term "non-resident taxable person" covers all person who undertake transactions involving supply of goods or services or both, whether or not such supplies are taxable, so long as such person neither has a fixed place of business nor residence in India. However, it is worth noting that "supply", in itself includes furtherance in business irrespective whether definition of non-resident taxable person does not include it.

As per proviso to section 10 of CGST Act, where more than one registered person is having the same Permanent Account Number (issued under the Income-tax Act, 1961), the registered person shall not be eligible to opt for composition scheme unless all such registered persons pay tax under composition scheme.

Suppliers of Specified Actionable claim restricted from obtaining composition registration:

As per NN 50/2023 CT, with effect from the 1st October, 2023, a specific exclusion shall be made within Notification No. 66/2017-Central Tax. The exclusion pertains to registered persons who are engaged in the supply of specified actionable claims*, as defined in S. 2(102A) of CGST Act, 2017.

This exclusion signifies that registered persons dealing with specified actionable claims, which have been distinctly defined, will not be eligible for the composition levy under section 10 of the CGST Act.

***Specific Actionable claims**

“Specified actionable claim” as defined in section 2(102A) of the CGST Act, 2017 means the actionable claim involved in or by way of: -

- (i) betting;
- (ii) casinos;
- (iii) gambling;
- (iv) horse racing;
- (v) lottery; or
- (vi) online money gaming;

RATE OF TAX UNDER COMPOSITION SCHEME (RULE 7)

COMPOSITION TAX RATES IN LIEU OF 9(1) OF CGST ACT, 2017: - (AS AMENDED BY CGST AMENDMENT ACT, 2018 W.E.F. 01.02.2019) [Section 10(1) r/w Rule 7]		
Type of person	CGST Rate	SGST Rate
(a) Manufacturer (other than notified manufacturers)	0.5% of Total Turnover in State or Union Territory	0.5% of Total Turnover in State or Union Territory
(b) Restaurant & outdoor catering services	2.5% of Total Turnover in State or Union Territory	2.5% of Total Turnover in State or Union Territory
(c) Other Suppliers (E.g. – Traders)	0.5% of <u>Taxable</u> supplies of goods and services in State or Union Territory	0.5% of <u>Taxable</u> supplies of goods and services in State or Union Territory
ON RCM SERVICES TAKEN – NORMAL RATE WOULD BE APPLICABLE		
Summary: Total Turnover in State = All Taxable Supplies made within State/UT + Exempt Supplies* (except interest & discount turnover)		
(-) RCM inward supplies (-) First Supplies		

SCHEME FOR SERVICE SUPPLIERS

INTRODUCTION

- 1. Effective Date:** Scheme is available from 1st April, 2019.
- 2. Eligibility:** Aggregate Turnover in preceding Financial shall not exceed Rs. 50,00,000/- [Exclude exempt supply by way of extending deposit, loan, advance where consideration is represented by interest or discount (Expl. 1 to S. 10(2A) of CGST)]
- 3. Mutually Exclusive Schemes:** If any person is eligible (even if not opted) for composition scheme u/s 10(1) then such person cannot take Section 10(2A). Please note that, we can supply goods along with services in this scheme. For example, if there is a business of hairstylist, then that business can sell beauty products as well, as the main business is of services.
- 4. Rate of Tax:** As per Amended Rule 7 of CGST Rules, GST shall be paid @ 6% of total turnover in State or Union Territory [CGST 3%, SGST 3%]

Note:

Supplier of goods engaged primarily in services can opt for composition scheme u/s 10(2A)

INELIGIBLE CRITERIA

Below persons are ineligible to opt for Composition Scheme:

- Not to be engaged in selling **non-taxable goods or services**
- Not to be engaged in **Inter-state supply** of goods or services.

- (iii) Not to be engaged in supplying through **Electronic Commerce Operator** liable to collect tax at source u/s 52 of CGST Act
- (iv) Not to be engaged in supply of Tobacco, Ice-cream & Pan-masala, Aerated Waters (TIPA), Fly ash bricks; Fly ash aggregates; Fly ash blocks, Building bricks, earthen tiles, roof tiles bricks of fossil meals or similar siliceous earths (Not even trading)
- (v) Such person shall not be a Casual Taxable person or Non-resident taxable person

OTHER PROVISIONS OF SECTION 10

- 1) **Option of Composition / Presumptive Scheme Lapses** if Aggregate **Turnover exceeds ₹ 1.5 crore, 75 lakhs or 50 lakhs** (as the case may be) in current financial year **[S. 10(3)]**
- 2) Tax **cannot be collected** from a recipient, by person opting to pay tax under section 10 **[S.10(4)]**
- 3) If a taxable person has paid tax under the composition scheme though he is not eligible for the scheme, the person would be liable to pay penalty and provisions of sec 73, 74 or **74A** of CGST Act shall be applicable for determination of tax and penalty. **[Section 10(5)]**

Where more than one registered person is having the same PAN, the registered person shall not be eligible to opt for the scheme unless **all such registered persons opt to pay tax under that sub-section** [Proviso to Section 10]

RULES GOVERNING COMPOSITION LEVY

Important Rules in regards to Composition Scheme:

Rules	Description
3	Intimation to pay tax under composition scheme, shall be filed prior to the commencement of the Financial Year (No need to file fresh intimation every year)
3	❖ ITC shall be reversed if regd. person switches from Normal scheme to composition / presumptive scheme. ❖ GST ITC-03 shall be filed within a period of 60 days from the commencement of the relevant financial year. ❖ Details of Stock to be furnished within 90 days from availing option
3	Single Application deemed to be application for all POB under same PAN
5	(a) No CTP no NRTP (b) Normal rate of tax for supplies taxable under RCM (c) No manufacturing of notified products during PFY (d) Mention the words "Composition taxable person, not eligible to collect tax on supplies at the top of the bill of supply" and (e) Mention the words "composition taxable person" on every notice or signboard
Rule 6	Decoded provision
(1)	Composition scheme valid until conditions are satisfied

(2)	Person is required to pay tax under regular scheme from the day he ceases to fulfil the conditions prescribed for composition levy.
(3)	Person to file application in form GST CMP 04 before withdrawing
(4)	Officer will issue notice in Form GST CMP 05
(5)	SCN to be replied in GST CMP 06 within 15 days of receipt
(6)	Furnish stock details in GST ITC 01 w/i 30 days of withdrawal of option [Person is required to pay tax under regular scheme from the day he ceases to fulfil the conditions prescribed for composition levy. Further, he shall intimate for withdrawal from scheme within 7 days of occurrence of such event.]
(7)	Intimation of withdrawal to be deemed Intimation of all Place of business
(8)	Cancellation of composition scheme by officer, Differential tax and interest be payable with penalty u/s 73/74
Departmental Clarification: In case of denial of option to opt for composition scheme, it has been clarified that effective date of such denial shall be from a date including any retrospective date. However, such effective date shall not be prior to date of contravention of provisions of CGST Act/Rules [Circular 77/51/2018 – GST dated 31st December, 2019]	

RETURN FILING AND OTHER COMPLIANCES

Sr. No.	Compliance	Form No.	Due date
1	Payment of Tax (Quarterly)	CMP 08	18 th Day of month succeeding quarter
2	Filing of return (Annually)	GSTR 4	30 th June of next financial year [e.g., For FY 2018-19, it would be 30 th June, 2019] <i>Consolidated details of sales & Invoice wise details of purchases</i>
3	Annual Return (after finalisation of Books of Accounts)	GSTR 9A	31 st December of next financial year

> Chapter 4

Time of Supply

Time of Supply determines when GST liability arises.

Learning Objectives

- Time of Supply for supply of goods taxable under forward charge and reverse charge (Section 12 of CGST Act)
- Time of Supply for supply of services taxable under forward charge and reverse charge (Section 13 of CGST Act)
- Time of Supply for Change in Rate of Tax (Section 14 of CGST Act)



Backdrop of Time of Supply

Taxable event in GST is Supply as recognized in Section 7 of CGST Act, 2017. Time of supply (not literally time it can be understood as Date) means the point in time when goods have been deemed to be supplied or services have been deemed to be provided. Time of supply (TOS) is important component to be determined as it is the date when the tax liability of a registered person triggers / gets crystallized. There may be series of events occurring in relation to a supply viz. invoice date, payment date or provision of service / supply of goods or such other dates. The date (among above mentioned events) on which it is deemed that supply has been provided is it is TOS. The provisions of TOS are contained in Section 12, 13 & 14 of CGST Act, 2017.

TIME OF SUPPLY OF GOODS - FORWARD CHARGE [SECTION 12(2)]

APPLICABILITY OF SECTION 12 - TIME OF SUPPLY OF GOODS: [SECTION 12(1)]

As per section 12(1) of CGST Act, the liability to pay tax on “goods” shall arise at the time of supply, as determined in accordance with the provisions of this section. Schedule II of CGST Act shall also be given due consideration in classifying an activity as goods or services.

Normal Supply of Goods

As per section 12(2) of CGST Act, the time of supply of goods shall be the earlier of the following dates, namely:

- (a) the **date of issue** of invoice by the supplier or
- (b) **the last date** on which he is required, under section 31, to issue the invoice with respect to the supply;
- ~~(c) the date on which the supplier receives the payment with respect to the supply**~~

**Clause (b) of Section 12(2) has been omitted vide Notification 66/2017 - Central Tax dated 15th November, 2017; since it has not taken effect through any of CGST Amendment Act, the provision continues to be in act, however, it is not to be referred.

Last Date to Issue Invoice:

The Invoice shall be issued at the time of:

- (a) **Where the supply involves movement of goods:** Removal of goods for supply to the recipient,
- (b) **Any other case:** Delivery of goods or making available thereof to the recipient, in any other case, [Section 31(1)]

Notes:

- (i) Advances received for supply of goods not to be taxed on receipt basis
- (ii) **Meaning of "Removal" [Section 2(96) of CGST Act]:** As per Section 2(96) of CGST Act, "removal" in relation to goods, means
 - (a) dispatch 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;

Notably, collection from factory of supplier would also be treated as removal.

Thus, where supply involves movement of goods, the due date to issue tax invoice would be "removal" as specified above. **Example:** Mr. A, sent goods to Mr. B the goods were removed from factory on 4th February and reached the recipient on 7th February. The invoice should be issued upto 4th February.

- (iii) **Meaning of "Delivery" [Not Defined in GST Law]:** The term delivery is not defined in GST Law. The "delivery" would gain its importance in cases where "supply did not involve movement of goods." In trade parlance and in context of these provisions, delivery would mean where the recipient is handed over the control over the goods and ownership has been passed on.

Example: Mr. A got the contract to construct immovable furniture at the premises of B, Mr. A took all the required furniture and accessories at premises of B. He constructed Furniture from 4th February to 7th February. On 7th February the work was completed, thus it would be termed as delivery is completed on 7th February.

Goods Sent on Approval Basis

As per section 12(2) of CGST Act, the time of supply of goods shall be the earlier of the following dates, namely:

- (a) the **date of issue** of invoice by the supplier or
- (b) **the last date** on which he is required, under section 31, to issue the invoice with respect to the supply;

Last Date to Issue Invoice [S. 31(7)]:

- (i) Date of Acceptance or,
- (ii) 6 months from removal

whichever is earlier

Specified Actionable Claims

The persons making supply of specified actionable claims shall be liable to pay tax at the time of

- (i) Date of invoice or
- (ii) Receipt of payment for such supplies by the suppliers.

[Notification No. 50/2023 CT dated 29.09.2023]

As per explanation 1, “supply” shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment.

As per explanation 2 to Section 12(2), for the purposes of clause (b),

The date on which the supplier receives the payment shall be earlier of

- ❖ The date on which the payment is entered in his **books of account (of supplier)** or,
- ❖ The date on which the payment is **credited to his bank account**.

Continuous Supply of Goods

As per section 12(2) of CGST Act, the time of supply of goods shall be the earlier of the following dates, namely:

- (c) the **date of issue** of invoice by the supplier or
- (d) **the last date** on which he is required, under section 31, to issue the invoice with respect to the supply;

Last Date to Issue Invoice [S. 31(4)]

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 [Section 31(4)]. (Please note in case where statement of accounts or successive payments both are involved, whichever is more frequent can be taken.)

Excess Payment up to ₹ 1,000 – [Proviso 1 to Section 12(2)]

Where supplier receives an amount up to Rs. 1000 in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess amount shall, at the option of the said supplier, be the date of issue of invoice relating to such excess amount (not receipt of same)

It shall be noted that currently the same is irrelevant for “supply of goods” as entire advances received in respect of goods are not taxable on receipt basis by virtue of notification 66/2017 - CT dated 15th November, 2017.

However, for the purpose of supply of goods, the words “as the case may be, the payment,” does not hold relevance, since advances are not taxable.

**TIME OF SUPPLY OF GOODS - REVERSE
CHARGE [SECTION 12(3)]**

As per section 12(3) of CGST Act, 2017; in case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earliest of the following dates, namely: -

- (a) the date of the receipt of goods; or
- (b) the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or
- (c) 31st day from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier:

Proviso (Residual): However, when it is not possible to determine the time of supply under clause (a) or clause (b) or clause (c), the time of supply shall be the date of entry in the books of account of the recipient of supply.

Notes: -

- (a) **Advance paid for RCM goods | Taxable:** If the advance is paid to person supplying goods taxable under reverse charge, then Notification 66/2017 - CT is not applicable., meaning thereby tax shall be payable under reverse charge, if a person procures goods which are taxable under reverse charge.

**TIME OF SUPPLY FOR SUPPLY OF GOODS
BY VOUCHERS [SECTION 12(4)]**

In case of supply of vouchers by a supplier, the time of supply shall be

- (a) the date of issue of voucher, if the supply is identifiable at that point; or
- (b) the date of redemption of voucher, in all other cases.

Notes: -

1. Vouchers are defined in the Act as “an instrument where there is an obligation to accept it as consideration or part consideration for a supply of goods or services or both and where the goods or services or both to be supplied or the identities of their potential suppliers are either indicated on the instrument itself or in related documentation, including the terms and conditions of use of such instrument” and examples of voucher are coupon, token, ticket, license, permit, pass.

**RESIDUARY PROVISION TO DETERMINE
TIME OF SUPPLY [SECTION 12(5)]**

Where it is not possible to determine the time of supply under the provisions of 12(2) or 12(3) or 12(4), the time of supply shall -

- (a) in a case where a periodical return has to be filed, be the date on which such return is to be filed; or
- (b) in any other case, be the date on which the tax is paid.

Notes: -

1. In clause (a) it is unclear whether periodical return means GSTR - 1 or GSTR 3B, a logical assumption can be taken as GSTR 3B as details of sales as well as purchases are furnished in the said return.
2. Payment of tax shall mean, payment made in cash or through input tax credit

TIME OF SUPPLY - LATE PAYMENT CHARGES [SECTION 12(6)]

Charges imposed for delay in payment of consideration will enjoy the facility of time of supply being **date of receipt of the charges imposed**.

- ❖ The rate of tax on such interest or late fees will be same as the product sold.
- ❖ The interest amount would always be considered as including GST; thus, we have to reverse calculate.

The time of supply for supply of goods would be determined as per section 12(2) whereas, time of supply for late payment shall be determined as per Section 12(6) of CGST Act.

TIME OF SUPPLY (TOS) FOR SUPPLY OF SERVICES [SECTION 13]

The liability to pay tax on services shall arise at the time of supply, as determined in accordance with the provisions of this section. Schedule II of CGST Act shall also be given due consideration in classifying an activity as goods or services.

(1) Time of Supply for Supply of Services under Forward Charge [Section 13(2) of CGST Act]

The time of supply of services shall be the earliest of the following dates, namely: -

If the invoice is issued within the period prescribed:

- (a) the date of issue of invoice by the supplier under section 31 or
- (b) the date of receipt of payment, whichever is earlier; or

If the invoice is not issued within the period prescribed:

- (a) the date of provision of service, or
- (b) the date of receipt of payment, whichever is earlier; or

In case where it is not possible to determine Time of supply as per above, the time of supply shall be the date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or clause (b) do not apply.

Amount received upto ₹ 1,000/- in excess of invoice amount: However, where the supplier of taxable service receives an amount up to one thousand rupees in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess amount shall, at the option of the said supplier, be the date of issue of invoice relating to such excess amount.

Notes: -

Time - Limit to issue tax invoice [Section 31 r/w Rule 47 of CGST Rules]

Sr. No.	Scenario	Last Date to Issue Tax Invoice [Section 31 of CGST Act]
1	Supply of services by any person other than bank, NBFC, FI, Insurance companies [Rule 47]	Within 30 days of supply of services
2	Supply of services by any bank, NBFC, FI, Insurance companies [Rule 47]	Within 45 days of supply of services
3	Continuous Supply of Services [S. 31(5) of CGST Act]	(a) Where the due date of payment is ascertainable from the contract, the invoice will 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 will be issued before or at the time when the supplier of services receives the payment. (c) When the payment is linked to the completion of an event, the invoice will be issued on or before the date of completion of that event.
4	Cessation of supply of service before completion of service [S. 31(6) of CGST Act]	At the time when the supply ceases and such invoice shall be issued to the extent of the supply made before such cessation <i>A contract for supply of professional services was entered for ₹ 5,00,000 for the period of two months on 20th July 2017. However, on 16th August 2017, the recipient informed the supplier that he is not willing to receive any more services under the contract. Both of them mutually agree that the services provided till date can be valued at ₹ 3,50,000. The invoice for this was issued on 20th August 2018 and the payment was made by the recipient on 25th August 2018.</i>

Sr. No.	Scenario	Last Date to Issue Tax Invoice [Section 31 of CGST Act]
		<i>Answer: Here the cessation of supply of services occurs on 16th August 2017. The date by which the invoice should have been raised was also 16th August 2017. However, the invoice was issued on 20th August 2017 which is after the prescribed time period. So, the time of supply will be the earlier of the date of completion of service (16th August 2017) and the date of payment (25th August 2017) which will be 16th August 2017.</i>

Continuous supply of service: -

There are three important conditions to be satisfied in order to be a continuous supply of services: -

- (a) The services should be provided continuously or on recurrent basis
- (b) The contract period should be exceeding three months
- (c) The payment obligations should be periodical

For instance, an annual maintenance contract, construction contract etc. may be considered as continuous supply of services if the aforesaid conditions are satisfied. As stated in the context of goods, continuity of supply does not imply continuous supply.

If each transaction is concluded satisfactorily, there cannot be a continuous supply. There must be something that cause the mere performance and insufficient to conclude the contractual performance of supplies. Merely delaying the invoicing cannot imply continuous supply.

The date of receipt of payment shall be the date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank account, whichever is earlier.

(2) Time of Supply for Supply of Services under Reverse Charge [Section 13(3) of CGST Act]

The time of supply under reverse charge for services is basically divided into two parts, first one being services under 9(3)/9(4) & 5(3)/5(4) except import of services from associated enterprises located outside India & second one being import of services from associated enterprise located outside India.

Part "A" - Time of Supply reverse charge services other than Associate Enterprises Outside India

Time limit to issue self-invoice: As per rule 47A of CGST Rules "Notwithstanding anything contained in rule 47, where an invoice referred to in rule 46 is required to be issued under 31(3)(f) of CGST Act (i.e., Self invoice) by a registered person, who is liable to pay tax under reverse charge, he shall issue the said invoice **within a period of thirty days from the date of receipt of the said supply of goods or services**, or both, as the case may be.

The new rule mandates a 30-day deadline for issuing tax invoices under RCM, ensuring clear compliance requirements for businesses.

As per Section 13(3) in case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earlier of the following dates, namely: –

- (a) the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or
- (b) 61st Day from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier, in cases where invoice is required to be issued by the supplier;
- (c) the date of issue of invoice by the recipient, in cases where invoice is to be issued by the recipient

Thus, we can conclude that,

Time of Supply for Services from Unregistered Suppliers: This is determined by the earlier of

- (a) the date of payment recorded in the recipient's accounts or debited from their bank account, or
- (b) the date the recipient issues the invoice.

Time of Supply for Services from Registered Suppliers: This is determined by the earlier of

- (a) the date of payment recorded in the recipient's accounts or debited from their bank account, or
- (b) 61st day after the invoice date issued by the supplier.

Notes:

1. Date of payment as entered in the books of account of the recipient (**not supplier**) is relevant here as recipient is the taxable person.
2. Payment to a supplier whose supplies are taxable under reverse charge are an exception to 180 days rule, meaning thereby even if payment is made later than 180 days, ITC availed on payment of tax under reverse charge shall not be reversible. [Section 16].

Part "B" - Time of Supply reverse charge services Associate Enterprises Outside India [Proviso to 13(3)]: -

In case of supply by associated enterprises, where the supplier of service is located outside India, the time of supply shall be the date of entry in the books of account of the recipient of supply or the date of payment, whichever is earlier.

Notes: -

1. The government here has not clarified, date of which entry shall be taken, whether receipt of service or payment entry. However, a logical presumption can be taken as date of booking of invoice.
2. Important Note: - Time of supply for services supplied by way of Transfer of Development rights or FSI for Construction of Project which are taxable under RCM is different from general provisions.

(3) Time of Supply for Supply of Services by Vouchers [Section 13(4) of CGST Act]

In case of supply of vouchers by a supplier, the time of supply shall be—

- (a) the date of issue of voucher, if the supply is identifiable at that point; or
- (b) the date of redemption of voucher, in all other cases.

(4) Residuary provision to Determine Time of Supply [S. 13(5) of CGST Act]

Where it is not possible to determine the time of supply under the provisions of 13(2) or 13(3) or 13(4), the time of supply shall -

- (a) in a case where a periodical return has to be filed, be the date on which such return is to be filed; or
- (b) in any other case, be the date on which the tax is paid.

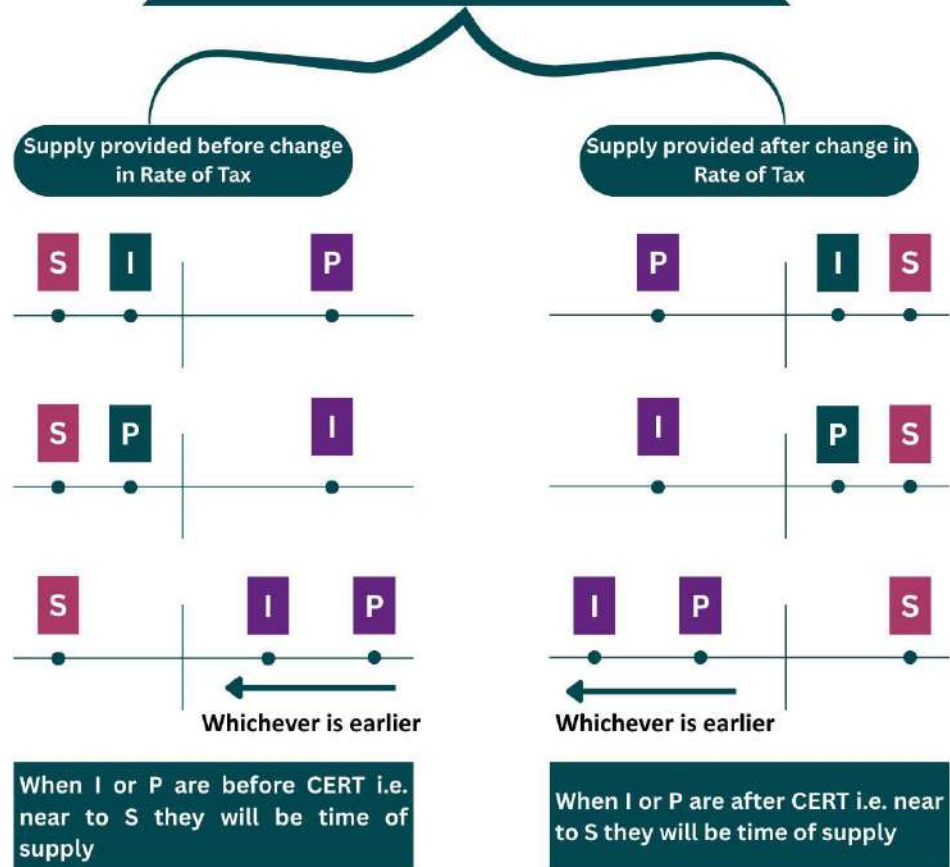
Notes: -

1. In clause (a) it is unclear whether periodical return means GSTR - 1 or GSTR 3B, a logical assumption can be taken as GSTR 3B as details of sales as well as purchases are furnished in the said return.
2. Payment of tax shall mean, payment made in cash or through input tax credit

(5) Time of Supply - Late Payment charges [Section 13(6) of CGST Act]

Charges imposed for delay in payment of consideration will enjoy the facility of time of supply being date of receipt of the charges imposed, that is, cash-basis of payment of GST.

4. TOS IN CASE OF CHANGE IN RATE EFFECTIVE OF TAX (CERT) S. 14 OF CGST



Section 14 is non-obstante to anything contained in section 12/13, meaning thereby, in case of change in rate of tax, section 14 will prevail over section 12/13. Example: If rate has been changed from 5% (Service date) to 12% (Invoice date), service provider purposely issued invoice after 30 days so that time of supply would be date of service and rate applies 5%, however, he cannot do so due to non-obstante clause in section 14

(S – Supply of goods & services, I – Date of issue of Tax Invoice, P – Receipt of Payment, Line indicates date of change in Rate of tax, and Grey Box Indicates Time of Supply)

The date of receipt of payment if payment (P) is credited

If credited within 4 Working Days from CERT (Incl. Date of CERT): -

- ❖ Date on which the payment is entered in the books of account of the supplier or;
- ❖ The date, on which the payment is credited to his bank account, whichever is earlier

After 4 working days from Change of Rate of Tax

- ❖ Shall be date on which payment is credited in Bank account.

Clarification on time of supply of HAM (Hybrid Annuity Model) projects [Circular No. 221/15/2024 GST dated 26th June, 2024]

Brief Introduction to Circular: Before understanding the circular relating to time of supply, let us first understand what is this project all about in simple words. For example, M/s. ABC Ltd. is a road developer and has awarded a project to construct National Highway. NHAI (National Highway Authority of India) is a responsible Authority. M/s. ABC Ltd. quoted 500 crores for construction of Highway. In HAM Project, 40% cost is financed by NHAI, payable in 15-20 annual instalments, meaning thereby, $500 \times 40\%$ / say 20 i.e., every year Rs. 10 crores. However, since NHAI is paying in instalments, M/s. ABC will demand, interest for the period payments. The interest on the Hybrid Annuity Model projects will be payable on the reducing balance of project completion cost. In this circular we will learn the time of supply of such instalment payments received by ABC Ltd.

In HAM contract, the payment is made spread over the contract period in installments and payment for each installment is to be made after specified periods, or on completion of an event, as specified in the contract. The same appears to be covered under the 'Continuous supply of services' as defined under section 2(33) of the CGST Act, 2017.

It is clarified that the tax liability on the concessionaire under the HAM contract, including on the construction portion, would arise at the time of issuance of invoice, or receipt of payments, whichever is earlier, if the invoice is issued on or before the specified date or the date of completion of the event specified in the contract, as applicable. If invoices are not issued on or before the specified date or the date of completion of the event specified in the contract, tax liability would arise on the date of provision of the said service (i.e., the due date of payment as per the contract), or the date of receipt of the payment, whichever is earlier. It is also clarified that as the installments/annuity payable by NHAI to the concessionaire also includes some interest component, the amount of such interest shall also be includible in the taxable value for the purpose of payment of tax on the said annuity/installment in view of the provisions of section 15(2)(d) of the CGST Act, 2017.

Clarification on time of supply of services of spectrum usage and other similar services under GST

Under the spectrum (Spectrum services refer to services that use radio waves, or "spectrum," to send data wirelessly. This includes services like mobile phone networks, Wi-Fi, TV broadcasts, and radio.) allocation model followed by Department of Telecommunications (DoT), bidder (the telecom operator) bids for securing the right to use spectrum offered by the Government. Here, service provider is the Government of India (through DoT) and service recipient is the bidder/telecom operator. The GST is to be discharged on the supply of spectrum allocation services by the recipient of services (the telecom operator) on reverse charge basis.

In case where full upfront payment is made by the telecom operator, GST would be payable when the payment of the said upfront amount is made or is due, whichever is earlier.

In case where deferred payment is made by the telecom operator in specified installments, same shall be considered as 'continuous supply of services' as defined under section 2(33),

since the supply of services (spectrum usage) is agreed to be provided by the supplier (DoT) to the recipient (telecom operator) continuously for a period which is exceeding three months with periodic payment obligations.

Further, in the given case, since the date of payment to be made by the telecom operator to DoT is clearly ascertainable from the relevant documents, invoice shall be issued in accordance with the provisions of section 31(5)(a). As per this section, in cases of continuous supply of services, where the due date of payment is ascertainable from the contract, the invoice shall be issued on or before such due date of payment.

Accordingly, tax invoice will be required to be issued in respect of the said supply of services, on or before such due date of payment as per the option exercised by the telecom operator. Thus, in this case, GST would be payable as and when the payments are due or made, whichever is earlier.

It is also clarified that the similar treatment regarding the time of supply, may apply in other cases also where any natural resources are being allocated by the Government to the successful bidder/ purchaser for right to use the said natural resource over a period of time, constituting continuous supply of services, with the option of payments for the said services either through an upfront payment or in deferred periodic instalments over the period of time.

> Chapter 5

Value of Supply

Value of Supply determines the taxable amount under GST.

Learning Objectives

- Value of Taxable Supply (hereinafter may be referred as “VOS”) [Section 15 of CGST Act]
- Valuation Rules (Rule 27 to 31 of CGST Rules)
- Valuation Mechanism for other suppliers (Rule 32)
- Concept of Pure Agent under GST (Rule 33)
- Rate of Exchange & Price cum tax (Rule 34 & Rule 35)

Chapter IV of CGST Act:
Backdrop of Value of Supply under GST: -

We have learnt how to treat any activity as a supply, and what kind of tax shall be levied depending upon location of supplier and place of supply. Now we are moving on to a new chapter wherein we will be learning how to determine value of supply. GST shall be calculated as a percentage of value of Supply; thus, it is quite relevant to note the provisions of value of supply.

Consideration is quid pro quo in a contract and price is the consideration expressed in money terms. Value is the price prevalent when a transaction takes place under controlled conditions. We have learnt in “Charge of GST” that GST shall be levied on “Value of supply,” it is only here that we explore value of supply provisions in detail. In this chapter we will learn how to compute value of supply in various conditions, inclusions, and exclusions in value of supply & CGST Rules governing value of supply.

**1. VALUE OF TAXABLE SUPPLY (HEREINAFTER MAY BE
REFERRED AS “VOS”) [SECTION 15 OF CGST ACT]**

Note: The provisions of value of supply are applicable to inter-state transactions vide section 20 of IGST Act.

1. Transaction Value shall be VOS when parties are unrelated and price is the sole consideration [S. 15(1)]

Transaction value should be taken for the purpose of valuing a supply under GST subject to fulfilment of certain conditions. **“Transaction value” is the price actually paid or payable** for the supply of goods and/or services when;

- a) The supplier and the recipient of the supply are not related parties AND;
- b) Price is the sole consideration for the supply (i.e., it shall not be in kind or non-monetary)

Notes: -

Non-satisfaction of conditions - Value as per Rules: Whenever abovementioned conditions are satisfied then transaction value, i.e., price actually paid / payable shall be regarded as value of supply and GST shall be levied on such value. However, if conditions are not fulfilled then value of supply shall be determined from CGST rules (Rule 27 to 31 – Discussed Later).

Analysis of “Price shall the sole consideration”: As per section 2(31) of CGST Act, consideration includes monetary and non-monetary consideration. However, if consideration is in “monetary terms,” then only a supply should be valued as per section 15. Any non-monetary consideration will invoke CGST rules to determine value of supply rather than Section 15. (Rules shall be applied – discussed later).

Example: -

- [1] Taxpert Professionals provides consultancy services to “Mr. Namkeens” a proprietary concern firm for ₹ 50,000/-. Since both parties are unrelated & price is sole consideration, value of supply is ₹ 50,000/-.
- [2] A new phone is bought by exchanging old phone, cannot be valued as per section 15(1) of CGST Act as price is not the sole consideration.

2. Inclusions in Value of supply [Section 15(2) of CGST Act]

Value of supply as determined in accordance with section 15(1) or 15(4) read with Rules thereon, shall be increased by components as specified in section 15(2) of CGST Act. Thus, whenever a value of supply has been determined under this section or from rule 27, 28, 29 and so on, it shall be increased as per below mentioned provisions. Let us understand each component in detail along with examples:

a) Tax, Duty, Cess, Fees other than CGST, SGST, IGST & Cess [Section 15(2)(a)]: -**Analysis:**

❖ Any taxes, duties, cesses, fees, and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, shall be added if charged separately by the supplier.

Example:

- [1] Tobacco suffers state excise duties as well as GST. GST would be levied on basic price plus excise duty chargeable on tobacco.
- [2] Municipal Tax is levied by supplier of renting of commercial property supplier, if supplier charges municipal tax separately from recipient it will form part of value of supply.

Notes:-**(i) GST shall not be levied on Tax collected at source (Income Tax): -**

As per Circular 76/50/2018-GST (amended vide corrigendum) dated 7.03.2019, value shall not include tax collected at source under income tax, as such collection is not a tax on goods but an interim levy on income. For example, if Taxable value is ₹ 100, & TCS rate is 2%, GST shall be levied on 100 & not on ₹ 102.; however, tax collected at source shall be done on value inclusive of GST. Below example would be sufficient to clarify the concept.

Particulars	Amount
Taxable Value	10,000.00
+ GST	1,800
Total	11,800
TCS [1% of 11,800]	118
Total Invoice Value	11,918

As per section 206C (1), every person, being a seller shall, **at the time of debiting of the amount payable by the buyer** to the account of the buyer or at the time of receipt of such amount from the said buyer in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, collect from the buyer of any goods. Since, TCS shall be done on amount of debit, which can be construed as including GST. Hence, TCS is levied upon GST component as well.

b) Amounts paid by recipient on behalf of Supplier [Section 15(2)(b)]:

Any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both shall be includible in value of supply.

Notes:

15(2)(b) an exception to 180 days payment Rule: As per provisions relating to Input Tax Credit (to be discussed in ITC Chapter), recipient has to pay to supplier the invoice value within 180 days from date of invoice. However, section 15(2)(b) is an exception for making payment to supplier within 180 days from date of invoice as recipient has already incurred (paid) to third party.

c) Incidental Expenses incurred before delivery of goods or supply of services [Section 15(2)(c)]

Incidental expenses, including commission and packing, **charged by the supplier to the recipient** of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services shall be added in value of supply. *(We would enlighten more in relation to this concept while learning pure agent concept)*

Example:

Mr. A sent goods to Mr. B worth ₹ 1,00,000/- & incurred weightment charges of ₹ 3,000/-, thus, value of supply would be ₹ 1,03,000/- provided weightment charges would be recovered from recipient. If the same are not recoverable from recipient, then it would be assumed to have been included in price of ₹ 1,00,000/-.

d) Interest, Late Fee, or Penalty charged [Section 15(2)(d)]

Interest or late fee or penalty for delayed payment of any consideration for any supply shall be added in value of supply.

e) Subsidies Linked to Price other than provided by the CG and SG [Section 15(2)(e)]:

Subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments.

Explanation to Section 15(2): The amount of subsidy shall be included in the value of supply of the supplier who receives the subsidy.

Notes:

It shall be noted that any subsidy received against a capital asset does not affect the value of the product directly and hence not includible in the price.

Example:

A catering company supplies Mid-day meal to students studying in some colleges the Total meal charge per student is ₹ 80/-. State Government decided to provide subsidy of ₹ 30 per meal. Accordingly, catering company receives ₹ 30 from state government & ₹ 50 from college. Accordingly, the value of supply would be ₹ 50 as subsidy is provided by SG. However, in the above case, if Reliance Industries (i.e., other than SG or CG) had provided subsidy then value of supply would have been ₹ 80.

3. Exclusions from Value of Supply [Section 15(3) of CGST Act]

a) Pre - Supply discounts [Section 15(3)(a) of CGST Act]

Discount which is provided **before or at the time of supply** may be reduced from value of supply provided such discount is duly **recorded in the invoice** issued in respect of such supply.

Example:

Mr. Rajesh buys 100 meters of cloth @ ₹ 1500 per meter, supplier Mr. Ram agrees to give discount of 10% to Mr. Rajesh as he is buying in bulk. Accordingly, the value of supply would be

Particulars	Amount
Basic Price [100 x 1500]	1,50,000
(-) Discount @ 10%	(15,000)
Taxable Value	1,35,000

b) Post - Supply discounts [Section 15(3)(b) of CGST Act]

As per said section, post supply discount is deductible from value of supply only when,

- (i) Such discount is established in **terms of an agreement** entered into at or before the time of such supply and specifically linked to relevant invoices; and,
- (ii) **Input tax credit** as is attributable to the discount on the basis of document issued by the supplier has been **reversed by the recipient of the supply**.

Notes:

- (i) Discounts including 'Buy more, save more' offers: -

- a) **Staggered Discount:** Sometimes, the supplier offers staggered discount to his customers (increase in discount rate with increase in purchase volume). For example- Get 10 % discount for purchases above ₹ 5000/- , 20% discount for purchases above ₹ 10,000/- and 30% discount for purchases above ₹ 20,000/-. **Such discounts are shown on the invoice itself.**
- b) **Turnover Discount / Periodic Discount / Year End Discount:** Some suppliers also offer periodic / year ending discounts to their stockists, etc.

For example- Get additional discount of 1% if you purchase 10,000 pieces in a year, get additional discount of 2% if you purchase 15000 pieces in a year.

Such discounts are established in terms of an agreement entered into at or before the time of supply though not shown on the invoice as the actual quantum of such discounts gets determined after the supply has been affected and generally at the year end. In commercial parlance, such discounts are colloquially referred to as “volume discounts.” Such discounts are passed on by the supplier through credit notes.

- c) **Clarification given by CBI&C:** It is clarified that discounts offered by the suppliers to customers (including staggered discount under “Buy more, save more” scheme and post supply / volume discounts established before or at the time of supply) shall be excluded to determine the value of supply provided they satisfy the parameters laid down in sub-section (3) of section 15 of the said Act, including the reversal of input tax credit (ITC) by the recipient of the supply as is attributable to the discount on the basis of document (s) issued by the supplier.
- d) Further, the supplier shall be entitled to avail the ITC for such inputs, input services and capital goods used in relation to the supply of goods or services or both on such discounts.

(It is also to be noted that financial / commercial credit note(s) can be issued by the supplier if the conditions mentioned in clause (b) of sub-section (3) of section 15 of the said Act are not satisfied. In other words, credit note(s) can be issued as a commercial transaction between the two contracting parties.)

- (ii) **Cash discounts:** Cash Discount are allowed to incentivize the customer for prompt payment. Merely because the policy of allowing cash discount is in existence before supply does not always make cash discounts eligible under section 15(3). In other words, the price at which a transaction of supply was negotiated and concluded is what is liable to GST and not the contingency

linked to payment of the dues in respect of such supply. GST is not a tax on recovery of dues but a tax on supply itself. However, as per ICAI, it is deductible, thus, questions shall be solved by reducing cash discount.

(iii) Taxability of No Claim Bonus offered by Insurance companies [Circular No. 186/18/2022-GST dated 27th December, 2022]

As per practice prevailing in the insurance sector, the insurance companies deduct No Claim Bonus from the gross insurance premium amount, when no claim is made by the insured person during the previous insurance period(s). The customer/ insured procures insurance policy to indemnify himself from any loss/ injury as per the terms of the policy, and is not under any contractual obligation not to claim insurance claim during any period covered under the policy, in lieu of No Claim Bonus.

It is, therefore, clarified that there is no supply provided by the insured to the insurance company in form of agreeing to the obligation to refrain from the act of lodging insurance claim during the previous year(s) and No Claim Bonus cannot be considered as a consideration for any supply provided by the insured to the insurance company.

Deduction of No Claim Bonus permissible as Discount: As per S. 15(3)(a) of CGST Act, value of supply shall not include any discount which is given before or at the time of supply if such discount has been duly recorded in the invoice issued in respect of such supply. Insurance companies make the disclosure in policy documents. It is, therefore, clarified that No Claim Bonus (NCB) is a permissible deduction. GST shall be leviable on actual insurance premium amount, payable by the policy holders to the insurer, after deduction of No Claim Bonus mentioned on the invoice.

4. Valuation Rules to be resorted to if Section 15(1) is contravened [Section 15(4) of CGST Act]

Where the value of the supply of goods or services or both cannot be determined under sub-section (1), the same shall be determined by applying valuation rules. Rule 27 to Rule 31 prescribes method to value a supply in case where any of the condition as mentioned in section 15(1) is not satisfied.

5. Specific Valuation method prescribed by GST Council (if any) [Section 15(5) of CGST Act]

Notwithstanding anything contained in sub-section (1) or sub-section (4), the value of such supplies as may be notified by the Government on the recommendations of the Council shall be determined in such manner as may be prescribed.

[Note: For certain industries, like air travel agent, life insurance business, etc.; specific optional methods are prescribed in rule 32]

(Note - Provisions of Valuation are contained in CGST Act, however the same are equally made applicable for inter-state transactions vide Section 20 of IGST Act)

Departmental Clarification

Clarification on Value of Supply made by Component Manufacturer using Moulds and Dies owned by Original Equipment Manufacturer (OEM) which are sent free of cost (FOC) [Circular No. 47/21/2018-GST]

The meaning of OEM & Component manufacturer has been already discussed in supply chapter. In this chapter we are going to see the valuation mechanism which has been clarified by CBI&C.

As per the said circular, it gives rise to 2 cases: -

Case 1: Moulds & Dies - in the scope of OEM & provided by him: Moulds and dies owned by OEM and provided to component manufacturer on FOC basis is not a supply and hence cost of such moulds and dies are not to be included in value of supply made by component manufacturer. Further, since the moulds and dies are provided on FOC basis by OEM to component manufacturer in course or furtherance of his business, there is **no requirement for reversal of input tax credit availed on such moulds and dies supplied by OEM.**

Important take away:

- i) No supply by OEM to Component Manufacturer
- ii) No reversal of Input Tax credit by OEM on purchase of moulds and dies, sent free of cost.

Case 2: Moulds & Dies - in the scope of Component Manufacturer & provided by OEM:

If contract exists between OEM and component manufacturer for the supply of components made by using the moulds / dies belonging to the component manufacturer, but the same have been supplied by OEM to component manufacturer on FOC basis, then amortised cost of such moulds and dies shall be added in value of such components. Further, the input tax credit is required to be reversed by OEM on such moulds and dies as the same will not be considered to be provided by OEM to the component manufacturer in course or furtherance of business.

Thus, in a nutshell, FOC supplies by recipient need not be added to value of supply until it is not the responsibility of supplier to be incurred.

Clarification regarding applicability of GST on additional / penal interest: [Circular No. 102/21/2019-GST dated 28th June, 2019]

An Equated Monthly Instalment (EMI) is a fixed amount paid by a borrower to a lender at a specified date on every calendar month. EMIs are used to pay off both interest and principal every month (i.e., Instalment Amount), so that over a specified period, the loan is fully paid

off along with interest. In cases where the EMI is not paid at the scheduled date, there is a levy of additional / penal interest on account of delay in payment of EMI. Circular Clarifies the taxability on such additional penal interest on account of delay in payment of EMI.

Following Table Illustrates & Clarifies the legal position on taxability of additional / penal interest on late payment of EMI: -

Case	Legal Provisions	Taxability
Purchase of goods/ service on EMI Basis & delaying EMI payment	Section 15(2)(d) of CGST Act, 2017	The amount of additional / penal interest is to be included in the value of supply. If the transaction is of Taxable goods/services such penal / additional interest would be added in Value of supply .
Purchase of goods in cash by taking loan & delaying such EMI	Sl. No. 27 of Notification No. 12/2017 – CTR dated 28.06.2017	Penal interest charged on a transaction would not be subject to GST , as the same would be covered under Sl. No. 27* of notification No. 12/2017-Central Tax (Rate) dated 28 th June, 2017.

As per Sl. No. 27 Services by way of:

- Extending deposits, loans, or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services);
- Inter se sale or purchase of foreign currency amongst banks or authorised dealers of foreign exchange or amongst banks and such dealers.

are exempt.

‘Interest’ means interest payable in any manner in respect of any moneys borrowed or debt incurred (*including a deposit, claim or other similar right or obligation*) but does not include any service fee or other charge in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilised.)

2. VALUE OF TAXABLE SUPPLY (HEREINAFTER MAY BE REFERRED AS “VOS”) [SECTION 15 OF CGST ACT]

Introduction:

The valuation rules shall come into play when any of the condition as entrusted in section 15(1) is not satisfied. The said conditions are reiterated below:

- Parties are not related parties; **AND**
- Price is the sole consideration.

Thus, if any of these conditions are violated, we resort to rules. Thus, now let us try and understand which rules shall be applied. If point (i) as stated above is violated, then rule 28 shall be applicable, if point (ii) is violated then rule 27 is applicable. There are other rules as well which we are going to discuss in due course.

Our attention shall be invited to Barter Transactions which are supply in purview of section 7 of CGST Act. In order to value barter transaction, we shall value a supply as per Rule 27 as price is not sole consideration in those transactions.

It would be relevant to note that if a transaction is without consideration, it is anyways out of purview of supply (*otherwise than mentioned in schedule I to CGST Act*).

RULE 27 OF CGST RULES, 2017: - CONSIDERATION NOT WHOLLY IN MONEY

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

(Sequentially)

Rule 27	Description
(a)	The open market value of such supply or,
(b)	If (a) is not available, then sum total of consideration in money + Consideration not in money or,
(c)	If (b) is not available then, Value of supply of goods or services or both of like kind and quality or,
(d)	If (c) is not available then, consideration in money + Rule 30 i.e., Cost of Supply + 10% or, Rule 31 - Reasonable means consistent with the principles and the general provisions of section 15 for consideration not determinable in terms of money.
Few examples of transactions covered under Rule 27: ❖ Barter Transactions	

[Note if (a) is not available then (b) shall be adopted, if (a) & (b) is not available then (c) shall be adopted, if (a), (b) & (c) are not available then (d) shall be adopted]

Analysis of above rule:

- i) **Applicability:** Rule 27 shall be applicable, where the consideration is not wholly in money, meaning thereby, if the contract lacks consideration, Rule 27 cannot be invoked.
- ii) **Not applicable in FOC transaction:** Rule 27 can only be invoked if there is consideration in kind for full value or part value. Thus, for FOC supplies, rule 27 cannot be applied to value goods, in such cases ITC shall be reversible as per section 17(5)(h) of CGST Act.
- iii) **The open market value of such supply:** Open Market Value shall not be confused with Arm Length Price in uncontrolled situation. "Open market value" of a supply of goods or services or both means the **full value in money, excluding the integrated tax, central tax, State tax, Union territory tax and the Cess** payable by a person in a transaction, where the supplier and the recipient of the supply are not related and the price is the sole consideration, to obtain such supply at the same time when the supply being valued is made.

Example: - Mrs. Jaya purchases a Samsung television set costing ₹ 85,000 from Giriyas, in exchange of her existing TV set. After an hour of bargaining, the shop manager agrees to accept ₹ 78,000 instead of his quote of ₹ 81,000, as he would still be in a profitable position (the old TV can be sold for ₹ 8,000).

Ans. Where the price is not the sole consideration for the supply, the “open market value” would be the value of the supply. Therefore, ₹ 85,000 would be the value of the supply.

iv) Sum total of consideration in money & non-monetary consideration: If the value is not determinable under clause (a) or clause (b) or clause (c), be the sum total of consideration in money and such further amount in money that is equivalent to consideration not in money as determined by the application of rule 30 or rule 31 in that order.

- As per Rule 30 of CGST Rules, where the value of a supply of goods or services or both is not determinable by any of the preceding rules of this Chapter, the value shall be 110% of the cost of production or manufacture or the cost of acquisition of such goods or the cost of provision of such services.
- In the case of supply of services, the supplier may opt for this rule, ignoring rule 30. As in case of services, determination of cost of services becomes quite difficult. [Proviso to rule 31]
- As per Rule 31 of CGST Rules, Where the value of supply of goods or services or both cannot be determined under rules 27 to 30, the same shall be determined using reasonable means consistent with the principles and the general provisions of section 15 and the provisions of this Chapter.

Thus, very importantly, it shall be noted that, **rule 30 or 31 shall only be applicable for that part of consideration which is non-monetary in nature and which is not determinable as per clause (a) (b) or (c).**

For Instance, for delivery of lectures, student paid me ₹ 2,000 and an antique shirt, the value of which is not determinable as per clause (a), (b) & (c). Thus, here value would be determined as ₹ 2,000 + 110% of Cost of Shirt.

Example: An old antique art work is sold against which consideration is partly in the form of money of ₹ 20,000 and partly in the form of a new furniture whose value known at the time of supply is ₹ 35,000. Then the value for the purpose of GST will be the monetary consideration combined with the equivalent money value of the new furniture i.e., ₹ 55,000.

v) The value of supply of goods or services or both of like kind and quality: The phrase “supply of goods or services or both of like kind and quality” means any other supply of goods or services or both made under similar circumstances that, in respect of the

- Characteristics,
- Quality,
- Quantity,
- Functional Components,
- Materials, and reputation of the goods or services or both

first mentioned, is the same as, or closely or substantially resembles, that supply of goods or services or both [Clause (b) of Explanation to Valuation rules of CGST Rules, 2017].

So, all the factors should be considered and the supply which is closest in terms of these factors should only be taken for the purpose of valuation.

For Example: - A Laptop of HP has been sold by Dream Machines, which does not have open market value and the value of non-monetary consideration also cannot be ascertained. So, we move on to check 3rd point i.e., supply of goods or services or both of like kind and quality. Dream Machines stated that HP laptop which he is selling has following specifications, Storage 1TB HDD, Processor Intel Core i3 7th Generation, 4 GB RAM. A Dell Laptop with same specifications is sold at ₹ 45,000/-. Thus, the value of supply of Laptop sold by HP would be ₹ 45,000/-.

Illustrations: Sriram Textiles is a registered person in Hyderabad. A particular variety of clothing has been categorised as non-moving stock, costing ₹ 5,00,000. None of the customers were willing to buy these clothes in spite of giving big discounts on them, for the reason that the design was too experimental. After months, Sriram Textiles was able to sell this stock on an online website to another retailer located in Meghalaya for ₹ 2,50,000, on the condition that the retailer would put up a poster of Sriram Textiles in all their retail outlets in the State. (ICAI)

Answer: - The supplier and recipient are not related persons. Although a condition is imposed on the recipient on effecting the sale, such a condition has no bearing on the contract price. This is a case of distress sale, and in such a case, it cannot be said that the supply is lacking 'sole consideration.' Therefore, the price of ₹ 2,50,000 will be accepted as value of supply. [Section 15(4) r/w Rule 27(d) r/w Rule 31 of CGST Rules]

RULE 28 OF CGST RULES, 2017: - VALUE OF SUPPLY OF GOODS OR SERVICES OR BOTH BETWEEN DISTINCT OR RELATED PERSONS, OTHER THAN THROUGH AN AGENT

Introduction to Rule 28: A supply between related persons or between distinct persons (with same PAN) is a suspicious area for revenue authorities. Accordingly, the valuation shall not be as per section 15 but shall be as per rule 28.

The value of the supply of goods or services or both between distinct persons as specified in section 25(4) and 25(5) of CGST Act or where the supplier and recipient are related, other than where the supply is made through an agent, shall –

Rule 28	Description
(a)	The open market value of such supply*** or,
(b)	If (a) is not available then, value of supply of goods or services or both of like kind and quality or,
(c)	If (b) is not available then, Rule 30 i.e., Cost of Supply + 10% or,
	Rule 31 - Reasonable means consistent with the principles and the general provisions of section 15.
Proviso 1 - 90% of Value charged by recipient to unrelated buyer: Where the goods are intended for further supply AS SUCH by the recipient, the value shall, at the option of the supplier, be an amount equivalent to 90% of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person. ***Proviso 2 - Any Value declared in invoice is deemed open market value: Where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services. Few examples of transactions covered under rule 28: ❖ Transactions between related parties such as Import of services without consideration from related party for furtherance in business (Schedule I Para 4) ❖ Stock transfer between distinct persons ❖ Cross charge (as discussed in supply chapter)	

[Note if (a) is not available then (b) shall be adopted, if (a) & (b) is not available then (c) shall be adopted]

[Please note that, proviso can be applied directly without applying (a), (b), (c)]

(A) VALUATION OF PERSONAL GUARANTEE PROVIDED BY DIRECTOR:

In regards to this, it is to be noted that, director and company are related parties as per section 15 of CGST Act. Further as per schedule I of CGST Act, supply of goods or services or both between related persons, when made in the course or furtherance of business, shall be treated as supply even if made without consideration would be treated as supply.

ACCORDINGLY, THE ACTIVITY OF PROVIDING PERSONAL GUARANTEE BY THE DIRECTOR TO THE BANKS/ FINANCIAL INSTITUTIONS FOR SECURING CREDIT FACILITIES FOR THEIR COMPANIES IS TO BE TREATED AS A SUPPLY OF SERVICE, EVEN WHEN MADE WITHOUT CONSIDERATION.

Valuation can be done as per Rule 28. As per proviso to Rule 28 of CGST Rules, if recipient is eligible for full ITC, then any value declared in invoice shall be treated as open market value. Thus, value of supply shall be treated as 0, thus, No GST shall be payable.

(B) CORPORATE GUARANTEE PROVIDED BY COMPANY:

VALUATION SHALL BE DONE AS PER RULE 28 (AMENDED), Rule 28(2) has been inserted vide Notification No. 52/2023 dated 26.10.2023, for determining the taxable value of such supply of services between related persons located in India in respect of providing corporate guarantee

As per said newly inserted rule 28(2), valuation shall be

- ❖ 1% of the amount of such guarantee offered per annum, or
- ❖ The actual consideration,

Whichever is higher

It is clarified that the Rule 28(2) shall not apply in respect of the activity of providing personal guarantee by the Director to the banks/ financial institutions for securing credit facilities for their companies.

However, where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the value of said supply of services

- 1) Clarifications on Corporate Guarantee Taxability u/r 28(2) of CGST Rules [Circular No. 225/19/2024-GST dated 11th July, 2024, Notification No. 12/2024 -CT dated 10th July, 2024] (Principal Notification & Circular: Notification No. 52/2023-Central Tax dated 26th October, 2023, Circular No. 204/16/2023-GST)**

Where the corporate guarantee is provided by a company (say holding company) to the bank/financial institutions for providing credit facilities to the other company (subsidiary company), where both the companies are related, the activity is to be treated as a supply of service between related parties as per provisions of Schedule I of CGST Act, even when made without any consideration.

VALUATION SHALL BE DONE AS PER RULE 28 (AMENDED), Rule 28(2) has been inserted vide Notification No. 52/2023 dated 26.10.2023, for determining the taxable value of such supply of services between related persons located in India in respect of providing corporate guarantee

As per said newly inserted rule 28(2), valuation shall be

- ❖ 1% of the amount of such guarantee offered per annum, or
- ❖ The actual consideration,

Whichever is higher

It is clarified that the Rule 28(2) shall not apply in respect of the activity of providing personal guarantee by the Director to the banks/ financial institutions for securing credit facilities for their companies.

However, where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the value of said supply of services

New Clarifications:

Issue	Clarification
Applicability of Rule 28(2)	Corporate guarantee issued or renewed on or after 26 th October 2023, then the valuation of the said supply will be required to be done as per Rule 28(2) of CGST Rules
1% Calculation	The value of supply of the service of providing a corporate guarantee will be calculated based on the amount guaranteed and will not be based on the amount of loan actually disbursed. ITC will be available to recipient.
Taxability in case of takeover of loans	There will be no impact on GST, unless there is issuance of fresh corporate guarantee or there is a renewal of the existing corporate guarantee. However, if the takeover of the loan is followed/ accompanied by issuance of fresh corporate guarantee, then GST would be payable on the same.
Multiple Guarantors	Guarantors have to pay GST on the proportion of the amount of guarantee offered.
Applicability of RCM	Intra – Group Guarantors Domestic – FCM Overseas Guarantor – RCM
Interpretation of “per annum”	If a corporate guarantee is issued for a period of say five years, then the value of such guarantee is to be calculated at one per cent per year of the amount of such guarantee offered, or the actual consideration, whichever is higher, i.e., the value of such corporate guarantee provided would be 5% of the amount guaranteed or the actual consideration, whichever is higher. Therefore, GST would be payable on such amount at the time of issuance of such corporate guarantee, i.e., 5% of the amount guaranteed or the actual consideration, whichever is higher.

	However, if a corporate guarantee is issued, say for a period of one year and is renewed five times, for a period of one year each, then tax would be payable on one per cent of the amount of such guarantee offered, or the actual consideration, whichever is higher, on the issue of such corporate guarantee in the first year as well as on every renewal in subsequent years.

Non-Applicability of rules when recipient is outside India	As per notification No. 12/2024 -CT dated 10.07.2024, where the recipient of the services of providing corporate guarantee between related persons is located outside India. Accordingly, the provisions of the said sub-rule shall not apply to the export of the services of providing corporate guarantee between related persons



Analysis:

(i) **Intent behind proviso 1 to rule 28:** It would be worth noting the intention behind insertion of proviso 1 to Rule 28. Where the recipient (related or distinct) sells goods as such i.e., without value addition, it will not give rise to any output tax liability, however, the expenses may suffer levy of GST (example - GST on rent of premises). It will give rise to accumulation of ITC and refund of same is not eligible unless taxable person is exporter or supplier to SEZ. Accordingly, value at 90% can be taken by supplier to avoid such business scenario.

(ii) **Example of Proviso 1:** It would be worth to note that, if recipient is selling goods as such then supplier can adopt value @ 90% of price charged by his recipient to his unrelated customer. This option works independently of (a), (b), (c) above, meaning thereby a supplier can directly wish to go for this option without considering (a), (b), (c).

(iii)



RULE 29 OF CGST RULES, 2017: VALUE OF SUPPLY BETWEEN PRINCIPAL AGENT (OTHER THAN SOLE SELLING AGENT)

Introduction to Rule 29: Rule 29 is applicable in case of supply of goods through agent or receipt of goods through agent. The agent functions as an extended arm of the principal and therefore, supplies (inward and outward) effected by an agent on behalf of the principal will be treated as supplies effected by the principal (unless an independent agent having his own registration).

The valuation for supplies made to agent or received from agent shall be done in below manner: -

Rule 29	Description
(a)	The open market value of the goods being supplied, OR, At the option of the supplier, be 90% of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person, where the goods are intended for further supply by the said recipient. Whichever is beneficial
(b)	Rule 30 i.e., Cost of Supply + 10%
	Rule 31 - Reasonable means consistent with the principles and the general provisions of section 15
Valuation of Commission income is not covered under rule 29, because the same is supply of services. Supply of goods are only covered by rule 29.	

[Note if (a) is not available / not wanting to opt for (a), then (b) shall be adopted.]

Circular No.73/47/2018 GST dated November 5, 2018 (in the context of del-credere agent) states as:

Del-credere Agent (DCA) is a selling agent who is engaged by a principal to assist in supply of goods or services by contacting potential buyers on behalf of the principal. DCA Guarantees payment to supplier. Following scenarios are pertinent with respect to advance credit given to customer to enable him make payment to principal. These situations have been clarified vide **Circular No. 73/47/2018-GST dated 05-11-2018:**

- a) **If DCA is Agent in terms of Para 3 of Schedule I i.e., Agent issues invoice in his own name:** -

Interest charged by DCA to customer would be **includible in value of goods** supplied **by DCA to recipient** in terms of Sec 15(2)(d). (The advance being provided by DCA to the buyer no longer retains its character of an independent supply and is subsumed in the supply of the goods accordingly int is added)

- b) If DCA is not the agent in terms of Para 3 of Schedule I i.e., **Agent issues inv. in name of principal:**

Interest charged by DCA to customer is an **independent supply** & shall **not be added** in VOS of goods. Further, such **interest is exempt** in terms of notification 12/2017-CTR.

Valuation Mechanism for other suppliers (Rule 31A, 31B, 31C & Rule 32)

1. Valuation in case of Lottery Betting & Gambling [Rule 31A]

Notwithstanding anything contained in the provisions of this Chapter, the value in respect of supplies specified below shall be determined in the manner provided hereinafter.

Nature of Supply	Value of supply
Supply of lottery (<i>w.e.f. 1st March, 2020 vide NN 08/2020 - CT dated 2nd March, 2020</i>) where Lottery is run by state government or Lottery organised by state government.	❖ 100/128 of the face value of ticket or; ❖ 100/128 of the price as notified in the Official Gazette by the Organising State. whichever is higher.
Actionable claim in the form of chance to win in betting, gambling, or horse racing in a race club	100% of the face value of the bet or the amount paid into the totalisator.

Notes:

- No Distinction between Lottery run or authorised by SG:** It is vide NN 01/2020 - CT(R), there is no distinction between lottery run by state government or lottery organised by state government.

2. Rule 31B: Value of supply in case of online gaming including online money gaming [NN 45/2023 – CT dated 6th September, 2023]:

The value of supply of online gaming, including supply of actionable claims involved in online money gaming, shall be the **total amount paid or payable to or deposited with the supplier by way of money or money's worth, including virtual digital assets, by or on behalf of the player:**

However, **any amount returned or refunded by the supplier** to the player for any reasons whatsoever, including player not using the amount paid or deposited with the supplier for participating in any event, **shall not be deductible from the value of supply of online money gaming.**

**Analysis:**

- ❖ In case where games are played online, wherein a player has deposited ₹ 10,000 into his account and plays the game worth ₹ 4,000/-; GST would be applicable on ₹ 10,000 (the money not used shall not be reduced)
- ❖ Virtual digit assets shall also be considered as consideration, for example, if a person instead of depositing ₹ 10,000; deposits crypto currency, then such value shall also be taxed.
- ❖ This rule is a non-obstante rule, meaning thereby, value of supply shall be determined as per rule 31B only in case of online gaming.

3. Rule 31C: Value of supply of actionable claims in case of casino:

The value of supply of actionable claims in casino shall be the total amount paid or payable by or on behalf of the player for –

- i) purchase of the tokens, chips, coins, or tickets, by whatever name called, for use in casino; or
- ii) participating in any event, including game, scheme, competition or any other activity or process, in the casino, in cases where the token, chips, coins or tickets, by whatever name called, are not required:

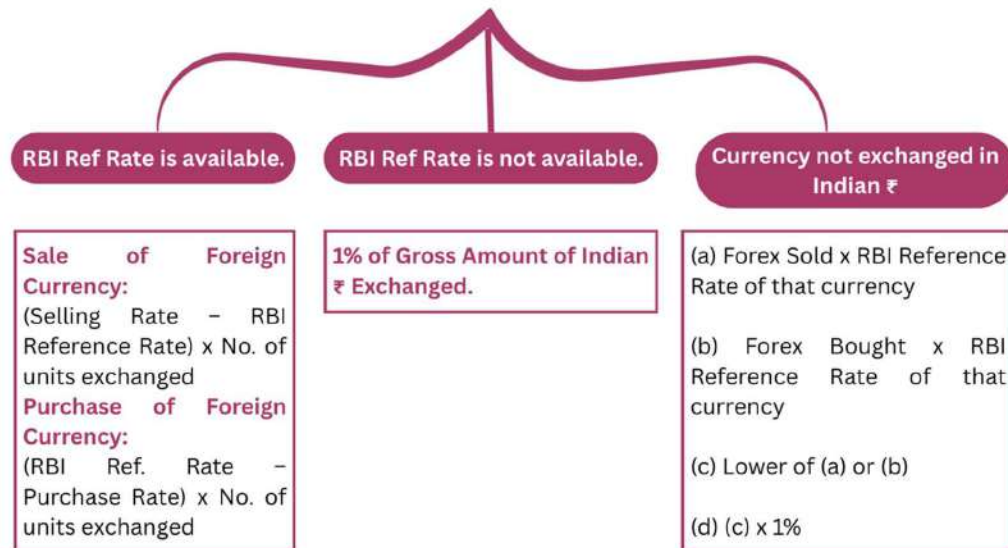
However, any amount returned or refunded by the casino to the player on return of token, coins, chips, or tickets, as the case may be, or otherwise, shall not be deductible from the value of the supply of actionable claims in casino.

Explanation: For the purpose of rule 31B and rule 31C, any amount received by the player by winning any event, including game, scheme, competition or any other activity or process, which is used for playing by the said player in a further event without withdrawing, shall not be considered as the amount paid to or deposited with the supplier by or on behalf of the said player.

Analysis of explanation: Suppose a person wins ₹ 100,000 in a certain game, such ₹ 100,000 shall not be treated as deposit amount and GST shall not be charged on it.

4. Valuation Mechanism for other supplies (Optional) [Rule 32]

Valuation Mechanism for purchase and sale of foreign currency, including money changing. Rule 32 provides valuation mechanism for various supplies. It is pertinent here to note that this rule is the optional rule. Supplier may adopt valuation as per section 15 read with Rule 27 to 31 if he finds it beneficial. Now let us understand valuation mechanism as per rule 32. [Rule 32(1)].

Option 1: - Purchase / Sale of Foreign incl. Money Changing [R. 32(2)(a)]**Option 2: - Value of Supply for money changing business (optional) [R. 32(2)(b)]**

For an Amount (₹)	Value of Supply (Not Tax)
Upto 1,00,000	1% of Gross Amount Exchanged or ₹ 250 higher (i.e., minimum ₹ 250)
1,00,001 – 10,00,000	₹ 1000 + 0.5% of Gross Amount Exchanged (in excess of ₹ 1,00,000)
10,00,001 & above	₹ 5500 + 0.1% of Gross Amount Exchanged (in excess of ₹ 10,00,000) or ₹ 60,000/- whichever is lower. (i.e., maximum ₹ 60,000)
Option shall not be withdrawn during financial year	

Example: - If ₹ 2,54,00,000/- are converted then Value of Supply will be ₹ 29,900/- (Hint – Upto ₹ 10,00,000 = ₹ 5,500, for more than ₹ 10,00,000/-, i.e., 2,44,00,000 x 0.1% = 24,400 or 60,000 w.e. is lower)

Notes:

The computation of value of supply shall be for each transaction and not sum total of all transactions in month.

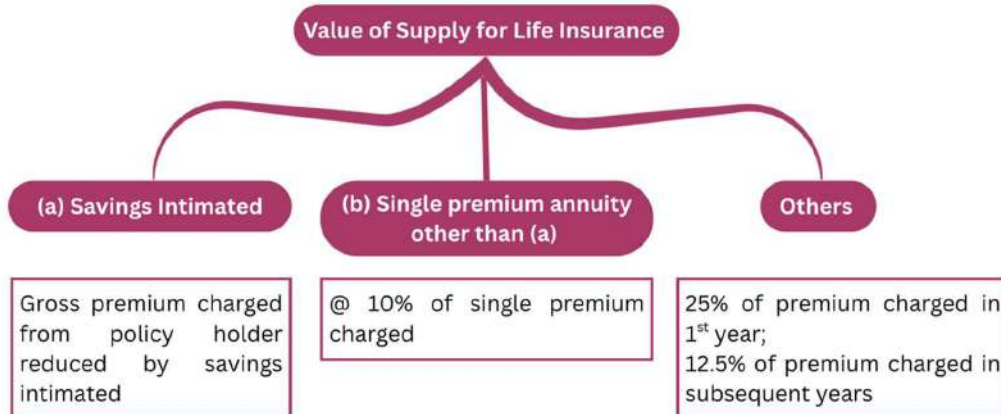
5. Air Travel Agent [R. 32(3)]

The value of the supply of services in relation to booking of tickets for travel by air provided by an air travel agent shall be deemed to be an amount calculated

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

Explanation: “Basic fare” means that part of the air fare on which commission is normally paid to the air travel agent by the airlines. GST shall be levied on 5% or 10% as the case may be.

6. Life Insurance Business [R. 32(4)]



Clarification is in regards to the treatment of the amount of premium which is not included in the taxable value of supply, (i.e., other than taxable portion) as determined under the provisions of Rule 32(4) of CGST Rules. The service of providing life insurance cover is neither nil rated, nor there is any notification issued under section 11 of CGST Act by virtue of which the said service or any portion of the said service has been exempted from GST. It may be noted that because some amount of consideration is not included in value of taxable supply as per the provisions of the statute, it cannot be said that the said portion of consideration becomes attributable to a non-taxable or exempt supply. Thus, rule 42 & rule 43 reversal is not required in respect of portion of premium not included in value of supply.

CLARIFICATION ON SALVAGE VALUE DEDUCTED FROM INSURANCE CLAIM AMOUNT [CIRCULAR 215/9/2024-GST DATED 26TH JUNE, 2024]

The insurance companies, which are engaged in providing general insurance services in respect of insurance of motor vehicles, insure the cost of repairs/ damages of motor vehicles incurred by the policyholders. Such damages to the insured vehicle are classified in two categories:

- (i) Total Loss/ Constructive Total Loss or Cash Loss; and
- (ii) Partial Loss Situation

Clarifications are sought to understand whether GST is payable by the insurance company on salvage/ wreckage value earmarked in the claim assessment of the damage caused to the motor vehicle.

Case 1: Deduction of Salvage Value: Any Deduction made by the insurance company from the final claim amount paid to the insured is in the form of deductibles which is pre-decided and mutually agreed by the insured and the insurer while signing the insurance contract. The deduction of the value of salvage from the insurance settlement amount, is as per the terms of the insurance contract, and cannot be said

to be consideration for any supply being made by insurance company. Accordingly, in such cases, there does not appear to be any supply of salvage by insurance company and as such, there does not appear to be any liability under GST on the part of insurance company in respect of this salvage value.

For example: If the bike has been insured. The bike was purchased at price of ₹ 80,000. If suppose, the bike was damaged after 1 year in accident and recoverable value comes to ₹ 10,000/-. The insurance terms were to depreciate bike by 20% every year. Thus, value at the end of year one comes to ₹ 64,000/- (80,000-20%). Further, since the recoverable value was 10,000/-. Insurance company will settle the claim of ₹ 54,000 [64,000-10,000]. Even if ₹ 10,000 were paid short than determined value, it shall not be treated as supply made by insurance company. Thus, no GST shall be applicable on ₹ 10,000/- (**salvage value**).

Case 2: No deduction of Salvage value: In situations where the insurance contract provides for settlement of claim on full IDV (Insured's Declared value), without deduction of value of salvage/ wreck, the insured will be paid for full claim amount without any deductions on account of salvage value. In such a situation, the salvage becomes the property of Insurance Company after settling the claim for the full amount and the insurance company is obligated to deal with the same or dispose of the same. In such cases, the outward GST liability on disposal/sale of the salvage is to be discharged by the insurance companies.

For example: If the bike has been insured. The bike was purchased at price of ₹ 80,000. If suppose, the bike was damaged after 1 year in accident and recoverable value comes to ₹ 10,000/-. The insurance terms were to depreciate bike by 20% every year. Thus, value at the end of year one comes to ₹ 64,000/- (80,000-20%). The insurance company settles the full value i.e., ₹ 64,000 & retains the bike. The insurance company sells the bike and recovers ₹ 10,000/- from market. **GST shall be payable by insurance company on such salvage value.**

7. Margin Scheme for Second Hand Dealers [R. 32(5)]

Meaning of Margin Scheme: This scheme is designed for second hand goods dealer which do not avail input tax credit on their inward supplies. Thus, if such dealers are made liable to pay GST on outward supplies, 100% would be the value addition and tax burden on recipient would increase. Accordingly, a scheme known as margin scheme is prescribed in GST Rules, to tax the "Margin" of such dealers.

Margin scheme under GST: Rule 32(5) of the Central Goods and Services Tax (CGST) Rules, 2017 provides that where a taxable supply is provided by a person dealing in buying and selling of second hand goods i.e., used goods as such or after such minor processing which does not change the nature of the goods and where no input tax credit has been availed on the purchase of such goods, the **value of supply shall be the difference between the selling price and the purchase price and where the value of such supply is negative, it shall be ignored.** This is known as the margin scheme.

Further, Notification No.10/2017-Central Tax (Rate), dated 28-6-2017 exempts Central Tax leviable on intra-State supplies of second-hand goods received by a registered person, dealing in buying and selling of second-hand goods [who pays the central tax on the value of outward supply of such second-hand goods as determined under sub-rule (5)] from any supplier, who is not registered.

Repossession of Assets & Margin Scheme: In the business of lending, hypothecation of goods and security of assets play vital role in the event of default in repayment of the loan. In such cases, the goods/assets would be repossessed or attached as a part of recovery of the outstanding loan amount. Taking over of goods by the lender from the defaulting borrower is termed as “repossession”

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

Analytical Chart for understanding of Margin Scheme with Analysis

Source of Purchase	Normal Second-Hand Dealer Case		Repossession Case	
	Purchase from Registered Dealer availing ITC	Purchase from person not availing ITC	Repossession of Asset from Unregd. person	Repossession of Asset from regd. person
Margin Scheme Availability	Not available as ITC is availed by recipient at first stage	Available as ITC is not availed by recipient	Available as ITC is not availed by recipient	Not available as ITC is availed by recipient at first stage
Taxable Value for Levy of GST <i>(From Lender Perspective while selling such assets)</i>	Full Sale Consideration	Difference between sale price & purchase price	Difference between sale price & purchase price	Balance Loan Amount for which repossession is done.
Purchase Price	NA (as margin scheme is not available)	Price charged by supplier	Price charged by supplier (-) 5% per quarter or part from date of purchase till date of disposal	It would be treated as sold to bank by defaulting borrower and bank would avail input tax credit and sell it and pay GST on full consideration.

Notes:

- 1) **Sale of Goods to Related Parties:** In case of supply (of repossessed goods) made to related parties, the value of supply shall be determined as per Rule 28 of the CGST Rules, 2017. The Rule 28 requires determination of value based on the open market value and in case of non-availability of open market value then the other methods of valuation as provided therein should be adopted. Whereas Rule 32(5) of the CGST Rules, 2017 specifically provides valuation mechanism for repossessed goods.
- 2) **Specific prevails over general provisions:** Applying the legal maxim “Generalia specialibus non derogant” which means specific provision shall prevail over general provisions in a statute it can be concluded that Rule 32(5) of the CGST Rules, 2017 shall apply when the repossessed goods is sold to related party since it is a more specific rule as compared to Rule 28 of the CGST Rules, 2017.
- 3) **Sale of Old & Used Motor Vehicle:** In case of sale of old and used motor vehicle (where ITC was not availed), GST shall be paid on difference between Sale value (-) Depreciated Value as per Income Tax Act. However, if difference is negative then no GST shall be payable. [NN 8/2018 – CT (R)]

4. Concept of Pure Agent in GST [Rule 33]

A pure agent is the one who while making supply to the recipient, also receives (amount) & incurs expenditure on some supplies on behalf of recipient and claims actual reimbursements (without adding in his own value of supply). The relation between supplier & recipient is of principal nature w.r.t. main contract, whereas for reimbursement the nature of expenditure is of pure agent. The question here arises that whether expenses incurred by supplier shall be added in value of supply or not. As per rule 33 if the supplier has incurred the expenses in nature of pure agent, then it shall be excluded from value of supply.

Pure Agent means the person who:

- (a) Enters into a **CONTRACTUAL AGREEMENT** with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both; **(C)**
- (b) **Neither intends to hold nor holds any TITLE** to the goods or services or both so procured or supplied as pure agent of the recipient of supply; **(T)**
- (c) Does **NOT USE FOR HIS OWN INTEREST** such goods or services so procured; **(I)** and
- (d) **Receives** only the **ACTUAL AMOUNT incurred** to procure such goods or services in addition to the amount received for supply he provides on his own account. **(A)**

Examples of Pure Agent are:

- ❖ Port fees, Port charges, Custom duty, dock dues, transport charges etc. paid by Customs Broker on behalf of owner of goods.
- ❖ Expenses incurred by C & F agent and reimbursed by principal such as freight, godown charges.

The expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be excluded from the value of supply, if all the following conditions are satisfied, namely- [CODE: - ASA & CIT(A)]

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

Notes:

- 1) It would be crucial to note that all the conditions shall be cumulatively satisfied to regard any expenditure as incurred as a pure agent.
- 2) Every reimbursement cannot be claimed as pure agent and excluded from value of supply. The base parameter to be checked is whether the said services are in addition to what supplier is providing as his main supply.
- 3) **Please note below examples for better clarity on the concept of pure agent:**

Example 1

The supplier is in the business of leasing the immovable property for theatre purposes. Apart from the property it also provides for the utilities such as electricity and running of DG and HVAC sets and potable water and RO treated water through facilities. The utility charges would be recovered from lessee based on the reading shown in the sub-meter.

In the present case since, running a theatre would not be possible unless it is accompanied with supply of water and electricity and without which NOC would not be granted hence, the two services are being provided by the supplier where renting is main supply and supply of electricity, water, fuel are in nature of ancillary supply. The utility charges would not be regarded as incurred in nature of pure agent as same are not in addition to the services supplied on his own account, but the necessity to provide the main supply.

Example 2

Corporate services firm A is engaged to handle the legal work pertaining to the incorporation of Company B. Other than its service fees, A also recovers from B, registration fee and approval fee for the name of the company paid to the Registrar of Companies.

The fees charged by the Registrar of Companies for the registration and approval of the name are compulsorily levied on B. A is merely acting as a pure agent in the payment of those fees. Therefore, A's recovery of such expenses is a disbursement and not part of the value of supply made by A to B.

Example 3

Customs Broker issues invoices to importer for charging agency fees & reimbursing hotel expenses, customs duty, dock dues paid.

In this case, hotel expenses would be added in value of supply i.e., in agency fees to arrive at value of supply. The expenses incurred on behalf of importer on account of customs duty & dock dues would qualify as pure agent expenditures.

Example 4

X Contracts with Y, a real estate agent to sell his house and thereupon Y gives advertisement in TV. It was agreed that Mr. X will reimburse the advertisement charges incurred by Mr. Y

Mr. Y shall issue the tax invoice for his brokerage charges along with advertisement charges and shall apply GST on total value. The expenses incurred for advertisement shall be added in value of supply as the same are not in addition to services provided on his own account, but required necessarily to provide services.

Example 5

Mr. X a Legal Consultant visited its client and stayed at hotel and claims reimbursement of it.

In this case, the hotel charges would be included in value of supply as such services so procured are used for his own interest.

5. RATE OF EXCHANGE & PRICE CUM TAX [RULE 34 & 35]**(A) Rate of Exchange [Rule 34 of CGST Rules]**

- (1) The rate of exchange for determination of value of taxable goods shall be the applicable rate of exchange as notified by the Board under section 14 of the Customs Act, 1962 for the date of time of supply of such goods in terms of section 12 of the Act.
- (2) The rate of exchange for determination of value of taxable services shall be the applicable rate of exchange determined as per the generally accepted accounting principles for the date of time of supply of such services in terms of section 13 of the Act] **Amended vide NN 17/2017 - CT dated 27th July, 2017]**

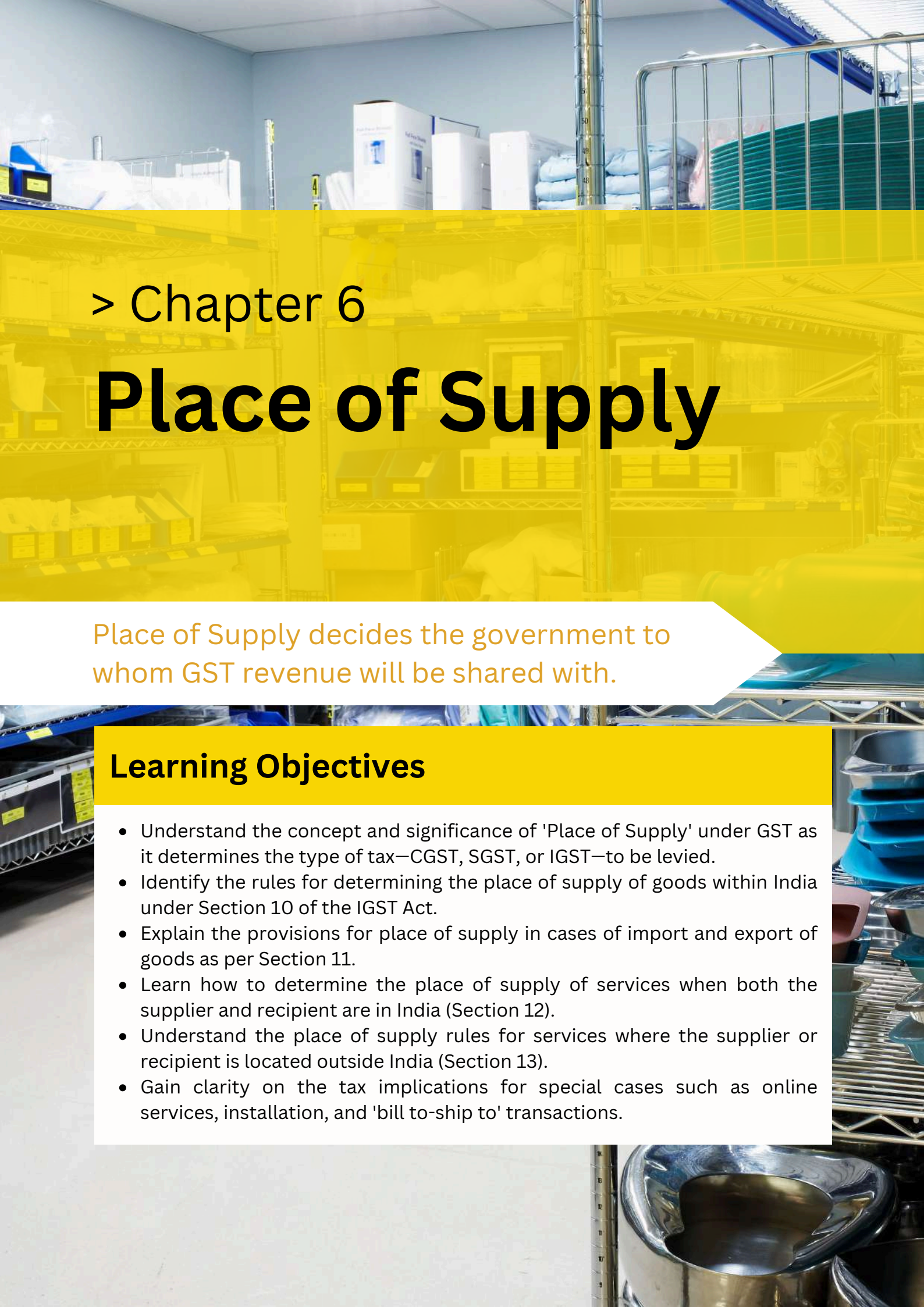
Note: Different exchange rates may be applied for supply of goods for paying tax under the GST regime and in accounting valuation. This can be one of the reasons for turnover differences in financial statements and returns. A comparative statement for difference in foreign exchange as per Rule 34 of the CGST Rules and AS-11 should be made, and difference in turnovers because of difference in foreign exchange rates will be reported in GSTR 9C.

(B) Price - Cum Tax [Rule 35 of CGST Rules]

Where the value of supply is inclusive of integrated tax or, as the case may be, central tax, State tax, Union territory tax, the tax amount shall be determined in the following manner-

(Example: - Supplier forgets to charge & recover tax from customer, he has to pay as per below. Further, Interest, penalty for delayed consideration shall be generally considered as inclusive of tax.)

Tax amount = (Value inclusive of taxes X tax rate in % of IGST or, as the case may be, CGST, SGST or UTGST) ÷ (100+ sum of tax rates, as applicable, in %) Notes: - Logically Cess, should have been included over here.



> Chapter 6

Place of Supply

Place of Supply decides the government to whom GST revenue will be shared with.

Learning Objectives

- Understand the concept and significance of 'Place of Supply' under GST as it determines the type of tax—CGST, SGST, or IGST—to be levied.
- Identify the rules for determining the place of supply of goods within India under Section 10 of the IGST Act.
- Explain the provisions for place of supply in cases of import and export of goods as per Section 11.
- Learn how to determine the place of supply of services when both the supplier and recipient are in India (Section 12).
- Understand the place of supply rules for services where the supplier or recipient is located outside India (Section 13).
- Gain clarity on the tax implications for special cases such as online services, installation, and 'bill to-ship to' transactions.

Backdrop of Place of Supply under GST

GST is understood as a “**Destination-Based Consumption Tax**” but there is no provision that declares this fact. Destination based consumption tax means the revenue would accrue to that state in which the goods or services are consumed. It is in Place of Supply that we find that the destination principle of GST is fully captured (except 3 services as enumerated in section 13(8) of IGST Act – discussed later). As per article 269A, the matters relating to place of supply would be governed by centre. It is by that reason; place of supply provisions is contained in IGST Act.

RELEVANCE OF PLACE OF SUPPLY

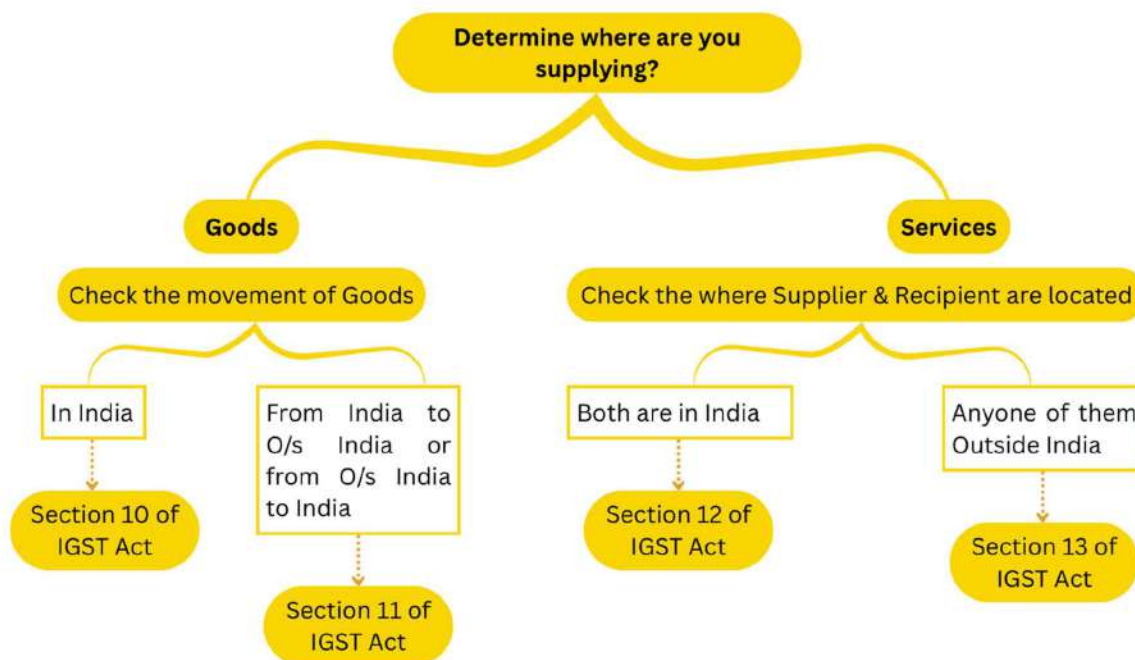
The relevance of place of supply can be understood as below:

- i) **Nature of supply & Kind of Tax:** Place of supply is important to determine the kind of tax that is to be applied. In case of Intra-state supplies CGST & SGST/UTGST shall be levied [A. 246A read with Section 9 of CGST Act, Section 9 of SGST/UTGST Act]; & in case of Inter-state supplies, IGST shall be levied [A. 269A read with Section 5 of IGST Act]. In order to determine whether a supply is inter-state or intra-state 2 factors play a key role, viz., Location of supplier & Place of supply. (Section 7 & 8 of IGST Act)
- ii) **Government Settlements:** As per Section 18 of IGST Act, the IGST collected by centre shall be apportioned to the tune of 50% to the state which is regarded as Place of Supply. Thus, place of supply shall be determined with due caution.
- iii) **Exports of Goods or Services:** It is well established principle that, goods or services shall travel outside India but not taxes, meaning thereby in order to regard any activity as exports, the place of supply shall be outside India. As per section 2(6) of IGST Act, in order to export a service, supplier has to fulfill 5 conditions, one such condition being, place of supply shall be outside India.
- iv) **Economic Aspects:** The economists emphasize on consumption taxes as Indirect Taxes are paid by recipient i.e., consumer, thus, the revenue shall accrue to the state in which consumer is located (not to the origin state except few cases). Thus, in order to determine where the goods / services are consumed, place of supply plays a key role.

As per Article 269A, parliament shall formulate the principles for determining the place of supply, and when a supply takes place in the course of inter-State trade or commerce. Accordingly, the provisions in relation to place of supply has been contained in IGST Act, which is administered by Centre (Parliament).

Before beginning the deep discussion on provisions of place of supply, let us first understand the structure in which the provisions of IGST Act are contained. In order to determine which

provisions shall be applied to determine place of supply, the below flow chart diagram shall be referred.



- 1) Place of supply of **goods other than** supply of goods **imported** into, or **exported** from India (Section 10 of IGST Act, 2017)
- 2) Place of supply of goods imported into, or exported from India. (Section 11 of IGST Act, 2017)
- 3) Place of supply of services where location of supplier and recipient is in India (Section 12 of IGST Act, 2017)
- 4) Place of supply of services where location of supplier or location of recipient is outside India (Section 13 of IGST Act, 2017)
- 5) Special provision for payment of tax by a supplier of online information and database access or retrieval services (Section 14 of IGST Act, 2017)

1. PLACE OF SUPPLY OF GOODS SUPPLIED DOMESTICALLY (SEC 10 OF IGST ACT)

Section 10 of IGST Act, formulates principles to determine place of supply for goods supplied in India. The Outlay of Section 10 of IGST Act, has been given below and has been analysed point wise in further explanation of chapter:

Section	Basic Outlay
10(1)	Domestic Transactions: Section 10 applies to supply of goods, <i>other than supply of goods imported into, or exported from India</i>
10(1)(a)	Normal Supply of Goods: - Determination of Place of supply where supply involves movement of goods whether by supplier / recipient or any other person.

Section	Basic Outlay
10(1)(b)	Bill to Ship to Model: - Determination of Place of supply where goods delivered on the direction of 3 rd person
10(1)(c)	No Movement of Goods: - Determination of Place of supply where Supply do not involve movement of goods
10(1)(d)	Assembly & Installation: - Determination of Place of supply where goods are assembled, or installed at site
10(1)(e)	Goods supplied on board: - Goods are supplied on board a conveyance, including a vessel, an aircraft, a train, or a motor vehicle

(i) Determination of Place of Supply for Normal Supply of Goods [Section 10(1)(a) of IGST Act]

Where the supply involves movement of goods, whether by the supplier (of goods) or the recipient (of goods) or by any other person, the place of supply of such goods shall be the **location of the goods at the time at which the movement of goods terminates for delivery to the recipient.**

In depth Analysis:

- 1) Location of Supplier of Goods:** It shall be noted that location of the supplier of goods have not been defined in GST Law (Location of the supplier of service is defined). The place where goods are situated would represents the location of supplier (of goods). The location of supplier is therefore the physical point where the goods are situated under the control of the person wherever registered. Further, careful attention shall be given to the definition of place of business. As per clause (a) of Section 2(85) of CGST Act, **“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 is a place of business”**. In GST what we register is place of business, thus, such locations would be registered.
- 2) Delivery Taken by Recipient from Supplier - Ex-factory:** - It is quite interesting to evaluate such kind of transactions where supplier sells goods to recipient on ex-factory basis (i.e., recipient collects goods from suppliers' factory) and takes such goods to his location (in another state).

As per section 10(1)(a) of IGST Act, **“Location where movement terminates for delivery”** is place of supply. Accordingly, the location where movement is terminated i.e., his factory seems to be place of supply. However, the term **“Delivery”** shall be read along with section 2(2) of CGST Act which reads **“address of delivery”** as the address of the recipient of goods or services or both indicated on the tax invoice issued by a registered person for delivery of such goods or services or both.

Further, section 2(3) of CGST Act states that **“address on record”** as the address of the recipient as available in the records of the supplier. Thus, it can be argued

and inferred that delivery of goods done by the supplier or taken by the recipient would deem to be terminated at the registered place or address of recipient on record mentioned in the tax invoice.

Example: If recipient of Delhi comes to Mumbai for collecting goods from his supplier of Mumbai, the place of supply would be Delhi, provided the recipient provides the address to supplier of his place of business located in Delhi. If Mumbai is regarded as Place of Supply, the recipient cannot take input tax credit of CGST, SGST of Maharashtra.

Illustrations – Section 10(1)(a) of IGST Act



Transaction	State of Supplier (from where goods are removed)	Termination of Movement of delivery	Place of supply	Tax Treatment
Movement of goods by the supplier (goods dispatched by supplier)	Maharashtra	Gujarat	Gujarat	IGST would be payable by MH Supplier to CG in MH CG would apportion 50% of the same to Gujarat (POS State)
Movement of goods by the recipient (goods collected by recipient)	Rajasthan	Maharashtra	Maharashtra	IGST would be payable by RJ Supplier to CG in RJ CG would apportion 50% of the same to Maharashtra

Central Government would come to know about Place of Supply when supplier files its GSTR - 1, in GSTR 1 there is a column asking to furnish the details of Place of supply.

Numerical Illustration on Inter-Government Transfer of IGST [Reference: Section 18 of IGST Act]

Transaction: - Mr. A sold goods to Mr. B of Maharashtra [₹ 10,000 excluding GST], Mr. B of Maharashtra sold goods to Mr. C of Telangana [₹ 20,000 excluding GST], goods are consumed in Telangana itself.

Transaction	Tax Treatment
Supply by A to B [Intra - State]	Goods worth ₹ 10,000/- are sold., thus, CGST & SGST would be payable at Maharashtra by Mr. A amounting to ₹ 900 CGST & ₹ 900 SGST.
Supply by Mr. B to Mr. C [Inter-State]	Goods worth ₹ 20,000/- are sold., thus, IGST would be payable at Maharashtra to Centre after reducing Input Tax credit of CGST 900 & SGST 900. Thus, $₹ 20,000 \times 18\% (-) 900 (-) 900 = 1,800$ would be payable to Centre
Transfer by MH Government to Centre in regards to utilisation of SGST to pay IGST by B	MH Government will transfer ₹ 900 to Centre as the supplier paid 900 less to centre due to availability of SGST Credit. The same would be collected by Centre from MH Government. Now total revenue with Centre is $₹ 900$ (CGST of MH) + 1800 (IGST) + 900 (Transfer by MH) = 3600 which may be equated as $₹ 20,000 \times 18\%$.
Inter-government settlement	Central Government would transfer ₹ 1800 to Telangana Govt. as the goods are consumed over there.

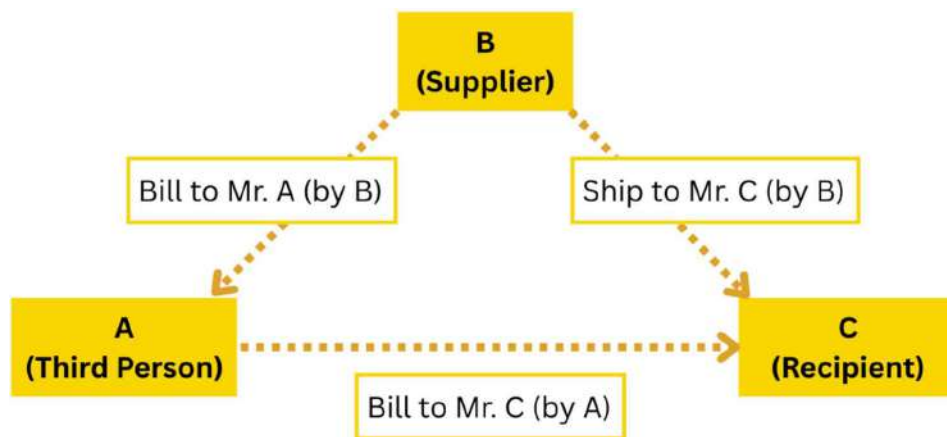
We can very well say that the beautiful concept derives its color by Tax having reached to the state of Telangana, without supplier (Mr. B) taking registration in Telangana. Centre acted as an Intermediary and transferred the taxes accruing to Telangana.

(ii) Determination of Place of Supply for when supply of goods is on direction of third person [Section 10(1)(b) of IGST Act]

Where the goods are delivered by the supplier to a recipient or any other person on the direction of a third person (commonly known as “Bill To Ship To” - Refer Indepth Analysis (i)), whether acting as an agent or otherwise, before or during movement of goods (not after movement has completed), either by way of **transfer of documents of title** to the goods or otherwise, it shall be **deemed that the said third person has received the goods** and the **place of supply** of such goods shall be the principal place of business of such person i.e., **location of third person who has given the instruction**.

In depth Analysis:

- 1) **Meaning of Bill to ship to:** There are few instances wherein the person does not have goods with him, however, he (hereinafter “third person”) directs some another supplier to deliver the said goods to place of business of his recipient. In the said tri party transaction, it shall be noted that, there involves 2 transactions. First leg of transaction is between the third person and the supplier and second leg of transaction between third person and recipient. Third person would be liable to pay to supplier & he would receive consideration from recipient.
- 2) **Transaction covered u/s 10(1)(b):** - The provision of Section 10(1)(b) deals only with the first leg of supply, that is, **supply by supplier to third party**. In the instant case, supplier would bill to third person & ship (deliver) the said goods to recipient. This arrangement is popularly called as Bill to Ship to Model as “B” is Billing to “A” & Shipping to “C.”



In the aforementioned transaction the two transactions are denoted as below:

a) **Transaction between A (Third Person) & B (Supplier) – First Leg of Transaction:**

This is governed by provisions of section 10(1)(b) of IGST Act. Thus, when “B” will invoice to “A” the place of supply on invoice issued by “B” would be shown as Location of “A” even if the movement of goods is terminated at Location of C. “A” would be deemed to receive goods.

b) **Transaction between A (Third Person) & C (Recipient) – Second Leg of Transaction:**

This will be governed by normal provisions of Section 10(1)(c) of IGST Act, as the goods do not involve movement of goods from A to C (as per ICAI SM second leg would be governed by Section 10(1)(a) of IGST Act). Thus,

when “A” will invoice to “C,” the place of supply on invoice would be location of goods at the time of delivery to “C”.

Other Aspects & Practical Difficulties in relation to Bill to Ship to Transactions

Aspect	Analysis								
(i) Input Tax Credit [Section 16]	As per Section 16 of CGST Act, 2017; one of the conditions to avail Input Tax credit is actual receipt of goods & services. However, it would be worth to note that “A” would be eligible to avail input tax credit on invoice raised by “A” even if goods are not actually received by him as “bill to ship to model” is an exception to the said condition as mentioned in section 16(2) of CGST Act.								
(ii) E - way Bill** [Section 68 r/w Rule 138]	In the said transaction as we already saw there are 2 transactions taking place, however, the movement is taking place only from supplier to recipient, thus, only one E - way bill shall be generated. Practically, in E - way Bill following details shall be furnished (only relevant details): -								
	<table> <tr> <td>Bill from</td><td>Name of third person</td></tr> <tr> <td>Ship from</td><td>Place of business of supplier</td></tr> <tr> <td>Bill To</td><td>Name of recipient</td></tr> <tr> <td>Ship To</td><td>Place of business of recipient</td></tr> </table>	Bill from	Name of third person	Ship from	Place of business of supplier	Bill To	Name of recipient	Ship To	Place of business of recipient
Bill from	Name of third person								
Ship from	Place of business of supplier								
Bill To	Name of recipient								
Ship To	Place of business of recipient								
(iii) Practical Difficulties	It may be noted that, in an e - way bill, the value of goods has to be entered. Supposingly, if supplier generates E - way bill and puts the value of goods of what he is supplying to third person, then the cost of goods to third person would be disclosed to recipient. Further, third person would not provide the details of his selling price to supplier to be mentioned on E - way bill as it will reveal the selling price.								
(iv) Registrations	It may so happen that, recipient would require the goods at the location of his client for further carrying work. Thus, he may insist third person to make delivery at the location of client of recipient rather than location of actual recipient. In this case, the “Ship To” address shall be the address at which recipient intends to receive goods. The said place shall be registered in GST.								
(v) Out & Out Sales	The transaction of supply from non-taxable territory to non-taxable territory without goods entering into India is neither supply of goods nor supply of services as it is mentioned in Schedule III, thus, POS is not required to be determined. Moreover, Section 10(1)(b) is only applicable when movement of goods is in India.								

****E - way Bill** is a document to be generated before or at the time of movement of goods if consignment value exceeds ₹ 50,000. E - way bill is to track the movement of goods and is in 2 parts, GST EWB - 01, PART A (Product, recipient & value details) & PART B (Vehicle details)

Illustrations on Section 10(1)(b) of IGST Act

Location of Third Person	Location of Supplier	Location of Recipient	Place of supply b/w Supplier & Third person – S. 10(1)(b) of IGST Act	Place of supply b/w Third Person & Recipient – S.10(1)(c) or 10(1)(a) of IGST Act
Amar (Maharashtra)	Akbar (Maharashtra)	Anthony (Madhya Pradesh)	Maharashtra (Location of Amar) Thus, CGST SGST would be levied even if movement of goods is inter-state.	Madhya Pradesh (Location of Goods at the time of delivery) IGST payable at Maharashtra by Amar, CG would apportion 50% to Madhya Pradesh, being Place of supply state.
Amit (Gujrat)	Arjun (Rajasthan)	Mihir (Rajasthan)	Gujrat (Location of Amit) (Thus, IGST would be levied even if movement of goods is within same state. Thus, IGST is payable at Rajasthan, would then be apportioned to Third person's state)	Rajasthan (Location of Mihir) IGST payable at Gujarat by Amit, CG would apportion 50% to Madhya Pradesh, being Place of supply state.

Location of Third Person	Location of Supplier	Location of Recipient	Place of supply b/w Supplier & Third person – S. 10(1)(b) of IGST Act	Place of supply b/w Third Person & Recipient – S.10(1)(c) or 10(1)(a) of IGST Act
John (Maharashtra)	Mr. Sheikh (Dubai)	Mr. Maxwell (Canada)	This transaction is neither supply of goods nor services as movement of goods is from a non-taxable territory to non-taxable territory without goods entering into India (Schedule III to CGST Act)	
John (Maharashtra)	Mr. Sheikh (Dubai)	Mr. Ram (Haryana)	Section 10 of IGST Act, would not apply in this case as, section 10 is applicable only when movement of goods is within India. Since movement of goods is from Dubai to Haryana, Section 11 (a) – Imports would be in picture.	

(iii) Determination of Place of Supply for when supply does not involve movement of goods [Section 10(1)(c) of IGST Act]

Where the supply does **not involve movement** of goods, whether by the supplier or the recipient, **the place of supply shall be the location of such goods at the time of the delivery to the recipient.**

In depth Analysis

Sometimes, it may so happen that the goods are ought to be sold on “as is basis,” meaning thereby no movement of goods shall take place. The example would be a case where the job worker develops a mould for the production of goods for the principal and retains the mould in his place itself for production of goods. The mould developed by the job worker is sold to the principal but the same is retained by the job worker without causing the movement of mould from job worker premises to principal premises. In this case, the place of supply would be job worker premises.

Other Illustrations

Supply under Finance Lease - Place of supply to be determined u/s 10(1)(c)

MA Pvt. Ltd. (New Delhi) has leased his machine (cost ₹ 8,00,000) to MB Pvt. Ltd. (Noida, Uttar Pradesh) for production of goods on a monthly rent of ₹ 40,000. After 14 months MB Pvt. Ltd. requested MA Pvt. Ltd. to sell the machine to it for ₹ 4,00,000, which is agreed to by MA Pvt. Ltd. In this case, there will be no movement of goods and the same will be sold on as is where is basis. **Thus, the**

location of the machine at the time of such sale will be the place of supply, i.e., Noida.

(iv) Determination of Place of Supply for Goods Assembled or Installed at Site [S. 10(1)(d)]

Where the goods are assembled or installed at site, the place of supply shall be the place of such installation or assembly.

In depth Analysis:

- 1) It is very crucial to note here that when the place of supply shall be determined u/s 10(1)(d). The place of supply under this section has to be derived only when the supply is termed to be “completed” upon installation or assembly.

Illustrations:

Installation of Machinery [S. 10(1)(d)]

MA Pvt. Ltd. (New Delhi) purchases a machine from MB Pvt. Ltd. (New Delhi) for being installed in its factory at Noida, Uttar Pradesh. The place of supply is the site at which the machine is installed, i.e., Noida.

Assembly of Machinery at a Power Plant [S. 10(1)(d)]

Pure Refineries (Mumbai, Maharashtra) (Recipient) gives a contract to PQ Ltd. (Ranchi, Jharkhand) (Supplier) to supply a machine which is required to be assembled in a power plant in its refinery located in Kutch, Gujarat. The place of supply is the site of assembly of machine, i.e., Kutch even though Pure refineries is in Maharashtra.

Section 10 (1) (ca) [Supply of Goods to Unregistered person] inserted:

(ca) where the supply of goods is made to a person other than a registered person, the place of supply shall, notwithstanding anything contrary contained in clause (a) or clause (c), be the

- ❖ **location as per the address of the said person recorded in the invoice issued** in respect of the said supply and the
- ❖ **location of the supplier** where the address of the said person is not recorded in the invoice.

(v) Determination of Place of Supply for Goods supplied on board a conveyance including vessel [S. 10(1)(e)]

Where the goods are supplied on board a conveyance (by operator of conveyance to its passengers), including a vessel, an aircraft, a train or a motor vehicle, the place of supply shall be the location at which such goods are taken on board.

In depth Analysis:

- 1) Firstly, let us try to understand the transactions involved in these supplies from below pictorial diagram



Transaction	Analysis	Remarks
Supply by A to B	The said supply is not covered under section 10(1)(e), the place of supply of goods supplied by A to B shall be derived from Section 10(1)(a) of IGST Act.	The Place of supply of said transaction would be Maharashtra, since goods terminated for delivery at Maharashtra.
Supply by B to C [Separate Consideration not charged]	It would be very relevant to first analyse whether the supply made by B to C is covered under Section 10 or not. For the same, it would be important to classify whether B supplies goods or services to C. In this case, it is important to invite attention to Section 8 of CGST Act, which talks about composite supplies. Here the principal activity is supply of services thus, if B does not charge any separate consideration for supply of these goods, the supply of goods would form part of composite supply of services and the place of supply of said supply cannot be determined u/s 10(1)(e). Relevant section would be section 12	The place of supply would be determined u/s 12(2), the Location of recipient, unless recipient does not provides his address (Discussed later)
Supply by B to C [Separate Consideration charged]	If a separate consideration is charged by B to C, then it is an independent supply of goods accordingly, the place of supply shall be the place where such goods are taken on board.	The Place of supply would be Maharashtra.

Thus, we infer that for the purpose of Section 10(1)(e) of IGST Act, the supply of goods by the **operator of the conveyance during its journey to the passenger** is covered.

Other examples could be supply of packaged food in train where separate consideration is generally charged. However, whether packaged food is supply of goods or service is another matter of dispute before department at this moment.

2. PLACE OF SUPPLY OF GOODS IMPORTED INTO, OR EXPORTED FROM INDIA (SECTION 11 OF IGST ACT)

The taxation of cross border transactions for supply of **goods** is governed by section 11 of IGST Act. Section 11 with an ease describes the place of supply of goods: -

- (a) Imported into India shall be the location of the importer;
- (b) exported from India shall be the location outside India.

a) Analysis of Import of Goods & Related Transactions: -

(i) Meaning of Import of goods [Section 2(10) of IGST Act]

Term	Meaning
Import of Goods	Import of goods has been defined in section 2(10) of the IGST Act as bringing goods into India from a place outside India. All imports are deemed as inter-State supplies and accordingly IGST is levied in addition to the applicable custom duties. If the goods have been imported in India, the place of supply of goods is the place where the importer is located. <i>(The detailed analysis of Import of goods have been done in "Customs")</i>
"Imported goods"	"Imported goods" means goods brought into India from a place outside India but does not include goods which have been cleared for home consumption. (Definition has been taken from Customs Law)
Relevant Case Law	Import is said to be commenced when goods entered into territorial waters and shall be completed when goods become part of mass of goods within India. (Garden Silk Mills vs. UOI)
IGST on Imports	IGST is a customs duty leviable u/s 3(7) of Customs Tariff Act, 1975 on import of goods. The rate of IGST u/s 3(7) on the product is same as rate of IGST on the same product sold in India. However, it would be worth noting that, IGST exemption notification for domestic supplies cannot be stretched to IGST exemption on import of goods, unless notifications issued under customs specifically provide for.

(ii) Other Relevant points, Clarifications & Analysis in regards to Imports

Transaction	Legal Reference	Analysis
(i) High Sea Sales (HSS)	Circular No. 33/ 2017-Cus dated 1 st August, 2017 read with Schedule III	❖ Government clarified the position of levy of GST on 'HSS' vide Circular No. 33/ 2017-Cus dated 01.08.2017 – that IGST on 'HSS' transactions of imported goods, whether one or multiple, shall be levied and collected only at the time of importation i.e., when the import declarations are filed before the Customs authorities for the customs clearance purposes for the first time. ❖ In other words, the buyer of "HSS" shall be discharging IGST on such imports and as part of Customs. ❖ Further, value addition accruing in each such 'HSS' shall form part of the value on which IGST is collected at the time of clearance i.e., buyer shall pay IGST on the final purchase value as per last High Sea transaction envisaging all margins earned by all persons who made 'HSS' of such goods. ❖ The High Sea sales is neither supply of goods nor supply of services, by virtue of para 8(b) of Schedule III to CGST Act.
(ii) In-bond sales	Circular No. 46/ 2017-Cus dated 24 th November, 2017 read with Schedule III	❖ In respect of supply of goods within warehouse, IGST is not applicable until bill of entry for home consumption is filed ❖ The sales of goods in warehouse are neither supply of goods nor supply of services, by virtue of para 8(a) of Schedule III to CGST Act.
(iii) Clarification on Levy of IGST Sale of Goods	Circular No. 3/1/2018-IGST, dated 25 th May, 2018	❖ IGST shall be levied and collected at the time of final clearance of the warehoused goods for home consumption i.e., at the time of filing the ex-bond bill of entry and the value addition accruing at each stage of supply shall form part of the value on which the integrated tax would be payable at the time of clearance of the warehoused goods for home consumption.

b) Analysis of Export of Goods & Related Transactions:

Term	Meaning
Meaning of Export Goods	❖ “Export goods means goods which are to be taken out of India to a place outside India.” Thus, export commences when exporter files shipping bill & is completed when goods crossed territorial waters of India i.e., 12 NM.
Analysis	❖ Export of goods is not same as “supply of goods to SEZ,” even though both are zero rated supplies as per section 16 of IGST Act. Further, person supplying zero rated supplies are entitled to claim refund of ITC (exports under Letter of Undertaking) or claim refund of GST paid on such supplies (exports on payment of IGST) (to be discussed in refund chapter)
Exports are Inter-state Supplies	❖ Export of goods & supplies to SEZ are zero-rated and are interstate supplies pursuant to section 7 of IGST Act. Thus, any person supplying zero rated goods has to compulsorily obtain GST Registration. <i>[Limit of ₹ 20,00,000/- is for service suppliers, however to claim SEIS benefits, a person shall have Importer Exporter Code and for obtaining Importer Exporter Code, GST Registration is mandatory]</i>

3. PLACE OF SUPPLY OF SERVICES WHERE LOCATION OF SUPPLIER AND RECIPIENT IS IN INDIA (SECTION 12 OF IGST ACT)

Preface to Section 12 of IGST Act [Location of Service Supplier & Location of Service Recipient is in India]:

The first aspect which shall be noted before beginning section 12 is that, the said section is only applicable to determine place of supply of “**services**” when “**location of supplier & recipient is in India**”. Now let us move on to understand Location of recipient of “Service” & Location of supplier of “service.”

As per section 2(70) of CGST Act, “location of the recipient of services” means;

Receipt of supply at:	Location of Service Recipient
(i) Registered Place of business	Location of such place of business
	Meaning of Place of business [Section 2(85) of CGST Act]: ❖ 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 ❖ A place where a taxable person maintains his books of account; or ❖ A place where a taxable person is engaged in business through an agent, by whatever name called;
(ii) Other than the place of business for which registration has been obtained	Location of such fixed establishment;
	The following three elements are critical to determine whether a place is a ‘fixed establishment’ [Section 2(50) of CGST Act]: (a) Having a sufficient degree of permanence; (b) Having a structure of human and technical resources; and (c) Other than a registered place of business.
(iii) More than one establishment	Whether the place of business or fixed establishment, the location of the establishment most directly concerned with the receipt of the supply
(iv) Any other place	Usual place of residence of the recipient
Location of recipient of service shall be in India in order to apply provisions of section 12 of IGST Act	

As per section 2(71) of CGST Act “location of the supplier of services” means;

Provision of supply from:	Location of Supplier
(i) Registered Place of business	Location of such place of business
	Meaning of Place of business [Section 2(85) of CGST Act]: - ❖ 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 ❖ A place where a taxable person maintains his books of account; or ❖ A place where a taxable person is engaged in business through an agent, by whatever name called.
(ii) Other than the place of business for which registration has been obtained	Location of such fixed establishment;
	The following three elements are critical to determine whether a place is a ‘fixed establishment’: (a) Having a sufficient degree of permanence; (b) Having a structure of human and technical resources; and (c) Other than a registered place of business.
(iii) More than one establishment	Whether the place of business or fixed establishment, the location of the establishment most directly concerned with the receipt of the supply
(iv) Any other place	Usual place of residence of the supplier
Location of supplier of service shall be in India in order to apply provisions of section 12 of IGST Act	

It is crucial to note that Intra-state supplies u/s 8 of IGST Act, 2017; is subject to provisions of section 10 (for goods) & section 12 (for services), meaning thereby a supply can become intra-state supply when POS is determined from Section 10 (for Goods) or Section 12 (for Services) of IGST Act. If Place of supply & Location of Supplier is same state wherein Place of supply is determined as per section 13 (not section 12) of IGST Act, then such supply would be regarded as inter-state supply.

1) General Provisions to Determine Place of Supply of Services [S. 12(2) of IGST Act]

Section	Provision	Place of Supply if provided to Unregistered person	Place of Supply if provided to Registered person
12(2) 	Services other than those specified in Section 12(3) to 12(14) below.	(i) the location of the recipient where the address on record exists; and (ii) the location of the supplier of services in other cases.	Location of such person
❖ The default presumption for place of supply in respect of registered recipients (B2B supply of services) is the location of such person. Since the recipient is registered, address of recipient is always there and the same can be taken as proxy for place of supply. ❖ The default presumption for place of supply in respect of unregistered recipients (B2C supply of services) is also the location of recipient. However, in many cases, the address of recipient is not available; in such cases, location of the supplier of services is taken as proxy for place of supply.			

Illustrations
Service Provided to Registered Person
Mr. A (a Chartered Accountant registered in New Delhi) makes a supply of service to his client MB Pvt. Ltd. of Noida, Uttar Pradesh (registered in Uttar Pradesh). In this case, since the supply is made to a registered person, the place of supply is the location of the registered recipient, i.e., Noida.
Services provided to unregistered person – Address available
Mr. A, a Chartered Accountant in Gurugram, Haryana, (registered in Haryana) provides consultancy services to his client Mr. C who is a resident of New Delhi but is not registered under GST. If the address of Mr. C is available in the records of Mr. A, location of Mr. C, i.e., New Delhi will be the place of supply, else the location of Mr. A, which is Gurugram, will be the place of supply.
Services provided to unregistered person – Address not available
Baba Astrologers (Delhi) provide astrology services to customers over call. Baba astrologers do not keep a record of address of recipient due to continuous calls being received by them. In such case Place of supply would be location of supplier of services i.e., Delhi.

2) Services in relation to Immovable Property [S. 12(3) of IGST Act r/w Rule 4 of IGST Rules]

Section	Types of Service	Place of Supply
12 (3) 	Services: (a) Directly in relation to an immovable property, including services provided by architects, interior decorators, surveyors, engineers and other related experts or estate agents, any service provided by way of grant of rights to use immovable property or for carrying out or co-ordination of construction work; (b) by way of lodging accommodation by a hotel, inn, guest house, home stay, club, or campsite, by whatever name called, and including a house boat or any other vessel; or (c) by way of accommodation in any immovable property for organising any marriage or reception or matters related thereto, official, social, cultural, religious, or business function including services provided in relation to such function at such property; or (d) any services ancillary to the services referred to in clauses (a), (b) and (c), shall be the location at which the immovable property or boat or vessel	Where Immovable Property Located in India: - Place where immovable property is located or intended to be located. Where Immovable Property is Located Outside India: [Proviso to Section 12(3)]: Location of recipient (Notes: In any case, government's intention is clear to tax the same in India as Location of supplier & Location of recipient are located in India)

Manner of Determination of Place of Supply where Immovable property is located in more than one state

IMMOVABLE PROPERTY IN MORE THAN ONE STATE - CONTRACT AVAILABLE: [Explanation to Section 12(3)]

Immovable property/Boat/Vessel located in more than one State/Union territory:
 Sometimes the immovable property may extend to more than one location, for example, a railway line, a national highway, or a bridge on a river may originate in one State and end in the other State or a house boat stay may traverse more than one State.

In such cases, i.e., where the immovable property or boat or vessel is located in more than one State/Union territory, the service is deemed to have been supplied in each of the respective States/Union territories, in proportion to the value for the services determined **in terms of the contract or agreement entered into in this regard.**

IMMOVABLE PROPERTY IN MORE THAN ONE STATE - CONTRACT NOT AVAILABLE:

-

Manner of determining proportionate value of service in the absence of a contract or agreement between the supplier and recipient of services, the proportionate value of services supplied in different States/Union territories (where the immovable property or boat or vessel is located) is computed in accordance with rule 4 of IGST Rules as under:

IGST Rule	Supply Service	Basis of Proportion
4 	Lodging accommodation by a hotel, inn, guest house, club, or campsite, (except cases where such property is a single property located in two or more contiguous States or Union territories or both) and services ancillary to such services, referred under section 12(3) of the IGST Act, 2017	In proportion to the number of nights stayed in such property.
Illustration: - A hotel chain X charges a consolidated sum of ₹30,000/- for stay in its two establishments in Delhi and Agra, where the stay in Delhi is for 2 nights and the stay in Agra is for 1 night. The place of supply in this case is both in the Union territory of Delhi and in the State of Uttar Pradesh and the service shall be deemed to have been provided in the Union territory of Delhi and in the State of Uttar Pradesh in the ratio 2:1 respectively. The value of services provided will thus be apportioned as ₹20,000/- in the Union territory of Delhi and ₹ 10,000/- in the State of Uttar Pradesh.		
4 	All other services in relation to <u>immovable property</u> including supply of accommodation by a hotel, inn, guest house, club, or campsite, where such property is a single property <u>located in two or more contiguous States or Union territories or both</u> (except services provided by way of lodging accommodation by a <u>house boat</u> or any other vessel), and services ancillary to such services, referred under section 12(3) of the IGST Act, 2017.	In proportion to the <u>area of the immovable property</u> lying in each State or Union territory as declared by service provider.

Illustration: - There is a piece of land of area 20,000 square feet which is partly in State S1 say 12,000 square feet and partly in State S2, say 8000 square feet. Site preparation work has been entrusted to T. The ratio of land in the two states works out to 12:8 or 3:2 (simplified). The place of supply is in both S1 and S2. The service shall be deemed to have been provided in the ratio of 12:8 or 3:2 (simplified) in the States S1 and S2 respectively. The value of the service shall be accordingly apportioned between the States.

4 	The Supply of services provided by way of lodging accommodation by a house boat or any other vessel and services ancillary to such services, referred under section 12(3) of the IGST Act, 2017.	In proportion to the time spent by the boat or vessel in each such State or Union territory,
A company C provides the service of 24 hours accommodation in a houseboat, which is situated both in Kerala and Karnataka inasmuch as the guests board the house boat in Kerala and stay there for 22 hours but it also moves into Karnataka for 2 hours (as declared by the service provider). The place of supply of this service is in the States of Kerala and Karnataka. The service shall be deemed to have been provided in the ratio of 22:2 or 11:1 (simplified) in the states of Kerala and Karnataka, respectively. The value of the service shall be accordingly apportioned between the States.		

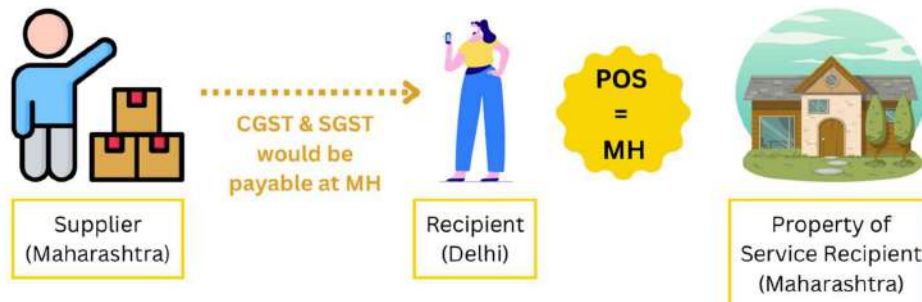
In depth Analysis: -

Meaning of “Directly”: Service shall be “directly in relation to” immovable property: The section clearly clarifies that, the place of supply in relation to services directly related to immovable property are covered, meaning thereby, any indirect services in relation immovable property would be covered u/s 12(2), such as services availed to compute capital gains on sale of immovable property is an indirectly related; whereas architecture services/ construction/ survey of land would be covered under directly related services.

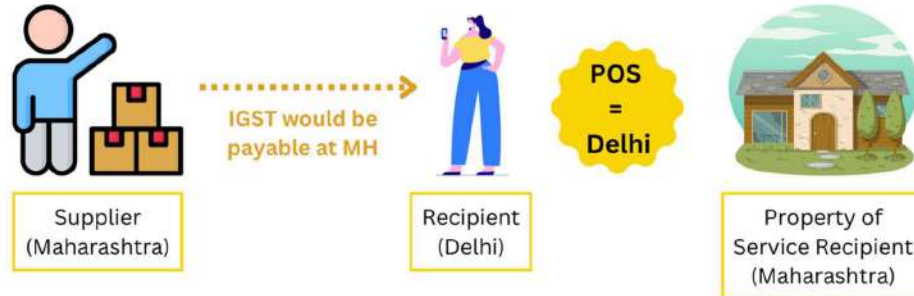
The essence of “directly in relation to immovable property,” lies in the fact that the service shall enhance the value of property.

Pictorial Illustrations:

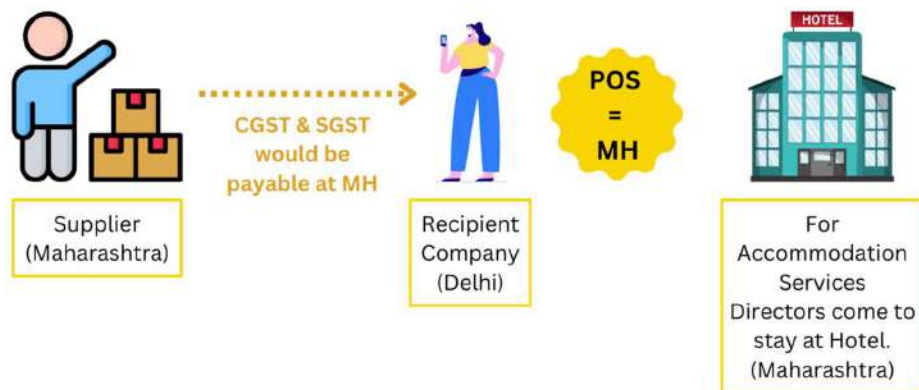
Architect Services



Service of Computation of Capital Gains Tax on Immovable Property



Accommodation Services



Note: - In case of accommodation services provided by MH person to Delhi recipient, the place of supply being MH, ITC would be disallowed to Delhi recipient for CGST & SGST paid at Maharashtra, being an Intra-state supply in another state.

POS of Advertisement Services [Circular No. 203/15/2023-GST dated 27th October, 2023]:

(a) **Hoarding on Land or Structure erected on Land:** The hoarding/structure erected on the land should be considered as immovable structure or fixture as it has been embedded in earth. Further, place of supply of any service provided by way of **SUPPLY (SALE) OF SPACE ON AN IMMOVABLE PROPERTY** or grant of rights to use an **IMMOVABLE PROPERTY SHALL BE GOVERNED BY THE PROVISIONS OF SECTION 12(3)**

(b) **Services provided by Vendor to Advertisement company for display of the advertisement of the advertisement company at the said location.:** In this case, there is no supply (sale) of space/ supply (sale) of rights to use the space on hoarding/structure (immovable property) by the vendor to the advertising company for display of their advertisement on the said display board/structure, the said service does not amount to sale of advertising space or supply by way of grant of rights to use immovable property. Therefore, such services **PROVIDED BY**

THE VENDOR TO ADVERTISING COMPANY ARE PURELY IN THE NATURE OF ADVERTISEMENT SERVICES IN RESPECT OF WHICH PLACE OF SUPPLY SHALL BE DETERMINED IN TERMS OF SECTION 12(2) OF IGST ACT.

3) Service such as Restaurant, catering, personal grooming etc. [S. 12(4) of IGST Act]

Section	Type of Service	Place of Supply
12(4) 	Restaurant and catering services, personal grooming, fitness, beauty treatment, health service including cosmetic and plastic surgery	Place where service is actually performed.

In depth Analysis: -

- (i) **Coverage of only restaurant services (not accommodation):** - It is interesting to note that only restaurant services are covered, accommodation services would be covered by section 12(3) of IGST Act.
- (ii) **Intra-state supply:** - It is pertinent to note that whenever a place of supply is determined in accordance with this section, it would always give rise to intra-state supply as location of supplier & location where performance is done will always be same (except where SEZ is supplier). Further, if the recipient is of another state, then he will not be eligible to avail input tax credit of tax paid in such another state other than where he is registered.

Pictorial Illustrations: -



Other Illustration:

Mr. A, a business man from Pune dines in a restaurant at Mumbai while on a business trip. The place of supply of restaurant service is the location where such service is performed i.e., Mumbai.

4) Services in relation to Training & Performance appraisal [S. 12(5) of IGST Act]

Section	Type of Service	Place of Supply if provided to unregistered person	Place of Supply if provided to registered person
12(5)	Services in relation to Training & Performance appraisal.	Actual place of performance.	Location of such registered person.

Notes:

Recipient vs. Beneficiary: - Recipient here being the “person liable to pay the consideration” is not to be misconstrued to be the “trainee” or “person appraised.”

E.g.: In case of a corporate training organized by a training institute in Mumbai for a registered corporate client in Bangalore, the consideration is paid by the corporate through the individual participants who would be required to pay a certain delegate fee. Hence, the POS has to be determined on the basis of location of the recipient being the corporate entity and not based on the place where the services are actually performed.

Pictorial Illustration:

Assume - Sony TV is unregd. in GST) Judges of Indian Idol actually provides services to Sony TV, by evaluating candidates at different locations. Thus, the beneficiary (the who has been judged) is different from recipient (i.e., Sony TV). In the instant case, even if the recipient is located at MH, the place of supply would be Delhi, since, the performance appraisal services are performed in Delhi. However, if Sony TV is regd. in GST, the place of supply would be MH.



Since Sony Entertainment is unregistered person, the place of supply would be where such appraisal has been done i.e., Delhi in this case.

Other Illustrations:

DEO Consultants (Kolkata) impart GST training to accounts and finance personnel of Sun Cements Ltd. (Guwahati, Assam) at the company's Kolkata office. Since the

recipient is registered, the place of supply is the location of the registered person i.e., Guwahati.

Mr. Suresh (unregistered person based in Noida) signs up with Excellent Linguistics (New Delhi) for training on English speaking at their New Delhi Centre. Since the recipient is unregistered, the place of supply is the location where services are provided i.e., New Delhi.

5) Admission to Event / Amusement Park [S. 12(6) of IGST Act]

Section	Type of Service	Place of Supply
12(6) 	Admission to a cultural, artistic, sporting, scientific, educational, entertainment event or amusement park or any other place and services ancillary thereto	Place where the event is actually held or where the park or such other place is located

Analysis: -

It is very important to note that only **Admission Fee (i.e., Entry Fee)** would fall in the ambit of provisions of 12(6), services for organizing the event at the venue are **NOT covered in Section 12(6) they are covered in Section 12(7).**

Pictorial Illustration



Other Illustrations:

Dharmesh Dance classes of Gujrat is going to have concert in Mumbai, ticket of which is for Rs. 750 per person. Dharmesh Dance Academy would levy IGST as location of supplier is Gujrat & Place of supply is Mumbai (Maharashtra).

Mr. A, a resident of Ghaziabad, Uttar Pradesh, buys a ticket for a circus organized at Gurugram, Haryana by a circus company based in New Delhi. The place of supply is the location where the circus is held i.e., Gurugram

6) Event Management Services [S. 12(7) of IGST Act r/w Rule 5 of IGST Rules]

Section	Type of Service	Place of Supply if provided to URP	Place of Supply if provided to Reg. Person
12(7) 	Organisation of a cultural, artistic, sporting, scientific, educational or entertainment event including supply of services in relation to a conference, fair, exhibition, celebration, or similar events Services ancillary to organisation of any of the events or services referred to in clause (a), or assigning of sponsorship to such events.	If event is held in India: Place where event is actually held. If event is held Outside India: Location of recipient	Location of such registered Person

Manner of Determination of Place of Supply where event is in more than one state

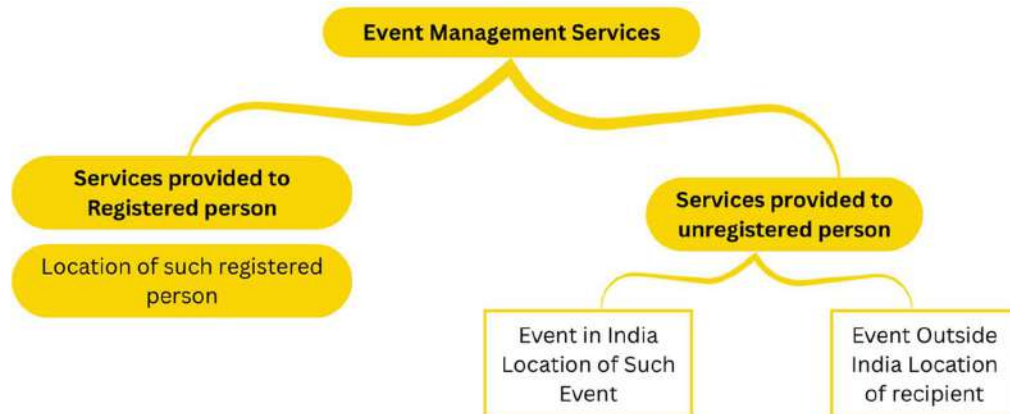
EVENT IN MORE THAN ONE STATE - CONTRACT AVAILABLE [EXPLANATION]

Where the **event** is held in **more than one State** or Union territory **and a consolidated amount** is charged for supply of services relating to such event, the place of supply of such services shall be taken as being in each of the respective States or Union territories in proportion to the value for services separately collected or determined **in terms of the contract or agreement** entered into in this regard or, in the **absence of such contract or agreement**, on such other basis **as may be prescribed**

EVENT IN MORE THAN ONE STATE - CONTRACT NOT AVAILABLE [RULE 5]

Rule No. (IGST Rule)	Type of Service	Basis of Apportionment
5	Organisation of a cultural, artistic, sporting, scientific, educational or entertainment event including supply of services in relation to a conference, fair, exhibition, celebration, or similar events; or services ancillary to Organisation of any of the events or services referred earlier or assigning of sponsorship to such events etc. referred under 12(7) of IGST Act	In absence of such contract or other basis – POS shall be determined as per application of the generally accepted accounting principles.

Illustration: - An event management company E has to organize some promotional events in States S1 and S2 for a recipient R (unregistered). 3 events are to be organized in S1 and 2 in S2. They charge a consolidated amount of Rs. 10,00,000 from R. The place of supply of this service is in both the States S1 and S2. Say the proportion arrived at by the application of generally accepted accounting principles is 3:2. The service shall be deemed to have been provided in the ratio 3:2 in S1 and S2 respectively. The value of services provided will thus be apportioned as Rs. 6,00,000/- in S1 and Rs. 4,00,000/- in S2.



Pictorial Illustrations:

(i) Services provided to Registered business Entities



(ii) Services provided to Unregistered persons - Event O/S India



(iii) Services provided to Unregistered persons - Event in India



Test Yourself

Service	Location of Supplier	Location of Event	Location of Recipient	Place of Supply
Wedding Services	Delhi	Maharashtra	Rajasthan (Unregistered)	Maharashtra
Destination Wedding Services	Delhi	Dubai	Rajasthan (Unregistered)	Rajasthan
Annual Day Function of RIL (A Registered company)	Punjab	Gujrat	Maharashtra (Registered)	Maharashtra
Annual Day Function of RIL (A Registered company)	Punjab	Malaysia	Maharashtra (Registered)	Maharashtra
Google arranges Award Function in Maharashtra	Maharashtra (MH)	Maharashtra (MH)	United States (US)	Section 13 would be applicable as recipient is located outside India (Ans would be MH)

Other Illustrations:

Event Management Services to Registered persons: - Mega Events, an event management company at New Delhi, organizes an award function for Shah Diamond Merchants of Ahmedabad (registered in Gujarat), at Mumbai. Since the recipient is a registered person, the place of supply is the location of the recipient, i.e., Ahmedabad

Event Management Services to Unregistered persons - Event in India: - Grand Wedding Planners (Chennai) is hired by Mr. Ramesh (unregistered person based in Hyderabad) to plan and organise his wedding at New Delhi. The recipient being an

unregistered person, the place of supply is the location where the event is held i.e., New Delhi.

Event Management Services to Unregistered persons - Event in Outside: -Grand Wedding Planners (Chennai) is hired by Mr. Ramesh (unregistered person based in Hyderabad) to plan and organise his wedding at Seychelles. The recipient being an unregistered person and the event held outside India, the place of supply is the location of the recipient i.e., Hyderabad and not the location where the event is held i.e., Seychelles.

7) Goods Transport Services [S. 12(8) of IGST Act r/w IGST Amendment Act, 2018]

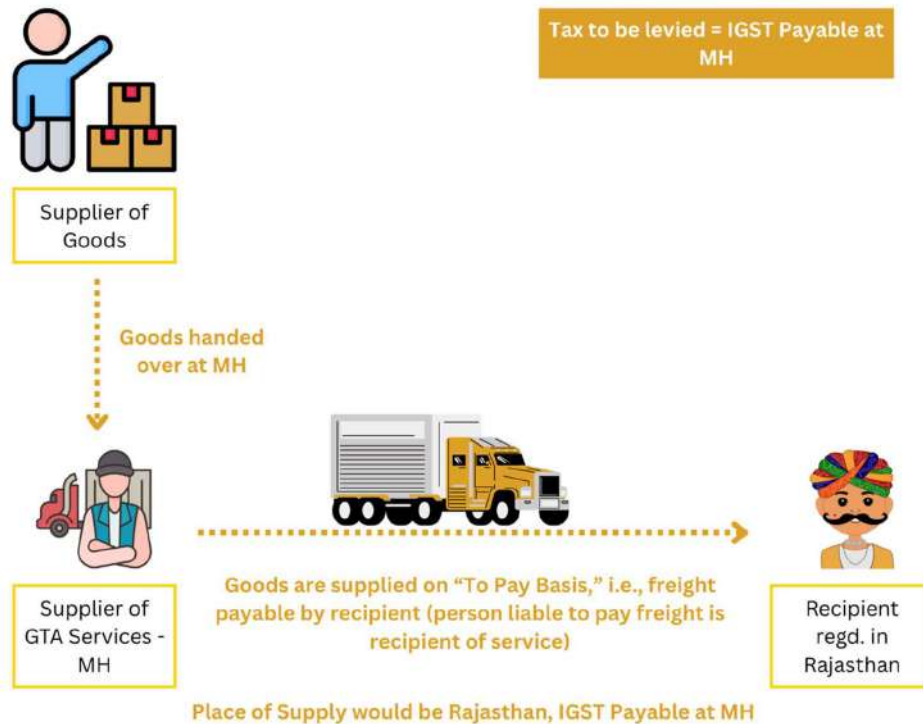
Section	Type of Service	Place of Supply if provided to URP	Place of Supply if provided to Registered person
12(8) 	Transportation of goods including mail or courier.	Place where goods are handed over for their transportation	Location of such registered Person
~~Proviso to Section 12(8) - If Place of Destination is outside India, then such destination location is Place of supply~~			

In depth Analysis:

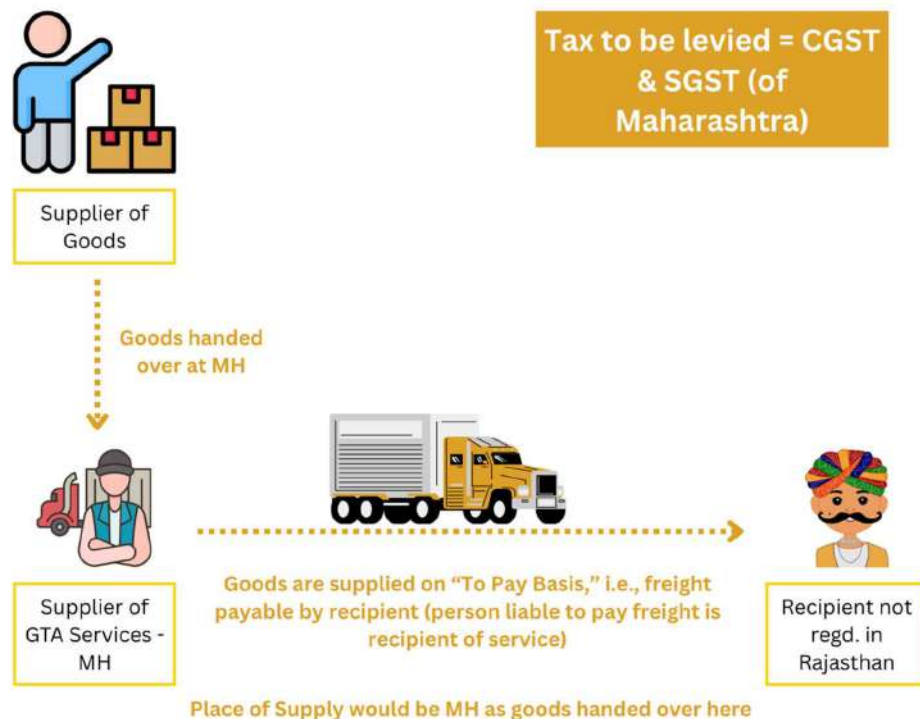
- (i) **Taxability of Transport Services:** As per Entry No. 18 of Notification 12/2017 - CT(R), services by way of transportation of goods by road except services of
 - Goods Transport Agency
 - Courier agencies
 are exempt from GST.
- (ii) **Recipient of GTA Services:** As per Notification 13/2017 - CT(R) the person who is liable to pay freight shall be construed to be the recipient of GTA service
- (iii) The place of supply of Mail & Couriers (where supplier and recipients are located in India) shall be determined u/s 12(8) of IGST Act.

Pictorial Illustrations:

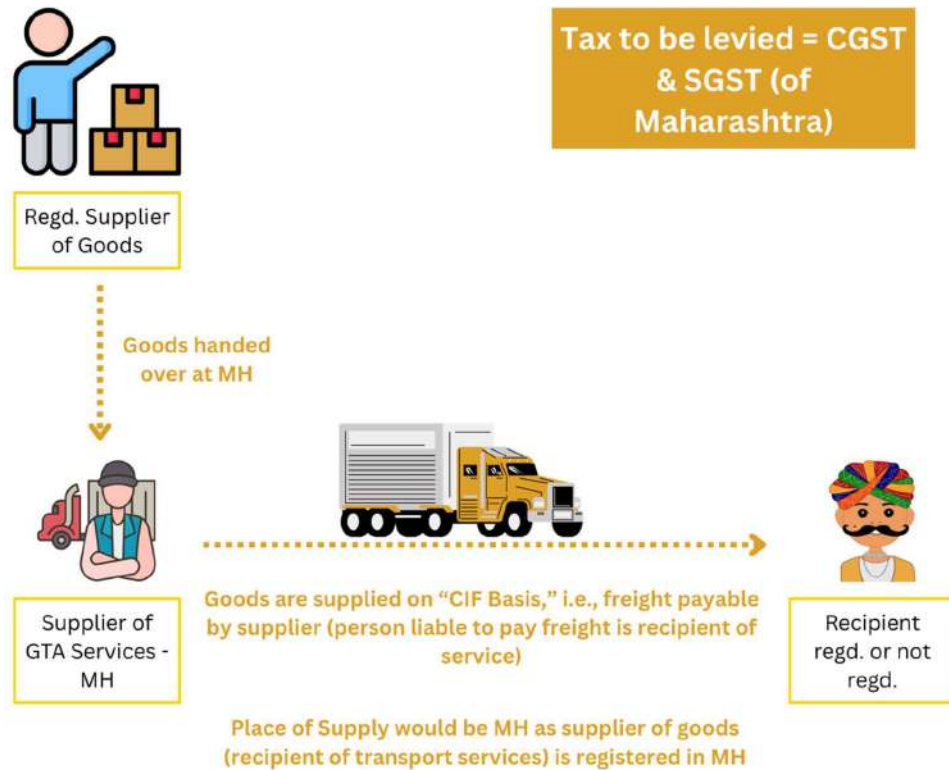
(i) Transport Services provided to Registered person (Being Recipient of Goods)



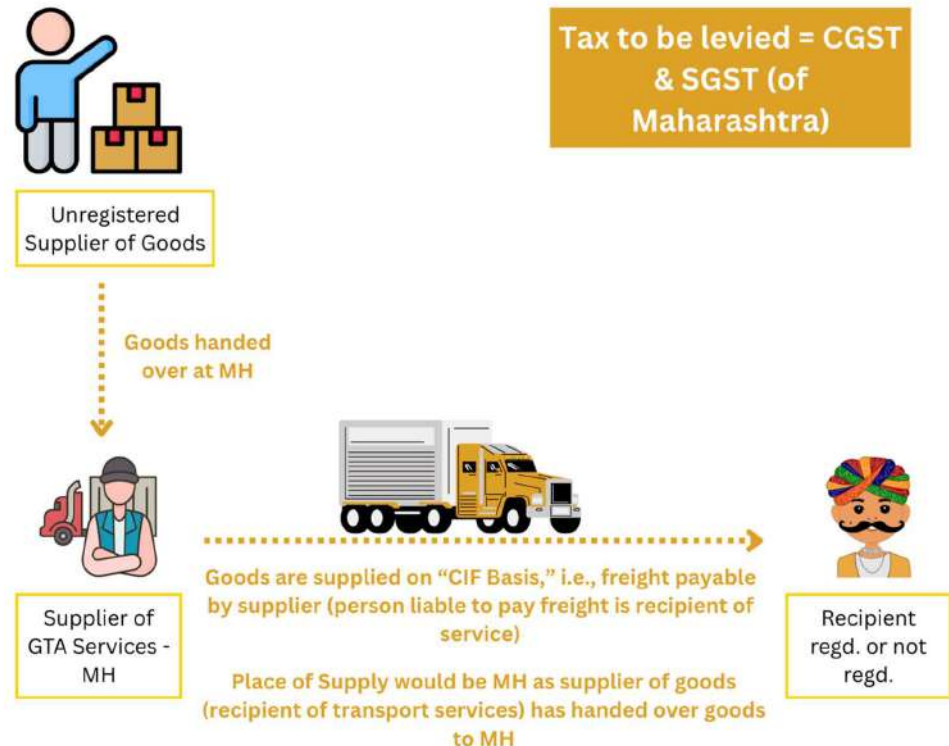
(ii) Transport Services provided to Unregistered persons (Being Recipient of Goods)



(iii) Transport Services provided to Registered persons (Being Supplier of Goods)



(iv) Transport Services provided to Unregistered persons (Being Supplier of Goods)



8) Passenger Transport Services [S. 12(9) of IGST Act]

Section	Type of Service	Place of Supply if provided to URP	Place of Supply if provided to Registered Person
12(9) 	Passenger transportation service	Place where passenger embarks on the conveyance for continuous journey	Location of such registered Person
Where the right to passage is given for future use and the point of embarkation is not known at the time of issue of right to passage, the place of supply of such service shall be determined in accordance with the provisions of Section 12(2).			

In depth Analysis: -

- (i) **Return Journey is a Separate Journey even if booked at one go:** As per Explanation to section 12(9), the return journey shall be treated as a separate journey, even if the right to passage for onward and return journey is issued at the same time. As per section 2(3) of IGST Act “continuous journey” means a journey for which a single or more than one ticket or invoice is issued at the same time, either by a single supplier of service or through an agent acting on behalf of more than one supplier of service, and which involves no stopover between any of the legs of the journey for which one or more separate tickets or invoices are issued.

For the purposes of this clause, the term “stopover” means a place where a passenger can disembark either to transfer to another conveyance or break his journey for a certain period in order to resume it at a later point of time.

- (ii) Where the point of embarkation is unknown (in cases where the right to passage is given for future use) then the place of supply will be determined under the residuary clause (i.e., Section 12(2) of the IGST Act).

(iii) Illustrations for Stopover & Continuous Journey

Travel Journey	Place of Supply if recipient is registered in Maharashtra	Place of Supply if recipient is unregistered
[1] Continuous Journey		
Maharashtra-Rajasthan-Haryana	Maharashtra	Maharashtra
Delhi-Gujarat-Goa	Maharashtra	Delhi
Rajasthan-Goa-Haryana	Maharashtra	Rajasthan
[2] Stopover Journey		
Maharashtra - Rajasthan	Maharashtra	Maharashtra
Rajasthan - Haryana	Maharashtra	Rajasthan
Delhi - Gujarat	Maharashtra	Delhi
Gujarat - Goa	Maharashtra	Gujarat

(iv) Pictorial Illustrations:

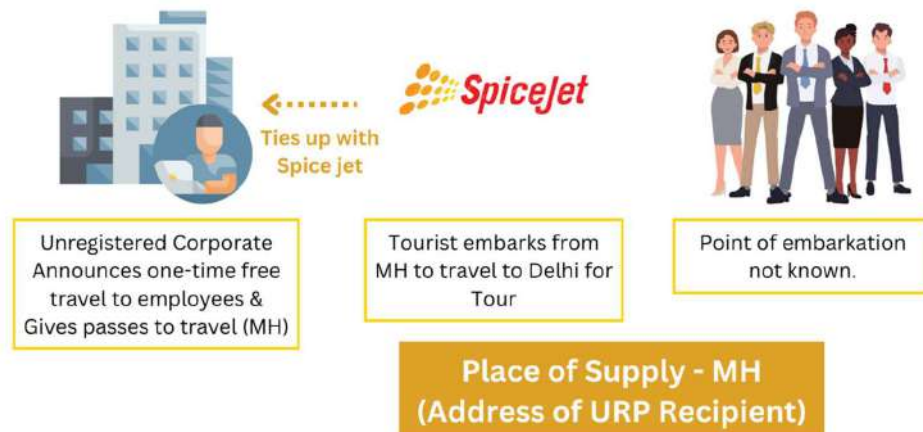
(a) Supply of Passenger Transport Services to Registered person: 12(9)



(b) Supply of Passenger Transport Services to unregistered person: 12(9)



(c) Point of Embarkation - Not known [12(9) r/w 12(2)]



9) Services on board a conveyance [S. 12(10) of IGST Act]

Section	Type of Service	Place of Supply
12(10)	Services on board a conveyance, including a vessel, an aircraft, a train, or a motor vehicle	Location of the first scheduled point of departure of that conveyance for the journey (Conveyance includes a vessel, an aircraft, a train, or a motor vehicle.)

In depth Analysis:

- (i) This provision does not distinguish place of supply between registered or unregistered recipients.
- (ii) The registered recipients would lose input tax credit if place of supply is state other than state where they are registered.
- (iii) The services on board would include services such as purchase of movies in plane on payment of extra consideration. It shall be noted that any service availed on payment of separate charges would be covered in the ambit of Section 12(10) of IGST Act. It can be detailed with below illustration:

Nature of Payment	Example
Extra Consideration	The employee of registered recipient located in Gujarat (passenger) availed travelling ticket worth Rs. 8,000 (excl. GST) for travel from Maharashtra to Gujarat. The place of supply would be Gujarat [Section 12(9) of IGST Act - Passenger Transportation Service]. The employee procured movie subscription plan for 2 hours on payment of extra charges of Rs. 500. In this case, movie is a service on board. Accordingly, the place of supply would be Maharashtra i.e., Location of the first scheduled point of departure of that conveyance for the journey.
Single Price	The employee of registered recipient located in Gujarat (passenger) availed travelling ticket along with a movie at a bundled price of Rs. 8,000 (excl. GST) for travel from Maharashtra to Gujarat. The place of supply would be Gujarat [Section 12(9) of IGST Act - Passenger Transportation Service]. Movie is an ancillary supply, given along with the principal supply of transportation. Thus, the place of supply for entire Rs. 8500 would be Gujarat.

10) Telecommunication Services [S. 12(11) of IGST Act]

Provision	Type of Service	Place of Supply
Section 12(11)	(a) Fixed Telecommunication Line [Landline] Services by way of ❖ Fixed telecommunication line, ❖ Leased circuits, ❖ Internet leased circuit, ❖ Cable or dish antenna	Location where the telecommunication line, leased circuit or cable connection or dish antenna is installed for receipt of services
	(b) Mobile Connection [Post Paid] Mobile connection for telecommunication and internet services provided on post-paid basis.	Location of billing address of the recipient of services on the record of the supplier of services
	(c) Mobile Connection - Pre paid [Physical Voucher]: Mobile connection for telecommunication, internet service and direct to home television services are provided on pre-payment basis through a voucher or any other means; - (i) Through a selling agent or a re-seller or a distributor of subscriber identity module card or re-charge voucher. (ii) By any person to the final subscriber	Address of the selling agent or re-seller or distributor as per the record of the supplier at the time of supply Location where such prepayment is received or such vouchers are sold.
	In other cases [Where address of recipient as per records of supplier of services is available]	Address of the recipient as per the records of the supplier of services and where such address is not available, the place of supply shall be location of the supplier of services
	In other cases [Where address of recipient as per records of supplier of services is not available]	Location of the supplier of services

Provision	Type of Service	Place of Supply
	Online pre-paid recharge (through internet banking or other electronic mode of payment)	Location of the recipient of services on the record of the supplier of services shall be the place of supply of such services.
Explanation [Telecom Services in Multiple States]- Where the leased circuit is installed in more than one State or Union territory and a consolidated amount is charged for supply of services relating to such circuit, the place of supply of such services shall be taken as being in each of the respective States or Union territories in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed (in absence of contract, rule 6 to be followed)		
Rule 6	Services relating to a leased circuit where the leased circuit is installed in more than one State or Union territory and a consolidated amount is charged for supply of such services 12 (11) of IGST Act, 2017	In proportion to the number of points lying in the State or Union territory. The number of points in a circuit shall be determined in the following manner. a) In the case of a circuit between two points or places, the starting point or place of the circuit and the end point or place of the circuit will invariably constitute two points; b) Any intermediate point or place in the circuit will also constitute a point provided that the benefit of the leased circuit is also available at that intermediate point.

Illustrations:

Case	Place of Supply	Explanation
Mr. X an unregistered person in Goa has MTNL Landline at his home.	Goa	Fixed Line would be located at Goa
Perrigo Ltd., Maharashtra has procured plans for its directors, his directors are located at various locations in India	Maharashtra	Billing Address of recipient (Perrigo) on record of supplier of service is Maharashtra.

Case	Place of Supply	Explanation
Mr. Bhanushali purchased pre-paid voucher of Rs. 499 from a shop (Maharashtra) in his area	Maharashtra	Address of selling agent as per record of supplier. Thus, selling agents' location is place of supply.
Mr. Paras (Maharashtra) a customer of Airtel recharged his mobile through Paytm in Gujrat	Maharashtra	Location of the recipient of services on the record of the supplier of services

Other Illustrations:

- (i) A company T installs a leased circuit between the Delhi and Mumbai offices of a company C. The starting point of this circuit is in Delhi and the end point of the circuit is in Mumbai. Hence one point of this circuit is in Delhi and another in Maharashtra. The place of supply of this service is in the Union territory of Delhi and the State of Maharashtra. The service shall be deemed to have been provided in the ratio of 1:1 in the Union territory of Delhi and the State of Maharashtra, respectively.
- (ii) A company T installs a leased circuit between the Chennai, Bengaluru and Mysuru offices of a company C. The starting point of this circuit is in Chennai and the end point of the circuit is in Mysuru. The circuit also connects Bengaluru. Hence one point of this circuit is in Tamil Nadu and two points in Karnataka. The place of supply of this service is in the States of Tamil Nadu and Karnataka. The service shall be deemed to have been provided in the ratio of 1:2 in the States of Tamil Nadu and Karnataka, respectively.
- (iii) A company T installs a leased circuit between the Kolkata, Patna and Guwahati offices of a company C. There are 3 points in this circuit in Kolkata, Patna and Guwahati. One point each of this circuit is, therefore, in West Bengal, Bihar and Assam. The place of supply of this service is in the States of West Bengal, Bihar and Assam. The service shall be deemed to have been provided in the ratio of 1:1:1 in the States of West Bengal, Bihar and Assam, respectively.

11) Banking & Financial Sector Including stock broking & Insurance services [S. 12(12) & 12(13) of IGST Act]

Section	Type of Service	Place of Supply	
12(12)	Banking & Financial Sector including stock broking	Location of recipient if address available in records of supplier else, Location of supplier	
12(13)	Insurance service	Provided to Unregd person	Provided to regd. Person
		Location of Recipient of service in records of insurance company	Location of such registered Person

Illustrations:

- (i) Mr. A (Chennai) buys shares from a broker in BSE (Mumbai). The place of supply is the location of the recipient of services in the records of the supplier i.e., Chennai.
- (ii) Mr. B (New Delhi) withdraws money from Best Bank's ATM in Amritsar. Mr. B has crossed his limit of free ATM withdrawals. The place of supply is the location of the recipient of services in the records of the supplier i.e., New Delhi.
- (iii) Mr. C from Varanasi, Uttar Pradesh, visits a bank registered in New Delhi for getting a demand draft made. Mr. C does not have any account with the said bank. Therefore, since the location of recipient is not available in the records of the supplier, the place of supply is the location of the supplier of services i.e., New Delhi
- (iv) Ms. B (unregistered resident of Kolkata) goes to her native place Patna, Bihar and buys a medical insurance policy for her parents there from Safe Insurers, Patna (registered in Bihar). The place of supply is the location of the recipient of services in the records of the supplier i.e., Patna.

12) Advertisement services to CG/SG/Statutory body/LA/UT [S. 12(14)]

Section	Type of Service	Place of Supply
12(14)	Advertisement service to the Central Government/ State Government/ Statutory body/ Local authority meant for the State/Union territory identified in contract or agreement	Each of such States/ Union territories where the advertisement is broadcasted / run / played/ disseminated.

The value of such supplies specific to each State/Union territory is in proportion to the amount attributable to the services provided by way of dissemination in the respective States/Union territories determined in terms of the contract or agreement entered into in this regard.

In absence of such contract or agreement, place of supply shall be as per rule 3 of IGST Rules, 2017. (Also refer Illustrations from Notification below)

Rule 3 – Mode of Advertisement	Basis of Proportion in each State / UT
a) Newspapers and publications	Amount Payable for Publication in each state
b) Printed Material like pamphlet, leaflets, diaries, t-shirts, and the like.	Amount payable for the distribution of specified number of such printed material

Rule 3 – Mode of Advertisement	Basis of Proportion in each State / UT
c) i) Hoardings (other than those on trains).	Amount payable for the hoardings
ii) Advt. on trains	Proportion to the length of the railway track
d) i) Back of utility bills	Number of consumers having billing addresses in such State/UT
ii) Railway Tickets	Proportion to the number of railway stations
e) Radio stations	Amount payable to each radio station
f) Television channels	Viewership as per Broadcast Audience Research Council for last week of quarter.
g) Viewership figures relate to a region comprising of more than one State/UT	Ratio of populations in those States/UTs as per the last census.
h) Cinema Halls or screens in Multiplex	Amount payable to cinema hall or screens in multiplex.
i) Internet	Number of internet subscriber figures published by TRAI for the last quarter of the immediately preceding financial year.
Internet subscribers' figures relate to a region comprising of more than one State/UT	Ratio of populations in those States/UTs as per the last census.
j) SMS	Number of telecom subscriber figures published by TRAI for the immediately preceding quarter
Fig. of Telecom subscribers relate to a telecom circle comprising of more than one state or UT	Ratio of populations in those States/UTs as per the last census.

PLACE OF SUPPLY FOR SERVICES WHERE LOCATION OF SUPPLIER OR LOCATION OF RECIPIENT IS OUTSIDE INDIA (SECTION 13 OF IGST ACT, 2017)

It is imperative to look upon the heading of the provision which states “OR,” meaning thereby if any of them is located outside India then place of supply shall be determined u/s 13 of IGST Act.

The clauses will render most of the transactions as Import of services or export of services subject to fulfilment of certain conditions mentioned therein. A Transaction is regarded as export of services if it fulfills all the conditions as enshrined in section 2(6) of IGST Act which are mentioned below: -

- (i) **Supplier** of service is located in **India**;
- (ii) **Recipient** of service is located **outside India**;
- (iii) **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) Supplier of service and recipient of service are not merely establishments of a distinct person in accordance with explanation 1 of section 8;

(Export of Service will be a Zero-Rated supply; exporter can claim refund of ITC (exported under LUT) or refund of GST paid on such service (exported with payment of GST i.e., without LUT)

In order to classify a supply as Import of service, section 2(11) of IGST Act, requires fulfillment of ALL following conditions: -

- (i) **Supplier** of service is located outside **India**;
- (ii) **Recipient** of service is located **in India**; and
- (iii) **Place of supply of service is in India**;

(Import of Service will attract GST under reverse charge)

1. General Provision [S. 13(2)]

Section	Type of Service	Place of Supply
13(2)	All services other than covered in 13(3) to 13(13)	If Location of recipient of services is available: - location of the recipient of services If Location of the recipient of services is not available - Location of the supplier of services.

Notes: -

The principal exceptions to the above general rule relating to place of supply of cross border services are:

- ❖ Performance-based services
- ❖ Services directly in relation to immovable property
- ❖ Admission to and/or organization of events, celebrations etc.
- ❖ Services supplied by a banking company, financial institution, non- banking financial company (NBFS) to account holders
- ❖ Intermediary services
- ❖ Hiring of means of transport other than aircrafts and vessels except yachts, up to a period of one month
- ❖ Transportation of goods, other than by way of mail or courier
- ❖ Passenger transportation services
- ❖ Services on board a conveyance during the course of a passenger transport operation
- ❖ Online information and database access or retrieval services

The place of supply of each of the above exceptions is discussed below.

2. Performance Based Services [S. 13(3) r/w Rule 7 of IGST Rules, 2017 & various Notifications & Circulars]

Section	Type of Service	Place of Supply
13(3)	(a) Services supplied on goods which are required to be made physically available by recipient of service to supplier of service, or to a person acting on behalf of supplier of service in order to provide services. (b) <u>Physical presence of recipient is required for supply of service: -</u> Service supplied to individual, represented either as recipient of service / person acting on behalf of recipient which require physical presence of recipient or person acting on behalf of recipient, with service supplier.	Place of performance <u>Exceptions: -</u> (i) Electronic Means: - Location of Goods at Time of supply (ii) Imported temporarily for repairs <u>or for any other treatment or process</u> exported without use in India - POS 13(2) LOR <u>(IGST Amendment Act, 2018 w.e.f. 1st February, 2019)</u> Place of performance

Notes:

- (i) POS of services that are 'in respect of' goods made available 'by' recipient 'to' supplier or persons representing supplier for performance of those services will be the location where the services are actually performed. It is worthwhile to note here that the goods must be made available only by the recipient and not his representative but whereas person to whom it is made available could be supplier or his representative.
- (ii) Services that are supplied by remotely accessing the goods, the place of supply will be the location of the goods.
- (iii) However, the said provisions will not apply in the case of services supplied in respect of goods which are temporarily imported into India for repairs or for any other treatment or process and are exported after such repairs or treatment or process without being put to any use in India, other than that which is required for such repairs or treatment or process. This amendment is made vide IGST (Amendment) Act, 2018, dated 29th August, 2018 & is effective from 1st February, 2019.

Manner of determining proportionate value of service in the absence of a contract or agreement: In the absence of a contract or agreement between the supplier and recipient of services, the proportionate value of services supplied in different States/Union territories (where the service is performed) is computed in accordance with rule 7 of IGST Rules in the following manner -

Rule No.	Type of Service	Basis of Apportionment
7	Where the location of the supplier of services or the location of the recipient of services is outside India, in the case of the supply of services in respect of goods which are required to be made physically available, services supplied to an individual which require the physical presence, etc. covered by 13(3) of IGST Act, 2017	a) In the case of services supplied on the same goods, by equally dividing the value of the service in each of the States and Union territories where the service is performed; b) In the case of services supplied on different goods, by taking the ratio of the invoice value of goods in each of the States and Union territories, on which service is performed, as the ratio of the value of the service performed in each State or Union territory; c) In the case of services supplied to individuals, by applying the GAAP.

Departmental Clarifications in relation to Section 13(3) of IGST Act:

- (i) **Clarification of Place of Supply in case of pharmaceutical sector (Notification No. 04/2019- Integrated Tax w.e.f. 1st October, 2019)**
 CBIC by virtue of this notification has clarified POS for certain services such as Integrated discovery & development, Bio-equivalence, and Bio- availability Studies etc. provided by pharmaceutical industry, (Refer Amendment sheet for detailed analysis of why such provision has been introduced) on goods physically made available by service recipient, that POS shall be the location of the recipient of services (and not where performed) subject to fulfilment of the following conditions: -
- (a) Supply of services from the taxable territory are provided as per a contract between the service provider located in taxable territory and service recipient located in non-taxable territory.
 - (b) Such supply of services fulfils all other conditions in the definition of export of services, except (iii) i.e., “the place of supply of service is outside India”.
- (ii) **Clarification regarding determination of place of supply in case of software/design services related to Electronics Semi-conductor and Design Manufacturing (ESDM) industry (Circular No. 118/37/2019-GST dated 11th October, 2019)**
- ❖ If developing and designing is the principle supply then the place of supply for testing of kits provided physically provided by recipient of service would be location of recipient (not place of performance) since service provider is involved in a composite supply of software development and design for integrated circuits electronically, testing of software on sample prototype hardware is often an ancillary supply, whereas, chip design/software development is the principal supply of the service provider.
 - ❖ If testing of kits provided physically by recipient of service is the principal supply, then place of supply would be place of performance.
- (iii) **POS for cutting and polishing activity on unpolished diamonds** which are temporarily imported into India which are not put to any use in India, would be determined as per the provisions contained in Section 13(2) of IGST i.e., Location of Recipient [as these services are an exception to Section 13(3)(a)].
[CBIC vide Circular No. 103/22/2019-GST dated 28th June, 2019]
- (iv) **Place of supply for “Supply of maintenance, repair or overhaul service in respect of aircrafts, aircraft engines** and other aircraft components or parts supplied to a person for use in the course or furtherance of business” would be the place of supply of services shall be the location of the recipient of service [Notification No. 02/2020- Integrated Tax dated 26th March, 2020 w.e.f. 1st April, 2020]

Place of supply of B2B MRO services in case of shipping industry shall be the location of the recipient. [Notification No. 03/2021 IT dated 02.06.2021] (Prior to this notification it was the place where they are performed)

Illustrations:

- (i) ABC INC (US) sent certain sample goods to PQR Ltd. (Maharashtra) for testing purpose (assume not specified in NN 04/2019 – IT), PQR Ltd is required to test those sample and provide test reports to ABC INC. PQR Ltd, destroys the samples received as after sampling they are of no use. Determine POS as per section 13(3) of IGST Act – POS would be Maharashtra as place of performance is Maharashtra.
- (ii) Mr. X (US) came to India for his treatment of COVID-19, doctors performed his test in India. Determine the place of supply in this case. As per section 13(3)(b), Service supplied to individual, represented either as recipient of service / person acting on behalf of recipient which require physical presence of recipient or person acting on behalf of recipient, with service supplier, the place of supply would be place of performance.
- (iii) Mr. X (New Delhi) imports a machine from Germany for being installed in his factory at New Delhi. To install such machine, Mr. X takes the service of an engineer who comes to India from Germany for this specific installation. The place of supply of installation service, which requires the physical presence of machinery, is the location where the service is actually performed i.e., New Delhi.
- (iv) A makeup artist M has to provide make up services to an actor A. A is shooting some scenes in Mumbai and some scenes in Goa. M provides the makeup services in Mumbai and Goa. The services are provided in Maharashtra and Goa and the value of the service in Maharashtra and Goa will be ascertained by applying the generally accepted accounting principles.

3. Immovable property Related Services [S. 13(4) r/w Rule 8 of IGST Rules, 2017]

Section	Type of Service	Place of Supply
13(4)	Supply of services supplied directly in relation to an immovable property, including services supplied in this regard by ❖ Experts and estate agents, ❖ Supply of accommodation by a hotel, inn, guest house, club, or campsite, by whatever name called, ❖ Grant of rights to use immovable property ❖ Services for carrying out or coordination of construction work, including ❖ Architects or interior decorators	Place where immovable property located or intended to be located.

Rule No.	Type of Service	Basis of Apportionment
8	Where the location of the supplier of services or the location of the recipient of services is outside India, the supply of services directly in relation to an immovable property, supply of accommodation by a hotel, inn, guest house, club, or campsite, by whatever name called, grant of rights to use immovable property etc. referred under section 13(4) of the IGST Act, 2017.	By applying the provisions of rule 4, mutatis mutandis

Illustrations:

- (i) Mr. A (Maharashtra), architect is providing services to Mr. Meetkumar (Gujrat) to blue print of a property intended to be located in Dubai – POS will be determined as per section 12(3) as supplier & recipient are located in India. POS would be Gujrat (Location of recipient)
- (ii) Mr. A (Maharashtra), architect is providing services to Mr. Peras Goda (US) to blue print of a property intended to be located in Dubai – POS will be determined as per section 13(4) as recipient are located in India. POS would be Dubai (Location of Immovable property)

4. Admission & Event Management Services [S. 13(5) r/w Rule 9 of IGST Rules, 2017]

Section	Type of Service	Place of Supply
13(5)	Admission/Organisation to events including ancillary services.	Place where event is actually held

The value of services supplied by way of admission to or organisation of an event in each State or Union territory – where the service is supplied - (when such services are supplied in more than one State/union territory) is in proportion to the value for services determined in terms of the contract or agreement entered into in this regard.

In the absence of a contract or agreement between the supplier and recipient of services, the proportionate value of services supplied in different States/Union territories (where the service is supplied) is computed in accordance with rule 9 of IGST Rules.

Rule No.	Type of Service	Basis of Apportionment
9	Where the location of the supplier of services or the location of the recipient of services is outside India, in the case of the supply of services by way of admission to, or organisation of a cultural, artistic, sporting,	By applying the provisions of rule 5, mutatis mutandis

	scientific, educational or entertainment event, or a celebration, conference, fair, exhibition or similar events, and of services ancillary to such admission or organisation etc. referred under section 13 of the IGST Act, 2017	

Please note that Section 13(5) is applicable for Admission as well as event management services unlike section 12 where there were 2 different provisions to determine place of supplies for admission and event management services.

Illustrations:

A circus team from Russia organizes a circus in New Delhi. The place of supply is the location where the event is actually held, i.e., New Delhi.

5. Services in Multiple Location including a Location in Taxable Territory [S. 13(6)]

Section	Type of Service	Place of Supply
13(6)	Supply of service u/s 13(3), (4), (5) in multiple location including location in Taxable territory.	Location in the taxable territory

Illustrations:

An event management company registered in New Delhi organises an art exhibition displaying works of an international painter based in Dubai. The exhibition is organised in 3 countries including New Delhi. Since the service is supplied at more than one location including a location in the taxable territory, the place of supply is the location in the taxable territory i.e., New Delhi.

6. Services in Multiple States [S. 13(7)]

Section	Type of Service	Place of Supply
13(7)	Supply of service u/s 13(3), (4), (5) more than 1 state/UT	As per value of supply of service in each respective State as per contract or agreement. In absence of contract or agreement, Rule 7 of IGST Rules to be considered.

7. Banking and financial services, Intermediary services and hiring of means of transport [Section 13(8)]

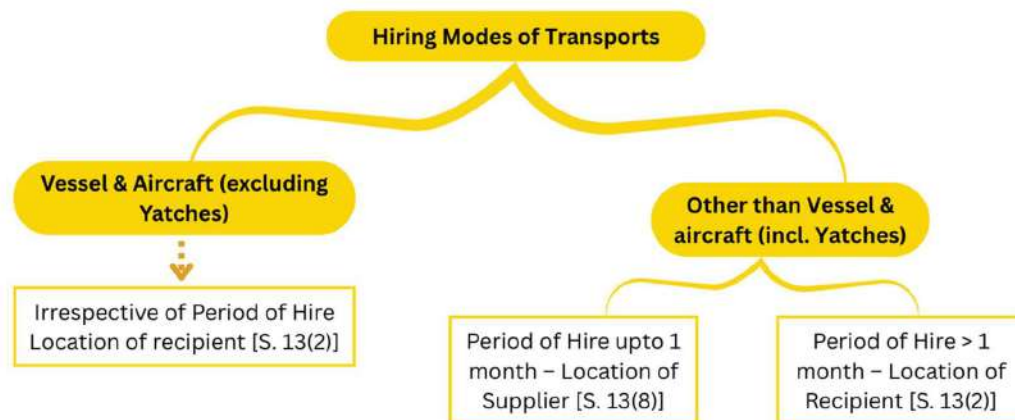
Section	Type of Service	Place of Supply

13(8)	Services Supplied by: - ❖ Banks/FI/NBFC to A/c holders ❖ Intermediary services ❖ Hiring all means of transport (incl. yacht) other than vessel or aircraft up to 1 month. <i>(For vessel & aircraft S. 13(2) applies irrespective of period of hire)</i>	Location of supplier of Service. <i>(In these cases, POS deviates from the 'destination' principle and appoints the POS to be the location of the supplier)</i>

Notes:

It is the crux of Place of supply to the extent possible to regard a place of supply as destination. However, in the cases of 13(8), the principal is deviated and made as "Location of supplier of service".

Bank/FI/NBFC to Account Holders
Mr. C, a foreign tourist, on a visit to Varanasi (Uttar Pradesh) uses his international debit card to withdraw money from an ATM of a local Bank registered in Uttar Pradesh. The place of supply is the location of the supplier of services i.e., Varanasi.
Intermediary Services (Agent)
Mr. Kamlesh (Maharashtra) an agent of Bosch Inc US, takes order from Indian Customer and places order to his principal in US. Mr. Kamlesh Charges commission from Bosch Inc, in return of agency services provided by him. Determine place of supply and nature of tax payable.
Place of supply would be Maharashtra [Location of supplier & place of supply in same state]. However, IGST shall be levied on such transaction. Provisions of Section 8 (Intra-state supplies) are subject to Section 12 of IGST Act (POS for Services when Supplier & Recipient are in India). Thus, if agent in India provides services to foreign supplier [S. 13(8)] IGST shall be levied as POS is coming from Section 13 & not Section 12. Accordingly, even though LOS & POS are in same state it is an inter-state supply & IGST shall be levied (S. 7(5)(c) of IGST Act, 2017)

**Illustration:**

Mr. D, an unregistered person based in New Delhi hires a yacht from a company based in London, UK for 20 days. The place of supply is the location of the supplier of services i.e., London

8. Goods Transport, Passenger Transport, Services on Board [Section 13(9), 13(10), 13(11)]

Section	Type of Service	Place of Supply
13(9)	~~Transportation of goods other than mail or courier (For Mail or Courier Section 13(2) shall apply)~~	~~Place of destination of Goods~~
13(10)	Passenger transportation services	Place where the passenger embarks on the conveyance for a continuous journey
13(11)	Services provided on board a conveyance during passenger transportation including services intended to be wholly or substantially consumed while on board	First scheduled point of departure of that conveyance for the journey

Taxability of satellite services provided by ANTRIX Corporation Limited to: -

- ❖ Customers Located Outside India – POS would be as per **Section 13(2)** of IGST Act & such supplies will be **zero-rated services** as per **Section 16** of IGST Act, 2017
- ❖ Customers Located in India – POS would be determined as per **Section 12(8)** of IGST Act, 2017 would be **taxable**. (Circular 2/1/2017 – IGST dated 27/09/2017)

Illustrations:

- (i) A shipping line, Mumbai, Maharashtra transports a shipment of flowers from Mumbai to Paris, for an event management company based in Paris. The place of supply is the location of destination of goods transported i.e., Paris
- (ii) Mr. A, a foreign tourist, has booked a ticket for New Delhi-Sri Lanka flight from an airline registered in New Delhi for a continuous journey without any stopover. The place of supply is the place where the passenger embarks on the conveyance for a continuous journey i.e., New Delhi.

9. Online Information Database Access Retrieval Services [Section 13(12) r/w Section 14 of IGST Act]

Section	Type of Service	Place of Supply
13(12)	Online Information Database Access or Retrieval Service	Location of Recipient

Analysis on Online information and database access or retrieval services (OIDAR) [Section 13(12)]

The place of supply of OIDAR [See definition] is the location of the recipient of services. It is difficult to determine the location of the recipient in case of OIDAR as such recipients normally access the services online and are not required to disclose their location.

The explanation to section 13(12) lays down 7 conditions. On satisfying any 2 non-contradictory conditions out of such seven conditions, the service recipient is deemed to be located in the taxable territory, i.e., India.

The seven conditions are:

- (a) the recipient gives an Indian address through internet;
- (b) the payment is settled by an Indian credit card/debit card/other card;
- (c) the recipient has an Indian billing address;
- (d) the computer/other device used by the recipient has an Indian IP address;
- (e) the recipient uses an Indian bank account for payment;
- (f) the country code of the subscriber identity module card used by the recipient of services is of India;
- (g) the recipient receives the service through an Indian fixed land line.

Clarification on Place of supply of OIDAR Services (by person located in India) to unregd. person located in India [Circular No. 242/36/2024-GST dated 31st December, 2025]

Since there is no special provision applicable for OIDAR Services in Section 12, the POS shall be determined as per general provisions i.e., 12(2) of IGST Act. As per said section when the services are supplied to an unregistered person, the place of supply of the said services shall be the location of the recipient, if his address is available on record, and shall be the location of the supplier, if the address is not available on record.

Section 31(2) of the CGST Act provides that a registered person providing taxable services must issue a tax invoice with details like the service description, value, tax charged and such other particulars as **may be prescribed**.

As per prescribed rule 46, in case of OIDAR services, online money gaming services, 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.

For the purpose of recording the name of the State of the recipient on tax invoice in respect of such supplies made to unregistered persons for such online services, supplier should devise suitable mechanism to ensure collection of such details from unregistered recipient before making any supplies to him. As mentioned above, in such cases, the name of the State of the recipient so recorded shall be deemed to be the address of recipient available on record and thus, **for determining place of supply of the said services, provisions of section 12(2)(b)(i) of IGST Act will be applicable as per which the place of supply shall be the location of the recipient.**

If the supplier fails to issue invoice in accordance with the said provisions by not recording correct mandatory particulars, including recording of name of State of unregistered recipient in respect of such supplies, **he may be liable to penal action under the provisions of section 122(3)(e) of CGST Act.**

Special provision for payment of tax by a supplier of Online Information and Database Access or Retrieval services (OIDAR) (Section 14 of IGST Act, 2017)

As per Section 2(17) of the IGST Act, “Online information and database access or retrieval services” means services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply and impossible to ensure in the absence of information technology and includes electronic services **except online money gaming as defined in 2(80B) of CGST Act.**

OIDAR services can be defined in simple words as Services (and not goods) **supplied and delivered over continuous internet connectivity which involves minimal human intervention & is impossible to avail service in absence of information technology.**

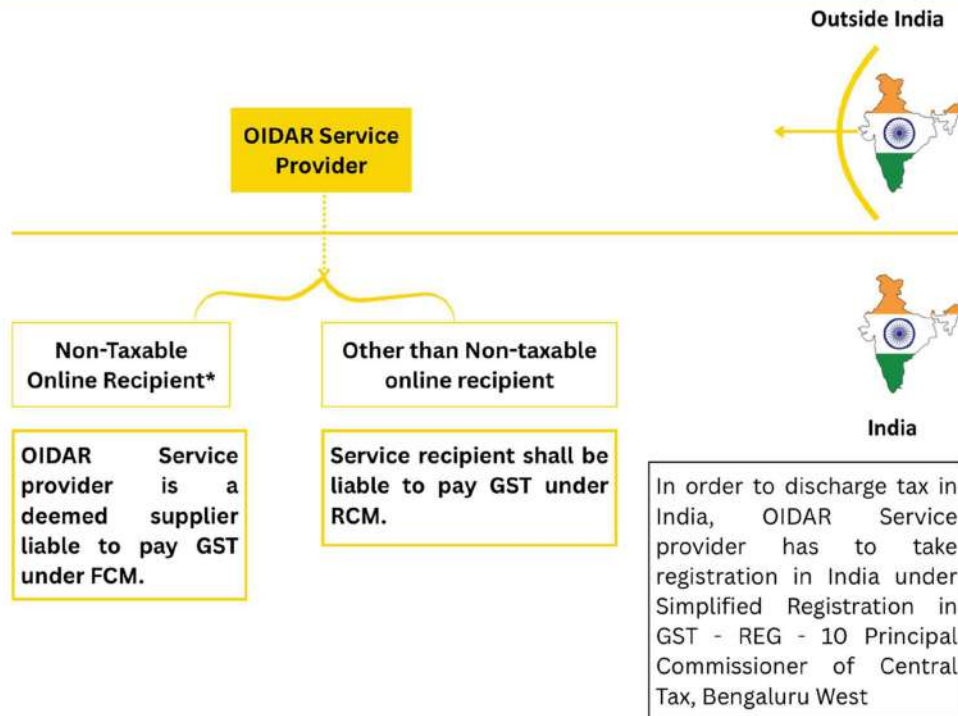
In order to have clarity in understanding the following some **examples of OIDAR** services would be worth noting: -

1. Banner ads, pop-up ads, sponsored ads (Google Ads)
2. Webhosting (Cloud Services by Amazon)
3. Data warehousing
4. Access to content permitted **only ‘online’** even if stored in cache on user-end device but **not** allowing (official) **permanent download** (Gaana.com)
5. TV programs and movies supplied over the internet like monitored by issuing user login / password.

Following are **NOT** to be construed as **OIDAR Services**:

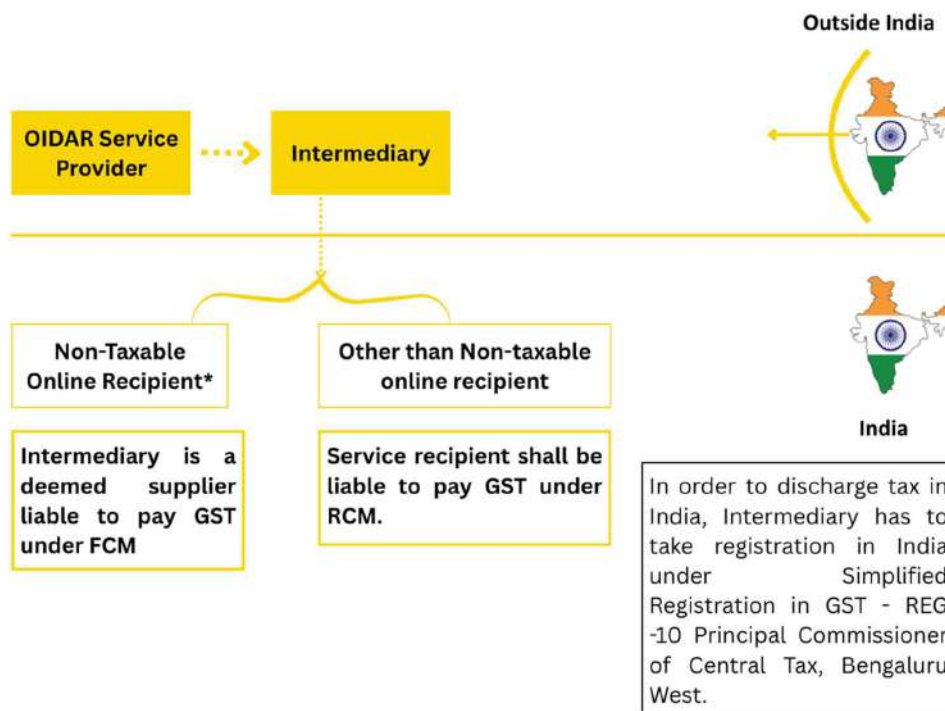
1. Advertisement in newspaper, on posters and on television
2. Downloadable e-books, movies, music, etc. which are available for offline viewing
3. Educational or professional courses, where the content is delivered by a teacher over the internet or electronic network.
4. Online order processing in respect of offline supply of goods
5. Services of lawyers and financial consultants who advise clients through email
6. Computer/ mobile games to be used after downloading to user-end device

As per Section 14 of IGST Act, following taxability and inference can be drawn in case where OIDAR service provider is located in non-taxable territory:



"Non-taxable online recipient" means any unregistered person receiving online information and database access or retrieval services located in taxable territory.

Explanation - For the purposes of this clause, the expression "unregistered person" includes a person registered solely in terms of clause (vi) of section 24 of the Central Goods and Services Tax Act, 2017;



An intermediary located in the non-taxable territory, who arranges or facilitates the supply of such services, shall be deemed to be the recipient of such services from the supplier of services in non-taxable territory and supplying such services to the non-taxable online recipient.

However, if following (all) conditions are satisfied then, INTERMEDIARY WOULD NOT BE TREATED AS FURTHER SUPPLYING OIDAR SERVICES IF ALL THE BELOW CONDITIONS ARE SATISFIED

- a) The invoice or customer's bill or receipt issued or made available by such intermediary taking part in the supply clearly identifies the service in question and its supplier in non-taxable territory;
- b) The intermediary involved in the supply does not authorize the charge to the customer or take part in its charge which is that the intermediary neither collects or processes payment in any manner nor is responsible for the payment between the non-taxable online recipient and the supplier of such services.
- c) The intermediary involved in the supply does not authorize delivery; and
- d) The general terms and conditions of the supply are not set by the intermediary involved in the supply but by the supplier of services.

Section 14A of IGST Act: Registration Mechanism for Online Money Gaming

- 1) **Online money gaming supplier not located in India – Liable to IGST [14A(1)]:** A supplier of online money gaming as defined in clause (80B) of section 2 of the Central Goods and Services Tax Act, 2017, not located in the taxable territory, shall in respect of the supply of online money gaming by him to a person in the taxable territory, be liable to pay integrated tax on such supply.
- 2) **Simplified Registration shall be obtained [14A(2)]:** For paying tax, the supplier of online money gaming shall obtain a single registration under the Simplified Registration Scheme referred to Section 14(2) of IGST Act.

Representative can be apptd. For payment of tax: Provided that any person located in the taxable territory representing such supplier for any purpose in the taxable territory shall get registered and pay the integrated tax on behalf of the supplier:

If no physical presence or representative, they shall appoint a person: Provided further that if such supplier does not have a physical presence or does not have a representative for any purpose in the taxable territory, he shall appoint a person in the taxable territory for the purpose of paying integrated tax and such person shall be liable for payment of such tax.

Consequences on Failure [14A(3)]: (3) In case of failure to comply with provisions of sub-section (1) or sub-section (2) by the supplier of the online money gaming or a person appointed by such supplier or both, notwithstanding anything contained in section 69A of the Information Technology Act, 2000, any information generated, transmitted, received or

hosted in any computer resource used for supply of online money gaming by such supplier shall be liable to be blocked for access by the public in such manner as specified in the said Act."

In Simple words, person providing online gaming services shall be liable to be registered in India for the purpose of payment of tax. He shall be registered in Bangalore. Further, where such person is not located in taxable territory, he shall appoint representative to pay tax. However, if there is no representative, then he shall appoint the agent for the purpose of payment of tax.

If the supplier fails to comply with the same, the computer resources shall be blocked.

> Chapter 7

Input Tax Credit

Input Tax Credit allows taxpayers to offset GST paid on purchases.

Learning Objectives

- Understand the concept of Input Tax Credit (ITC) under GST and its role in preventing the cascading effect of taxation.
- Identify the conditions and documentation required for availing ITC, including invoice compliance and supplier tax payments.
- Learn the rules regarding apportionment of credit and blocked credits as per Section 17 and related rules.
- Understand the time limits and special provisions for availing ITC in various circumstances including reverse charge and cancellation/revocation of registration.
- Gain insights into ineligible ITC scenarios, such as personal consumption, CSR activities, and construction of immovable property.
- Analyse special cases like Input Service Distributor mechanism, ITC for banking companies and financial institutions, and treatment of warranty-related transactions.

Backdrop of Input Tax Credit

GST is levied on “supply” of goods or services or both. Input Tax credit (hereinafter “input tax credit,” “input tax,” or “ITC”) is the GST paid by recipient to supplier of goods or services or both. In Indirect Tax the burden of tax is passed on to next buyer in the chain till its consumption. ITC is a mechanism to avoid cascading of taxes. Thus, every person who is registered under GST (other than section 10 supplier) avails input tax credit (subject to certain circumstances) and levies taxes on his outward taxable supplies. In nutshell, he pays taxes only on his value addition. Let us move on to understand one of the beautiful chapters in GST.

Chapter Overview – Section to be read with below rules

Section	Rule	Description
16	36, 37	S. 16: Conditions to avail input tax credit R. 36: Documentary requirements and conditions for claiming input tax credit R. 37: Reversal of input tax credit in the case of non-payment of consideration R. 37A: Non filing of GSTR 3B by supplier
17	38, 42, 43	S. 17: Apportionment of credit and blocked credits R. 38: Claim of credit by a banking company or a financial institution R. 42: Manner of determination of input tax credit in respect of inputs or input services and reversal thereof. R. 43: Manner of determination of input tax credit in respect of Capital Goods (<i>R/w Explanation to Chapter V of CGST Rules</i>)
18	40, 41, 41A, 44	S. 18: Availability of credit in special circumstances S. 40: Manner of claiming credit in special circumstances. R. 41: Transfer of credit on sale, merger, amalgamation, lease, or transfer of a business R. 41A: Transfer of credit on obtaining separate registration for multiple places of business within a State or Union territory R. 44: Manner of reversal of credit under special circumstances

DETAILED ANALYSIS OF SECTION 16 READ WITH RULE 36

1. CONDITIONS TO AVAIL INPUT TAX CREDIT [SECTION 16(1) & SECTION 16(2)]

Every regd. person shall be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business on satisfaction of below conditions:

- a) **Shall be in possession of tax invoice or debit note issued by a supplier registered under this act, or such other tax paying documents as may be prescribed.**

The input tax credit shall be availed by a registered person, including the Input Service Distributor, on the basis of any of the following documents, namely, -

- (a) **Tax Invoice:** an invoice issued by the supplier of goods or services or both in accordance with the provisions of section 31;
- (b) **Self-Invoice:** an invoice issued in accordance with the provisions of clause (f) of subsection (3) of section 31, subject to the payment of tax;
- (c) **Debit Note:** a debit notes issued by a supplier in accordance with the provisions of section 34;
- (d) **Bill of Entry:** a bill of entry or any similar document prescribed under the Customs Act, 1962 or rules made thereunder for the assessment of integrated tax on imports;
- (e) **Input Service Distributor:** An Input Service Distributor invoice or Input Service Distributor credit note or any document issued by an Input Service Distributor in accordance with the provisions of sub-rule (1) of rule 54.

It can be inferred from above table that **Payment voucher is not the document required for claiming** ITC on GST paid under reverse charge.

Input tax credit shall be availed by a registered person only if all the applicable particulars as specified in the provisions of Chapter VI are contained in the said document, and the relevant information, as contained in the said document.

Minimum details to be contained on tax invoice:

- ❖ Details of the amount of tax charged,
- ❖ Description of goods or services,
- ❖ Total value of supply of goods or services or both,
- ❖ GSTIN of the supplier and recipient and
- ❖ Place of supply in case of inter-State supply,

(Proviso has been inserted vide, w.e.f. 04-09-2018 vide N. No. 39/2018 dt. 04-09-2018.)

Tax paid in pursuance of any order where any demand has been confirmed on account of any fraud, willful misstatement or suppression of facts cannot be availed as ITC.

aa) GSTR – 1 filed by supplier and reflecting in B2B field in GSTR 2B

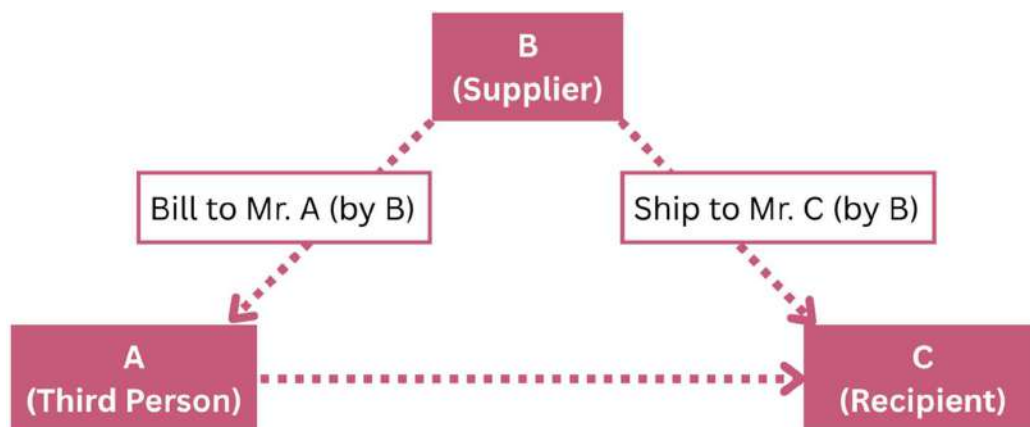
The details of the invoice or debit note referred above has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37 (NN 39/2021 CT)

b) Recipient has received the goods or services or both.

Exception - Bill to Ship to Model for goods as well as services.

- (i) **Bill to ship to Model for Supply of “goods”:** Where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise it shall be deemed that the registered person has received the goods.
- (ii) **Bill to ship to Model for Supply of “services”:** Where the services are provided by the supplier to any person on the direction of and on account of such registered person, it shall be deemed that the registered person has received the services.
[Explanation has been substituted w.e.f. 01-02-2019 (vide N.No.2/2019-CT dt. 29-01-2019)]

Bill to Ship to Model Transactions:



Example: The registered head office (New Delhi) of ABC Pvt. Ltd. enters into a contract with DEF Pvt. Ltd. of New Delhi for repair and maintenance of computers systems installed at its registered branch office in Bengaluru, Karnataka. DEF Pvt. Ltd. issues an invoice on ABC Pvt. Ltd., New Delhi for the services provided by it. Though the actual

services are received by the branch office and not by the head office, section 16(2)(b) allows ITC of such repair and maintenance services to head office.

Clarification on availment of ITC for Automobile dealers in case of Bill to Ship to Model dated 31st December, 2024

It has been stated that in automobile sector, the contract between the automobile dealers and the Original Equipment Manufacturers (OEMs) is generally an Ex-Works (EXW) contract, and as per the terms of the contract, the property in goods (i.e. vehicles) passes to the dealer at the factory gate of the OEM, when the **goods are handed over to the transporter at the instance of the dealer**, and the **delivery on the part of the OEM is complete at his factory gate**.

The transport may be arranged by the OEM on behalf of the dealer and where insurance is arranged, it may also be done on behalf of the dealer. Any claim in case of loss has to be lodged by the dealer. The **dealer also duly accounts for the invoice in his books of accounts on such delivery of the vehicles at the factory gate of the OEM**. The dealer avails **ITC on the date the vehicles are billed to him and handed over to the transporter** by the OEM at his factory gate.

As per Explanation to clause (b) of sub-section (2) of section 16 of the CGST Act provides that the goods would be deemed to have been “received” by the registered person for the purpose of this clause, where:

- a) the goods are delivered by the supplier to a recipient or to any other person on the direction of such registered person, whether acting as an agent or otherwise;
- b) such direction may be given before or during movement of goods; and
- c) the **goods may be delivered either by way of transfer of documents** of title to goods or otherwise.

In the instant case, as per the terms of the EXW contract between the dealer and the OEM:

- a) the goods are being handed over by the OEM to the transporter at his factory gate for onward transmission to the dealer;
- b) transport is arranged by OEM on the behalf of dealer; and
- c) if insurance is arranged, it is done on the behalf of dealer and any claim in case of loss has to be lodged by the dealer.

In such a scenario, the **property in the said goods can be considered to have been passed on to the dealer by the OEM upon handing over of the said goods to the transporter** at his factory gate, meaning thereby that the goods can be considered to have been delivered to the registered person (the dealer), through the transporter, by the supplier (the OEM) at his factory gate and the supply of the said goods can be considered to have fructified at the factory gate of the OEM, **even though the goods may be physically received by the registered person** (the dealer) after the transit period.

Accordingly, it is clarified that as per Explanation to clause (b) of sub-section (2) of section 16 of CGST Act, **the registered person (the dealer) can be considered to have “received” the said goods at the time of such handing over of the goods by the supplier to the transporter**, at his factory gate, for their onward transmission to the said registered person (the dealer).

In simple words, if supplier hand overs the goods to transporter for further transportation, ITC can be availed by recipient (as goods are said to be delivered as ownership is passed on) even if in actual it will be received later on.

The same principle is applicable in respect of supply of other goods also where the contract between the supplier and recipient is an EXW contract, and as per terms of the contract, the goods are to be delivered by the supplier to the recipient, or to any other person (including a transporter) on behalf of the recipient, at his (supplier's) place of business and the property in the goods stands transferred to the recipient at the time of such handing over.

In such cases, the said goods can be construed to have been “received” by the said recipient at the time of handing over the said goods to the recipient or to the transporter, as the case may be, as per provisions of clause (b) of sub-section (2) of section 16 of CGST Act.

Goods received on installments basis [Proviso 1 to section 16(2)]: If goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment.

ba) ITC in GSTR 2B shall not appear in Restricted category.

It is important to note that what will be shown in restricted category:

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 under sub-section (1) of section 37 (Summarized form)

- (i) Inward supply is received from a supplier having new registration (upto the prescribed time period)
- (ii) Supplier has defaulted in payment of tax and the default has continued for the prescribed time period
- (iii) Tax paid in GSTR-3B Is lower than the output tax shown in GSTR-1 by the prescribed limit
- (iv) Inward supply is received from a supplier who has taken more ITC in GSTR-2B than in GSTR-3B by the prescribed limit
- (v) Supplier has paid higher proportion of taxes from his electronic credit ledger than what is allowed as per law
- (vi) Other Notified persons

In all the above cases, ITC cannot be availed by recipient even if it is shown in GSTR 2B

- c) **The tax charged by supplier shall be paid to the Government by such supplier**
(Provisional ITC can be taken initially prior to matching on common portal)

Subject to the provisions of section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilization of input tax credit admissible in respect of the said supply;

As per Rule 37A of CGST Rules, in case a supplier files GSTR – 1, but has not filed GSTR 3B (i.e., taxes are not paid) by 30th September, of succeeding financial year, the recipient would be liable to reverse input tax credit availed by him in GSTR 3B on or before 30th day of November following the end of such financial year. In case of non-reversal of input tax credit by recipient by 30th November, he would be liable to pay along with interest as well u/s 50.

- d) **Recipient has furnished the return under section 39 (GSTR 3B)**

We avail Input Tax credit in GSTR 3B. Thus, filing of GSTR 3B is very important for availment of ITC. Now a days, we have to accept the invoices from IMS portal so as to avail ITC.

CONCEPT OF 180 DAYS: [PROVISO 2 TO 16(2)]

Every recipient shall pay to its supplier within 180 days from date of invoice, the INVOICE VALUE, otherwise he shall be liable to pay ITC along with interest payable u/s 50 from date of utilization till date of reversal.

Exception to above: - (i.e., 180 days payment rule shall not be applicable in below 3 scenarios):

-
- ❖ RCM Supplies – 9(3) & 9(4) of CGST Act, 2017 and 5(3) & 5(4) of IGST Act, 2017. [Proviso 2 to Section 16]
- ❖ Schedule I (Proviso 1 to Rule 37)
- ❖ Additions made in value of supply u/s 15(2)(b) of CGST Act – Amount incurred by buyer on behalf of supplier. [Proviso 2 to Rule 37 - Consideration Deemed to be paid]

2. TIME LIMIT TO AVAIL ITC [SECTION 16(4)]

Time limit to avail ITC in case of invoices and debit notes shall be upto: -

- (a) 30th November of succeeding financial year or,
- (b) Actual Date of filing annual return;

whichever is earlier.

Note: R. 37(4) r/w Proviso 3 to Section 16(2): - This time-limit is not applicable when a person re-pays even after such due date in respect of invoice value reversed on account of non-

payment of consideration w/i 180 days. Thus, there is no time-limit to re-avail the reversed ITC.

(Time limit to avail ITC in case of RCM services from unregd. Person is covered separately)

Examples to understand the concept:

Date of invoice	30 th November	Actual date of filing GSTR 9	Upto when Input tax credit can be taken
7 th November, 2018	30 th November of Succeeding Financial Year	28 th November, 2019	28 th November, 2019
7 th November, 2018	30 th November of Succeeding Financial Year	19 th September, 2019	19 th September, 2019

Thus, we conclude that, there are certain pre conditions & certain post conditions for availment of Input Tax Credit.

Pre-conditions	Post Conditions
Registration under GST Act [Section 16(1)]	Payment to supplier within 180 days [Proviso to section 16 r/w Rule 37]
Possession of valid tax invoice [16(2)(a)]	Actual end-use in taxable outward supplies [17(1), 17(2), 17(5)(h) and 18(4)]
Delivery of goods or services (Complete and effective) [16(2)(b)]	Eligibility [17(5)(h)]
	Payment of tax by supplier [16(2)(c)]
	Credit show in return filed [16(2)(d)]
	Availment within time-limit [16(4)]

CLARIFICATION ON TIME LIMIT UNDER SECTION 16(4) OF CGST ACT, 2017 IN RESPECT OF RCM SUPPLIES RECEIVED FROM UNREGISTERED PERSONS [Circular No. 211/5/2024-GST dated 26th June, 2024]

Query:

Department has taken view that in cases where supplies are taken from unregd. Persons for which recipient is liable to pay GST under RCM and have not paid in previous year, the relevant year of the invoice for the purpose of section 16(4) (Time limit to avail ITC) of CGST Act is the year in which the said supply was received and accordingly, the time limit for availment of ITC under section 16(4) of CGST Act is only up to the September/ November of the following financial year, i.e. the financial year following the financial year in which the said services was received.

However, industry is of the view that ITC should be allowed till the financial year following the financial year in which self-invoice u/s 31(3)(f) has been issued. In relation to same, CBIC has issued the below clarification.

Section/Rule Number	Relevance	Provision
S. 16(2)(a)	Condition to avail ITC	As per section 16(2)(a) of CGST Act, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed
R. 36(1)(b) r/w S. 31(3)(f)	Document & Pmt of tax condition	Rule 36(1)(b) of CGST Rules, prescribes that input tax credit shall be availed by a registered person on the basis of an invoice issued in accordance with the S. 31(3)(f), subject to the payment of tax.
S. 31(3)(f)	Self-Invoice	Where the supplier is unregistered and recipient is registered, and the recipient is liable to pay tax on the said supply on RCM basis, the recipient is required to issue invoice as per section 31(3)(f) of CGST Act and pay the tax in cash on the same under RCM.
S. 16(4)	Time limit to avail ITC	A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the thirtieth day of November following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier

A combined reading of the above provisions leads to a conclusion that as ITC can be availed by the recipient only on the basis of invoice or debit note or other duty paying document, and as in case of RCM supplies received by the recipient from unregistered supplier, invoice has to be issued by the recipient himself, the relevant financial year, to which invoice pertains, **for the purpose of time limit for availment of ITC under section 16(4) of CGST Act in such cases shall be the financial year of issuance of such invoice only. In cases, where the recipient issues the said invoice after the time of supply of the said supply and pays tax accordingly, he will be required to pay interest on such delayed payment of tax.**

Accordingly, it is clarified that in cases of supplies received from unregistered suppliers, where tax has to be paid by the recipient under reverse charge mechanism (RCM) and where invoice is to be issued by the recipient of the supplies in accordance with section 31(3)(f) of CGST Act, the relevant financial year for calculation of time limit for availment of input tax credit under the provisions of section 16(4) of CGST Act will be the **financial year in which the invoice has been issued by the recipient under section 31(3)(f) of CGST Act**, subject to payment of tax on the said supply by the recipient and fulfilment of other conditions and restrictions of section 16 and 17 of CGST Act. In case, the recipient issues the invoice after the time of supply of the said supply and pays tax accordingly, he will be required to pay interest on such delayed payment of tax. Further, in cases of such delayed issuance of invoice by the recipient, he may also be liable to penal action under the provisions of Section 122 of CGST Act.

For example:

- ❖ Invoice by supplier: 28th February, 2024
- ❖ Payment by recipient: 10th May, 2024

Thus, time of supply: 61st Day or Date of payment whichever, is earlier. Accordingly, 29th April or 10th May, 2024 whichever is earlier. Let us say, the self-invoice for the said transaction was issued on himself on 10th October, 2024. The last date to avail ITC would be 30th November, 2025 (30th November of succeeding financial year of self-invoice)

3. CAPITALISATION OF TAX COMPONENT [SECTION 16(3)]

If tax component has been capitalized and depreciation is claimed on such tax component under Income Tax Act (S.32 of Income tax act), then ITC cannot be claimed.

Insertion of Section 16(5) & Section 16(6) to CGST Act [Notification No. 17/2024 Central Tax dated 27th September, 2024]

(5) Notwithstanding anything contained in sub-section (4), in respect of an invoice or debit note for supply of goods or services or both pertaining to the Financial Years 2017-18, 2018-19, 2019-20 and 2020-21, the registered person shall be entitled to take input tax credit in any return under section 39 which is filed up to the 30th November, 2021.

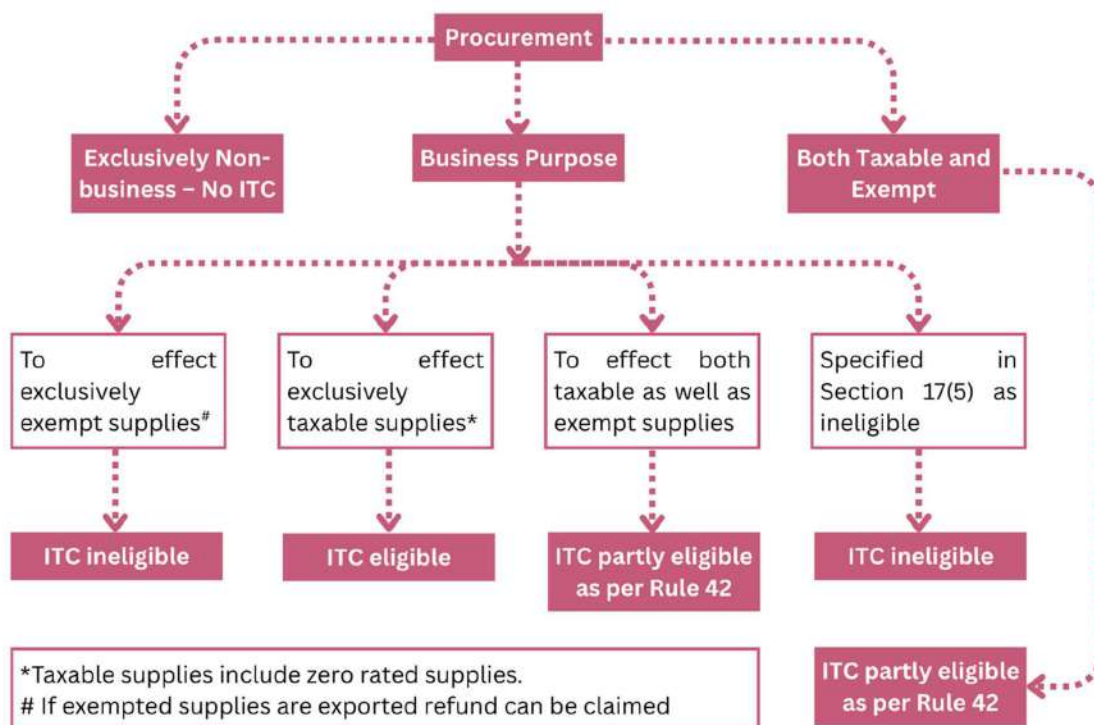
(6) Where registration of a registered person is cancelled under section 29 and subsequently the cancellation of registration is revoked by any order, either under section 30 or pursuant to any order made by the Appellate Authority or the Appellate Tribunal or court and where availment of input tax credit in respect of an invoice or debit note was not restricted under sub-section (4) on the date of order of cancellation of registration, the said person shall be entitled to take the input tax credit in respect of such invoice or debit note for supply of goods or services or both, in a return under section 39:

- (i) filed up to 30th November following the financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier; or
- (ii) for the period from the date of cancellation of registration or the effective date of cancellation of registration, as the case may be, till the date of order of revocation of cancellation of registration, where such return is filed within thirty days from the date of order of revocation of cancellation of registration
whichever is later

Impact and Analysis

- ❖ In order to understand Section 16(6) of CGST Act, let us take one example. For instance, the cancellation of registered person was done on 27th February, 2024. He applied for revocation on 28th October, 2025 (after claiming extension), the revocation order was issued on 25th November, 2025. Thus, now, he will be required to file returns for the period 28th February till 25th November, 2025 within 30 days of order of revocation. However, as on 30th Day, the 30/11 of succeeding financial year would have elapsed. Accordingly, section 16(6) of CGST allows the claim of ITC provided, the ITC was not time barred as on date of cancellation order.

APPORTIONMENT AND BLOCKED CREDIT [SECTION 17 READ WITH RULE 42 & 43]



RULE 42 OF CGST RULES: MANNER OF REVERSAL OF ITC ON INPUTS AND INPUT SERVICES USED FOR EFFECTING TAXABLE AND EXEMPT SUPPLIES

Sr. No.	Particulars (Computation of all elements shall be done separately i.e., C, S, IGST)	Denote by
I	Total input tax involved on inputs and input services	T
II	Input tax Exclusively for the purposes other than business (Non-Business Purpose)	(T ₁)
III	Input tax Exclusively for effecting exempt supplies	(T ₂)
IV	Ineligible Credit as per 17(5)	(T ₃)
V	Amount of input tax credit credited to the electronic credit ledger (T – T ₁ – T ₂ – T ₃)	C ₁
VI	ITC for exclusively for effecting Taxable & Zero-Rated Supplies	(T ₄)
VII	Common ITC available for apportionment (C₁ – T₄)	C ₂
VIII	Common Credit Attributable towards exempt supplies (E – Exempt T.O., F – Total T.O.) (See Notes)	(D ₁)
IX	Common Credit Attributable towards Non-Business purpose (D ₂ = 5% of C ₂)	(D ₂)

Sr. No.	Particulars (Computation of all elements shall be done separately i.e., C, S, IGST)	Denote by
X	Common credit attributable towards effecting Taxable & Zero-Rated Supplies (C2 – D1 – D2)	C ₃
XI	Total credit eligible (Exclusive + Common)	T ₄ + C ₃

COMPUTATION OF “E” & “F” [FOR RULE 42 & 43 BOTH]

COMPUTATION OF “E” [SECTION 17(2), 17(3) READ WITH RULE 42 & RULE 43]		
Sr. No.	Legal Provision Name in short	Detailed Explanation
1	INCLUSIONS (Section 2(47) of CGST Act)	EXEMPT SUPPLY means supply of any goods or services or both which attracts ❖ Nil rate of tax or ❖ Wholly exempt from tax under section 11, or under section 6 of the Integrated Goods and Services Tax Act, and, ❖ Non-taxable supply (<i>Petroleum products</i>).
2	INCLUSION (Section 17(3) of CGST Act)	REVERSE CHARGE OUTWARD SUPPLIES: Supplies on which the recipient is liable to pay tax on reverse charge basis
3	INCLUSION (Section 17(3) of CGST Act read with Explanation to Chapter V of CGST Rules)	TRANSACTIONS IN SECURITIES TO BE TAKEN AS EXEMPT SUPPLIES @ 1% OF SALE VALUE: As per explanation to the chapter V (Input Tax Credit), the value of security shall be taken as 1% of the sale value of such security. (Author's Note: In case of F&O contracts, 1% of Profit or Loss shall be taken, not of sale value)
4	INCLUSION (Section 17(3) r/w Explanation to Chapter V of CGST Rules)	STAMP DUTY VALUE OF LAND AND BUILDING: As per Section 17(3) of CGST Act, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building shall be treated as exempt supplies. Further, as per explanation to Chapter V of CGST Rules, the value of land and building shall be taken as the same as adopted for the purpose of paying stamp duty. SCHEDULE III ITEMS ARE EXCLUDED FROM EXEMPT TURNOVER EXCEPT LAND AND COMPLETED BUILDING: As per explanation to Section 17(3) of CGST Act, the expression “the value of exempt supplies” shall not include the value of activities or transactions specified in Schedule III, except those specified in paragraph 5 of the said Schedule
5	INCLUSION (NN 38/2023 – CT)	Paragraph 8 (b) of Schedule III of the Act: Supply of warehoused goods to any person before clearance for home consumption.

COMPUTATION OF "E" [SECTION 17(2), 17(3) READ WITH RULE 42 & RULE 43]		
Sr. No.	Legal Provision Name in short	Detailed Explanation
		Value shall be the value of supply of goods from Duty Free Shops at arrival terminal in international airports to the incoming passengers.
6	EXCLUSIONS: Explanation to Rule 42(1)(i)	VAT & EXCISE ON PETROLEUM PRODUCTS & ALCOHOLIC LIQUOR FOR HUMAN CONSUMPTION: The amount of any duty or tax levied under entry 84 and entry 92A of List I of the Seventh Schedule to the Constitution and entry 51 and 54 of List II of the said Schedule. Thus, VAT & Excise on Petroleum products shall not be added in Exempt Turnover.
7	EXCLUSIONS: Explanation 1 to Rule 43	INTEREST & DISCOUNT TURNOVER: ❖ The value of services by way of accepting deposits, extending loans or advances in so far as the consideration is represented by way of interest or discount, except in case of a banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances; and SALE VALUE OF DUTY CREDIT SCRIP
Imp Points: ❖ Exempt turnover of state shall be considered. ❖ Where the registered person does not have any turnover during the said tax period or the aforesaid information is not available, the value of "E/F" shall be calculated by taking values of "E" and "F" of the last tax period for which the details of such turnover are available, previous to the month during which the said value of "E/F" is to be calculated.		

- ❖ The amount equal to aggregate of "D1" and "D2" shall be **reversed** by the registered person in FORM GSTR-3B or through FORM GST DRC-03 (Added to Output Tax Liability has been substituted with reversal in form GSTR 3B / DRC 03 [Notification No. 16/2019-CT])
- ❖ Final Calculation of D1, D2 shall be **re-computed at end of financial year** [Short reversal shall attract interest @ 18% p.a. from 1st April of Next financial year till the date of reversal. However, if excess reversal has been done, ITC can be re-availed on or before 30th November of next FY or annual return whichever is earlier.

Manner of Reversal of ITC of Capital Goods used for effecting taxable & exempt supplies [Section 17(1), 17(2) & 17(3) r/w Rule 43]

As per Rule 43; ITC on capital goods which are used in current tax period for effecting taxable as well as exempt supplies and whose useful life (out of 5 yrs.) remains shall be reversed in below manner:

1. Step 1: Aggregation of Common Credit T_c

$T_c = \sum A$ ("A" credited to the electronic credit ledger under clause (c) in respect of common capital goods whose useful life remains during the tax period, to be denoted as " T_c ")

2. Step 2: Calculation of Monthly Common Credit on Capital Goods i.e., T_m

$T_m = T_c / 60$... (Since life is 5 years it is taken as 60 months)

3. Step 3: Calculation of Common Credit Attributable towards exempt supplies: -

$T_e = (E / F) \times T_m$ where;

"E" is the aggregate value of exempt supplies during the tax period, and

"F" is the total turnover in the State of the registered person during the tax period

In case where capital Goods is used earlier for making exclusively exempt supply & hereafter it is going to be used for Taxable as well as exempt supply, then, Full ITC shall be taken and shall be reduced by T_e (ITC attributable to exempt period). Further, Rule 43 shall be applicable from current period on "Full ITC value".

While going from Taxable to Exempt = ITC shall be reversed as per Balance useful life in months. While going from Exempt to Taxable = ITC shall be availed by reducing 5% per quarter.

In case of capital goods case, no rechecking at end of financial year for exempt and taxable turnover to be done.

Note: Interest shall be payable on amount utilisation from the date of availment till the date of reversal

Special Provision for Banking Co. or a Financial Institution & NBFC [S. 17(4) OF CGST ACT]

Option 1: -

Comply with the provisions of 17(2) of CGST Act r/w Rule 42 of CGST Rules, 2017 i.e., reversal of input tax credit attributable to exempt supplies (Pt. 2 of Chart)

(Bank provides exempt supplies by earning interest income)

Any Option to be exercised for a full FY

Option 2 – 17(4) r/w Rule 38 of CGST Rules, 2017: -

- **NOT avail** the credit of Tax paid on inputs and input services that are used for non-business purposes, and the **ineligible ITC**, in FORM GSTR-2;
- The said company or institution **SHALL AVAIL 100%** of the credit of tax paid supplies made by one registered person to **another registered person having the same Permanent Account Number**.
- **Avail the credit of 50% of eligible ITC of inputs, input services and capital goods.** The balance ITC shall lapse.

INELIGIBLE INPUT TAX CREDIT [S. 17(5) OF CGST ACT]

Section 17(5) of CGST Act is the section for blocked credit, meaning thereby, even if such expenditure is incurred for purpose of business, credit of such would not be eligible as section 17(5) is non-obstante clause to section 16 (1) & 18 (1).

List of ineligible input tax credit is as per detailed in below paragraphs

Section 17(5)(a) & 17(5) (aa) & 17(5) (ab): - Credit in respect of Motor Vehicle / Aircraft / Vessel: -

S. 17(5)(a): ITC will not be eligible on Motor vehicles (as per MV Act) for **TRANSPORTATION OF PERSONS** (it means transportation of goods is allowed) which has approved seating **capacity of less than or equal to 13 persons** (including the driver). However, credit will be available when they are used for making the following taxable supplies:

- ❖ Further supply of such motor vehicles (Motor vehicle Dealers);
- ❖ Transportation of passengers;
- ❖ Imparting training on driving such motor vehicles (Driving Schools);
(Two-wheeler having upto 25 CC Engine capacity is not a motor vehicle)

Other points:

- ❖ **JCB, Cranes are not MV:** The vehicle which could run on road would be called as motor vehicle, however, it does not include a vehicle which is of a special type such as JCB, Cranes etc.
- ❖ If motor vehicle which is **designed to carry persons** is **used** for carrying and transportation of **goods**, input tax credit would **still be ineligible**
- ❖ ITC on **Maxi cab** will be **allowed** as it is used for transportation of passengers.
- ❖ **Meaning of “Further Supply”:** It is very crucial to note that “further supply” of vessel or aircraft or motor vehicle does not necessarily mean “resale” but any “form” of supply. In other words, “purchase” of vessel or aircraft or motor vehicle when used to let-out on ‘lease,’ will qualify for credit admissibility because the output is ‘further supply’ although not of the same form.

Clarification on availability of ITC on Demo vehicles [Circular No. 231/25/2024-GST dated 10th September, 2024]

As per 17(5)(a) of CGST Act input tax credit shall not be available in respect of motor vehicles for transportation of persons having approved seating capacity of not more than 13 persons (including the driver), **except when they are used for making following taxable supplies**, namely:

- A. *further supply of such motor vehicles; or*
- B.
- C.

It is to be seen whether or not the Demo vehicles in question can be said to be used for making “further supply of such motor vehicles”.

As demo vehicles are used by authorized dealers to provide trial run and to demonstrate features of the vehicle to potential buyers, it helps the potential buyers to make a decision to purchase a particular kind of motor vehicle. Therefore, as **demo vehicles promote sale of similar type of motor vehicles**, they can be **considered to be used by the dealer for making ‘further supply of such motor vehicles.’ Accordingly, input tax credit in respect of demo vehicles is not blocked.**

Demo vehicle for providing marketing services to manufacturer:

Where the **authorized dealer merely acts as an agent** or service provider to the vehicle manufacturer for providing marketing service, including providing facility of vehicle test drive to the potential customers of the vehicle on behalf of the manufacturer and is **not directly involved in purchase and sale of the vehicles**. The sale invoice for the vehicle is directly issued by the vehicle manufacturer to the customer.

The dealer may sell the said demo vehicle to a customer after a specified time or kilometres as per agreement with the vehicle manufacturer on payment of applicable GST.

In such a case, the **authorized dealer is merely providing marketing and/or facilitation services** to the vehicle manufacturer and is not making the supply of motor vehicles on his own account. Therefore, the said demo vehicle **cannot be said to be used by the dealer for making further supply of such motor vehicles**.

Thus, ITC is not eligible.

Other aspects:

- ❖ Availability of ITC is not affected on account of **cost of motor vehicle** (not ITC) being capitalized. However, if ITC is capitalized then ITC cannot be taken
- ❖ Sale of capitalized motor vehicle shall be governed as per section 18(6) of CGST Act read with rule 44 of CGST Rules.

S. 17(5) (aa): Also, ITC will not be available on vessels & aircrafts, however it will be eligible if used for making the following taxable supplies, namely: -

- ❖ Further supply of such vessels or aircraft; or
- ❖ Transportation of passengers; or
- ❖ Imparting training on navigating such vessels; or
- ❖ Imparting training on flying such aircraft;
- ❖ Transportation of goods.

S. 17(5) (ab): SERVICES IN RELATION TO MV/AC: Further, credit of general insurance, servicing, repair and maintenance shall be available in so far as it relates to motor vehicle, vessels or aircraft on which credit is available or where such services are received by a taxable person engaged

- (i) in the manufacture of such motor vehicles, vessels or aircraft; or
- (ii) in the supply of general insurance services in respect of such motor vehicles, vessels or aircraft insured by him.

CLARIFICATION IN RESPECT OF ITC ON REPAIRING SERVICES TAKEN BY INSURANCE COMPANIES [CIRCULAR NO. 217/11/2024-GST DATED 26TH JUNE, 2024]

The insurance companies, which are engaged in providing general insurance services in respect of insurance of motor vehicles, insure the cost of repairs/ damages of motor vehicles incurred by the policy holders and settle the claims in two modes i.e., Cashless or Reimbursement. In cashless form, insurance company directly pays the repairing charges to garage, and in reimbursement model, the insurance company pays to customer who has incurred the expense in relation to repairs.

In case of reimbursement model, Repair cost is paid by insured to garage and then reimbursed to insured.

Legal Provisions & Analysis:

As per section 16, ITC is available to recipient. As per definition of recipient, recipient means the person liable to pay the consideration. Thus, even if insured is paying the consideration to garage, the liability to pay consideration is upon Insurance company. Definition of consideration provides that anyone can pay consideration. Thus, even if insured pays the consideration it is treated as valid consideration in eyes of law.

Section 17(5) of the CGST Act provides that ITC in respect of services of repair of motor vehicles shall be available where received by a taxable person engaged in the supply of general insurance services in respect of motor vehicles insured by him.

Thus, ITC is allowed to insurance company provided invoice is raised in the name of insurance company. However, if invoice is raised in name of individual and then insurance is claimed by insured, no ITC will be available to insurance company.

Proportionate Claim Accepted:

- (a) **Two Separate Invoices:** In cases where the garage issues two separate invoices in respect of the repair services, one to the insurance company in respect of approved claim cost and second to the customer for the amount of repair service in excess of the approved claim cost, input tax credit may be available to the insurance company on the said invoice issued to the insurance company subject to reimbursement of said amount by insurance company to the customer.
- (b) **Single Invoicing:** If the garage issues invoice in name of insurance company for full amount, however, insurance company only accepts part of the claim then, ITC in respect of such proportion will only be available and not that of full amount.

17(5)(b): - Supply of Certain Services: FOBHCL2

Food & Beverage, Outdoor Catering, Beauty Treatment, Health services, cosmetic & plastic surgery, Leasing renting hiring of motor vehicle, life insurance health insurance

3 Exceptions:

- ❖ Inward supply for making outward supply
- ❖ Obligation for employer to provide to employee under any law for time being in force
- ❖ Inward supply for composite or mixed outward supply (ex.: Event management)

Other Points: -

1. **Example of Element as a composite or mixed supply:** A company got organized an event by hiring an Event Manager. Event Manager is contracted to ensure all arrangements relating to food, guests, lighting, decoration, cab services for pick up and drop services. In such case ITC will be available to event manager as such services are in furtherance of business & ITC will be available to company as the services are availed as composite supply of event management and not a standalone supply.
2. **Example of Obligatory Services by Employer under any law:** Maharashtra Shops & Establishment Act provides that rent-a-cab facility has to be provided by employer to night shift employees & female employees leaving office after certain time in night. (Rule 13 of the 2018 Rules – Maharashtra Shops Establishment Rules), thus ITC will be eligible as it is mandatory under law to provide such services.

Another, example could be where there are more than 200 employees in a factory registered under Factories Act, 1948; as per said act providing canteen facility is obligatory on employer's part. Thus, such employer would be allowed to avail input tax credit.

3. **Leasing, Rental, Hiring of Motor Vehicle:** It shall be noted that **purchase** of motor vehicle for transportation of persons having seating capacity ≤ 13 is blocked by Section 17(5)(a), whereas **taking "such" vehicle on lease, rental or hire** is blocked under section 17(5)(b) if used for purposes (exceptions) specified in section 17(5)(a).

4. **Intent of Law:** In section 17(5)(b) if we carefully observe, all the ineligible relates to personal benefits of a person / employees.

ITC on Membership of Club, health and fitness centre; and travel benefits extended to employees on vacation is not allowed:

Exception:

- ❖ Obligation for employer to provide to employee under any law for time being in force

(c) Works Contract Services (WCT) 17(5)(c): -

ITC is not eligible for works contract services when supplied for CONSTRUCTION (capitalization) of an immovable property. However, it is available in following cases (exceptions). (Construction means capitalization i.e., debited to fixed asset account and not charged to P & L account)

Exceptions: -

- ❖ IMMOVABLE PLANT AND MACHINERY (even if capitalized).
- ❖ Further supply of works contract service; (Sub-contracting Services)
- ❖ Construction of other than plant & machinery & debited to Profit & Loss Account

(Imp Note: Land & Building, Telecommunication Towers, Pipelines laid outside factory premises are not plant and machinery).

Clarification on availability of input tax credit on ducts and manholes used in network of optical fiber cables (OFCs) in terms of section 17(5) of the CGST Act, 2017

Ducts and manholes are basic components for the optical fiber cable (OFC) network used in providing telecommunication services. The OFC network is generally laid with the use of PVC ducts/sheaths in which OFCs are housed and service/connectivity manholes, which serve as nodes of the network, and are necessary for not only laying of optical fiber cable but also their upkeep and maintenance.

In view of the Explanation in section 17 of the CGST Act, 2017 it appears that ducts and manholes are covered under the definition of “plant and machinery” as they are used as part of the OFC network for making outward supply of transmission of telecommunication signals from one point to another.

Accordingly, it is clarified that availment of input tax credit is not restricted in respect of such ducts and manhole used in network of optical fiber cables (OFCs), either under works contract or goods or services purchased for self-construction.

(d) Goods & Services used in Self Construction [S. 17(5)(d)]: -

ITC on goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his **own** account including

when such goods or services or both are used in the course or furtherance of business is not eligible. (If debited to PNL then ITC will be allowed)

- (e) Goods or Services or both on which tax has been paid under **section 10** (Composition Scheme)
- (f) Goods or services or both received by a **non-resident taxable person except** on goods **imported by him;**
- (fa) Goods or services or both received by a taxable person, which are used or are intended to be used for activities relating to obligations under the **Corporate Social Responsibility** as per Section 135 of Companies Act, 2013
- (g) Goods or services or both used for **personal consumption**
- (h) Goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples:
 - **Normal losses are allowed.**
 - Schemes such as “**Buy 1 Get 1 free**” are very common in such cases even if one item is given free, ITC **reversal is not required on such free item**

CLARIFICATION ON TAXABILITY OF WARRANTY CONTRACTS [CIRCULAR 216/9/2024-GST DATED 26TH JUNE, 2024]

The circular hereby intends to clarify on warranty replacements done by authorised distributor to customer free of cost. Let us take one example to understand the intent and further clarifications of this circular.

Suppose, you have purchased HP laptop from ABC Computers. However, laptop has stopped working due to battery issue & the laptop is in warranty. Thus, you will take this laptop to ABC computers and they will replace battery free of cost to you. However, ABC Computers will obviously charge the price to HP. Accordingly, we are going to understand tax treatments in various scenarios in above referred example.

Issue 1:

There are cases where the original equipment manufacturer offers warranty for the goods supplied by him to the customer and provides replacement of parts and/ or repair services to the customer during the warranty period, without separately charging any consideration at the time of such replacement/repair services.

Whether GST would be payable on such replacement of parts or supply of repair services, without any consideration from the customer, as part of warranty?

Relating to Our Example: HP (Original equipment manufacturer) offers you 1 year warranty meaning

thereby, if in one year anything happens to your laptop, the replacement and repairing will be done free of cost. Whether GST will be levied on replacement and repairing services provided?

Clarification:

The value of original supply of goods (provided along with warranty) by the manufacturer to the customer includes the likely cost of replacement of parts and / or repair services to be incurred during the warranty period, on which tax would have already been paid at the time of original supply of goods. As such, where the manufacturer provides replacement of parts and/ or repair services to the customer during the warranty period, without separately charging any consideration at the time of such replacement/ repair services, **no further GST is chargeable on such replacement of parts and/ or repair service during warranty period.**

However, **if any additional consideration is charged** by the manufacturer from the customer, either for replacement of any part or for any service, then **GST will be payable** on such supply with respect to such additional consideration.

Relating to Our Example: No GST will be leviable on the battery replaced / services provided if additional charges are not taken because, the price of laptop already included likely cost of repairs and replacement. However, if additional charges are taken from customer, GST would be levied on it.

Issue 2:

Whether GST would be payable on replacement of parts and/ or repair services provided by a distributor without any consideration from the customer, as part of warranty on behalf of the manufacturer?

Relating to Our Example: HP (Original equipment manufacturer) offers you 1 year warranty through its authorised distributor meaning thereby, if in one year anything happens to your laptop, the replacement and repairing will be by such distributor done free of cost. Whether GST will be levied on replacement and repairing services provided?

Further, HP is not required to reverse ITC on battery replaced Free of cost.

Clarification:

There may be instances where a distributor of a company provides replacement of parts and/ or repair services to the customer as part of warranty on behalf of the manufacturer and no separate consideration is charged by such distributor in respect of the said replacement and/ or repair services from the customer.

In such cases, **as no consideration is being charged** by the distributor from the customer, **no GST would be payable by the distributor** on the said activity of providing replacement of parts and/ or repair services to the customer.

However, **if any additional consideration is charged by** the distributor from the customer, either for replacement of any part or for any service, then **GST will be payable** on such supply with respect to such additional consideration.

Relating to Our Example: No GST will be leviable on the battery replaced / services provided by distributor if supplied free of cost. However, if additional charges are taken from customer, GST would be levied on it.

Issue 3:

In the above scenario where the distributor provides replacement of parts to the customer as part of warranty on behalf of the manufacturer, whether any supply is involved between the distributor and the manufacturer?

Relating to Our Example:

There can be 4 circumstances as below:

- ❖ ABC Computers purchased battery from open market, replaced it to customer and charged such price to HP
- ❖ ABC Computers asked HP to send him battery then he will replace the battery under warranty. Further, HP is not required to reverse ITC on battery replaced Free of cost.
- ❖ HP has already sold some batteries to ABC computers; ABC replaces the battery from stock already received and HP reduces receivable from ABC Computers.
- ❖ HP has already sold some batteries to ABC computers; ABC Computers replaces the battery from stock already received and HP later on sends new battery for ABC Computers

Clarification: There can be 4 instances as discussed below: -

- (a) There may be cases where the **distributor replaces the part(s) to the customer** under warranty either by using his stock or by purchasing from a third party and charges the consideration for the part(s) so replaced from the manufacturer, by issuance of a tax invoice, for the said supply made by him to the manufacturer. In such a case, **GST would be payable by the distributor on the said supply by him to the manufacturer.**

These **supplies cannot be considered as exempt supply** and accordingly, the manufacturer, who provides replacement of goods or its parts, as the case may be and/or repair services to the customer during the warranty period, is **not required to reverse the ITC** in respect of the said replacement of goods or its parts, as the case may be or on the repair services provided.

- (b) There may be cases where the **distributor raises a requisition** to the manufacturer for the part(s) to be replaced by him under warranty and the manufacturer then provides the said part(s) to the distributor for the purpose of such replacement to the customer as part of warranty. In such a case, where the manufacturer is providing such part(s) to the distributor for replacement to the customer during the warranty period, without separately charging any consideration at the time of such replacement, **no GST is payable on such replacement of parts by the manufacturer.**

- (c) There may be cases where the **distributor replaces the part(s) to the customer under warranty out of the supply already received by him** from the manufacturer and the manufacturer issues a credit note in respect of the parts so replaced subject to

provisions of section 34(2) of the CGST Act. Accordingly, the tax liability may be adjusted (reduced) by the manufacturer. ITC shall be reversed by distributor on account of credit note given by manufacturer.

- (d) There may be cases where the distributor replaces the goods or its parts to the customer under warranty by using his stock and then raises a requisition to the manufacturer for the goods or the parts, as the case may be. The manufacturer then provides the said goods or the parts, as the case may be, to the distributor through a delivery challan, without separately charging any consideration at the time of such replenishment. In such a case, no GST is payable on such replenishment of goods or the parts, as the case may be. ITC shall not be reversed by HP.

Relating to Our Example:

There can be 4 circumstances as below:

- ❖ ABC Computers purchased battery from open market, replaced it to customer and charged such price to HP. ABC Computers shall charge GST on raising invoice on HP. HP will get ITC
- ❖ ABC Computers asked HP to send him battery then he will replace the battery under warranty. No GST is payable on battery replaced nor ITC shall be reversed by HP even if given free because the price of such free product was already included in original price of the product.
- ❖ HP has already sold some batteries to ABC computers; ABC replaces the battery from stock already received and HP reduces receivable from ABC Computers by issuing CN to ABC. HP reduced its liability and accordingly, ABC shall reduce ITC.
- ❖ HP has already sold some batteries to ABC computers; ABC Computers replaces the battery from stock already received and HP later on sends new battery for ABC Computers. No GST is payable, nor ITC is required to be reversed.

Issue 4:

Where the distributor provides repair service, in addition to replacement of parts or otherwise, to the customer without any consideration, as part of warranty, on behalf of the manufacturer but charges the manufacturer for such repair services either by way of issue of tax invoice or a debit note, whether GST would be payable on such activity by the distributor?

Referring to our example:

ABC Computers replaced battery and provided repairing services to us so that laptop runs without any problem for free. However, ABC Charged for such repairing services to HP.

Clarification:

In such scenario, there is a supply of service by the distributor and the manufacturer is the recipient of such supply of repair services in accordance with the provisions of section 2(93)(a) of the CGST Act, 2017.

Hence, GST would be payable on such provision of service by the distributor to the manufacturer.

Referring to our example:

GST shall be payable by ABC who is charging to HP.

Issue 5:

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

Clarification:

- (a) If a customer enters into an agreement of **extended warranty with** the supplier of the **goods** at the time of original supply, then the consideration for such extended warranty becomes part of the value of the **composite supply, the principal supply** being the supply of goods, **and GST would be payable accordingly**. However, if the supply of **extended warranty** is made by a person different from the supplier of the goods, then supply of extended warranty will be treated as a separate supply from the original supply of goods and will be **taxable as supply of services**.
- (b) In case where a consumer enters into an agreement of **extended warranty at any time after the original supply**, then the same shall be **treated as a supply of services** distinct from the original supply of goods and the supplier.
- (i) Any tax paid in accordance with the provisions of sections 74 (Fraud), 129 (Detention Seizure) and 130 (Confiscation)

[In above clause, references to Section 129 & 130 are removed as tax is not paid under those sections only penalties and fines are levied w.e.f. 1st November, 2024 – Not applicable for CA Exams of May, 2025]

As per rule 36(3), No input tax credit shall be availed by a registered person in respect of any tax that has been paid in pursuance of any order where any demand has been confirmed on account of any fraud, wilful misstatement or suppression of facts under section 74. (words added)

AVAILABILITY OF ITC IN SPECIAL CIRCUMSTANCES [SECTION 18 OF CGST ACT]

Sr. No.	Supplier	Inputs / Semi Finished / Finished	Capital Goods	ITC on <u>Stock</u> to be considered as on
1	Liable for registration (crosses the turnover of Rs 20 Lakhs / 10 lakhs) – Applies for registration within 30 days of becoming liable for registration and obtains registration (Note 3) – 18(1)(a)	Available (Refer Notes)	Not Available	Day immediately preceding the date from which he becomes liable to pay tax . (Note - If person is liable to register on account of exempt supply becoming taxable, section 18(1)(a) shall be applied)
(Refer revised Tax invoice concept from Charge of GST)				
2	Voluntary Registration – 18(1)(b) <i>(Applies on its own without T.O. crossing specified limits)</i>	Available (Refer Notes)	Not Available	Day immediately preceding the date of grant of registration
3	Composition Scheme to Regular Scheme – 18(1)(c) r/w Rule 40	Available (Refer Notes)	Available after reducing 5% per quarter or part thereof from Date of Invoice.	Day immediately preceding the date from which supplier is liable to pay tax under regular scheme
4	Supplies of REGISTERED Exempt supplier becomes Taxable 18(1)(d) r/w Rule 40	Available (Refer Notes)	Available after reducing 5% per quarter or part thereof from Date of Invoice.	Day immediately preceding the date from which exempt supplies become taxable
5	1) Regular Scheme to Composition Scheme or Presumptive Scheme	-	-	Reverse (& + in output tax) amount of tax in respect of: -

Sr. No.	Supplier	Inputs / Semi Finished / Finished	Capital Goods	ITC on <u>Stock</u> to be considered as on
	(NN 02/2019 – CTR) (NN 9/2019 – CTR) 2) Taxable to exempt supplies 3) Cancellation of Registration u/s 29(5) of CGST Act <i>(Sec 18 (4) of CGST Act r/w R. 44(1) of CGST Rules)</i> <i>(Note 7)</i>			Stock on which ITC has been availed at the time of purchase. Capital Goods after reducing ITC proportionately on the basis of usage life in months. Balance ITC if any shall be lapsed (Rule 44 of CGST Rules)

Other Aspects:

- 1) **Sale of Capital Goods under GST, GST to be discharged as [18(6)]:**
 - (a) ITC reduced by 5% per quarter or
 - (b) Tax on Transaction Value
whichever is higher.

(Note: - For Moulds, Dies, Jigs, Tools, and fixtures Sold as Scrap, Transaction Value can be taken directly)
- 2) Credit of Stock & Capital goods will **not be allowed after expiry of 1 year** from invoice date. [S. 18(2) of CGST]
- 3) If a supplier obtains registration within 30 days of becoming liable, the effective date of registration would be date on which he was liable for registration. Thus, he shall issue revised tax inv. **within 1 month from the date of issuance of certificate of registration, for the period from effective date of registration** (date on which he crossed limits) **till the date of issuance of certificate of registration** to him. [Section 31(3)(a)]
- 4) **Declaration in Form GST ITC-01 must be filed within 30 days** from the date of becoming eligible to input tax credit as **Certificate from a practicing CA/CMA if ITC claimed exceeds Rs. 2 lakhs.**
- 5) Where tax invoices are not available credit amount shall be reversed on **basis of market price.**

In respect of 18(4) (Point 5 of Table above) details to be furnished in GST ITC 03 & GSTR 10 (final return in case of cancellation of registration). Further, it should be certified by CA / CMA.

INPUT SERVICE DISTRIBUTOR [SECTION 20, 21 OF CGST ACT]

ISD is an office of supplier of SERVICES (not goods, i.e., ISD can distribute credit of common services only). A supplier may have number of establishments located in different States, however, as regards input services, a supplier may insist for obtaining invoices in the name of its one central location, irrespective of which establishment has actually received the services. The purpose could be centralized accounting or centralized payment system.

For example: - If X & Co. is conducting statutory audit of Reliance Industries Limited's branches it would be so difficult for X & Co. to issue separate invoice for each branch in different state, thus concept of ISD enables X & Co. to raise tax invoice on head office & after taking ISD registration ISD can distribute credit attributable to concerned branch.

1. The **credit can be distributed** to the recipients of credit against a **document** containing such details as prescribed in **Rule 54 of CGST Rules, 2017**.
2. The amount of the credit **distributed** shall **not exceed** the amount of credit **available for distribution**;
3. **SPECIFICALLY ATTRIBUTABLE: SHALL BE DISTRIBUTED TO THAT RECIPIENT**
4. **MORE THAN 1 RECIPIENT: SHALL BE DISTRIBUTED IN TO OPERATIONAL UNITS IN RATIO OF THEIR PFY TURNOVER.**

Notes: -

- If above is not available then the last quarter, previous to the month during which credit is to be distributed for which details of such turnover of all the recipients are available,
- Turnover means taxable goods as well as goods not taxable (exempt) under this Act reduced by excise duty & VAT levied

Distributed as: $C1 = (t1 \div T) \times C$ where,

- "C" is the amount of credit to be distributed,
- "t1" is the turnover in state of recipient during relevant period;
- "T" is the aggregate of the turnover during relevant period for all recipients to whom credit is attributable.

CGST & SGST or UTGST



Distribute to recipient of same state as CGST & SGST or UTGST

CGST & SGST or UTGST



Distribute to recipient of another state as IGST

(IGST to be distributed as IGST only)

1. ISD shall separately distribute the amount of eligible ITC & ineligible ITC [ineligible under the provisions of 17(5) of CGST Act]
2. ISD to distribute to ALL RECIPIENTS irrespective of being registered or not, of providing exempt supply or not.
3. Tax credit of CGST, SGST / UTGST, IGST shall be distributed separately in the document as per Rule 54 / of CGST Rules, 2017.
(If ISD is Banking Co., or Financial Institution or NBFC, document for distributing credit may not be serially numbered)

Further ISD credit note and debit note shall be issued in same proportion in which credit was distributed to recipient & shall be reported in GSTR 6. ITC of IGST shall be distributed as IGST only (cannot be distributed as CGST / SGST, UTGST)

Clarification in respect of apportionment of input tax credit (ITC) in cases of business reorganization under section 18 (3) of CGST Act read with rule 41(1) of CGST Rules [Circular 133/2019]

Issues	Clarification
(i) In case of Demerger, the ratio of value of assets demerged shall be taken state wise or PAN India wise	State wise. Example: ❖ If an entity has business in state of MH & RJ. MH has 2 units namely A, B; having assets Rs. 10 & Rs. 20 respectively. Thus, total assets in MH are Rs. 30. Further it has assets of Rs. 30 in RJ. It wishes to demerge unit A. ❖ Thus, total assets = 60 ❖ Ratio of unit A shall be 10/60 or 10/30. ❖ Answer is 10/30 (State wise)
(ii) Whether the ratio of value of assets, as prescribed under proviso to rule 41 (1) of the CGST Rules, shall be applied in respect of each of the heads of input tax credit viz. CGST/ SGST/ IGST/ Cess	The ratio may be applied on total of balance of unutilised ITC by keeping following 2 principles in mind: (a) ITC to be apportioned shall not exceed balance available in respective tax head (b) Total ITC apportionment shall not exceed ratio on total balance of ITC.
(iii) Date of which ratio of value of assets shall be taken	Appointed date of demerger (not date of order)
(iv) The ratio of assets shall be applied on balance of ITC of which date	Date on which GST - ITC 02 is filed.

> Chapter 8

Registration Under GST

GST registration is mandatory for eligible businesses to collect tax.

Learning Objectives

- General Provisions for person liable for registration under GST [Section 22 of CGST Act]
- Person exempted from registration [Section 23 of CGST Act]
- Compulsory registration [Section 24 of CGST Act]
- Procedure for registration and concept of deemed distinct persons under registration [Section 25 of CGST Act r/w Rule 8, 9, 10, 10A, 11, 25, 18, 17, 16] & Aadhar Authentication [Section 25(6A) to Section 25(6D)].
- Rules in relation to Application of Registration [Rule 8, 9, 10, 10A, 12, 18]
- Special provisions relating to casual taxable person and non-resident taxable person [Section 27 r/w Rule 13 & 14, 15]
- Deemed Registration [Section 26]
- Amendment of registration [Section 28 r/w Rule 19]
- Cancellation or Suspension of registration [Section 29 r/w Rule 20, 21, 21A, 22]
- Revocation of cancellation of registration [Section 30 r/w Rule 23]
- Method of Authentication [Rule 26]

Backdrop of Registration

GST is recognised for its seamless flow of credit through chain of suppliers. This is only possible when a supplier is registered under GST (other than composition). It is important to understand that there is no **concept of centralized registration in GST** (one registration for all units), in GST there is a concept of state-wise registration (in a same state as well different registrations can be taken by same person for different place of businesses). GST is known as destination-based consumption tax. Thus, the supplier being in origin state would become difficult for him to deposit tax to destination state. Accordingly, the concept of IGST has been innovated, wherein the supplier deposits tax, to Central Government's Account named as IGST, at origin state. Further, Central Government is responsible to apportion the 50% of such tax collected to destination state which has been collected by origin state supplier. Thus, recipient state gets the revenue of GST without supplier obtaining registration in such state. Registration of a business with the tax authorities implies obtaining a unique identification code (i.e. Goods & Services Tax Identification Number) from the concerned tax authorities so that all the operations of, and data relating to the business can be agglomerated and correlated.

PERSON LIABLE FOR REGISTRATION [SECTION 22 OF CGST ACT]

As per section 22 of CGST Act, every supplier shall be liable to be registered under this Act in the State or Union territory (except Special category state), from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds Rs. 20 lakhs. For Special category states – 10L [Special category States are Tripura, Nagaland, Manipur, Mizoram]

- ❖ Aggregate turnover to be calculated on ALL India PAN Basis
- ❖ If one state is special category state which makes **TAXABLE SUPPLY THEN OVERALL LIMIT WOULD BE 10L**
- ❖ If one state is special category state which makes **EXEMPT SUPPLY THEN OVERALL LIMIT WOULD BE 20L**
- ❖ **In Aggregate turnover calculation exempt supplies shall also be added, however registration shall not be taken in the state from which supplier makes exclusively exempt supply**
- ❖ Registration required only for a place of business from where taxable supply takes place.

COMPUTATION OF AGGREGATE TURNOVER (ATO) [Section 2(6) OF CGST ACT]

AGGREGATE TURNOVER TO INCLUDE

1. All Taxable Supplies (Excl. reverse charge inward)
2. Exempt Supplies
3. Export of goods or services
4. Inter-State supplies of persons having the same Permanent Account Number shall be computed on all India basis

AGGREGATE TURNOVER TO EXCLUDE [SECTION 2(6)]

Tax Component - Tax component i.e., Central tax, State tax, Union territory tax, integrated tax and cess shall be excluded

Explanation to Section 22	Analysis
(i) Supplies made by Agent	When agent issues invoice in his own name, it shall be added in the turnover of agent. (Clarified by CBI&C circular)
(ii) Supply by Job – Work	Supply of goods, after completion of job work, directly from a registered job worker's premises is treated as supply of goods by the principal & shall be included in the aggregate T/O of principal. <i>(If the principal wishes to supply goods from the place of business of unregistered job worker, the place of business of job worker shall be added as “additional place of business in suppliers” registration.)</i>

NUMBER OF REGISTRATIONS IN A STATE

Particulars	Analysis [Rule 11]
(i) Separate Registration in Single state is an option	If Multiple places of business, then B.E. MAY OBTAIN SEPARATE REGISTRATIONS
(ii) Inter-unit taxability	They would be called as distinct persons and supply between them would be taxable
(iii) Separate Registration Application be filed	Separate application to be filed for obtaining multiple registration.
	Note: Rule 9 & Rule 10 relating to verification and grant of registration (to be discussed in later paras) shall be applicable to separate place of business.
SEZ & non-SEZ unit under same PAN, to obtain different registration	

THRESHOLD OF RS. 40 LAKHS FOR EXCLUSIVE SUPPLIER OF GOODS

- ❖ **Interstate supplier of goods - Mandatory Registration:** Person engaged in inter-state supply of goods have to compulsorily obtain registration under GST as per Section 24 (No benefit of threshold)
- ❖ **Interstate supplier of services - Mandatory Registration if ATO > Rs. 20L or Rs. 10L:** Person engaged in inter-state supply of services have to compulsorily obtain registration if aggregate turnover exceeds Rs. 20,00,000 or Rs. 10,00,000 (SCS) (Section 23, Section 24 r/w Notification 10/2017 Integrated Tax)

As per said notification, any person, who is engaged in **EXCLUSIVE [INTRA]¹ SUPPLY OF GOODS** and whose aggregate turnover in the financial year does not exceed Rs. 40 Lakh, except, -

[1Intra has been written for sake of understanding & not directly mentioned in notification]

- a) Persons required to take **compulsory registration** under section 24 of CGST Act.
- b) Persons engaged in making supplies of the tobacco, ice-cream, pan masala, fly ash bricks, fly ash block, fly ash aggregates, building bricks, earthen tiles, roof tiles, bricks of fossil meals or similar siliceous earths (**Inserted vide Notification No. 03/2022-Central Tax dated 31st March, 2022 w.e.f. 1st April, 2022**)

- c) Persons engaged in making **intra-State supplies** in the States of Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Puducherry, Sikkim, Telangana, Tripura, Uttarakhand; **(M3NS T2APU)**. [It does not mean inter-state supplier from these states can avail benefit of this notification as Inter-state suppliers of goods are compulsorily liable for registration (S.24) & covered in point (a) above.]
- d) Persons exercising option of **voluntary registration**, or such registered persons who intend to continue with their registration. (Optional scheme) shall not be liable to obtain registration under GST.
1. **Service from Interest /Discount shall be ignored for deciding exclusivity of supply of goods:** If Supplier earns int. income which is service income, still he would be considered as supplier of goods. Int. income shall be added in A.T.O.
2. **Other Points in Section 22:**
- ❖ When business is transferred as a going concern, transferee shall be liable to be registered w.e.f. date of such transfer or succession.
 - ❖ When transfer is in nature of amalgamation or demerger pursuant to an order of High court or Tribunal, transferee shall be liable to be registered w.e.f. date on which the Registrar of company issues certificate of registration giving effect to such order of High Court or Tribunal.

PERSON EXEMPT FROM OBTAINING REGISTRATION [SECTION 23]

Person Exempt from taking Registration [S. 23]: Notwithstanding anything contained in Section 22 or 24 of CGST Act, the following persons shall not be liable to registration, namely:

Sr. No.	Category of Exempted persons
1	Exclusively Exempt supplier of goods or services
2	An agriculturist , to the extent of supply of produce out of cultivation of land
3	Suppliers exclusively engaged in supplying goods/services under RCM
4	Inter-state service provider upto Rs. 20 Lakhs / Rs. 10 Lakhs (Except Section 9(5) – ECO service provider)
5	Persons supplying inter-state supply of notified handicraft & handmade goods ≤ Rs. 20 Lakhs (Rs. 10 Lakhs is SCS) <i>Condition: Such persons shall have obtained a PAN and have generated an e-way bill</i>
6	Casual Taxable Persons (CTP) supplying notified handicraft & handmade goods <i>Condition: Such persons shall have obtained a PAN and have generated an e-way bill</i>
7	Service provider whose ATO ≤ Rs. 20 Lakhs (Rs. 10 Lakhs in SCS) through ECO who is liable to collect Tax at source
8	Commission Agent making supplies on behalf of agriculturist (a non-taxable person) <i>(However, where commission agent is liable to pay tax under RCM for any other service procured by him, such agent will be required to get registered.)</i>
9	Exclusive supplier of goods having turnover not exceeding Rs. 40 lakhs

Person Liable to obtain Compulsory Registration [S. 24]

Sr. No.	Category of persons liable for compulsory registration
1	Persons making any inter-State taxable supply of goods. For services > 10L, 20L, compulsory registration.
2	Casual taxable persons making taxable supply other than notified handicraft & handmade goods
3	RCM Recipient
4	9(5) Supplier such as Ola, Uber, Zomato etc.
5	Persons who supply goods (of any amount) (subject to conditions mentioned below the table) and/or services > 20 lakhs/10 lakhs (SCS) through ECO
6	ECO who is required to collect tax at source under section 52 [Section 24(x)]
7	Non-resident taxable persons (NRTP) making taxable supply [Section 24(v)]
8	Tax Deductor u/s 51
9	Clearing forwarding Agents issuing invoice in their names.
10	Input Service distributors [ISD]
11	OIDAR service provider supplying to Non-taxable online recipient.
12	Person supplying online money gaming from place outside India to a person in India

PROCEDURES

PROCEDURE TO OBTAIN REGISTRATION UNDER GST

PROCESS 1: SUBMISSION OF APPLICATION WITH AADHAR AUTHENTICATION & OFFICER DOES NOT CARRIES OUT PHYSICAL VERIFICATION:

Below steps are to be followed:

- (i) Apply for registration within 30 days of becoming liable for registration. If the registration has been applied for within 30 days of becoming liable, then the effective date of registration would be the date on which the person was liable for registration. However, if he applies for registration after 30 days of becoming liable for registration, the date of grant of registration shall be the effective date of registration.
- (ii) On application for registration, officer would examine the application, if he is satisfied with the application, he would grant the registration within **7 days of submission of application***. However, if he is not satisfied with the application then he would issue a show cause notice to the applicant, which shall be replied within 7 days from receipt of notice.

*Date of submission of the application shall be:

- ❖ The date of authentication of the Aadhaar number, or
- ❖ 15 days from the submission of the application in Part B of FORM GST REG-01 under sub-rule (4), whichever is earlier.

Example: If applicant has submitted the application on 12th November, 2023, and does Aadhar authentication on 16th November, 2023; date of submission of application would be 16th November, 2023. However, if he fails to do Aadhar authentication within 15 days of preliminary submission, then he will fall in process 2.

- (iii) On submission of reply, if the officer is satisfied with the reply, he would grant the registration within 7 days of receipt of reply, otherwise he would reject the application.
- (iv) Where the officer fails to take action in (ii) or (iii) above, the registration shall be deemed to be approved.

Verification with Photograph at Centre if not opted for Aadhar Authentication [NN 12/2024 CT read with NN 09/2025–CT dated 11th February, 2025] (w.e.f. 11th Feb, 2025)

In the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the said rules), with effect from a **11th February, 2025**, in rule 8(4A), after the first proviso, the following proviso shall be inserted, namely: -

Verification with Photograph at Centre if not opted for Aadhar Authentication: Every application made under rule 8(4) by a person, other than a person notified under section 25(6D) (for those whom Aadhar authentication provisions are not applicable), who has

not opted for authentication of Aadhaar number, shall be followed by taking photograph of the applicant where the applicant is an individual or of such individuals in relation to the applicant as notified under sub-section (6C) of section 25 where the applicant is not an individual, along with the verification of the original copy of the documents uploaded with the application in FORM GST REG-01 at one of the Facilitation Centers and the application shall be deemed to be complete only after successful verification as laid down under this proviso.

PROCESS 2:

Registration procedure when:

- ❖ Aadhar Authentication not opted
- ❖ Aadhar Authentication opted but failed to do so
- ❖ Aadhar Authentication opted and done but proper officer, with the approval of an officer authorised by the Commissioner not below the rank of Assistant Commissioner, deems it fit to carry out physical verification of places of business

Process as below:

- (i) Registration shall be granted within 30 days of date of submission of application but after physical verification of place of business [Proviso to Rule 9(1)] (Photograph of Verification shall be uploaded within 15 days of verification)
- (ii) FORM GST REG-03 shall be issued to ask for clarification or additional documents not later than 30 days from the date of submission of the application. Physical verification shall be completed atleast 5 days prior to completion of time period (i.e., 30 days)
- (iii) Officer failed to take action within 30 days of date of submission of application* - Deemed Approval of Registration [R. 9(5)(b)]
- (iv) Bio metric authentication is mandatory for New GST Registration not only in Gujarat but in whole India.

*Date of submission of the application shall be:

- ❖ The date of authentication of the Aadhaar number, or
- ❖ 15 days from the submission of the application in Part B of FORM GST REG-01 under sub-rule (4),

whichever is earlier.

Example 1:

If applicant has submitted the application on 12th November, 2023, and does not perform Aadhar authentication by 27th November, 2023 (15 days). The date of submission of application would be 27th November, 2023.

Example 2:

If applicant has submitted the application without doing Aadhar Authentication on 12th November, 2023. The date of submission of application would be 12th November, 2023.

As per Notification 03/2021 - Central Tax dated 23rd February, 2021; provisions of section 25(6B) & 25(6C) of CGST Act, 2017 are not applicable to person who is,

A person who is not a citizen of India, Department or establishment of State Government or Central Government, Local authority, Statutory body, Public Sector Undertaking, A person applying for Unique Identity Number under section 25(9).

SECTION 25: DEEMED DISTINCT PERSONS

Points	Decoded Provision
1.	TIME LIMIT TO APPLY FOR REGISTRATION: ❖ Normal person to apply for registration within 30 days of becoming liable ❖ CTP & NRTP to obtain registration 5 days prior to commencement of business ❖ SEZ & non-SEZ unit under same PAN, to obtain different registration ❖ Person supplying from Territorial Waters to obtain registration in the coastal State or Union territory where the nearest point of the appropriate baseline is located.
2.	Income Tax PAN is mandatory for obtaining registration. However, tax Deductor can apply for GST registration on income tax TAN .
3.	Any specialised agency of the United Nations Organisation or any Multilateral Financial Institution and organisation shall be given Unique Identity Number which would be used for refund purposes

RULES RELATING TO REGISTRATIONS

RULE 8: APPLICATION FOR REGISTRATION	
8(1)	PAN will be verified online Aadhar Linked Mobile number
8(2)	PAN will be verified through CBDT website, shall be verified through an OTP except for NRTP, TDS, TCS, person supplying online gaming services from outside India
8(3)	A temporary reference number (TRN) shall be generated and communicated to the applicant on the said mobile number and e-mail address
8(4)	Using TRN generated, the applicant shall electronically apply in Part B of FORM GST REG-01, duly signed or verified through electronic verification code, along with the documents specified in the said Form.
8(4A)	Aadhar Authentication: Aadhar shall be authenticated thru mobile no. regd. with Aadhar by OTP Date of submission of the application in such cases shall be, earlier of: ❖ The date of authentication of the Aadhaar number, or ❖ 15 days from the submission of the application in Part B of FORM GST REG-01 under sub-rule (4)
RULE 9 R/W RULE 25: APPROVAL / REJECTION / NOTICE ETC. [RULE 9 R/W RULE 25]	
9(1)	Documents are proper - Approval of Registration within 7 working days (Deemed Approval if officer failed to take action - R. 9(5)(a))
	Proviso: If not opted for Aadhar Authentication then registration shall be granted within 30 days of submission of application, after physical verification of POB (Deemed Approval if failed to take action - R. 9(5)(b))

	Rule 25: Verification report along with the other documents, including photographs, shall be uploaded in FORM GST REG-30 within a period of 15 working days following the date of such verification.
9(2)	Documents are deficient - Notice (GST REG 03) be issued by PO within 7 WD - Reply (in GST REG 04) shall be furnished by applicant within 7 WD. In cases where, compliance of Aadhar Authentication not done or PO requires physical verification notice be issued by PO within 30 days from date of submission
9(3)	Proper officer is satisfied - grant reg. within 7 working days from receipt of clarification / documents (Deemed Approval if officer failed to take action - R. 9(5)(c))
9(4)	No reply / unsatisfactory reply furnished by applicant - Reg would be rejected.
9(5)	Deemed approval (covered)

AMENDMENTS [SECTION 28] (15, 15, 7, 7)

(A) Amendment in Core Fields (Legal Name, Address, etc)

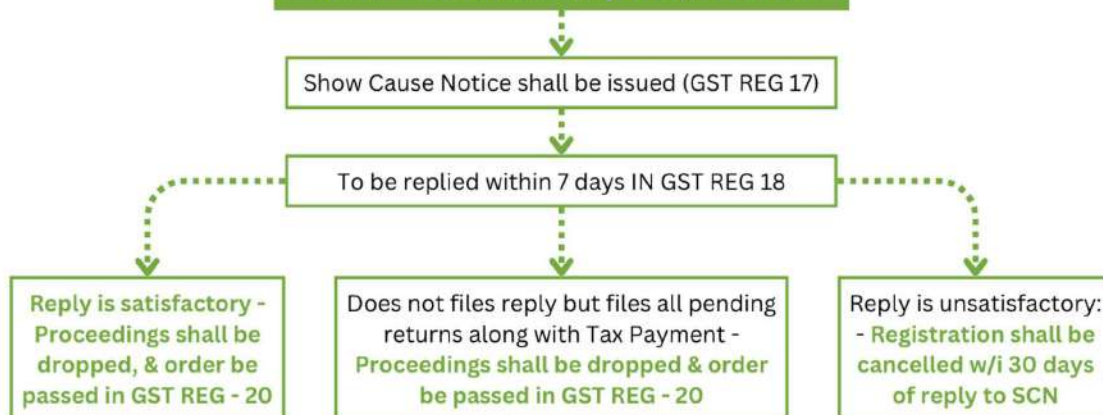
- ❖ **Apply for Amendment within 15 days of change** (GST REG – 14)
- ❖ **Officer will approve** such change on common portal **within 15 working days** of receipt of application
- ❖ If **officer is of the opinion** that application is not satisfactory, **SCN** (Show cause notice) shall **be issued** within 15 working days from application, **seeking replies from assessee within 7 working days** of service of notice.
(If neither approval is given nor show cause notice is issued within 15 working days, then it would be deemed to be approved)
- ❖ If **Satisfactory reply is received** – Officer shall **approve the amendment within next 7 days** otherwise, Deemed Approval.
- ❖ If **satisfactory reply is not received or no reply is received** – Officer will **reject** application in GST REG 05.

(B) Amendment in Non – Core Fields (Email ID, Mob No. etc)

- ❖ Can be **amended online without approval of officer.**

CANCELLATION OF REGISTRATION [SECTION 29 OF CGST ACT]

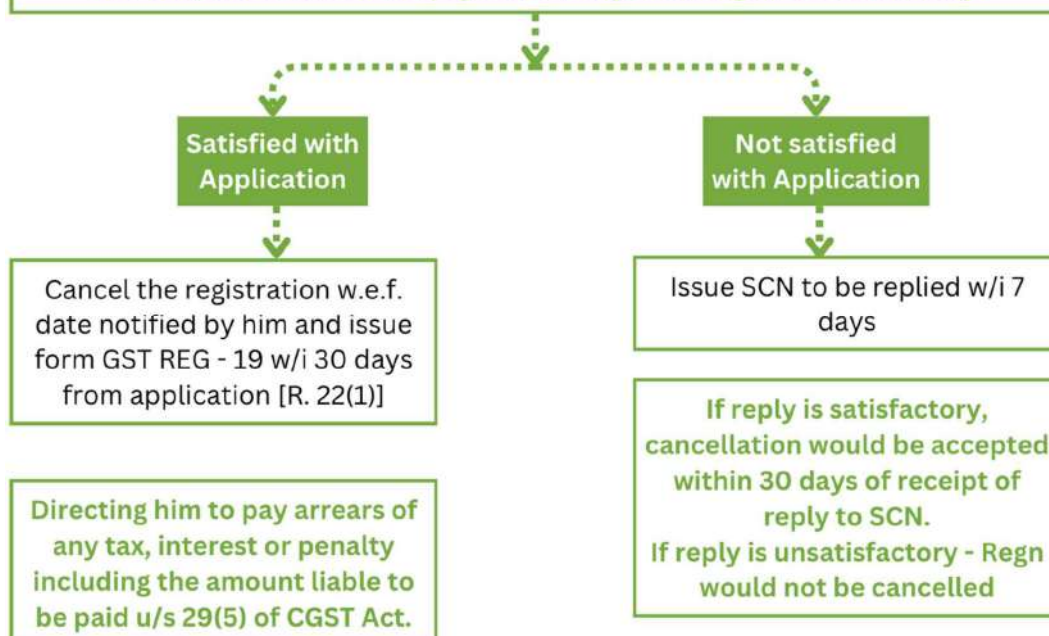
Part A - Cancellation by Proper Officer



PART B: - Cancellation by Registered person [R. 20 r/w R. 22(3)]

Apply for Cancellation w/i 30 days of occurrence of event warranting cancellation
(Form GST REG 16)

Application should accompany details of inputs held in stock or inputs contained
in semi-finished or finished goods held in stock and of capital goods held in stock
on the date from which the cancellation of registration is sought, liability
thereon, the details of the payment, if any, made against such liability



GROUNDS OF CANCELLATION

Pt.	CANCELLATION OF REGISTRATION
1	Power with PO to cancel registration on his own motion, application by reg person or by legal heirs due to 29(1)(a) Discontinuation of business, transferred fully, amalgamated, demerger, disposed 29(1)(b) Change in constitution 29(1)(c) no longer liable to be registered under section 22 or section 24, or voluntarily registered but now wishing to opt out. Note: During pendency of the proceedings relating to cancellation registration will be suspended
2	Cancellation by P.O. in certain circumstances (also can cancel retrospectively) 29(2)(a) Registered person has contravened prescribed contraventions** **Prescribed contraventions (a) No Business from declared place of business; or (b) Issues, invoice or bill without supply of goods or services or both; or (c) Anti-profiteering (d) Violates the provision of rule 10A (Furnishing of Bank details) (e) Avails ITC in violation of section 16 (f) GSTR 1 or 1A > than GSTR 3B <i>(Form GSTR 1A is an amendment return of Form GSTR 1 filed for a tax period by a taxpayer. Any record filed in a particular GSTR 1 can be amended in the same period GSTR -1A which has to be filed after GSTR 1 is furnished but before GSTR 3B.)</i> (g) Violates the provision of rule 86B (h) 3B monthly not filed for 6 months or 2 Quarters. (ga) violates the provisions of 3rd or 4th proviso to rule 23(1) of CGST Rules <i>As per proviso 3 of Rule 23 of CGST Rules, all returns due for the period from the date of the order of cancellation of registration till the date of the order of revocation of cancellation of registration shall be furnished by the said person within a period of thirty days from the date of order of revocation of cancellation of registration.</i> <i>As per proviso 4 of Rule 23 of CGST Rules, where the registration has been cancelled with retrospective effect, the registered person shall furnish all returns relating to period from the effective date of cancellation of registration till the date of order of revocation of cancellation of registration within a period of 30 days from the date of order of revocation of cancellation of registration.</i> <i>If the person fails to file the above returns, then GST registration whose cancellation was revoked shall be again liable for cancellation.</i>

	(b) Composition person not furnished the return for a financial year beyond three months from the due date (c) Not commenced business within six months from the date of registration; (d) Registration obtained by means of fraud, wilful misstatement or suppression (Opportunity of being heard be given, during pendency of proceeding – registration be suspended)
3	The registered person shall reverse ITC or pay output tax on such goods whichever is higher in respect of stock; The registered person shall pay reverse ITC in terms of balance useful life in months or tax on transaction value whichever is higher in respect of capital goods or plant and machinery.

SUSPENSION OF REGISTRATION [SECTION 29 OF CGST ACT]

Meaning & Relevance of suspension of registration:

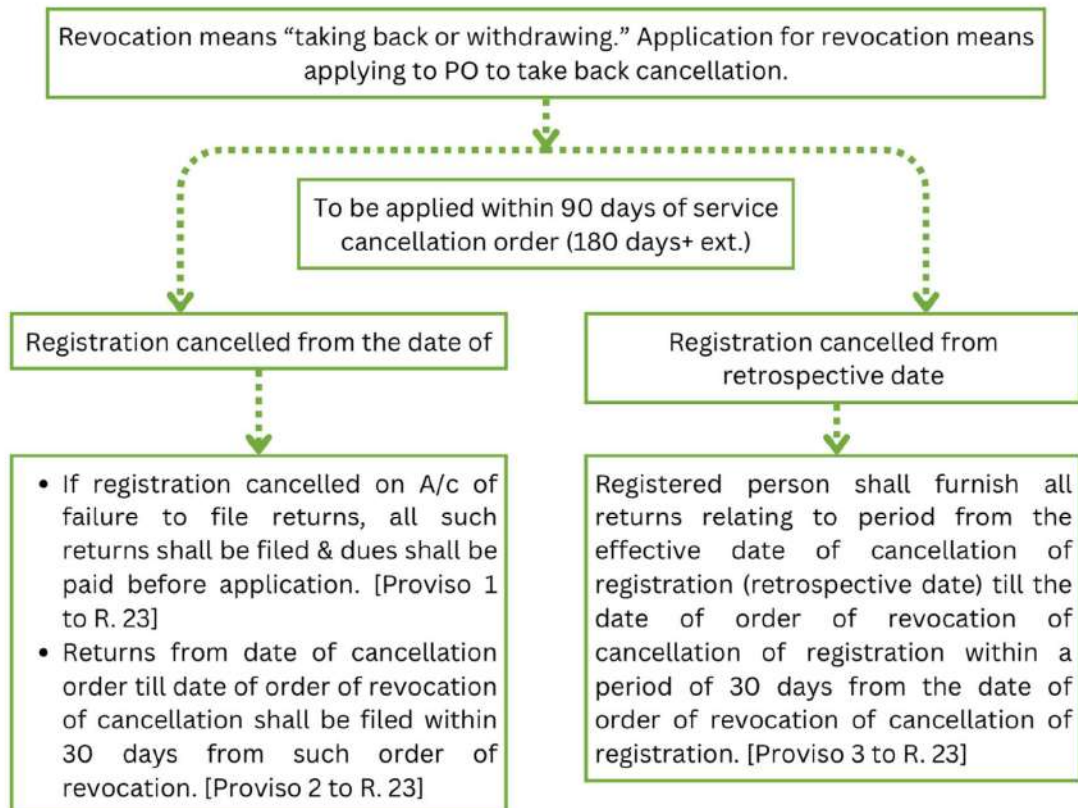
Suspension of registration is covered under Section 29 of the CGST Act, 2017 and the procedure for the same has been provided under Rule 21A of the CGST Rules 2017. During the suspension period a registered person is not required to issue any tax invoice for supply made during that period nor he is required to file return u/s 39

Rule No.	Description of provision
Effective date of suspension	Where a registered person has applied for cancellation of registration under rule 20, the registration shall be deemed to be suspended
(i) Cancellation Application made by taxable person [R. 21A(1)]	FROM ❖ The date of submission of the application or, ❖ The date from which the cancellation is sought, whichever is later, TILL

	❖ Pending the completion of proceedings for cancellation of registration under rule 22. <i>[Note: Proceedings would be completed either when proceedings are dropped on satisfactory reply (GST REG 20) or registration is cancelled by issuance of order (GST REG 19)]</i>
(ii) Cancellation initiated by proper officer [R. 21A(2)]	Where the proper officer has reasons to believe that the registration of a person is liable to be cancelled under section 29 or under rule 21, he may suspend the registration of such person with effect FROM ❖ A date to be determined by him (i.e., PO) TILL ❖ Pending the completion of the proceedings for cancellation of registration under rule 22 <i>[Note: Proceedings would be completed either when proceedings are dropped on satisfactory reply (GST REG 20) or registration is cancelled by issuance of order (GST REG 19)]</i>
[21A(2A)] [Inserted vide NN 94/2020 – CT dt. 22.12.2020]	Significant Discrepancy in returns or <u>contravention of Rule 10A</u>, may lead to Suspension of his registration and the said person shall be intimated in FORM GST REG-31. The explanation shall be provided by replying within 30 days as to why registration shall not be cancelled.
No refund shall be granted during period of suspension	
Upon completion of proceedings, suspension period would be deemed to be revoked with effect from the date on which the suspension had come into effect. (PO can revoke suspension even during pendency of proceedings - Proviso)	
As per proviso 2 if registration has been suspended for non-filing of returns, the suspension shall be deemed to be revoked upon furnishing of all pending returns or suspended for non-furnishing of Bank details as per <u>rule 10A</u> , then suspension shall be deemed to be revoked on furnishing the details	
Revised tax invoice [S. 31(3)(a)] shall be issued for period of suspension and shall be furnished in first return as per section 40 of CGST Act	
Suspension shall be deemed to be revoked, where registration was suspended due to non-filing of return for a FY beyond 3 months from due date (in case of composition scheme), subject to the condition that registration has not been cancelled by PO under Rule 22.	

REVOCATION OF REGISTRATION [SECTION 30 OF CGST ACT]

Revocation of Cancellation (S. 30 r/w R. 23)



Other rules	Description
R. 23	A registered person, whose registration is cancelled by the proper officer on his own motion, subject to the provisions of rule 10B , may submit an application for revocation of cancellation of registration, in FORM GST REG-21.
R. 23(2)(a)	(a) Satisfied with Application: Proper officer shall revoke the cancellation of registration by an order in FORM GST REG-22 within 30 days from the date of the receipt of the application
R. 23(3)	Not satisfied with Application: P.O. shall issue SCN which shall be replied (in GST REG 24) by registered person within 7 working days. (Note: Indirectly SCN shall be issued within 30 days from receipt of application)
R. 23(2)(b) r/w R. 23(4)	Unsatisfactory reply / no reply: Proper officer by an order in FORM GST REG-05, reject the application for revocation of cancellation of registration within 30 days from receipt of clarification.

R. 23(4)	Satisfactory reply: Proper officer shall revoke the cancellation of registration by an order in FORM GST REG-22 within 30 days from the date of the receipt of the clarification .
Note: There is no provision of deemed approval of revocation of cancellation	

OTHER RULES RELATING TO REGISTRATION

RULE 10: ISSUE OF REGISTRATION CERTIFICATE	
Rule 10	Decoded provision
10(1)	GST Registration certificate be issued in form GST REG - 06 GSTIN Format 15 DIGIT: Two characters for the State code; Ten characters for the Permanent Account Number or the Tax Deduction and Collection Account Number; Two characters for the entity code; and one checksum character.
10(2)	If application is submitted w/i 30 days of becoming liable for registration the effective date of registration shall be the date on which the person <u>becomes liable to registration</u>.
10(3)	If Application is submitted after 30 days of becoming liable for registration the effective date of registration shall be the <u>date of the grant of registration</u>
10A	Bank Account details to be furnished within ❖ 30 days of grant of registration or ❖ Before furnishing the FORM GSTR-1 or using invoice furnishing facility whichever is earlier.
10B	If an Aadhaar number is not assigned to an existing registered person, he shall identify himself as follows. If Aadhaar number has not been assigned to the person required to undergo authentication of the Aadhaar number, such person shall furnish the following identification documents, namely: – ❖ his/ her Aadhaar Enrolment ID slip; and ❖ Bank passbook with photograph; or ❖ Voter identity card issued by the Election Commission of India; or ❖ Passport; or ❖ Driving license issued by the Licensing Authority (For Revocation & Refund Application – Aadhar Authentication is mandatory) Once Aadhaar number is allotted he shall authenticate Aadhaar within 30 days of the allotment of the Aadhaar number. In case of failure to undergo Aadhaar authentication/furnish proof of possession of Aadhaar number/furnish alternate registration allotted to such person shall be deemed to be invalid.
GST Registration certificate & GSTIN is communicated to applicant, within 3 days after grant of registration.	

SECTION 27: CASUAL TAXABLE PERSON / NON – RESIDENT TAXABLE PERSON

SPECIAL PROVISIONS FOR REGISTRATION FOR CTP AND NRTP [Section 27]	
25(1)	Application of registration shall be made at least 5 days prior to commencement
27(1)	VALIDITY OF REGISTRATION: ❖ A period specified in the application for registration or ❖ 90 days from effective date of registration, whichever is earlier. Extension of period by 90 days possible. If the period of exhibition is likely to exceed 180 days, normal GST registration should be obtained.
27(2)	ADVANCE DEPOSIT OF TAX IN E – CASH LEDGER: An advance deposit of estimated tax liability to be paid (Output - Input) If registration is extended then deposit an additional amount of tax.
27(3)	Amount will be credited to E - Cash Ledger
❖ Refund is granted to casual taxable person or non-resident taxable person only after he files all returns.	

RULE 12: SPECIAL PROVISIONS FOR TAX DEDUCTORS & TAX COLLECTORS

- ❖ **Grant of Registration:** An application for registration has to be submitted by such persons in a different prescribed form, and shall be granted w/i 3 working days
- ❖ **No physical Presence:** When a person is applying for registration to collect TCS or to deduct TDS in a State/UT **where he does not have a physical presence**, he shall mention name of said State/UT in Part A of prescribed application form for registration. (In Part B – Principal State of Business to be mentioned)
- ❖ **Cancellation of registration:** Officer may cancel the registration (on request made by tax deductor or collector that they are no longer liable for registration) issued and such cancellation shall be communicated to the said person electronically in prescribed form.
- ❖ **Procedure:** Proper Officer shall follow the procedure laid down for cancellation of registration prescribed under this Act and rules therein.

> Chapter 9

Accounts & Records

Accounts, records, and audits ensure transparency and compliance in GST.

Learning Objectives

- Understand the statutory requirements for maintaining books of accounts under Sections 35 and 36 of the CGST Act and Rules 56–58.
- Learn the specific types of records to be maintained, including those related to input, output, stock, production, and tax liabilities.
- Identify the obligations for different categories of taxpayers such as manufacturers, agents, service providers, works contractors, transporters, and warehouse operators.
- Recognise the rules regarding the location and manner of maintaining accounts—electronically or manually—with proper audit trails and backups.
- Understand the retention period of records: 72 months from the due date of the annual return or longer in case of appeals or legal proceedings.
- Analyse compliance-related clarifications, including the requirement to declare additional business places and maintain records accordingly.

Accounts & Records [Section 35 & 36 r/w Rules 56 - 58]

Chapter VIII – Accounts and Records [Sections 35 and 36] of the CGST Act enumerates the accounts and records required to be maintained by a taxpayer and the period for which such accounts and records are required to be preserved. 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.

What to maintain as regards to Books of Accounts – Section 35(1) of CGST r/w R. 56)	Records as per S. 35 of CGST Act: 1) Input: Inward Supplies, ITC availed 2) Process: Production or manufacture of goods 3) Storage: Stock of goods 4) Output: Outward Supplies, Output Tax Payable. (Input, Process, Storage, Output is the key to remember the provision) Records as per R. 56 of CGST Rules, 2017 1) Import & Export of Goods/ Services 2) Tax paid under reverse charge mechanism 3) Advance received & adjusted register. 4) Commodity wise stock details (Opening Balance, receipt, issue, goods lost, stolen, destroyed, written off, given as free samples, etc.) 5) Details of tax payable (including RCM Liability details), tax collected and paid, input tax, input tax credit claimed 6) Name & address of supplier & recipient 7) Complete address of premises where goods have been stored 8) Register of tax invoice, credit notes, debit notes, delivery challan issued or received during any tax period. Composition person not to maintain following two details: 1) Commodity wise Stock Details 2) Tax Details
Where to Maintain? [S. 35(1)]	- Principal place of business & Additional Place of Businesses. - Unless otherwise proved, documents or any books of accounts found at any other place other than mentioned in certificate of registration are deemed to be books of accounts of registered person

Accounts to be maintained by Specific Persons	Agents [R. 56(11)]	a) Authorisation received by Agent from each principal to receive or supply goods or services on behalf of such principal; b) Description, value and quantity (wherever applicable) of goods or services received or supplied on behalf of every principal; c) Details of accounts furnished to every principal; and d) Tax paid on receipts or on supply of goods or services effected on behalf of every principal.
	Manufacturers [R. 56(12)]	a) Monthly production accounts showing quantitative details of raw materials or services used in the manufacture and quantitative details of the goods so manufactured including the waste and by products thereof. b) Service Provider to maintain (R. 56(13)): Accounts showing quantitative details of goods used in the provision of services, details of input services utilised and the services supplied.
	Owner or Operator of Warehouses & Transporter whether or not registered under GST. [S. 35(2)]	a) Transporter to maintain records of goods transported, delivered and goods stored in transit by him, along with GSTIN of consignor and consignee for each of his branches. b) Owner or operator of a warehouse or godown shall maintain books of accounts with respect to the period for which particular goods remain in the warehouse, including the particulars relating to dispatch, movement, receipt and disposal of such goods. c) 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 d) If the owner & operator of warehouse & transporter of goods are not registered, they shall obtain a unique enrolment number by applying electronically.
	Manner of Maintenance (R. 56 & 57) & Period	1) Electronic Form – Authenticated by DSC [R. 56(15)]

	of Maintenance (S. 36) - Accounts shall be maintained at all Place of Businesses [R. 56(7)] - Not to be erased or overwritten [R. 56(8)] - Records may be maintained manually & each volume of BOA maintained manually shall be serially numbered. - Adequate Backup shall be taken for Electronic records [R. 57] - Audit Trial shall be produced when PO demands [R. 57] Period of Maintenance (S. 36) (A) A/cs not a subject Matter of Appeal 72 months from due date of annual return to which that accounts & records relate. (B) A/cs subject matter of Appeal or any proceedings 72 months from due date of annual return Or 1 year after final disposal of proceeding whichever is later.
Audit of Books of Accounts (S. 35(5), S. 44(2) of CGST Act, 2017, R. 80(3) of CGST Rules, 2017	Discussed in Returns chapter under caption GSTR – 9
Departmental Clarifications: - The persons involved in auction either as a principal or auctioneer shall declare warehouse or other places as additional place of business in case such places are meant for storage of goods. The principal and the auctioneer shall also maintain the books of accounts in terms of Section 35(1) at such places. However, it is clarified that the books of accounts may be maintained at the principal place of business in case of any difficulties faced in maintaining the books of accounts at such additional place of business upon intimating the jurisdictional officer in writing. - If goods are stored in godown of transporter, then the transporter's godown has to be declared as an additional place of business by the recipient. (Circular No. 61/35/2018-GST) - The transporter having place of business in more than one State or Union Territory and all such places of business are registered under the provisions of the GST law, shall obtain the unique common enrolment number. Such enrolment number shall be used by the transporter for generating the e-way bills and for undertaking the transport of goods.	

Clearing, Forwarding Agent [R. 56(17)]	Maintain true and correct records in respect of such goods handled by him on behalf of such registered person and shall produce the details thereof as and when required by the proper officer.
Works Contractor [R. 56(14)]	➤ The name and addresses of the persons on whose behalf the works contract is executed; ➤ Description, value and quantity (wherever applicable) of goods or services received & utilised for the execution of works contract. ➤ The details of payment received in respect of each works contract; and ➤ The names and addresses of suppliers from whom he received goods or services.

The PO shall determine the amt of tax payable on goods or services that are not accounted for, as if such goods / services had been supplied by such person & provisions of Sec 73 & 74

“Success comes to those who dedicate everything to their passion in life. To be successful, it is also very important to be humble & never let fame & money travel to your head.”

> Chapter 10

Documentation & E-Way Bill

Documentation and E-Way Bill ensure compliance in GST transactions.

Learning Objectives

- Various types of documents and tax invoice for Supply of Goods & Services [Section 31 r/w Rule 46, Rule 46A (Invoice cum bill of supply), Rule 48 (Manner of issue of invoice), Rule 49]
- Unauthorised Collection of Tax [Section 32], Tax to be indicated Separately [Section 33]
- Contents of Documents & Other Aspects thereof [Rule 46, 49, 50, 51, 52, 53, 54]
- Concept of Credit Notes & Debit Notes under GST [Section 34 r/w Rule 53]
- Tax Invoice in special cases [Rule 54]
- Concept of Delivery Challan [Rule 55] & Documents to be carried by person in charge of goods [R. 55A]
- Analysis of E - way Bill under GST [Section 68 r/w Rule 138 (series)]

Backdrop of Documentation

Every transaction shall be documented under GST, accordingly, tax invoice, debit notes, credit notes, receipt voucher, payment voucher etc. are the documents to be issued at various scenarios. In this chapter we are going to discuss, documents to be issued & time-limit to issue such documents prescribed under GST Law. This chapter goes both ways, meaning thereby a supplier shall issue a proper document at the time of his supply & he shall receive proper document at the time of his procurement.

Various Types of Documents

Revised tax invoice to be issued for the period between the date of grant of certificate of registration and the effective date of registration within 1 month from date of registration.

Bill of Supply (BOS) to be issued by composition person or exempt supplier of goods or services

Refund Voucher - To be issued while refunding the money which was received in advance for provision of supply but subsequently supply was not made.

Receipt Voucher - To be issued while receipt of advance for supply of services If rate of tax not known take 18% & Inter-state supply respectively.

Note: In case where we receive advance then we may issue tax invoice for the same instead of receipt voucher. If such advance is refunded then we will have to issue credit note for the same.

Payment Voucher - To be issued while making payment to 9(3)/9(4) suppliers

Self-Invoice – To be issued while taking RCM services from unregistered persons.

Self-invoice is to be issued when supplier is not registered. The term “Supplier who is not registered” shall include the supplier who is registered solely for the purpose of deduction of tax under section 51.

Invoice-cum-Bill of Supply (Rule 46A) - Supplying taxable as well as exempted to an unregistered person

Tax Invoice / Bill of supply to accompany transport.

Delivery Challan: When goods are sent for reasons other than supply (Job-work etc.), **delivery challan** to be issued u/r 55 of CGST Rules

As per Clarifications issued by CBIC:

1. Jewellery Supplier going in various states for sale on approval basis (line sales):

- It has been clarified vide Circular No.10/10/2017 dated 18.10.2017 that where the goods are removed for supply on approval basis, the person removing the goods either for intra-State supplies or inter-State supplies shall raise a delivery challan along with e-way bill (if applicable) since the supplier would be unable to ascertain the actual supply at the time of removal. It is also clarified that the person removing the goods shall carry the invoice book during the movement which shall enable him to issue an invoice once the supply is complete.

It is further clarified that 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, 2017.

2. Art from Galleries: - Circular No. 22/22/2017 dated 21.12.2017 have been issued clarifying the same procedure for removal of goods by artists and supply of such goods by artists from galleries.

3. Exhibition outside India: - Circular No. 108/27/2019 dated 18.07.2019 have been issued clarifying the procedure in respect of goods sent/taken out of India for exhibition or on consignment basis for export promotion. It has been clarified that such activity except when it is covered under Schedule I of the CGST Act does not constitute supply as no consideration is involved at that point in time and consequently same cannot be considered as Zero-rated supply under section 16 of the IGST Act. It has been further clarified that such goods shall be accompanied with a delivery challan.

4. Goods sent on approval: Where goods are sent on approval basis, an invoice would not be required at the time of removal of goods, and shall be issued only at the time of receipt of approval from the recipient. However, if the goods so dispatched have neither been accepted nor been returned within 6 months from the date of their removal, the tax invoice is required to be issued on the date immediately succeeding the date on which the 6-month period expires.

Tax Invoice (S. 31 of CGST Act r/w R. 46 of CGST Rules)

1. To be issued by **taxable person** making **taxable supplies of goods & services**.
2. Invoice number shall not exceed **16 digit** and there shall be unique series for each FY.
3. It shall **contain various contents** such as name, address, GSTIN of supplier & recipients, consecutive serial no., date, on request of unregistered recipient tax invoice to be issued if value is less than ₹ 50,000 containing name, address & state code, HSN, Description, Quantity, Total value, taxable value, tax, tax rate, POS if inter-state supply, address of delivery if diff from POS, tax payable on reverse charge (Yes/No), & Sign or DSC. Name of the state of recipient shall be deemed to be address of recipient for OIDAR & online money gaming supplier supplying from outside India
4. HSN - **If TO is upto ₹ 5 Cr** then 4 – digit HSN is required for B2B supplies (Optional in case of B2C), **More Than ₹ 5 Crores** – 6 Digit HSN is required (B2B as well as B2C), For Import Exports 8 digits is required. In case of services, service accounting code (SAC) shall be required, which is of 6 digits and starting with “99”

Meaning of Classification	In order to understand what rate of GST shall be applicable on any goods or services, it is important to check GST Tariff.
HSN Based Classification	Indian Customs Tariff is based on HSN. HSN stands for Harmonized System of Nomenclature. India has developed an 8-digit code of HSN.
Classification basis	Tariff Item, Heading, Sub-heading reference is taken from first schedule to Customs Tariff Act: Tariff item, sub-heading, heading, and chapters referred in the Schedules of rate notification for goods under GST are the Tariff item, sub-heading, heading and chapters of the First Schedule to the Customs Tariff Act, 1975.
Service Accounting Code (SAC)	For classification of services – SAC is used (it is 6 digits maximum)
Composition of SAC / HSN	Chapter No. (2 digit) Heading (2 digit) Sub-heading (2 digit) Tariff Item (2 digit)

5. Tax Invoice for goods to be issued in **triplicate** i.e., Original for recipient, duplicate for transporter, & Triplicate for supplier. Tax Invoice for services to be issued in duplicate i.e., Original for recipient, duplicate for supplier.
6. **Insurer, Banking Company, Financial Institution** and NBFC can issue **Consolidated tax invoice** for the supply of services made during the month, **at the end of the month** (Serial No. & Address of recipient are optional particular)
7. **Banks, insurers, telecom operators, NBFC & Financial Institutions** may issue tax invoice **for inter-branch transaction** before or at the time such supplies were **recorded in books or before expiry of quarter** during which supply was made.
8. **Goods transport agency (GTA)** transporting goods by road shall ensure mandatory particulars in addition to rule 46 which are Gross weight of consignment; Name of the Consignor and Consignee; Regn. No. of Vehicle; Details of goods transported; Origin and destination; GSTIN of person liable to pay tax whether as consignor / consignee / GTA.
9. **Passenger transport agency** – Ticket issued is deemed to be Tax Invoice (Serial No. & Address of recipient are optional)
10. **Where the supply is made on payment of IGST**: - “Supply meant for export/supply to SEZ unit or SEZ developer for authorised operations on payment of integrated tax” or; Where the supply is made without payment of IGST: “Supply meant for export/supply to SEZ unit or SEZ developer for authorised operations under bond or letter of undertaking without payment of integrated tax.” Further, in lieu of the State name & State code, the details of the country of destination would have to be provided.
11. **No Tax Invoice / Bill of supply is required if value is below ₹ 200** and recipient is unregistered & do not requires such invoice. (However, he shall raise consolidated tax

invoice at end of each day) (w.e.f. 1.09.2019, **this benefit is not applicable** to supplier engaged in making supply of services by way of admission to exhibition of **cinematograph** films in multiplex screens. Further, such supplier shall issue electronic ticket which would be deemed to be a tax invoice.)

12. Person who are not required to issue e – invoice shall put the declaration on invoice as to their aggregate turnover is not more than notified limit and E – invoice provisions are not applicable to them. [NN 14/2022 – CT dated 5th July, 2022]

Credit Note

Meaning: Whenever supplier wants to credit the account of recipient for certain reasons, he issues credit note

Credit note will be issued by SUPPLIER in below cases:

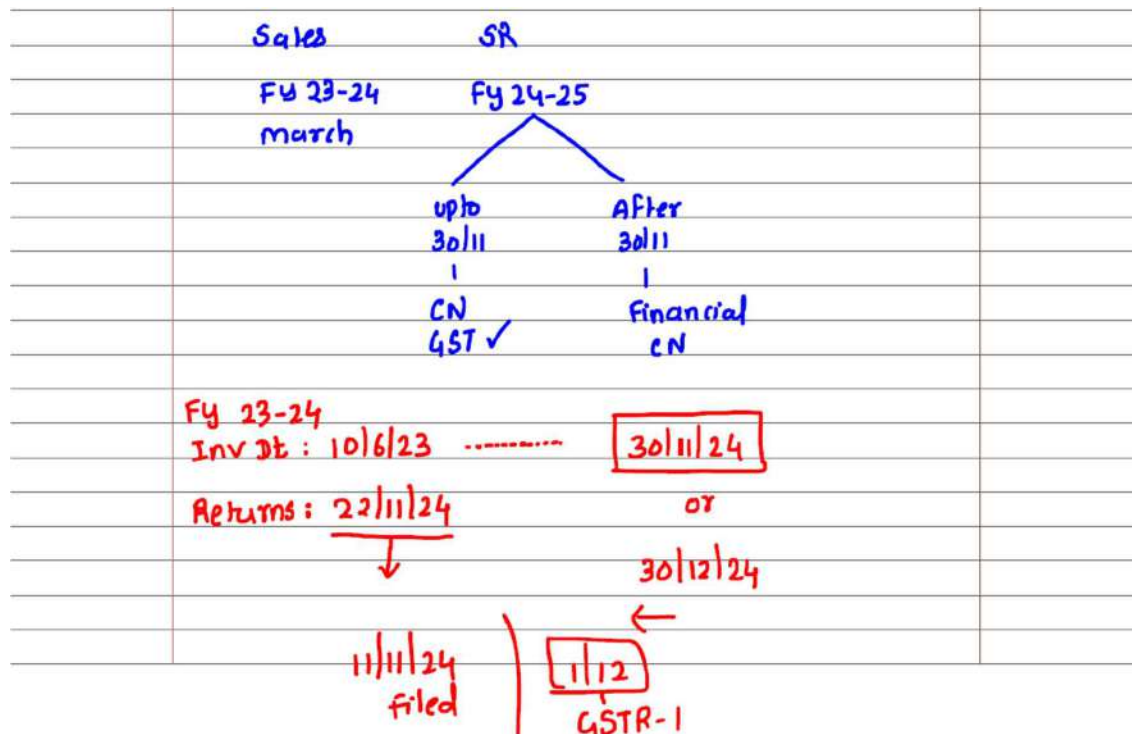
- ❖ Actual value of supply is lower than that stated in the original tax invoice;
- ❖ Tax charged in the original tax invoice is higher than that applicable on the supply;
- ❖ Goods supplied are returned by the recipient;
- ❖ Goods or services supplied are deficient.

Notes:

Time-limit to issue / declare Credit Note in Return:

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.



Manner of Issue of Credit Notes: (3 Copies for Goods, 2 for Services): -

Consolidated credit note can also be issued

Meaning: Whenever supplier wants to charge something from recipient for certain reasons, he issues debit note

Debit Note will be issued by SUPPLIER in below scenarios: -

- Actual value of supply is higher than that stated in the original tax invoice;
- Tax charged in the original tax invoice is lower than that applicable on the supply
- The debit note contains all the applicable particulars as specified in Rule 53 of the CGST Rules, 2017;
- A debit note issued under Section 74, 129 or 130 would not entitle the recipient to avail credit in respect thereof, and the supplier shall specify prominently, on such debit note the words "INPUT TAX CREDIT NOT ADMISSIBLE"

Time limit to issue Debit Note: -

A debit note may be raised and uploaded subsequently, with no restriction as to the time period for doing so. (Consolidated debit note can also be issued in same way like consolidated credit note is being issued)

Clarification in case of Pharma Sector (Expired Medicines) - Circular 72/46/2018 dated 26th October, 2018

Diagram illustrating the flow of goods and costs between Manufacturer (Mfg), Distributor (Dist.), Retailer, and Customer (C).

Manufacturer (Mfg):

SP	10,000
	<u>1,800</u>
	11,800

360 ITC (circled)
No ITC

Distributor (Dist.):

	15,000
	<u>2,700</u>
	17,700

2000
360

540 ITC ↑
360 Lia ↑

Retailer:

	20,000
	<u>3,600</u>
	23,600

540 L ↑

Inventory (Inv):

	Inv
	<u>3000</u>
	+ 540
	<u>3540</u>

Flow: Mfg → Dist. → Retailer → C

SP (Selling Price) is indicated for the Manufacturer's cost calculation.

360 ITC (Intercompany Transfer Cost) is circled and labeled "No ITC".

540 ITC ↑ and 360 Lia ↑ (Liaison) are indicated for the Distributor.

540 L ↑ (Liaison) is indicated for the Retailer.

The Inventory (Inv) calculation shows 3000 + 540 = 3540.

A note "Destroy" is written at the bottom left.

2. Treat it as return of Goods. (Assuming 20% goods are unsold)

	goods	goods
mfg.	10,000	Dist
1800	15000	2700
	20,000	3,600

Ret.

Fin. CN

2000

10,000 x 20%

3000

5K x 20%

8000 COP

1440

x 20%

288

Destroy

ITC reversal on original purch.

1. **Fresh supply:** The person giving return the goods shall be treated as supplier. The person accepting the goods can take ITC. However, manufacturer cannot avail ITC as the said goods are going to be destroyed. Thus, ITC will be ineligible.
2. **Return of Goods:** The person accepting the return of goods shall issue credit note with GST if goods are coming to him within time-limit, otherwise financial credit note to be issued. The manufacturer is liable to reverse the ITC on original purchase.

ELECTRONIC WAY BILL (E-WAY BILL) [Section 68 read with Rule 138, 138A to 138E]

E – way Bill helps in monitoring and tracking movement of goods. **Section 68** of CGST Act, 2017 mandates to carry prescribed documents by person in charge of conveyance while transporting goods. As per **Rule 138** of CGST Rules E – way bill is a prescribed document. E – way bill is not dependent on whether supply is inter-state / intra-state it depends on movement of goods.

		- Main Document	+	EWB
Supply	:	Tax Inv	+	EWB
J.w.	:	Delivery challan	+	EWB
S.R.	:	CN	+	EWB

Documents to be carried by person in charge (i.e., Transporter): Tax Invoice / Bill of supply or delivery challan & E – way bill (subject to its applicability), in case of imported goods - bill of entry shall be carried.

Person causing movement of goods of consignment value (Value declared in an invoice, a bill of supply or a delivery challan, as the case may be, issued in respect of the said consignment INCLUDING GST AND GST CESS BUT EXCLUDING EXEMPT SUPPLIES) EXCEEDING ₹ 50,000/-

- in relation to a supply; or
- for reasons other than supply; or
- due to inward supply from an unregistered person shall generate E – way Bill.

(Examples of “reasons other than supply” can be goods send to job-work.)

Other aspects:**❖ Mandatory E - way bill irrespective of Consignment Value:**

- (a) Inter-State transfer of goods by principal to job-worker
- (b) Inter-State transfer of handicraft goods by a person exempted from obtaining registration

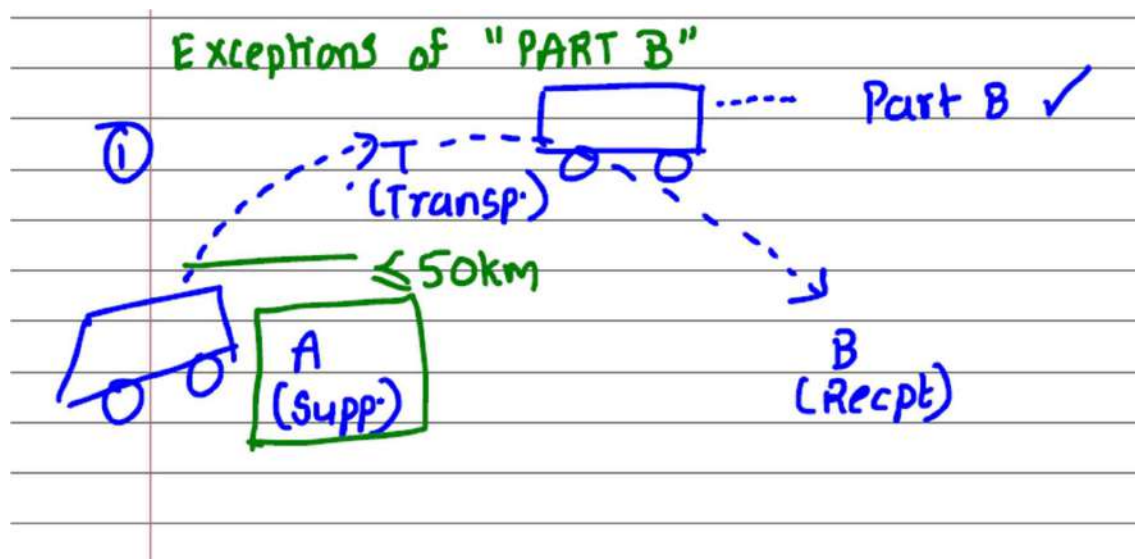
An unregistered person required to generate e-way bill in FORM GST EWB-01 in terms of the 4th proviso to Rule 138(1) (i.e., Handicraft goods seller) or an unregistered person opting to generate e-way bill in Form GST EWB-01, shall submit the details electronically on the common portal in FORM GST ENR- 03 and he shall get a unique enrolment number.

- ❖ **Rail, Air, Vessel Do Not generate:** E-way bill is to be generated by the consignor or consignee himself if the transportation is being done in own/hired conveyance or by railways by air or by vessel.
- ❖ **Validity:** Nature of e-way bill: E – way bill generated in one state will be valid in other states as well.
- ❖ Only 1 E-way Bill reqd. in “Bill to Ship To” Model as there is single movement of goods.
- ❖ **Unregistered transporters:** If the transporter is generating the e-way bill, but he is not registered person under GST law, it is mandatory for him to get enrolled on e-waybill portal before generation of the e-way bill to get 15-digit Unique Transporter Id called TRANSIN.
- ❖ **Delivery Challan:** In case where movement is other than for supply, the value given in the delivery challan should be adopted in the e-way bill
- ❖ **Part A filling:** Information in Part-A may be furnished by the transporter or ECO or courier agency, on an authorization received from such registered person
- ❖ **EWB reqd. to take delivery:** In case where goods are transported by railways, e-way bill generated for the movement is required to be produced at the time of delivery of the goods otherwise railways shall not deliver the goods.
- ❖ **Assignment of E-way Bill:** The consignor/recipient, who has furnished the information in Part A, or the transporter, may assign the e-way bill number to another registered/enrolled transporter for updating the information in Part B for further movement of the consignment [Rule 138(5A)]. However, once the details of the conveyance have been updated by the transporter in Part B, the consignor or recipient, as the case may be, who has furnished the information in Part A shall not be allowed to assign the e-way bill number to another transporter [Proviso to rule 138(5A)] (Transporter can assign)

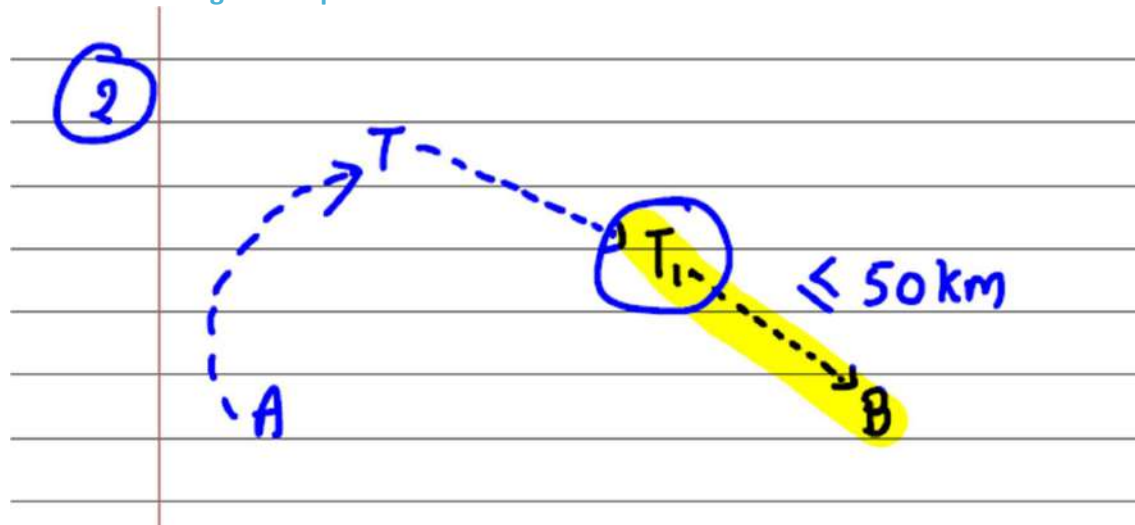
- ❖ E - way bill shall be generated in **form GST-EWB 01**. There are two parts of GST EWB 01, PART A & PART B. In Part A GSTIN of supplier & recipient, Place of delivery, nature of document, HSN, etc. are to be filled & in Part B vehicle details are to be filled (certain exceptions are there)

Notes: -

- ❖ Where multiple consignments are intended to be transported in one conveyance, transporter may indicate the serial number of e-way bills generated for each invoice and can generate consolidated E – way bill in form GST EWB – 02.
- ❖ 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
- ❖ Part B details (conveyance details) are not to be filled in 2 cases **[VERY IMP]**: -
 - (a) Distance between **consignor to transporter is upto 50 kms.**



- (b) **Goods** are **transferred** from one conveyance to another and distance between place of business of the **transporter** finally to the place of business of the **consignee is upto 50 kms.**



(i) **Validity of E – way Bill: -**

E – way bill is valid for the period from generation upto below specified validity periods. As per explanation 2 to rule 138(3) of CGST Rules, validity begins when Part B is filled for first time:

Distance	Validity
Upto 200 km (20 kms in case of over-dimensional cargo** or multimodal shipment in which at least one leg involves transport by ship)	1 day from relevant date**
For every 200 km or part thereof (20 kms in case of over-dimensional cargo or multimodal shipment in which at least one leg involves transport by ship)	1 additional day from relevant date**

Example: - Mr. A has generated EWB for 1800 KMS (normal vehicle), the e way bill has been generated on 11:00 AM on 23rd February, 2021, Thus, the first day of EWB would end on 24th February, 2021 - 11:59

**Over dimensional cargo means 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.

(ii) **Cancellation of E - way Bill can be done within 24 hours of generation. E – way bill verified in transit cannot be cancelled.**(iii) **Extension of E – way Bill:** If the consignment is not being reached the destination within the validity period due to exceptional circumstance like natural calamity, law and order issues, trans- shipment delay, accident of conveyance, etc., the validity can be extended. **The validity of the e-way bill may be extended within 8 hours from the time of its expiry.**(iv) **Recipient have to communicate their acceptance or rejection within 72 hours of the details being made available or the time of delivery of goods whichever is earlier, otherwise it shall be deemed that person has accepted the said details.**(v) **Blocking of E - way Bill [R. 138E]:**

E – way bill (Part A) cannot be generated if:

- ❖ Composition person / presumptive person failed to file CMP 08 for 2 consecutive quarters;
- ❖ Other than composition / presumptive person has not filed returns for 2 consecutive months, tax periods;
- ❖ Other than composition / presumptive person not furnished the statement of outward supplies for any two months or quarters
- ❖ Whose registration has been suspended under the R. 21A

However, e-way bill generation facility is blocked only in respect of any “outward” movement of goods of the registered person who is not eligible for e-way bill

generation as per rule 138E. E-way bills can be generated in respect of inward supplies of said registered person. [NN 15/2021 CT dated 18.05.2021].

- (a) No requirement of E-way bill if goods transported by non-motorised vehicle.
- (b) **Supply of goods from DTA unit to SEZ is defined as Inter State Supply.** However, if such supply is in same state, e way bill is not required if such movement has been exempted by SGST Rules
- (c) Where each invoice value is upto ₹ 50,000/-, but if aggregated then its exceeding ₹ 50,000/- and are being supplied **in a single conveyance to single recipient**, then E-way bill would be required to be generated.
- (d) Non-issuance of e-way bill may result in the following consequences:
 - ❖ Imposition of penalty of ₹ 10,000/- or tax sought to be evaded (wherever applicable), whichever is higher
 - ❖ Detention and seizure
 - ❖ Confiscation of goods and the conveyance

Rule 138A	Documents and devices to be carried by a person-in-charge of a conveyance
(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 (other than rail, air or vessel) 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 and furnish such details in PART A
(2)	E - Invoice may not be physically carried
(3)	Auto Population of Part A Details if E Invoice is made
(4)	a class of transporters has to obtain RFID embedded on conveyance
(5)	The Commissioner may require the person-in-charge of the conveyance to carry the tax invoice or bill of supply or bill of entry or delivery challan instead of E - way Bill.
Rule 138B	Verification of documents and conveyances
(1)	Commissioner may authorise P.O to intercept
(2)	Installation of RFID by Commissioner
(3)	Commissioner may authorise P.O to physically verify
Proviso to (3)	Any officer can carry out physical verification with commissioner's approval, on receipt of specific information on evasion of tax
Rule 138C	Inspection and verification of goods
(1)	Summary report shall be uploaded online by PO w/i 24 hours from Midnight in PART A, & final report in PART B, w/i 3 days of inspection (+3 days extension possible)
(2)	Physical Verification can be done only once during transit

(3)	Hard Copies of Notices to be shown to another tax authority if intercepted
Rule. 138D	Facility for uploading information regarding detention of vehicle
	Where a vehicle has been intercepted and detained for a period exceeding 30 minutes, the transporter may upload the said information in specified form on the common portal.
Rule 138E	Already covered (Blocking of E - way bill)
DEPARTMENTAL CLARIFICATION	
Recipient taxpayer shall also maintain accounts and records as required under rules 56 and 57 [as discussed earlier]. 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. [Circular No. 61/35 /2018 GST dated 04.09.2018].	

E – INVOICING [NOTIFICATION 13/2020 CT READ WITH RULE 48(4) OF CGST RULES]

INTRODUCTION:

E-invoicing is not generation of invoice by a governments' 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).'

ADVANTAGES OF E-INVOICING:

- (i) Auto-reporting of invoices into **GST return**.
- (ii) Auto-generation of **e-way bill**.
- (iii) Substantial **reduction in transcription errors**
- (iv) **Standardization** and inter-operability.
- (v) Complete **trail of B2B invoices** is available with the **Department**.
- (vi) Eliminate the **fake invoices claiming fictitious input tax credit** (ITC) by raising fake invoices.

A registered person (except specified class of persons), whose **aggregate turnover in any preceding financial year from 2017-18 onwards exceeds ₹ 5 crores** have 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,**
- ❖ **Exports of goods or services or both**

In case of exempt supplies, e – invoice is not required.

FOLLOWING ENTITIES ARE EXEMPT FROM THE MANDATORY REQUIREMENT OF E-INVOICING:

- (i) Special Economic Zone units (excluding SEZ unit developers)
- (ii) Insurer or banking company or financial institution including NBFC
- (iii) GTA supplying services in relation to transportation of goods by road in a goods carriage
- (iv) Supplier of passenger transportation service.
- (v) Person supplying services by way of admission to exhibition of cinematograph films in multiplex screens

- (vi) A Government Department and a local authority. (NN 23/2021 CT dtd. 01.06.2021)

Amendment of invoices is **not possible through** the IRP (**e-invoice portal**). **Cancellation cannot be done after 24 hours of generation.**

Note: Govt. department registered for deducting TDS would be treated as B2B. Thus, person supplying goods/services to such govt. departments would be required to generate E – invoice (if applicable)

DYNAMIC QR CODE

APPLICABILITY OF QR CODE PROVISIONS:

All B2C invoices (supply of goods or services or both to an unregistered person) (except exports & some specified supplies) issued by a registered person whose **aggregate turnover in any preceding financial year from 2017-18 onwards exceeds ₹ 500 crores** will have a Dynamic QR code on their tax invoices.

DYNAMIC QR CODE IS NOT APPLICABLE TO AN INVOICE ISSUED TO AN UNREGISTERED PERSON BY FOLLOWING SUPPLIERS:

- (i) Insurer or banking company or financial institution including NBFC
- (ii) Goods transport agency supplying services in relation to transportation of goods by road in a goods carriage
- (iii) Supplier of passenger transportation service
- (iv) Person supplying services by way of admission to exhibition of cinematograph films in multiplex screens
- (v) Supplier of online information and database access or retrieval (OIDAR) services.

Details are required to be captured in the Quick Response (QR) Code [Circular 146] [QR Code should be such that it can be scanned for making payment, whether or not actually payment is done or not]	(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

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.

> Chapter 11

Returns Under GST

GST returns ensure periodic tax reporting and compliance for businesses.

Learning Objectives

- Understand the importance and objectives of GST returns, including compliance verification, self-assessment of tax liability, and data sharing with tax authorities.
- Learn the types of GST returns such as GSTR-1, GSTR-3B, GSTR-9, and others, along with their due dates, applicability, and content requirements.
- Comprehend the structure and functioning of GSTR-2A and GSTR-2B for tracking inward supplies and eligible ITC.
- Gain insights into the QRMP scheme, its applicability, payment options (fixed and self-assessment), and related interest implications.
- Identify the consequences of late filing, including applicable late fees for different classes of taxpayers and returns.
- Analyze special returns such as GSTR-5 (for NRTP), GSTR-6 (for ISD), GSTR-7 and 8 (for deductors and collectors), and final return requirements on cancellation of registration.

Backdrop of Returns

The term “return” ordinarily means statement of information (facts) furnished by the taxpayer, to tax administrators, at regular intervals. The information 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 enables the Government/ tax administrator to estimate the tax collection for a particular period and determine the correctness and completeness of the tax compliance of the taxpayers.

The returns serve the following purposes:

1. Mode for transfer of information to tax administration;
2. Compliance verification program of tax administration;
3. Finalization of the tax liabilities of the taxpayer within stipulated period of limitation;
4. Providing necessary inputs for taking policy decision;
5. Management of audit and anti-evasion programs of tax administration

On filing of returns, the assessee self-asses his liability which will form base for tax department for determining your liability. There can be cases, where supplier has passed on higher GST to recipient, but has paid lesser tax. This can be determined by filing returns.

Important Sections

Section 37	Furnishing details of outward supplies
Section 38	Furnishing details of inward supplies
Section 39	Furnishing of returns
Section 40	First return
Section 44	Annual Return
Section 45	Final Return
Section 46	Notice to return defaulters
Section 47	Levy of late fee

VARIOUS TYPES OF RETURNS ALONG WITH FORM NUMBERS AND OTHER DETAILS

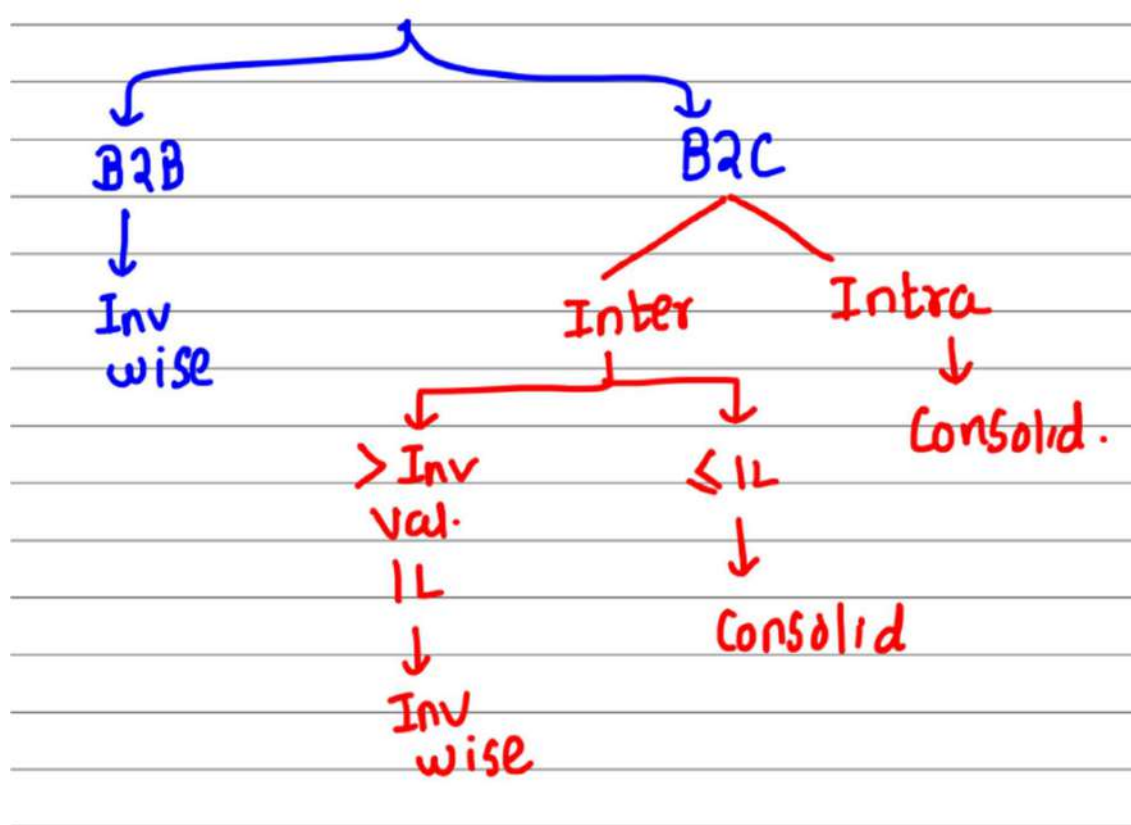


Form No.	Description	Due Date
GSTR – 1: Outward Supplies [S. 37(1) of CGST Act, 2017 r/w R. 59(1) of CGST Rules, 2017] Monthly / Quarterly (If a registered person does not carry out any activity of outward supplies in a particular month - Nil Return to be filed which can be filed through SMS)	Details of Outward supplies, (including debit notes, credit notes) made by registered person INCLUDING Casual Taxable person EXCLUDING ISD, NRTP, Composition Person, Tax Deductors, Tax Collectors, OIDAR service provider located outside India, providing services to Non-taxable online recipient	Aggregate Turnover in preceding financial year exceeding ₹ 5 Crore – 11th of Next Month. Registered persons opting for QRMP scheme: 13th of month subsequent to the quarter. (Those whose GSTR 1 is quarterly may file IFF for 1st two months of Quarter in respect of B2B supplies - refer below) Below persons shall not be allowed to file GSTR 1 (R. 59 of CGST Rules) ❖ A person who has not furnished GSTR 3B for preceding month or ❖ A person who has not filed GSTR 3B for preceding quarter or,

Form No.	Description	Due Date
		❖ Not complied with rule 10A or, ❖ Who has not replied to notice nor paid diff. tax liability as per rule 88C or, ❖ Who has not replied to notice nor paid diff. tax liability as per rule 88D

Other Aspects of GSTR 1:

- ❖ **Consolidated & Inv Wise:** Interstate B2C Supplies (i.e., Supplies to unregistered persons) – Invoice wise if invoice value exceeds ₹ 1,00,000/-. B2B Supplies to be shown invoice wise. B2C Intra-state and B2C Inter-state upto ₹ 1,00,000/- to be shown consolidated.



- ❖ **Time for filing:** GSTR 1 cannot be filed before end of tax period except in case of CTP or person whose registration is being cancelled.
- ❖ **Amendments in GSTR 1 & Time limit:** Rectification possible till 30th November following the end of the financial year or actual annual return whichever is earlier.
- ❖ **GSTR – 1A:** In cases where a taxpayer, after having filed Form GSTR-1, realizes that some amendment (downward or upward) is required to be made in his tax liability in Form GSTR-1, an optional Form GSTR-1A is provided to him.

Form No.	Description	Due Date
	This allows him to add any particulars of the current tax period missed out in reporting in Form GSTR-1 of current tax period or amend any particulars already declared in Form GSTR-1 of current tax period (including those declared in IFF, for the first and second months of a quarter, if any, for quarterly taxpayers). A registered 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 [Proviso to rule 59(1)]. At the recipient's end, the ITC for the supplies declared or amended by the suppliers through Form GSTR-1A will be available to the recipient in Form GSTR-2B generated for the next tax period. (Example: If GSTR – 1 is filed on 11th Then GSTR 1A can be filed after GSTR 1 is filed, but before filing of GSTR – 3B)	
	❖ Invoice Furnishing Facility (IFF) - Is a facility provided to quarterly taxpayers who are in QRMP scheme, to file their details of outward supplies in first two months of the quarter, to pass on the credit to their recipients. It is to be filed upto 13th of Next month for 1st 2 months of quarter. For 3rd month, normal GSTR – 1 to be filed. The details which were furnished in IFF shall not be filled again, just last month's data to be filled. - Invoice furnishing facility (IFF) is not mandatory, but an optional facility made available to the registered persons under the QRMP scheme. 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. - No late fee applicable on late filing of IFF, as IFF is neither mandatory nor allowed to be filed after the due date.	
	❖ Maximum time-limit upto which a registered person can furnish the details of outward supplies in Form GSTR-1 for a tax period is 3 years from the due date of furnishing such details. This time limit can be extended by the Government for a registered person or a class of registered persons subject to such conditions and restrictions as may be specified therein.	
GSTR 2A: Auto-populated Details of Inward supplies [Section 38 read with Rule 60]	Form GSTR-2A is a system generated read only statement of inward supplies for a recipient. This statement is updated on a real time basis.	No Due date [GSTR – 2B is generated on 14th of Next Month, if a supplier files his GSTR – 1 within due date then it will be reflected in GSTR 2B of same month, otherwise it will be reflected in next month. However, GSTR 2A is updated on basis of invoice month (not return filing cut-off date)]

Form No.	Description	Due Date
❖	Details in 2A are auto-populated on basis of suppliers' filing their own GSTR 1.	
❖	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	
❖	Form GSTR-2B – an auto-drafted read only statement containing the details of eligible ITC - is made available to the registered person (recipient) for every month. It is a static statement and is available only once a 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.	
❖	Details in GSTR – 1: B2B including UIN holders, B2C inter-State supplies where invoice value ₹ 2.5 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.	
❖	Scanned copies of invoices are not required to be uploaded (only details are to be uploaded)	

Other GST Returns

Form No.	Description	Due Date
GSTR 3B: Summary Return for Payment of Taxes [Section 39(1) read with rule 61 (Monthly 3B) & 61A (Quarterly 3B) of the CGST Rules]	A monthly / quarterly return (subject to conditions) for every registered person, other than an input service distributor or a non-resident taxable person or a composition taxpayer, a person deducting tax at source, a person collecting tax at source, i.e., an electronic commerce operator and OIDAR service provider located outside India & providing services to Non-taxable online recipient.	Within such time, as may be prescribed. Standard date: In case of Monthly 3B: On or before 20 th of Next Month. In case of Quarterly 3B: On or before 22 nd or 24 th of month succeeding quarter for which return is furnished Due date to pay tax - Monthly filers: On or before filing of return [S. 39(7)] QRMP Scheme: As may be prescribed [Proviso 1 to Section 39(7)]
Other Aspects of GSTR 3B: ❖ Nil Returns shall be filed if no taxable supplies are made during the period. [S. 39(8)] ❖ GSTR 3B cannot be furnished if GSTR 1 of current tax period is yet to be filed. ❖ The maximum time limit within which the rectification of errors/omissions is permissible is earlier of the following dates: - 30th day of November following the end of the financial year to which such details pertain or - Actual date of filing of the relevant annual return		
GSTR 4: Annual Return for persons registered to pay tax u/s 10 of CGST Act [Section 39(2) read with rule 62 of the CGST Rules]	Composition regd. person is required to file an annual return in Form GSTR-4. Due date to file return (Annual) [GSTR 4] Within such time as may be prescribed. FORM GSTR-4 for a financial year from FY 2024-25 onwards shall be required to be furnished by the registered person till the 30th June following the end of such financial year Due date of payment of tax (Quarterly) [GST CMP 08] On or before 18 th Day of month subsequent to quarte	

Form No.	Description	Due Date
❖ Nil Returns shall be filed if no taxable supplies are made during the period. [S. 39(8)]		
GSTR 5: Return for Non-Resident Taxable Persons [39(5) read with rule 63 of the CGST Rules]	A simplified monthly tax return has been prescribed in Form GSTR-5 for a NRTTP for every calendar month or part thereof. The details of outward supplies and inward supplies of a NRTTP are incorporated in GSTR-5.	Due date to file return: - ❖ Within 13 days from the end of the calendar month or ❖ Within 7 days after the last day of the period of registration, whichever is earlier.
GSTR 5A:	OIDAR Service provider, Person & Online Money Gaming	20 th of Next Month
GSTR-6 – Return for Input Service Distributor	Input Service Distributor (for distributing credits)	Due date to file return: - On or before 13 th day of the succeeding month
It can be filed between 10th & 13th.		
GSTR 7 (Tax Deductors): By 10th of Next Month. Payment of TDS also by same date. A TDS certificate is required to be issued by deductor (the person who is deducting tax) within 5 days of crediting the amount 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 such form and manner and within such time as may be prescribed. The said registered person shall furnish a return for every calendar month whether or not any deductions have been made during the said month.		
GSTR 8 (Tax Collectors): By 10th of Next Month: 10th of Next Month [Tax collected shall also be paid by such date along with return.] The rectification is not allowed after the due date of filing of GSTR-8 by 30th November following the end of the financial year		
GSTR-11 is the return to be filed by the persons who have been issued a Unique Identity Number (A specialized agency of the United Nations Organization), Consulate or Embassy of foreign countries – Due date 28th of the next month in which inward supply is received by the UIN holders		
GSTR - 9 (Annual Return) [Sections 44 read with rule 80 of the CGST Rules]	All registered persons are required to file an annual return which may include self-certified reconciliation except, Casual taxable persons, Non-resident taxable person, Input service distributors, Tax Deductor & Tax Collector, and Person supplying OIDAR services from outside India to unregistered persons in India	31 st December of the next financial year. Late filing fees: Upto 5 crores: Lower of 50/day or 0.04% of T.O.I.S. >5 crores – 20 Cr.: Lower of 100/day or 0.04% of T.O.I.S. >20 crores: Lower of 200/day or 0.5% of

Form No.	Description	Due Date
		T.O.I.S. (T.O.I.S. = Turnover in State)
Filing of annual return in respect of financial year 2023-24 has been exempted for the registered persons whose aggregate turnover is upto ₹ 2 crores.		
GSTR - 9A (Annual Return for Composition person)	A person paying tax under composition scheme is required to file the annual return in Form GSTR-9A. <i>(Note: GSTR 4 is filed before finalisation of books of accounts, whereas GSTR 9A is filed after finalisation of books of accounts. Both are annual)</i>	31 st December of the next financial year.
GSTR - 9C (Reconciliation Statement)	Self-certified (certified by taxpayer) reconciliation statement whose turnover is more than ₹ 5 crores	31 st December.
GSTR - 10 - Final Return	Every registered person who is required to furnish return u/s 39(1) and whose registration has been surrendered or cancelled is required to file a final return [Thus, ISD, NRTP, Composition person, tax deductor and collector are not required to file final return]	The final return has to be filed within 3 months of the: Date of cancellation or Date of order of cancellation whichever is later.

Taxpayers will not be allowed to furnish or below GST returns after the expiry of 3 years from due date of filing such respective returns, i.e., GSTR 1 under section 37(5); GSTR 3B under section 39(11); GSTR 9 under section 44(2); GSTR 8 under section 52 (15)

Section 40: First Return

Section 40	When a person becomes liable to registration after his turnover crosses the threshold limit, he may apply for registration within 30 days of so becoming liable. 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.

Section 47: Late Fees for delay in filing returns

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.

Delay in filing any of the following by their respective due dates, attracts late fee:

- (A) Statement of Outward Supplies [Section 37]
- (B) Returns (including returns under QRMP Scheme) [Section 39]
- (C) Final Return [Section 45]

CGST Late Fees (The below is from June, 2021 onwards / Quarter ending on 30th June, 2021 onwards)

Class of persons	Late Fees per day (Subject to Maximum late fee per return)	Maximum Late fees per return	Notifications
Registered person who has Nil GSTR 3B / 1 / 4	₹ 10 CGST, ₹ 10 SGST	₹ 250 CGST, ₹ 250 SGST	19, 20, 21 /2021 – CT
GSTR 3B / 1 /4- Registered person having ATO upto 1.5 crores (other than nil returns)	₹ 25 CGST ₹ 25 SGST	₹ 1,000 CGST, ₹ 1,000 SGST	19, 20, 21 /2021-CT
GSTR 3B / 1 - Registered person having ATO > 1.5 crores (other than nil returns)	₹ 25 CGST ₹ 25 SGST	₹ 2,500 CGST, ₹ 2,500 SGST	19, 20/2021-CT
GSTR 7	₹ 25 each	₹ 1000 each	22/2021-CT
Nil GSTR 7	No Late Fees	No Late Fees	
GSTR 6, 8, 10	100 (CGST) 100 (SGST) for every day during which such failure continues	₹ 5,000	
GSTR 9	Upto 5 crores: Lower of 50/day or 0.04% of T.O.I.S. >5 crores – 20 Cr.: Lower of 100/day or 0.04% of T.O.I.S. >20 crores: Lower of 200/day or 0.5% of T.O.I.S. <i>(T.O.I.S. = Turnover in State)</i>		
GSTR 9C	The circular clarifies the applicability of late fees for delays in furnishing FORM GSTR-9C. Before August 1, 2021, taxpayers		

with an aggregate turnover above ₹ 2 crore were required to submit an audited reconciliation statement (GSTR-9C) along with their annual return (GSTR-9). After this date, the audit requirement was removed, and only taxpayers with a turnover exceeding ₹ 5 crore had to submit a self-certified GSTR-9C with their annual return by December 31 following the financial year.

Late fees under Section 47 of the CGST Act apply if both GSTR-9 and GSTR-9C (where applicable) are not submitted by the due date. If only GSTR-9 is filed on time while GSTR-9C is delayed, the annual return is considered incomplete, and the late fee is calculated from the original due date until the complete return is furnished. However, the late fee is not imposed separately for GSTR-9 and GSTR-9C but as a combined penalty for the delay in submitting the full annual return.

As per Notification No. 08/2025-Central Tax, late fees for delayed filing of annual returns up to FY 2022-23 have been waived if GSTR-9C is submitted by March 31, 2025. No additional late fee will apply beyond the standard late fee under Section 47, provided GSTR-9C is filed within this deadline. However, any late fee already paid will not be refunded. The circular instructs tax authorities to issue trade notices for awareness and report any implementation issues to the Board.

QRMP Scheme

1. **Applicability: GSTR 3B can be filed quarterly** if turnover of preceding financial year is upto 5 crores.
2. If turnover exceeds 5 crores in any quarter, the person shall opt out in next quarter.
3. "OPT IN" for any quarter from 1st day of second month of preceding quarter to the last day of the first month of the quarter.

QRMP Scheme - GSTIN wise not PAN wise

EXPLANATIONS

PAYMENT MONTHLY AS PER
FIXED INSTALMENT METHOD: -

1. If previous quarter 3B was quarterly:

In 1st 2 months of current quarter, pay 35% of the tax paid in cash in the preceding quarter

2. If previous quarter 3B was monthly:

In 1st 2 months of current quarter, pay 100% of the tax paid in cash in the last month of preceding quarter

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.

INTEREST CALCULATION FOR DELAYED PAYMENT UNDER FIXED INSTALMENT: -

- ❖ Interest would not be levied for shortfall (difference between actual liability & fixed sum determined) in the first two months provided that he discharges his entire liability for the quarter in the form GSTR -3B of the quarter by the due date.
- ❖ However, interest would be levied on shortfall (difference between actual liability & fixed sum determined) in the first two months from due date of quarterly GSTR 3B to actual filing of return if he does not discharge his entire liability for the quarter in the form GSTR 3B of the quarter by the due date.

Self-assessment method: -

- ❖ In this case actual net liability is to be paid, i.e., output (-) input tax
- ❖ 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.

Interest calculation for delayed payment under 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. Interest payable, if any, shall be paid through form GSTR 3B.

If cash balance is sufficient in E – cash ledger then no need to pay in 1st month. In second month if cash ledger has sufficient balance to discharge 2 months liability, then no need to pay.

Note: payment in QRMP scheme has to be made by 25th of month succeeding month in which liability arose

Information Return [Section 150 of CGST Act] (NOT IMP)**AUTHORITY RESPONSIBLE TO FURNISH INFORMATION RETURN [S. 150(1)]:**

Information return is based on the idea of verifying the compliance levels of registered persons through information procured from independent third-party sources.

Prescribed persons: Taxable person, 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, Income tax authority etc.

DEFECTIVE INFORMATION RETURN [SECTION 150(2)]:

In case of defective information return, the commissioner or officer shall intimate the defect to person who has submitted such information.

Opportunity of rectifying the defect within a period of 30 days from the date of such intimation or within such further period which, may be provided.

However, if the defect is not rectified within the said period of 30 days, it will be deemed that it has not been furnished

ISSUANCE OF NOTICE FOR FAILURE TO FURNISH THE INFORMATION RETURN WITHIN STIPULATED TIME [SECTION 150(3)]

If failed to furnish information return within specified time, then, 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.

Penalty for not furnishing information within stipulated time [S. 123]: ₹ 100 CGST & ₹ 100 SGST for each day of the period during which the failure to furnish such return continues or ₹ 5,000/- (CGST); ₹ 5,000/- (SGST) whichever is lower.

GST PRACTITIONER [SECTION 48 OF CGST ACT READ WITH RULE 83]

Particulars	Provision
Meaning of GSTP	A registered person may authorise an approved GSTP to furnish information, on his behalf, to the Government.
Manner of Working	GSTN provides separate user ID and Password to GSTP to enable him to work on behalf of his clients without asking for their user ID and passwords.
Eligibility Criteria	❖ They should be a citizen of India ❖ They should be of sound mind. ❖ They should not be adjudged as an insolvent. ❖ They should not be convicted of an offense with imprisonment of two years or more.
Activities done by GST Practitioner	A Goods and Services Tax (GST) practitioner can undertake any or all of the following activities on behalf of a registered person: ❖ Furnish details of outward supplies (GSTR 1 and GSTR 2) ❖ Furnish monthly, quarterly, annual or final return (GSTR 3b, 4 and GSTR 9) ❖ Make deposit for credit into the electronic cash ledger; ❖ File a claim for refund; ❖ File an application for amendment or cancellation of registration; ❖ Generate e-way bill after furnishing information on the portal; ❖ Fill details of challan in GST ITC – 04; ❖ File an application intimating the tax authorities regarding payment of tax under composition scheme or withdrawal from the said scheme. However, it has been provided that a confirmation from registered person is sought where an application relating to a claim for refund or an application for amendment or cancellation of registration has been submitted by the Goods and Services Tax Practitioner.
	One should meet the required education or work experience as part of the GST Practitioner Eligibility criteria, given below: 1. A retired officer of the Commercial Tax Department of any State Government or of the Central Board of Excise and Customs, having worked in a post not lower in rank than that of a Group-B gazetted officer, for a period not less than two years, OR 2. A Tax Return Preparer or a Sales Tax Practitioner registered for a period of not less than 5 years, OR 3. 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 from a recognised Foreign University, OR

3. 4. One has passed any other examination notified by the Government for this purpose such as — Passed final examination of the ICAI, ICMAI, ICSI

Other points

- ❖ A registered person gives his consent and authorizes a GSTP in the prescribed form by listing the authorised activities in which he intends to authorise the GSTP. The GSTP accepts the authorisation in Part B of the same form.
- ❖ The GSTP can undertake only such tasks as indicated in the prescribed form. The registered person may, at any time, withdraw such authorization.
- ❖ Any statement furnished by the GSTP is made available to the registered person on the common portal. For every statement furnished by the GSTP, a confirmation is sought from the registered person over email or SMS.
- ❖ The GSTP should prepare all statements with due diligence and affix his digital signature on the statements prepared by him or electronically verify using his credentials.
- ❖ If the GSTP is found guilty of misconduct, his enrolment will be liable to be cancelled and a show cause notice would be issued to him.

> Chapter 12

Payment of Tax, TDS & TCS

Payment of GST, TDS & TCS ensures timely tax compliance.

Learning Objectives

- Section 49 discusses the three ledgers namely the electronic cash ledger, electronic credit ledger and electronic liability register,
- Section 49A & 49B discusses about the utilisation of input tax credit and its order of utilisation.
- Section 50 discusses about the interest on delayed payment of tax.
- Section 51 lays down the circumstances in which tax deduction at source (TDS) becomes mandatory.
- Section 52 deals with the circumstances when tax is to be collected at source (TCS) by the Electronic Commerce Operator.
- Further, the manner of transfer of ITC is laid down in section 53 and
- Transfer of certain amounts is discussed in section 53A.

Backdrop of Payment of Tax

Payment of Tax is an integral part of GSTR 3B. It is so because, GSTR 3B gets filed only when tax, interest and penalty (if any) payment is done. In GST, the introduction of E-ledgers is a unique feature under the GST regime. Electronic Ledgers or E-Ledgers are of two types. One set is prepared and updated by the Taxpayer – Electronic Cash Ledger and Electronic Credit Ledger. Second set is prepared and updated on the basis of returns furnished by the Registered person or Tax authority i.e. Electronic Liability register.

Once a taxpayer is registered on common portal (GSTN), two e-ledgers (Cash & Input Tax Credit ledger) and an electronic tax liability register will be automatically opened and displayed on his dashboard at all times.

E-Cash Ledger

Important Aspects of E – Cash ledger:

- 1) Any **amount paid** (by certain modes see point 4) by the taxpayer, **TDS, TCS claimed** will be **reflected in the electronic cash ledger**.
- 2) Registered person first **utilises its ITC to pay of tax liability, balance** liability can be **paid off through cash** ledger.

Major Heads	Minor Heads
IGST	Tax
CGST	Interest
SGST / UTGST	Penalty
Cess	Fees & Others

- 3) **Cash ledger Balance can be transferred** from any major head's minor head to any other major head's minor head by filing PMT 09 [R. 87(13)]. IGST Cash or **CGST cash ledger of a distinct person**, can be transferred to distinct person. However, no such transfer can be done if liability is outstanding [R. 87(14)].
- 4) **Interest, Penalty & Late fee can be paid only through E – cash ledger.**
- 5) Challan to be **generated online** (Manual is not allowed) in PMT 06 which will be valid for **15 DAYS**:
 - ❖ Internet banking (authorized banks only)
 - ❖ Credit or debit card (authorized banks only), NEFT, RTGS, UPI, IMPS
 - ❖ Over-the-counter (OTC) payment (authorized banks only) for **DEPOSITS UP TO RS. 10,000/- PER CHALLAN** and per tax period by cash, cheque or demand

draft. [OTC deposit of upto Rs 10,000 shall not apply to govt depts, PO or any other officer authorized to recover outstanding dues from a person (including recovery through attachment of property), or PO or any other officer authorized to collect amt by way of cash, cheque or DD during investigation/enforcement activity/ad hoc deposit]

- 6) Person supplying OIDAR services may also make deposit through international money transfer, from date to be notified by Board)
- 7) Unregistered person has to make payment on the basis of TRN generated

IMPORTANT TERMS:

1. Common Portal Identification Number (CPIN) – 14 DIGIT
2. CIN or Challan Identification Number –18 digits number (14 digits CPIN + 4 digits Bank Code).
3. Upon successful credit to authorized bank A/c, a Challan Identification No is generated and on the basis of this CIN, E-cash is credited.
4. Bank Reference Number (BRN)
5. E – FPB (Authorised bank branches to collect GST, For NEFT/RTGS Transactions, RBI will act as E-FPB.)

Practical Approach

Dashboard

Services

Ledgers

Electronic Cash Ledger

English

Electronic Cash Ledger

ASHOK RAMCHANDRA KADAM 27AHOPK5032D1ZH

Help

Financial Year	Month	Cash balance as on date :- 07-12-2024
2024-2025	December	₹ 1,14,614.00

Electronic Cash Ledger

File GST PMT-09 for transfer of amount(within same GSTIN).

File GST PMT-09 for transfer of amount(to different GSTIN on same PAN).

View Filed GST PMT-09

Select Period

* Indicates mandatory fields

From: *

01/09/2024

To: *

07/12/2024

GO

Sr.No	Date of deposit/Debit	Time of deposit	Reporting date (by bank)	Reference No.	Tax Period, if applicable	Description	Transaction Type (Debit/Credit)	Amount debited / credit		
								Integrated Tax	Central Tax	State Tax
1	-	-	-	-	-	Opening Balance	-	-	-	-
2	20/09/2024	11:51:34	-	AB270824668608G	-	TDS Credit	Credit	0.00	4,103.00	4,103.00
3	20/09/2024	11:55:32	-	AC270724105242G	-	TDS Credit	Credit	0.00	33,567.00	33,567.00
4	20/09/2024	-	-	AA270924095663N	Sep-24		Debit	0.00	25.00	25.00
5	20/09/2024	-	-	AA270924095663N	-		Credit	0.00	25.00	25.00

1 2 »

PMT – 09:

Cash ledger balance-preview of updated balance

Description	Cash ledger balance				
	Integrated tax (₹)	Central tax (₹)	State/UT tax (₹)	Cess (₹)	Total (₹)
Tax	0	57307	57307	0	114614
Interest	0	0	0	0	0
Fee	0	0	0	0	0
Penalty	0	0	0	0	0
Others	0	0	0	0	0

Add record

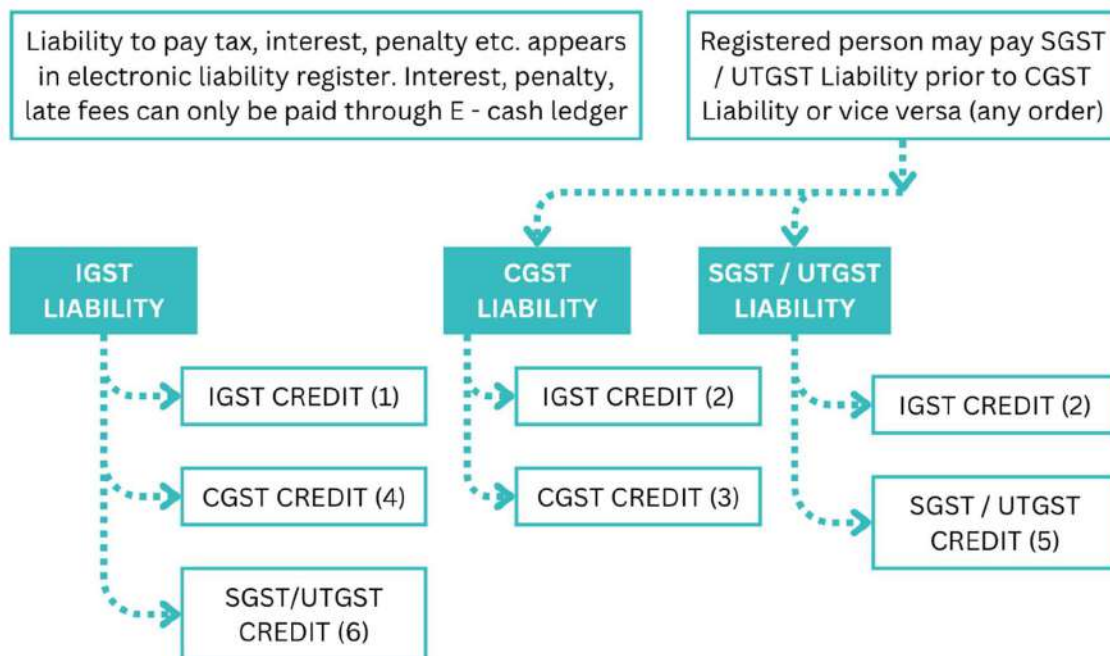
Transfer amount from			Transfer amount to		
Major head	Minor head	Amount available	Major head	Minor head	Amount
Select ▼	Select ▼		Select ▼	Tax	0
				Interest	0
				Penalty	0
				Fee	0
				Others	0

ELECTRONIC CREDIT LEDGER

[SECTION 49(2), (4) & (5), SECTION 49A, SECTION 49B
READ WITH RULE 86, RULE 86A, RULE 86B AND RULE
88A OF CGST RULES]

Payment of Taxes through Input Tax Credit (Section 49B r/w Rule 88A) inserted vide CGST Amendment Act, 2018.

Electronic Credit Ledger (ECL) (Rule 86)



1. **CGST & SGST paid in different** state is not available as ITC.
2. **RCM Liability to be discharge in Cash**
3. When a person claims refund of **UNUTILISED ITC (NOT WITH PAYMENT OF TAX)**, electronic credit ledger is debited.

RULES FOR PAYMENT OF TAX THROUGH INPUT TAX CREDIT:

1. IGST ITC shall be used to discharge IGST liability
2. Balance IGST ITC can be used to pay CGST Liability & SGST liability in any proportion. Accordingly, it is to be noted that IGST ITC shall be fully exhausted before utilising any other (C&S) ITC.
3. CGST ITC cannot be utilised to pay SGST liability & SGST ITC cannot be used to pay CGST liability. Thus, cross utilisation of ITC is not allowed between CGST & SGST.

4. In case where, after paying IGST Liability through IGST ITC, IGST liability remains unpaid, then CGST ITC can be used for paying IGST Liability **BUT ONLY AFTER CGST** Liability is paid. Further, if still IGST liability is pending, then SGST ITC can be used for paying IGST Liability **BUT ONLY AFTER SGST** Liability is paid.

Important Notes:

- RCM liability shall be paid only in cash, thus, to be added at the end.
- ITC shall be added (if eligible) in respect of RCM, in the same month, which can be used to pay output tax liability (FCM)

EXAMPLES TO UNDERSTAND UTILISATION OF ITC

Case I: [Excess IGST ITC distributed Equally]

Particulars	IGST	CGST	SGST
Output Tax Liability	1,80,000	75,000	75,000
Input Tax Credit	2,00,000	62,500	62,500

Solution:

Particulars	IGST	CGST	SGST
Output Tax Liability	1,80,000	75,000	75,000
Input Tax Credit			
IGST ITC	(1,80,000)	(10,000)	(10,000)
CGST ITC	-	(62,500)	-
SGST ITC	-	-	(62,500)
Net Liability	-	2,500	2,500

Notes:

- ❖ IGST ITC of Rs. 2,00,000 will be first utilised to pay IGST Liability (to the extent required), here we require only Rs. 1,80,000/-
- ❖ Balance IGST ITC will be utilised in equal proportion to pay CGST SGST liability, thus, Rs. 10,000 of IGST ITC would be allocated to pay CGST Liability & Rs. 10,000 of IGST ITC would be allocated to pay SGST Liability.
- ❖ Net liability of Rs. 2,500 CGST & 2,500 SGST shall be paid in Cash

Case II: [Short IGST ITC]

Particulars	IGST	CGST	SGST
Output Tax Liability	1,80,000	75,000	75,000
Input Tax Credit	1,60,000	95,000	95,000

Solution:

Particulars	IGST	CGST	SGST
Output Tax Liability	1,80,000	75,000	75,000
Input Tax Credit			
IGST ITC	(1,60,000)	-	-
CGST ITC	(20,000)	(75,000)	-
SGST ITC	-	-	(75,000)
Net Liability	-	-	-
Balance c/f	-	-	20,000

Notes:

- ❖ IGST ITC of Rs. 1,60,000 will be first utilised to pay IGST Liability. Thus, fully it shall be utilised.
- ❖ Balance IGST ITC shall be utilised to pay CGST SGST liability. However, in this case, excess IGST ITC is not there, thus no CGST & SGST liability can be paid.
- ❖ IGST liability can be paid through CGST Credit, however, only after CGST liability ITC is paid. Accordingly, Rs. 75000 (CGST credit) shall be used to pay CGST liability balance 20,000 would be used to pay IGST liability.
- ❖ It is to be noted that in next month SGST balance would be higher than that of CGST Balance by Rs. 20,000/-

Case III: [Excess IGST ITC distributed Unequally]

Particulars	IGST	CGST	SGST
Output Tax Liability	1,80,000	75,000	75,000
Input Tax Credit	2,10,000	62,500	82,500

Solution:

Particulars	IGST	CGST	SGST
Output Tax Liability	1,80,000	75,000	75,000
Input Tax Credit			
IGST ITC	(1,80,000)	(25,000)	(5,000)
CGST ITC	-	(50,000)	-
SGST ITC	-	-	(70,000)
Net Liability	-	-	-
Balance c/f	-	12,500	12,500
		(62,500 – 50,000)	(82,500 – 70,000)

W/N to Distribute ITC:

Particulars	CGST	SGST
	62,500	82,500
Balancing Figure [IGST ITC of 20,000 from ₹ 1,80,000 shall be first given to pay CGST liability]	*20,000	
	62,500	82,500

Balance IGST ITC (shall be distributed equally)	5,000	5,000
Total IGST Distribution	25,000	5,000

Steps:

- First write down CGST & SGST ITC balances
- Write higher total on both the sides
- Write balancing figure on shorter side (represents the amount of IGST to be distributed to pay particular liability)
- Then once equated it can be distributed equally

Notes:

- ❖ IGST ITC of Rs. 2,10,000 will be first utilised to pay IGST Liability (to the extent required), here we require only Rs. 1,80,000/-
- ❖ Balance IGST ITC (Rs. 30,000) will be utilized in proportion (as determined above) to pay CGST & SGST liability.
- ❖ Net liability is 0

Case IV: [Excess IGST ITC distributed Unequally]

Particulars	IGST	CGST	SGST
Output Tax Liability	1,80,000	75,000	75,000
Input Tax Credit	2,10,000	70,000	70,000

RCM Liability = ₹ 2,5000 CGST & 2,500 SGST (ITC is eligible)

Solution:

Particulars	IGST	CGST	SGST
Output Tax Liability	1,80,000	75,000	75,000
Input Tax Credit			
IGST ITC (WN)	(1,80,000)	(15,000)	(15,000)
CGST ITC (Incl. RCM)	-	(60,000)	-
SGST ITC (Incl. RCM)	-	-	(60,000)
Net Liability	-	0	0
RCM Liability	-	2,500	2,500
Balance c/f	-	12,500	12,500
		(70-60+2.5)	(70-60+2.5)

RCM liability is to be discharged in cash; therefore, it will be added in net liability and ITC.

ELECTRONIC LIABILITY LEDGER

About Electronic Liability Ledger [GST PMT – 01]
It is ledger on GST Portal, showing liabilities of taxpayer such as 3B liability, Liability determined by officer.
(i) Order of discharge of tax and other dues
As per Section 49(8) of CGST Act, following shall be the order of discharge of dues:
(i) Self-assessed tax and other dues for the past tax period
(ii) Self -assessed tax and other dues for the current period
(iii) Amount payable under section 73 or section 74, 74A ["Other Dues" referred above mean interest, penalty, fee or any other amount payable]
(ii) What is Debited in Electronic liability ledger?
❖ The E-Liability register of a person shall be debited by (a) amt payable towards tax, interest & fees as per return furnished by him, (b) tax, interest, penalty or late fees determined by PO and (c) amt of interest that may accrue from time to time

RULE 86A: RESTRICTION TO UTILISE E – CREDIT LEDGER

Officer NOT BELOW THE RANK OF AN ASSISTANT COMMISSIONER can restrict Utilisation of ITC from E – credit ledger if it is fraudulent ITC*.

***Fraudulent ITC means:**

- (a) ITC passed on by person who has not conducted business from regd. POB
- (b) ITC in respect of which GST not paid by Tax payer
- (c) ITC availed by person who has not conducted business from Regd. POB
- (d) No possession of tax invoice or debit note.

Other points:

1. If commissioner is satisfied that above conditions does not exist then he may allow such debit [R. 86A (2)]
2. Restriction period – 1 year

PAYMENT OF INTEREST ON LATE PAYMENT OF TAX AND INCORRECT AVAILMENT AND UTILISATION OF ITC [SECTION 50 OF CGST ACT]

Interest on Net Cash Liability: 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 74/74A 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, at 18% p.a. (Simple Interest)

Where any amount has been **credited in the Electronic Cash Ledger** as per provisions of sub-section (1) of section 49 **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**

In all other cases (i.e., **declared** by the registered person **in the further returns**), where interest is payable as per Section 50(1), the interest shall be calculated on the amount of tax which remains unpaid (**Gross Liability**), for the period starting from the date on which such tax was due to be paid till the date such tax is paid, at 18% p.a. (Simple Interest).

Example

Mr. Alok, a registered supplier of taxable goods, filed GSTR 3B for the month of January, 2023 on 15th April, 2023. The prescribed due date to file the said GSTR 3B was 20th February, 2023. The amount of net GST payable, in Cash i.e. Electronic Cash Ledger on supplies made by him for the said month worked out to be Rs. 36,500 which was paid on 15th April, 2023. Briefly explain the related provisions and compute the amount of interest payable under the CGST Act, 2017 by Mr. Alok. Ignore the effect of leap year, if applicable in this case.

Answer: Interest is payable in case of delayed payment of tax @ 18% per annum from the date following the due date of payment to the actual date of payment of tax. Thus, the amount of interest payable by Mr. Alok is as under: -

Period of delay = 21st February, 2023 to 15th April, 2023 = 54 days Hence, amount of interest = Rs. 36,500 x 18% x 54/365 = Rs. 972

EXAMPLES ON INTEREST ON GROSS AMOUNT:

<u>D.D. is 20/11</u>	October, 2025	Jan, 2026 → 30,000 lib pertaining to Oct.
2/11	85,000	1,15,000
to	(-) 72,000	(-) 1,50,000
20/2	<u>13,000</u>	
	20/11 Paid.	
		145,000
		(-) 150,000
		<u>-</u>
		Bal. 5000 20/2
	Int will be paid on Gross Amt i.e. 30,000	
	$30,000 \times 18\% \times \frac{92}{365} = 1361/-$	

INTEREST ON INCORRECT AVAILMENT AND UTILISATION OF ITC:

Interest on Availment and utilization of incorrect ITC

If recipient avails and utilizes incorrect ITC, Int shall be levied @ 18% on incorrect ITC availed and utilised from date of utilisation till the date of reversal of ITC.

Interest on Incorrect Availment and Utilisation of ITC

April 20/05	Lia ITC [5,30,000 + 50,000] correct ↓ Incorr.	5,00,000 (5,00,000) - Bal. 80,000	
May 20/6	Lia ITC [420,000 + op. 80,000]	4,35,000 (4,35,000) - Bal. 65,000	
June 28/07	Lia ITC [3,38,500 + op. 65,000]	3,90,000 (3,90,000) - Bal. 13,500 $= 31 - 19 + 31 + 30 + 31 + 30 + 31 = 165$	31/12 Int on 36,500
July 16/08	Lia ITC : 2,40,000 + op. 13,500	2,50,000 (2,50,000) - Bal 3,500 $31 - 15 + 30 + 31 + 30 + 31 = 138$	31/12 Int on 10,000
Period of Int Date of Utilisⁿ of ITC till Date of reversal ↓ Filed 15/07 28/07 Int from 15/07 20/07			

Date of utilisation of ITC would be as below:

- ❖ If Tax is paid through return (3B): Due date to file 3B or actual filing date whichever is earlier.
- ❖ If Tax is paid through other means (DRC 03): the date of debit in the electronic credit ledger (PMT 02) when the balance in the electronic credit ledger.

Month	Opening Balance	Eligible ITC	Incorrect ITC	Total ITC	O/P Tax liability	Closing Balance	Amount on which Interest is applicable
April	-	3,60,000	40,000	4,00,000	3,50,000	50,000	0 [As closing balance is more than incorrect availment]
May	50,000	2,50,000	-	3,00,000	2,80,000	20,000	20,000 [Electronic credit ledger balance i.e., 20,000 falls below Incorrect ITC 40,000 by Rs. 20,000. Thus, 20,000 is deemed to be utilised]
June	20,000	1,80,000	-	2,00,000	1,95,000	5,000	15,000 [Balance incorrect ITC was Rs. 20,000; however, electronic credit ledger balance was Rs. 5,000, Thus, interest would be levied on 15,000]
July	5,000	1,90,000	-	195,000	2,10,000	-	5,000 [Since credit ledger balance is 0, entire ITC has been utilised for payment of tax, thus, balance incorrect ITC would be liable to interest]

Issue: In case where IGST credit wrongly availed and utilised & IGST and balance in the electronic credit ledger has fallen below the amount of wrongly availed input tax credit of IGST, whether Interest will be levied if IGST, CGST & SGST total taken together does not falls below the wrong availment and utilisation?

Clarification: Since, IGST ITC can be utilised to pay all the liabilities viz., IGST, CGST & SGST, total credit shall be considered to check whether balance of E – credit ledger has fallen below incorrect availment and utilisation.

Scenario 1: IGST 30k is incorrect ITC:

		IGST	CGST	SGST
	o/p Tax	190,000	50,000	50,000
	<u>ITC</u>			
(2L + 30K)	IGST	(190,000)	(20,000)	(20,000)
80,000	CGST		(30,000)	-
80,000	SGST		-	(30,000)
		-	-	-
	Cl. bal.	-	50,000	50,000

No interest will be levied even if closing balance of IGST is lesser than incorrect ITC, as we have to check the total balance i.e., ₹ 1,00,000/-

RULE 86B

As per rule 86B, if supplier's turnover in a particular month exceeds Rs. 50 lakhs, then atleast 1% liability shall be paid through E – cash ledger. (Exempt supply and zero-rated supply not to be considered for determining 50L)

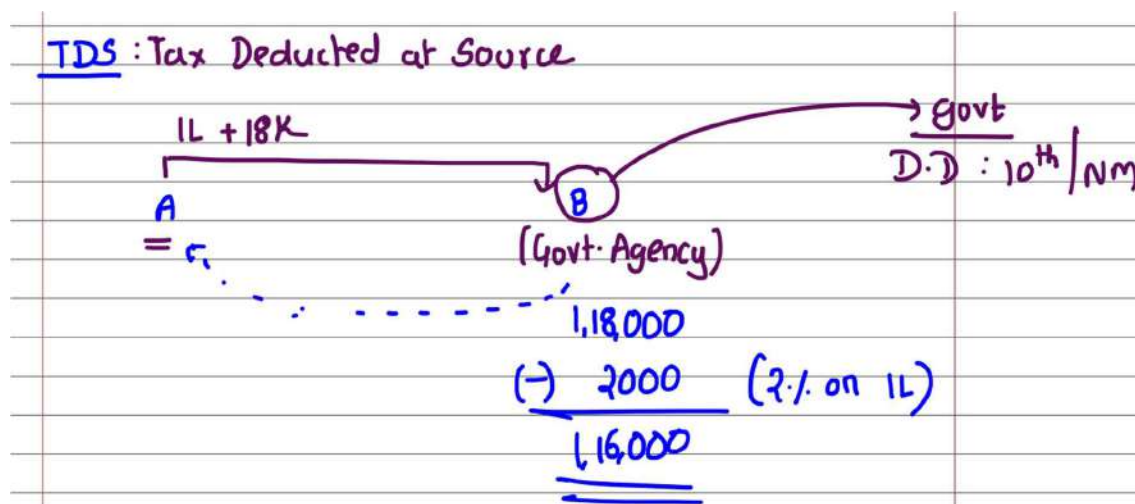
Example: If rate of Tax on certain product is 18%, & a firm is supplying taxable goods & services amounting to Rs. 60,00,000. The amount of Rs. 10,800 [Rs. 60,00,000 x 18% x 1%] shall be payable in Cash.

Meaning of liability: RCM liability shall not be taken into consideration over here.

Exceptions [In below cases, a regd. person can use full Input tax credit for making payment of output tax]:

- (i) The said person or the proprietor or karta or the managing director or any of its two partners, whole-time Directors, Members of Managing Committee of Associations or Board of Trustees, as the case may be, have paid more than Rs. 1 lakh as Income tax in each of the last two financial years for which the time limit to file return of income has expired.
- (ii) Obtained refund of Unutilised Input Tax Credit > 1 Lakh for export of goods or services or supply to SEZ
- (iii) Cumulative Payment in Cash > 1% applied cumulatively: Every month (including current month) supplier shall check [Liability discharged in cash divide by total liability]. If it is more than 1%, then no need to pay GST in cash in current month.
- (iv) The registered person is Government Department; or a Public Sector Undertaking; or a local authority; or a statutory body.

TAX DEDUCTED AT SOURCE [SECTION 51]



WHO HAS TO DEDUCT TDS?

- a) A department or establishment of the Central or State Government,
- b) Local authority,
- c) Governmental agencies,
- d) An authority or a board or any other body, -
 - ❖ Set up by an Act of Parliament or a State Legislature; or
 - ❖ Established by any Government;
 - with 51% or more participation by way of equity or control, to carry out any function;
- e) Society established by the CG / SG / LA under the Societies Registration Act, 1860
- f) public sector undertakings (PSU).

(Thus, when above mentioned persons would be recipients, they will deduct Tax at source as per provisions discussed below)

WHEN TO DEDUCT TDS? [Analysis of Whole provision]

- ❖ TDS shall be applicable only when **contract value exceeds Rs. 2,50,000 (excluding Taxes & Cess)**
- ❖ **Supplier shall be registered person** (incl. Composition) and the supplies shall be **taxable supplies**.
- ❖ TDS shall be deducted **even if individual supplies are upto Rs. 2,50,000**; provided contract value exceeds Rs. 2,50,000
- ❖ TDS shall be **deducted only at the time of payment** (incl. Advances) and shall be paid by 10th of subsequent month.
- ❖ It shall be noted that only “Taxable” proportion of contract shall be seen for determining applicability. *[Example: If a contract is of Rs. 9,00,000 (excl. GST), out of which Rs. 2,20,000 is taxable supply & 6,80,000 (exempt supply), TDS will not be applicable]*

RATE OF TDS: 1% CGST, 1% SGST (In case of IGST 2%)

WHEN NOT TO DEDUCT?

- ❖ When LOS = POS which is other than LOR, then not to be deducted. (whenever LOR is other than POS then not to be deducted)
- ❖ Further if supplier and recipient both are from (a) to (f) then not to deduct.

Other Points:

- ❖ Late payment attracts interest @ 18% p.a. from due date of payment till the date of actual payment.
- ❖ Supplier would be able to see the tax deducted in his cash ledger, meaning thereby he can use the said amount to pay his liabilities. TDS certificate is required to be issued by deductor (form GSTR – 7A) (the person who is deducting tax) in prescribed form to the deductee (the supplier from whose payment TDS is deducted).
- ❖ Tax Deductor has to obtain compulsory registration u/s 24 of CGST Act & return to be filed in Form GSTR 7

TDS & RCM on Metal Scrap w.e.f. 10th October, 2024 [Notification No. 24, 25/2024 – Central Tax dated 8th October, 2024, Notification No. 06/2024-Central Tax (Rate), Notification No. 06/2024-Integrated Tax (Rate)]

The provisions of TDS are now being made applicable to Metal Scrap. Section 51 was notified vide Notification No. 50/2018- Central Tax dated 13th September, 2018 which is now amended vide Notification No. 25/2024- Central Tax dated 9th October, 2024.

As per the amendment, any **registered person** receiving supplies of metal scrap falling under Chapters 72 to 81 of the First Schedule of Customs Tariff Act, 1975 from **another registered person** is required to deduct TDS. Accordingly, TDS is required to deduct TDS @ 2% in the following manner: -

- ❖ Inter-state supply: 2% under IGST
- ❖ Intra- State supply: 1% under CGST and 1% under SGST

In the following scenarios, **no TDS** is required to be deducted under Section 51 of the CGST Act:

- (i) Where the total value of supply under a contract does not exceed INR 2,50,000.
- (ii) If the location of the supplier and the place of supply are different from the state of registration of the recipient

The deductor is required to file a return of TDS deducted by the 10th of the following month in form GSTR-7.

Imp Point: Generally, TDS is not applicable if notified deductors supply to other notified deductors. However, this shall not be applicable in case of supply of metal scrap.

The following products are specified under Chapter 72 to Chapter 81 of the Customs Tariff Act, 1975:

Chapter 72 – Iron and Steel;
Chapter 73 – Articles of Iron and Steel;
Chapter 74 – Copper and Articles thereof;
Chapter 75 – Nickel and Articles thereof;
Chapter 76 – Aluminium and Articles thereof;
Chapter 78 – Lead and Articles thereof;
Chapter 79 – Zinc and Articles thereof

TDS on metal scrap shall apply w.e.f. 10th October, 2024.

Reverse Charge Mechanism [Section 9(3) of CGST Act]

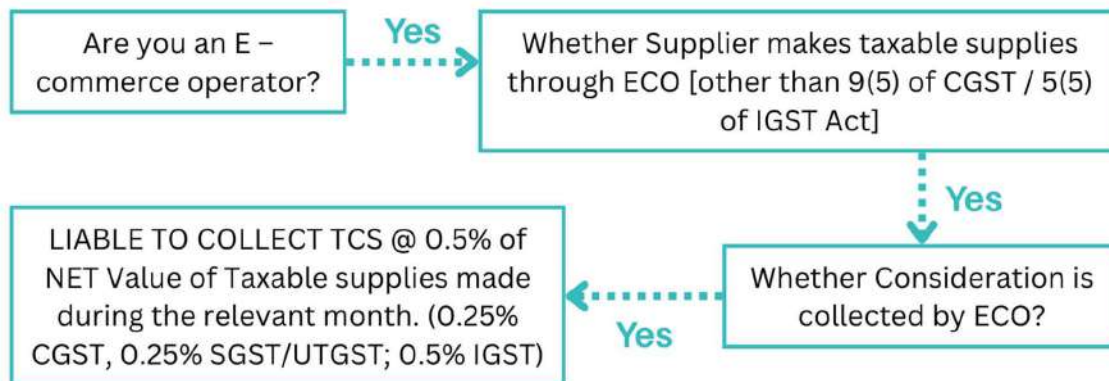
In the exercise of power given under Section 9(3) of the CGST Act, the Government specified the category of goods on which tax is required to be paid by the recipient under the Reverse

charge Mechanism vide Notification No. 4/2017-Central Tax (Rate) dated 28.06.2017. (RCM notification for goods)

As per Notification No. 06/2024-Central Tax (Rate) dated 08-10-2024, GST on the supply of metal scrap (specified under Chapters 72 to 81) **by an unregistered person to a registered person is required to be paid under RCM**. Accordingly, the registered recipient is required to pay GST under RCM.

No exemption from GST Registration – RCM Supplies: As per Notification 5/2017 – CT, supplier engaged in supplying exclusively under reverse charge shall not be required to obtain registration under GST. However, this shall not apply to any person engaged in the supply of metal scrap, falling under Chapters 72 to 81 in the first schedule of Customs Tariff Act. Thus, it means if a supplier being unregistered is supplying metal scrap to regd. dealer RCM is applicable, however, if the turnover of such unregistered dealer exceeds threshold, he would be liable to obtain registration under GST.

TAX COLLECTED AT SOURCE [SECTION 52]



		<u>TCS</u> (GST)	
		↓	
		collected by ECO	
11,800			
- 2000	Comm		
- 360	GST		
- 50			
[0.5% of 10,000]			
<u>9390</u>			
		ECO ←	
		• 360: GST (20/nm)	10,000 + 1,800 = 11,800/-
		• 50: TCS (10/nm) B	
		1800	
		- 360	
		- 50	
		<u>1390</u>	

Notes & interlinking of various chapters:

- 1) A registered person has to claim TDS & TCS in order to appear in his E-cash ledger. No automatic updation is available currently.
- 2) Net Value of taxable supplies = Total Supplies (-) Returns
- 3) TCS to be deposited upto 10th of next month
- 4) E – statement in GSTR - 8 to be filed upto 10th of Next month
- 5) Annual statement by 31/12 of succeeding financial year (Not yet notified)
- 6) Time-limit to rectify mistake in monthly statement –
 - ❖ 30TH November of succeeding financial year or,
 - ❖ Actual date of furnishing Annual statement
 Whichever is earlier
- 7) An officer not below the rank of Deputy Commissioner can issue notice to an operator, asking him to furnish details relating to volume of the goods/services supplied, stock of goods lying in warehouses/Godowns etc. The operator is required to furnish such details within 15 working days. In case an operator fails to furnish the information, besides being liable for penal action under section 122, it shall also be liable for penalty up to Rs. 25,000.

- 8) ECO liable to collect TCS are compulsory liable to be registered (S.24 of CGST Act)
- 9) Person supplying goods (not fulfilling conditions) & services (other than 9(5)) of value > Rs. 10L/20L are liable to be compulsorily regd. (S. 24 of CGST)
- 10) TCS is not collected on Services provided by ECO u/s 9(5) of CGST Act.

Clarification on TCS liability under Sec 52 of the CGST Act, 2017 in case of multiple E-commerce Operators in one transaction. [Circular No. 194/06/2023-GST dated. 17th July, 2023]

This circular discusses the liability to collect TCS in cases where there is involvement of more than one E-commerce operator. Government launched ONDC Network is a classic example of aggregators of E – commerce operators. ONDC is an app through which you can compare pricing of a certain product instantly on different ECO. For example, you want to buy watch you can check the comparative current pricing of watch together on Amazon, Flipkart, Watch suppliers' website etc. The said circular clarifies TCS liability aspects. Below example would help in explaining the provision much better:

Example 1:

Buyer → ONDC (Buyer side ECO) → Amazon Seller Side ECO → Watch Seller

In this case, ONDC collects payment through buyer and remits it to Amazon, in this case Amazon shall be liable to deduct TCS while paying to Watch seller.

Example 2:

Buyer → ONDC (Buyer side ECO) → Watch Seller

In this case, ONDC collects payment through buyer and remits it to Watch seller, thus, ONDC shall be liable to deduct TCS.

RULE 88C & RULE 88D

R 88C, R-88D			
Lia	GSTR-1 IL	GSTR-2B : ITC	2L
Lia	GSTR-3B 80K	3B : ITC	2-5L
	20K	50K	
	↓	↓	
	Notice	Notice	
	↓	↓	
	Reply wli 7d	Reply wli 7d	
	or	or	
	Pay Tax	Reverse ITC	
	Recovery Proceedings	• Determine liab. 73/74	

Rule 88C OF CGST RULES

If tax payable by supplier shown in GSTR 1 > GSTR 3B, then registered person shall be intimated of such difference by e-mailing, highlighting the said difference and directing him to:

- ❖ Pay the differential tax liability, along with interest under section 50,
- ❖ Explain the aforesaid difference in tax payable within a period of 7 days.

The registered person shall, either: -

- ❖ Pay the amount of the differential tax liability, along with interest under section 50, or
- ❖ Furnish a reply electronically incorporating reasons

Where supplier does not pay or does not reply within 7 days then proper officer, can recover in accordance with the provisions of section 79 (recovery proceedings)

Where any amount has been credited in the Electronic Cash Ledger 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. **Notification No. 12/2024 – Central Tax dated 10th July, 2024**

RULE 88D OF CGST RULES

If ITC availed by recipient in GSTR 3B > GSTR 2B in excess of notified %, then registered person shall be intimated of such difference by e-mailing, highlighting the said difference and directing him to:

Pay the differential tax liability, along with interest under section 50,
Explain the aforesaid difference in tax payable within a period of 7 days.

The registered person shall, either: -

- ❖ Pay the amount of the differential tax liability, along with interest under section 50, or
- ❖ Furnish a reply electronically incorporating reasons

Where supplier does not pay or does not reply within 7 days then proper officer, can determine the liability as per section 73 or 74 as the case may be.

> Chapter 13

Refund Under GST

GST refund process allows taxpayers to claim excess tax paid.

Learning Objectives

- Understand the key provisions and principles related to GST refunds, including the concept of unjust enrichment and the relevant legal framework (Sections 54–58 and Rules 89–98 of CGST Rules).
- Learn the procedures and documentation required for claiming refunds in cases like zero-rated supplies, inverted duty structure, and excess tax paid.
- Analyze how time limits, relevant dates, and specific refund categories (e.g., exports, SEZ, deemed exports, CSD, and NRTP) influence refund eligibility.
- Gain knowledge of refund calculations using specific formulas and definitions such as Net ITC, adjusted turnover, and turnover of zero-rated/inverted supplies.
- Understand the step-by-step process of refund sanctioning—application, acknowledgment, provisional refund, scrutiny, final sanction, and disbursement through PFMS.
- Identify special refund scenarios including refunds to unregistered persons, handling contract cancellations, and the importance of Aadhar authentication and documentation compliance.

Backdrop of Refund Under GST

Exporters are the backbone of the nation, thus, in order to promote exports, certain incentives shall be provided to exporters. There are various schemes and benefits available to exporters under GST, Customs & FTP. In GST, refund has been categorised into 3 aspects, namely, refund of unutilised input tax credit, refund of tax paid on export of goods or services, & refund in certain circumstances.

Further we would also learn in this chapter the documents to be furnished & the procedure to obtain refund claim from GST Department. The provisions of refund are contained in Section 54 to Section 58 of CGST Act read with Rule 89 to Rule 98 of CGST Rules.

It is very relevant to understand doctrine of unjust enrichment before beginning with GST. The principle of unjust enrichment states that no person can be enriched at another's expenses and the person who enriches or obtains benefit at another's expense and causing loss to another, he shall be required to reimburse a reasonable value of those services and money which he received unfairly. In Indirect Taxes, presumption is that the tax burden has been shifted to the recipient unless otherwise proved. If a regd. person has shifted the burden of tax on recipient, supplier cannot claim refund of the same.

The application of concept of unjust enrichment can be found in the Indirect Tax Laws. It is a well settled principle of Indirect Tax Laws that such duty/tax is allowed to be passed on to the end consumer.

BASIC TIME-LIMIT TO FILE REFUND APPLICATION

As per Section 54(1) r/w Rule 89, refund shall be claimed by a registered person **SUBJECT TO RULE 10B (Aadhar Authentication)** in **PRESCRIBED MANNER** by making application before the expiry of 2 YEARS FROM THE RELEVANT DATE (Discussed later). The **2 years' time limit does not apply to refund on account of electronic cash ledger (Circular No. 166/22/2021-GST)**.

Refund Scenarios: It shall be noted that refund can be arising on account of: -

PART (A) Zero rated supplies with & without payment of tax, inverted duty structure

PART (B) Other circumstances (such as refund of wrong tax, refund to CTP, N RTP etc.)

(A) ZERO RATED SUPPLIES WITH & WITHOUT PAYMENT OF TAX

Supply of goods or services **TO SEZ FOR AUTHORISED OPERATIONS & Export of goods or services is zero rated supply**. If it is done under LUT then refund can be claimed under below rule 89(4).

Refunds for IGST on goods subjected to export duty, including exports to SEZs, are restricted. This applies regardless of whether the goods were supplied with or without payment of tax.

(i) Formula to Compute Refund

$$\text{Refund Amount} = \text{Net ITC} \times \frac{\text{Turnover of ZRS of Goods \& Services}}{\text{Adjusted Total Turnover (iii)}}$$

Analysis of Formula

(i) Refund Amount [Para 37 of Circular 125]	Refund amount shall be lower of (a), (b) or (c) as below: a) Total as per Formula: b) Balance at end of Tax period (after covering said tax period) c) Balance in Credit Ledger at the time of filing refund:
(ii) Net ITC	Net ITC here means Input Tax credit on Inputs & Input Services (Not Capital Goods)
(iii) Turnover of Zero-Rated supply of Goods	(a) Lower of ❖ the Free on Board (FOB) value declared in the Shipping Bill or Bill of Export form or ❖ the value declared in tax invoice or bill of supply, OR, (b) The value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier whichever is less, other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both. As per Rule 96B, if proceeds from EXPORT OF GOODS WITH OR WITHOUT PAYMENT OF TAX are not realised within time period as specified in FEMA (9 months from date of export, then refund granted would be recovered. If amount is realised thereafter, exporter has to intimate the department within 3 months from realisation of proceeds, then refund would be sanctioned accordingly.

(iv) Turnover of Zero-Rated supply of Services	Zero-Rated Supply of Service = ❖ Payment Received during relevant period for zero-rated supply of service (+) ❖ pre-received consideration of previous relevant period whose service has been completed in current period (-) ❖ Pre-received consideration in current period for provision of service subsequently (i.e., Advances received) <i>(Amount received in Special Vostro Account shall be treated as received in forex)</i>						
(v) Adjusted Total Turnover (Denominator) [R. 89(4) of CGST Rules]	Adjusted Total Turnover shall include <table> <tr> <th>Include (+)</th><th>(-) or exclude</th></tr> <tr> <td>Turnover in state / UT for supply of Goods & Services (Excluding zero rated services)</td><td>➤ CGST, SGST/UTGST, IGST & Cess [S. 2(112)]</td></tr> <tr> <td>Zero rated services as added in (iv) above</td><td>➤ Exempt Supplies other than zero rated supplies of exempt supplies</td></tr> </table>	Include (+)	(-) or exclude	Turnover in state / UT for supply of Goods & Services (Excluding zero rated services)	➤ CGST, SGST/UTGST, IGST & Cess [S. 2(112)]	Zero rated services as added in (iv) above	➤ Exempt Supplies other than zero rated supplies of exempt supplies
Include (+)	(-) or exclude						
Turnover in state / UT for supply of Goods & Services (Excluding zero rated services)	➤ CGST, SGST/UTGST, IGST & Cess [S. 2(112)]						
Zero rated services as added in (iv) above	➤ Exempt Supplies other than zero rated supplies of exempt supplies						
Relevant Period	Relevant period means the period for which the claim has been filed.						
Documentation (Not relevant)	(i) [Export of goods] Declaration under second and third proviso to section 54(3) [Drawback & Export Duty] (ii) [In all cases] Undertaking in relation to sections 16(2)(c) and section 42(2) (iii) [In all cases] Statement 3 under rule 89(2)(b) [Manually to be filled after validating statement 3A] (iv) [In all cases] Statement 3A under rule 89(4) [Contains details of invoice, shipping bill, FIRC (N.A. in goods), Port code, etc. Json file to be uploaded, created from excel utility] (v) [In all cases] Copy of GSTR-2B of the relevant period [Excel copy from GST Portal ONLY], ISD, RCM credit, import of goods can be refunded even though not reflected in GSTR 2B (Clarified by Circular 139/09/2020 r/w Circular 135) (vi) [In all cases] Statement of invoices (Annexure-B) [Annexure B shall Tally with ITC taken in GSTR 3B, HSN, Input/Service/CG Bifurcation shall be done] (vii) [In case of Export of services] Documentation as per Rule 89(2)(c) [statement of BRC/FIRC] [In case of supplies to SEZ] Evidence regarding the endorsement that supply of goods or services is made to a Special Economic Zone unit or a Special Economic Zone developer						
As per section 16(3) of IGST Act, a person supplying zero-rated goods shall realise export proceeds within time-limit as per FEMA, however, if it fails to do so, he shall be liable to pay back the refund granted to him within 30 days from expiry of time-limit to repatriate the proceeds along with interest u/s 50 of CGST Act. Export proceeds for services realised after 1 year 15 days Goods exported after 3 months 15 days from date of Invoice:							

Any registered person availing the option to supply goods or services for export without payment of integrated tax shall furnish LUT in FORM GST RFD-11 to the jurisdictional Commissioner, binding himself to pay the tax due along with the interest u/s 50 within 15 days after the expiry of one year, or the period as allowed under the Foreign Exchange Management Act, 1999 (42 of 1999) including any extension of such period as permitted by the Reserve Bank of India, 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.

In context to above below clarifications are given by CBIC:

1. SUBSEQUENT TO EXPORT of the goods or realization of payment in case of export of services, exporter would be ENTITLED TO CLAIM REFUND
2. No interest on refund would be given
3. Refund can be filed in "EXCESS PAYMENT OF TAX" OR "ANY OTHER" on portal

(B) INVERTED DUTY STRUCTURE
[S. 54(3) r/w R. 89(5) OF CGST RULES]

<u>Law</u>	Cardboard 28% →	Person	Paper 5% →	: IDS ✓
<u>Circular</u>	machine (Goods) 18% →	Person	5% →	BARC : IDS ✓
<u>Circular</u>	Cardboard 28% →	Person (chg of rate)	Cardboard 5% →	XYZ : IDS X
<u>Law</u>	Cardboard 28% →	Person	Paper 0% (exempt) →	XYZ : IDS X
			paper 0% (exempt → exp.)	: 89(4) = 2RS.

Meaning of Inverted Duty Structure	of Duty	INPUT TAX RATE HIGHER THAN OUTPUT TAX IS CALLED AS INVERTED DUTY. Output tax rate is Nil or where Outward supply is an exempt supply, it would NOT constitute inverted duty structure & refund of un-utilised ITC would not be available.
Formula of Maximum Amount of Refund	of	$\frac{\text{Turnover of Inverted Supply of Goods \& Services}}{\text{Adjusted Total Turnover}} \times \text{Net ITC}$ (-) Tax Payable on such inverted rated supply of goods and services x Net ITC / ITC availed on inputs and input services.
(i) Net ITC		Net ITC shall mean input tax credit availed ON "INPUTS" (ONLY INPUTS NEITHER INPUT SERVICES NOR CAPITAL GOODS) during the relevant period

(iii) Adjusted Total Turnover	Adjusted Total Turnover & Relevant period definitions are same as discussed in (1) above
Department Clarifications	(a) Manufacturer supplying to merchant exporter claim refund of tax under Rule 89(5) of CGST Rules (b) Refund of accumulated input tax credit (ITC) NOT ALLOWED on account of reduction in GST Rate (c) Where goods are purchased under normal rate, but sold under concessional rate under any notification, in such cases, refund of unutilised ITC can be claimed under inverted duty structure. (d) In case of works contract services, inverted duty structure refund cannot be claimed.
Documentation (NOT RELEVANT)	(i) Declaration under second and third proviso to section 54(3) <i>[Seems irrelevant but circular has mentioned this requirement]</i> (ii) Declaration under section 54(3)(ii) [Not engaged in exempt supply] (iii) Undertaking in relation to sections 16(2)(c) and section 42(2) (iv) Statement 1 under rule 89(5) [Online Manually] (v) Statement 1A under rule 89(2)(h) [A statement containing the number and the date of the invoices received and issued during a tax period] (vi) Self-declaration under rule 89(2)(l) if amount claimed does not exceed two lakh rupees, certification under rule 89(2)(m) otherwise (vii) [In all cases] Copy of GSTR-2A of the relevant period [Excel copy from GST Portal ONLY] RCM (on goods) credit, import of goods can be refunded even though not reflected in GSTR 2A (Clarified by Circular 139/09/2020 r/w Circular 135) (viii) Statement of invoices (Annexure-B) [Annexure B shall Tally with ITC taken in GSTR 3B, HSN, Input/Service/CG Bifurcation shall be done]

**Refund of IGST on account of upward revision of price [New Rule 89(1B)]
[Notification No. 12/2024 – Central Tax dated 10th July, 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 rule 10B (**Aadhar Authentication**), before the expiry of two years from relevant date (the date on which the ship or the aircraft in which such goods are loaded, leaves India or goods pass the frontier or the date of despatch of goods by the Post Office)

Details required:

- ❖ Details of export invoices along with copy of such invoices

- ❖ Details 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
- ❖ the details of refund already sanctioned
- ❖ 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
- ❖ 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.
- ❖ 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.

Refund to Canteen Stores Department (New Rule 95B) [Notification No. 12/2024 – Central Tax dated 10th July, 2024]:

The Canteen Stores Department, (CSD), is a solely owned Government of India Enterprise under Ministry of Defence and has its depot in all major military bases operated by the Indian Armed Forces.

Refund of tax paid on inward supplies of goods received by Canteen Stores Department: Notwithstanding anything contained in rule 95, a Canteen Stores Department under the Ministry of Defence, **which is eligible to claim the refund of fifty per cent. 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.

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 FORM GST RFD-01 in accordance with the provisions of rule 89.

The refund of tax paid by the applicant shall be available, if-

- (a) 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;

- (b) name and Goods and Services Tax Identification Number of the applicant is mentioned in the tax invoice; and
- (c) 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.

RELEVANT DATE: REFUND SHALL BE FILED WITHIN 2 YEARS FROM RELEVANT DATE

Sr. No.	Case	Relevant Date
1.	Goods are exported by sea or air (With or without payment of tax)	The date on which the ship or the aircraft in which such goods are loaded, leaves India.
2.	Goods are exported by land (With or without payment of tax)	The date on which such goods pass the frontier.
3.	Goods are exported by post (With or without payment of tax)	The date of despatch of goods by the Post Office concerned to a place outside India.
4.	Supply of goods regarded as deemed exports where a refund of tax paid is available in respect of the goods (Supplier or recipient of deemed exports claiming refund)	The date on which the return relating to such deemed exports is furnished (by supplier). [Clarified by Circular No. 166/22/2021 dated 17 th November, 2021]
5.	Export of services (With or without payment of tax)	(i) Receipt of payment in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India or (ii) Issue of invoice Whichever is Later.
6.	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
7.	Refund of unutilised input tax credit under clause (ii) of the first proviso to sub-section (3) [Inverted duty structure]	The due date for furnishing of return under section 39 for the period in which such claim for refund arises
8.	Tax is paid provisionally under this Act or the rules made Thereunder	The date of adjustment of tax after the final assessment thereof
9.	A person, other than the supplier	The date of receipt of goods or services or both by such person
10.	Other case	The date of payment of tax
11.	Any person, claiming refund under section 77 of the Act of any tax paid by him, in respect of a transaction considered by him to be an intra-State supply, which is subsequently held to be an inter-State supply	Before the expiry of a period of two years from the date of payment of the tax on the inter-State supply, file an application. [Rule 89(1A) read with Circular No. 162/18/2021-GST]

Sr. No.	Case	Relevant Date
12.	Zero-rated supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit where a refund of tax paid	The due date for furnishing of return under section 39 in respect of such supplies.

Deemed Exports under GST

Meaning of Deemed Export & Logic behind the concept: Notified Deemed Exports:

As per Section 147 of CGST Act r/w NN 48/2017 - CT dtd. 18.10.2017 following would be treated as deemed exports.

- (i) Supply of goods by a registered person AGAINST ADVANCE AUTHORISATION
- (ii) Supply of capital goods by a registered person AGAINST EXPORT PROMOTION CAPITAL GOODS AUTHORISATION (EPCG)
- (iii) Supply of goods by a registered person TO AN EXPORT ORIENTED UNIT (EOU), Electronic Hardware Technology Park Unit (EHTP) or Software Technology Park Unit (STP) or Bio-Technology Park Unit (BTP).
- (iv) Supply of gold by Bank or Public Sector Undertaking against AA

As per Proviso 3 to Rule 89, refund in case of deemed exports can be claimed by:

The recipient of deemed export supplies OR, 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.

Examples

CASE STUDY 1 [SUPPLIER CLAIMING REFUND]:

Mr. Ram, a registered supplier, supplies to EOU, Mr. Ram supplies the goods at Rs. 50,000 (excl. IGST @ 18%), Mr. Ram collects Rs. 50,000/- from EOU. Thus, in this case, Mr. Ram would be liable to pay tax of Rs. 9,000/- IGST (by ITC or cash) and would be eligible to claim refund of Rs. 9,000/- under 3rd proviso to rule 89(1). Here Mr. Ram has to submit that, EOU will not avail ITC nor obtain refund of such tax mentioned in tax invoice.

CASE STUDY 2 [RECIPIENT CLAIMING REFUND]:

Mr. Ram, a registered supplier, supplies to EOU, Mr. Ram supplies the goods at Rs. 59,000 (incl. IGST @ 18%), Mr. Ram collects Rs. 59,000/- from EOU. Thus, in this case, Mr. Ram would be liable to pay tax of Rs. 9,000/- IGST (by ITC or cash), however he would not be eligible to claim

refund of Rs. 9,000/- as burden of tax has been shifted to recipient. The recipient would be eligible to claim the refund of Rs. 9,000/- under rule 89(4).

Other Circumstances of Refund

- (a) Refund Voucher
- (b) Refund of Wrong Tax paid
- (c) Refund to CTP/NRTP: Can be claimed after last return is filed
- (d) Refund of Balance in Electronic Cash Ledger
- (e) Tax becoming refundable on consequence of any judgement, order or direction of appellate authority, appellate tribunal; or court [S. 54(9) of CGST]
- (f) On finalization of provisional assessment (contained in detail in Assessment Chapter) (i.e, tax payer had paid more at the time of provisional assessment & becoming refundable to him while final assessment)
- (g) Refund of Tax paid on purchase made by UN bodies or embassies. [S. 54(2) of CGST r/w S. 55 of CGST] (Such persons have to claim refund once in every quarter but before expiry of 2 years from last day of quarter.) They can also claim refund of IGST paid on Import of Goods

Notes:

- (i) Declaration that Tax Incidence have not passed is not reqd. when refund is upto Rs. 2,00,000/-. In case refund claim exceeds Rs. 2,00,000/- then CA Certificate would be required to be attached. However, in below 5 cases, CA /CMA certificate in Annexure 2 of RFD -01/ self-declaration is also NOT required. [R. 89(2)(m)]. However, in below cases, such declaration is not required:

- ❖ Export of goods or services on payment of IGST [S. 54(8)(a)]
- ❖ Refund of Unutilised input tax credit [S. 54(8)(b)]
- ❖ Refund voucher [S. 54(8)(c)]
- ❖ Refund of Wrong Tax Paid [S. 54(8)(d)]
- ❖ Notified Applicants [S. 54(8)(f)]
- ❖ Refund on account of E – cash ledger (Circular No. 166/22/2021-GST)

Note: As per section 54(8), except these 6 cases and where refund is on account of 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; the refund shall be credited to consumer welfare fund

Refund Procedure

Step 1: Application for Refund

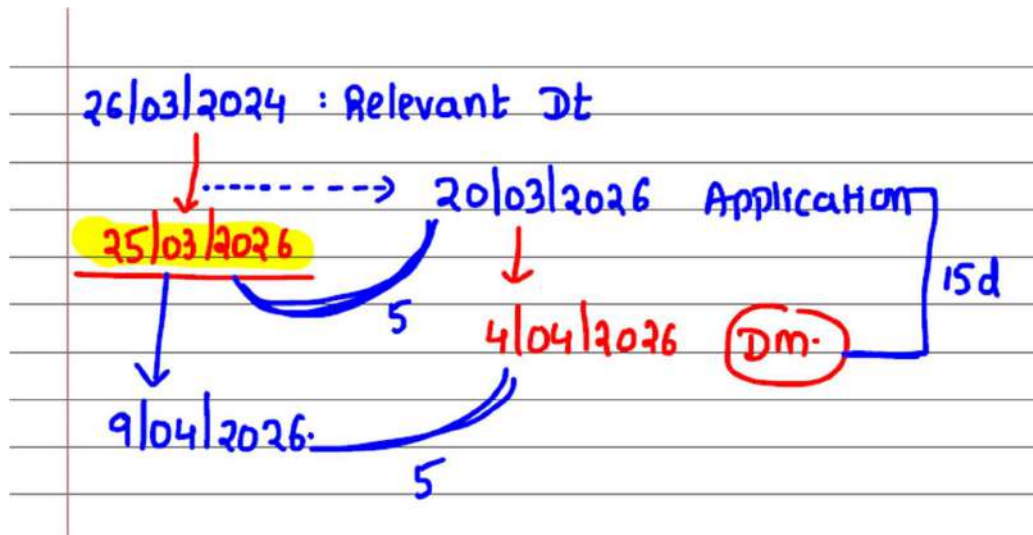
1. **Time Limit to Apply:** The applicant has to apply for refund **WITHIN 2 YEARS** from relevant date in **FORM GST RFD 01**
2. **Documents:** The refund application shall be supported by documents as specified in Rule 89(2) & circular
3. **Withdrawal:** The application once submitted, can be withdrawn by applicant at any time before provisional refund 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. (To be seen later) (NN 15/2021-CT)
4. **Impact on E-Credit Ledger:** On withdrawal of application, the amount debited from electronic credit ledger shall be re-credited
5. At the time of application for refund on account of accumulated input tax credit, the electronic credit ledger shall be debited (Automatically happens)
6. Once the application is made, the system generates, ARN i.e., Application Reference Number.
7. **Application for Refund:** Application for refund in case of export of GOODS (not services) is not required. Shipping bill filed would be deemed to be refund application

8. **Lower limit for refund:** Refund will not be granted if refund claimed is less than Rs. 1,000 each tax head separately (N.A. in e-cash ledger refund)

Step 2: Acknowledgment of Refund Claim / Deficiency [R. 90]

1. **Receipt of ARN:** Once the application is submitted, and is complete w.r.t. Documentation attached, the proper officer would issue acknowledgement in Form GST RFD 02 within 15 days of Application date (i.e., ARN) (Please note this is just acknowledgment and does not mean that entire refund has been scrutinised and approved thereof)
2. **Refund order** [under S. 54(7) read with S. 54(5)] shall be issued within 60 days from date of receipt of application complete in all respects.
3. **Deficiency Memo and Fresh Application:** If the refund claim is not complete, the proper officer shall issue deficiency memo (DM), highlighting the deficiency within 15 days of application in form GST RFD 03. In case of deficient acknowledgment, in order to cure the deficiency, FRESH APPLICATION has to be filed again. It will have distinct ARN again

[Time lost between Application Date till issue of DM shall be excluded from 2 years - R. 90(3)]



4. **Impact on E-credit Ledger:** On communication of Deficiencies, the electronic credit ledger shall be re-credited [R. 93(1)]. No requirement of PMT 03 to re-credit in credit ledger.
(Note in case of exports with payment of tax, no separate debit is required)
5. **No deficiency memo** shall be issued again in respect of same deficiency, unless the same is not rectified or other substantial deficiency is found out.

Step 3: Processing of Refund Claim

1. **Provisional Refund:** As per S. 54(6) of CGST Act r/w Rule 91 of CGST Rules if refund is for zero-rated supply, officer may sanction refund on provisional basis @ 90% of refund claimed within 7 DAYS FROM ACKNOWLEDGMENT IN GST RFD 04
2. **Condition:** Provisional refund would only be granted if the applicant is not accused of prosecution, where the amount of tax evasion exceeds Rs. 2.5 crores [R. 91(1)]
3. **Payment order** shall be issued in **GST RFD 05** for refunding provisional amount and shall be electronically credited to any of the bank accounts (to be revalidated if not paid in same FY)

Dept. clarifications [Para 13 to Para 17 of Circular 125]

1. If some refund inadmissible, Provisional refund @ 90% may be sanctioned of balance amt.
2. If PO deems to issue full refund instead of provisional, he can do so
3. Final refund < Provisionally granted, then show cause in RFD 08, shall be issued to recover the excess.
4. If reply not furnished, PO shall add in applicant's electronic liability through issuance of FORM GST DRC-07
5. If refund is of ITC, then it shall be re-credited to credit ledger in GST PMT 03, only on receipt of undertaking from applicant, that he will not file appeal against the same
6. Provisional refund shall **not be granted**, if amount is to be withheld u/s 54(10) or 54(11) of CGST Act even after reducing withheld amount. [Amount can be withheld by department when applicant was liable to pay which can be adjusted against refund payable by dept., or order giving rise to a refund is the subject matter of an appeal or where officer feels if refund given then it will affect adversely] (In all cases refund can be withheld)
7. GST RFD 08 (SCN) and GST RFD - 06 (Refund order) shall be treated as issued u/s 73/74 only.

Step 4: Sanction of Refund

1. If refund is eligible a **refund order** in Form **GST-RFD 06**, along with Refund order a **payment order in GST-RFD 05** shall be issued. Consolidated payment advice shall be made on basis of payment order, basis which refund is disbursed [R. 92(1)]
2. Refund order is the amount payable to applicant **in respect of refund claimed**, **however**, payment order is what is actually payable to applicant, post reducing any amount payable by him and amount granted as provisional refund.
3. If officer feels that some portion of refund is to be rejected, he has to issue **SCN** in form **GST RFD 08**, which is to be **replied** by applicant within 15 days in form **GST RFD 09**. Refund shall not be rejected before providing an opportunity of being heard.
4. **Proportionate refund claim [R. 92(1A)]:** In cases other than zero rated supplies on payment of tax or deemed export, the refund shall be granted to the applicant **in the**

proportion in which it has been paid through E cash ledger. If it was paid through ITC, it will be re-credited to ECeL through GST PMT 03.

5. If amount of refund is to be withheld, PO shall issue pass order in Part A of GST RFD 07, at the time of release he shall issue the release order in Part B of GST RFD 07 and **then he has to pass refund sanction order**
6. If erroneous refund has been granted to the regd. person. He shall deposit the amount of erroneous refund along with applicable interest and penalty, wherever applicable, through FORM GST DRC-03 E-cash ledger.
7. Proper officer shall re-credit an amount in electronic credit ledger by passing an order in FORM GST PMT-03A, preferably within a period of 30 days from
 - The date of receipt of request for re-credit of erroneous refund amount so deposited; or
 - The date of payment of full amount of erroneous refund along with applicable interest, and penalty, wherever applicable, whichever is later.

Step 5: Disbursement of Refund

1. The disbursement of refund does not take place through GST Portal, it takes place through PFMS Portal, i.e., Public Financial Management System.
2. The refund is paid to the bank account, details of which were furnished at the time of registration. Aadhar Authentication shall be done & all returns shall be filed before applying for refund.
3. In cases where refund is on account of export of GOODS on payment of tax, the shipping bill filed shall be deemed to be application & the details of exports are transmitted to ICEGATE Portal [Indian Customs EDI (Electronic Data Transfer) Gateway] [R. 96]
4. (Aadhar Authentication mandatory)
5. Export of service – Rule 89 to be followed
6. In case of exports to Bhutan, the refund is given to Bhutan government in order to increase imports of Indian products into Bhutan [R. 96(9)]
7. As per Section 56 of CGST Act, **if refund is not paid to applicant within 60 days of application**, the applicant shall be eligible to get **interest @ 6% p.a. from 61st Day from application of refund till date of grant of refund.**

The following periods shall not be included in the period of delay:

- (a) Any period of time beyond 15 days of receipt of notice in FORM GST RFD-08, 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 by the applicant for furnishing the correct details of the bank account or for validating the details of the bank account, where the amount of refund sanctioned could not be credited to the bank account furnished by the applicant.
8. If refund is not granted within 60 days of application consequent to order passed in an appeal or further proceedings, then interest shall be payable by government @ 9% p.a. from **61st Day from application of refund till date of grant of refund.**

Circulars

PROCEDURE & DOCUMENTATION IN RESPECT OF GOODS (SPECIFICALLY) SENT/TAKEN OUT OF INDIA FOR EXHIBITION OR ON CONSIGNMENT BASIS FOR EXPORT PROMOTION: (CIRCULAR NO. 108/27/2019-GST DATED 18TH JULY, 2019)

Aspect	Analysis
Supply	It is <u>not a supply</u> as in case of sale on approval basis transaction there is <u>no consideration</u>. Further it also <u>falls out of ambit of Schedule I</u>, accordingly it is <u>not a supply</u> under GST even if it is for without consideration. (Section 7 of CGST Act r/w Schedule I to CGST Act, 2017) Since it is <u>not a supply</u>, the question of zero-rated “supply” does not arise. Accordingly, it is not a zero-rated supply (it does not mean it is exempt supply). Accordingly, the goods can be <u>sent even without LUT</u> & question of refund does not arise at the time of sending goods.
Documentation (Tax Invoice & Delivery Challan) to be kept by taxable person.	Goods sent on approval shall be accompanied with <u>delivery challan</u> u/r 55 of CGST Rules, 2017. As per section 31(7) of CGST Act, 2017; if the goods are not returned within 6 months from date of removal, it shall be deemed to be supplied on expiry of 6 months. In such a case it would be treated as supply & tax invoice (R. 46) shall be raised on expiry of 6 months.
Accounts & Records	The registered person dealing in specified goods shall maintain a record such as Description, removal date, quantity, value, shipping bill No., details of goods not bought back etc.
Refund of Tax for goods sent out of India.	As the same is not a zero-rated supply, question of refund of tax does not arise. However, when it is treated as supply it would be a Zero – rated supply & refund of tax is permissible. It will be treated as supply: - (i) On the date of expiry of six months from the date of removal, if the specified goods are neither sold nor brought back within the said period; or (ii) On the date of sale, in respect of such quantity of specified goods which have been sold abroad within the specified period of six months. Even if goods are treated as supply in case (i) & (ii) as above, the refund u/s 89(4) can only be claimed in respect of (ii) only i.e., goods actually sold abroad. Further, it is important to note that question of “Export on payment of GST” does not arise in this case as, when goods were sent, they were not actually exported (unless accepted / time-limit expired).

Clarification in respect of Advances | Refund Voucher | GSTR 3B aspects [Circular No. 137/07/2020-GST]

Sr. No.	Issue	Clarification
1	CASE 1: An advance is received by a supplier for a Service contract which subsequently got cancelled. Tax Invoice has been issued prior to supply; however, supply did not take place. OR; CASE 2: 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 his tax liability in his returns?	The supplier is required to issue a "credit note" in terms 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.
2	An advance is received by a supplier for a Service contract which subsequently got cancelled. Receipt voucher has been issued at the time of receipt; however, supply did not take place, thus refund voucher was issued.	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".

Clarification on refund claims by unregistered person whose contracts are cancelled [Circular No. 188/20/2022-GST dated 27th December, 2022]

Particulars	Description
Section under which refund is allowed	The refund claim can be filed by the unregistered persons only in those cases where at the time of cancellation/termination of agreement/contract for supply of services, the time period for issuance of credit note under section 34 of the CGST Act has already expired and the tax incidence has not been passed.
Manner	The unregistered person has to take temporary registration and apply for refund under the 'Refund for Unregistered person.' Following shall also be done: ❖ Undergo Aadhaar authentication as per rule 10B of CGST rules, 2017 ❖ The applicant shall provide the details of the bank account which is in his name and has been obtained on his PAN.
Statements	Where the refund is claimed by an unregistered person where the agreement or contract for supply of service has been cancelled or terminated: - Rule 89(2) (ka): - <i>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.</i> Rule 89(2) (kb): - <i>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.</i> Further, it is to be noted that a certificate as above is not required to be furnished in cases where refund is claimed by an unregistered person who has borne the incidence of tax.
Time period for issuance of CN is not yet expired	Where the time period for issuance of credit note under section 34 of the CGST Act has not expired supplier shall reduce output tax liability and shall repay back to the unregistered buyer.

Particulars	Description
Relevant date for filing of refund	Date of issuance of letter of cancellation of the contract/ agreement for supply by the supplier will be considered as the date of receipt of the services by the applicant.
Minimum refund amount	No refund shall be claimed if the amount is less than one thousand rupees.
Officer's duties	❖ The proper officer shall process the refund claim filed by the unregistered person in a manner similar to other RFD-01 claims ❖ Scrutinize the application with respect to completeness and eligibility of the refund claim to his satisfaction and issue the refund sanction order in FORM GST RFD-06 ❖ Speaking order along with the refund sanction order in FORM GST RFD-06 shall be uploaded
Proportionate Refund	In cases where the amount paid back by the supplier to the unregistered person on cancellation/termination of agreement/contract for supply of services is less than amount paid by such unregistered person to the supplier, only the proportionate amount of tax involved in such amount paid back shall be refunded to the unregistered person.

> Chapter 14

Assessment and Audit

Assessment and audit ensure accuracy and compliance in GST filings.

Learning Objectives

- Understand the concept of assessment under GST, including self-assessment, provisional assessment, best judgment assessment, and summary assessment.
- Learn the procedures and timelines for filing returns, rectifying errors, and complying with provisional and final assessment orders.
- Gain clarity on the role and powers of the proper officer in scrutiny of returns, assessment of non-filers, and unregistered persons.
- Analyze how summary assessments can be initiated in cases of revenue risk, and how they can be withdrawn or challenged.
- Comprehend the process and purpose of departmental audits and special audits under Sections 65 and 66, including roles of tax authorities and nominated auditors.
- Explore the implications and timelines of audit outcomes, and how they may lead to further action under Sections 73 or 74 for recovery of unpaid or short-paid tax.

Backdrop of Assessment and Audit

In terms of Section 2(11) of the Act, “assessment” means determination of tax liability under this Act and includes self-assessment, re-assessment, provisional assessment, summary assessment and best judgement assessment. GST is a trust-based system, meaning thereby a registered person has the liberty to self-assesses its sales, purchases, output tax liability, input tax credit etc. in GSTR 3B (Summary return) / GST CMP 08 (Composition persons), GSTR 5 (Non-residents) and so on.

Incorrect Details identified by Taxpayer himself: - In terms of Section 39(9), if a registered person discovers any omission or incorrect particulars furnished in a return, he is required to rectify such omission or incorrect particulars in the return to be furnished for the tax period during which such omission or incorrect particulars as are noticed (on payment of due interest), unless the same is as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, or such rectification is time barred (i.e., after 30th November of succeeding financial year or the actual date of furnishing of relevant annual return whichever is earlier)

Proper officer assesses the liability of registered persons (also unregistered persons), by virtue of power contained in these sections [Section 61 to Section 64 read with CGST Rules]. Let us elaborate each section in its entirety.

Important Sections

1. Self-Assessment [Section 59 of CGST Act]
2. Provisional Assessment [Section 60 read with Rule 98]
3. Scrutiny of Returns [Section 61 read with Rule 99]
4. Assessment of non-filers of returns [Section 62]
5. Assessment of Unregistered persons [Section 63]
6. Summary Assessment in certain special cases [Section 64 read with Rule 100]

SELF ASSESSMENT [SECTION 59 OF CGST ACT]

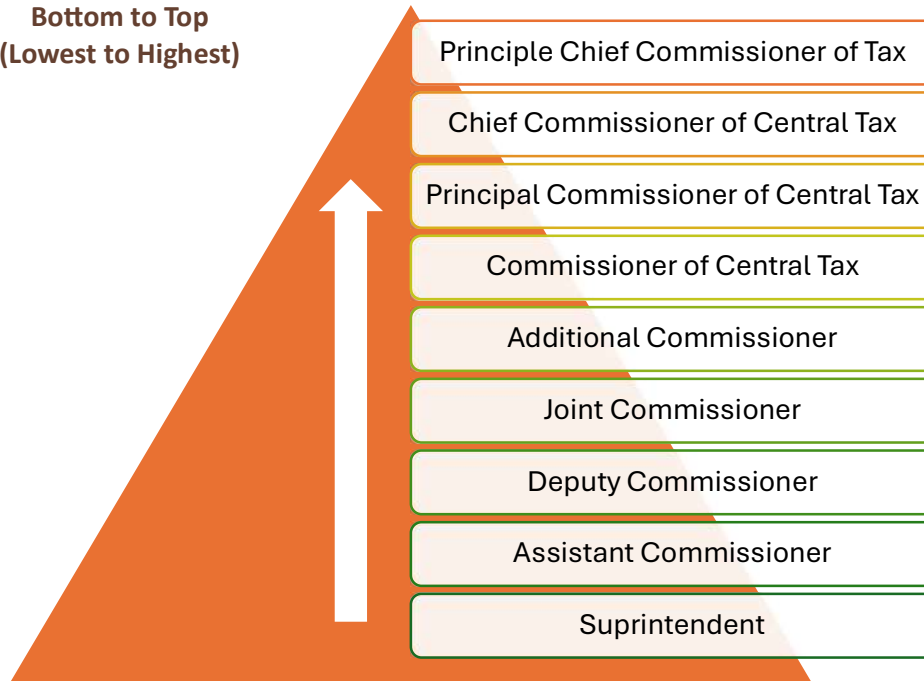
Every registered person shall self-assess the taxes payable under this Act and furnish a return for each tax period as specified under section 39.

Analysis:

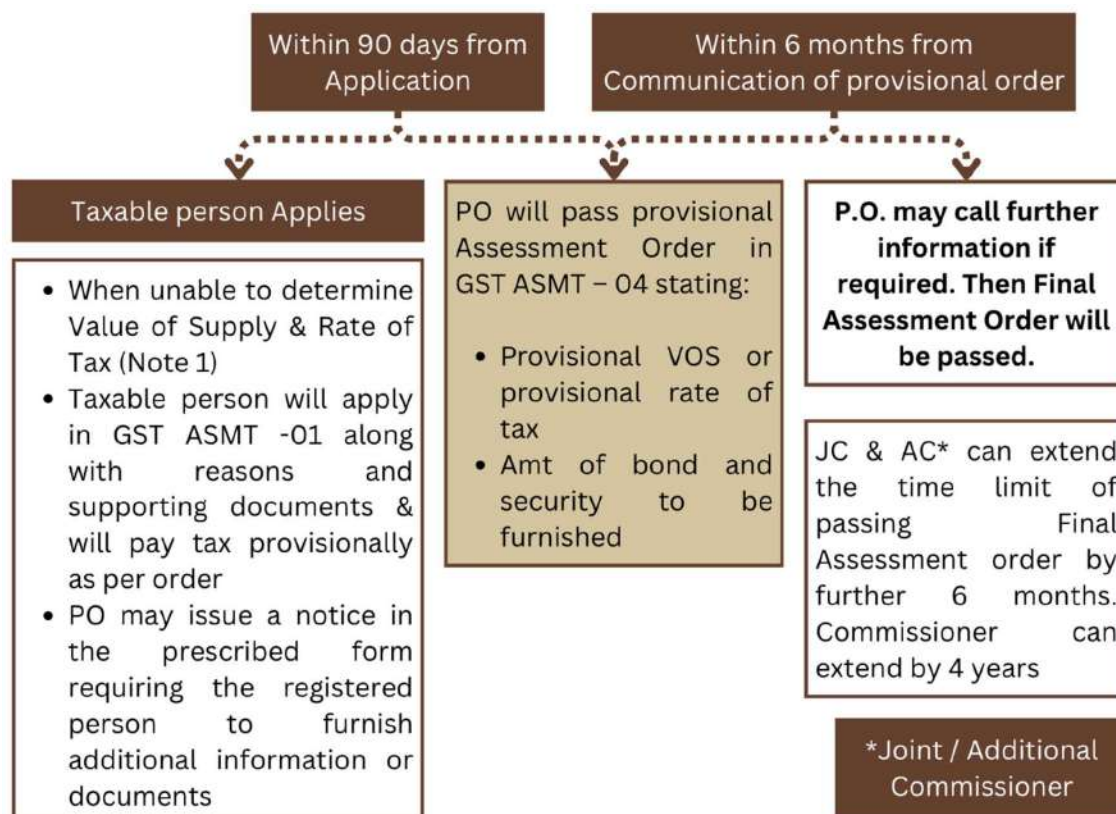
- (i) **Correction of errors & omissions:** As per section 39(9) rectification or omission or incorrect particulars in the return can be done upto 30th November of Succeeding financial year or the actual date of furnishing of relevant annual return, whichever is earlier.
- (ii) **Departmental Clarification**
GSTR 3B does not contain separate tables for amendment, thus amendment can be done in current month for past periods so long as the amount is not negative. In case of negative liability, refund can be claimed

Hierarchy of Officers

Bottom to Top
(Lowest to Highest)



PROVISIONAL ASSESSMENT & FINAL ASSESSMENT [SECTION 60 OF CGST ACT]



Interest Table (Interest on Tax Difference between provisional assessment & final Assessment Order)

Final Tax is: -	Interest Period		Rate of Interest p.a.
	From	To	
Payable by Assessee (i.e., Final Assmt Liab > Prov. Liab [S. 60(4) of CGST Act])	First day after the due date of payment of tax in respect of the said supply of goods or services	Date on which tax was actually paid	18% [S. 50(1)]
Refundable to Assessee [S. 60(5) of CGST Act] (i.e., Prov. Assmt Liab > Final Liab)	61 st Day from date of application for refund (not from final assessment order)	Date on which tax was actually refunded.	6% [S. 56]

Analysis:

1. **Payment of Tax under provisional assessment only allowed on Bond & BG:** Provisional order would indicate the amount of bond to be executed in Form GST ASMT – 05 by the applicant. The security has to be furnished in the form of bank guarantee not exceeding 25% of the bond 'amount' which shall include IGST, CGST, SGST or UTGST and cess (if any) payable in respect of the transaction. [**S. 60(2) of CGST Act r/w R. 98(3) & R. 98(4)**]
2. **Release of security on finalisation of assessment:** On conclusion of the **final assessment order (in GST ASMT 07)** the applicant can file an application under Rule 98(6) in FORM GST ASMT- 08 for release of security furnished. Security shall be released (by passing release order in GST ASMT - 09) within 7 working days from application date.
3. **Relevant Date for Refund Application:** Refund application shall be filed within 2 years **FROM finalization of provisional assessment** for claiming refund of difference between provisionally paid tax & final tax liability (i.e., final tax is lesser than provisionally paid tax).
4. **Final Assessment Order is Appealable** before appellate authority u/s 107.

SCRUTINY OF RETURNS [S. 61]

1. PO scrutinises the returns furnished to verify correctness of returns filed by regd. Person & informs the discrepancies if any by issuing notice u/r 99 of CGST Rules SEEKING EXPLANATION I.E., REPLY WITHIN 30 DAYS FROM SERVICE OF NOTICE [GST ASMT 10].
2. If explanations provided by taxable persons are not acceptable then PO may resort to
 - a) Audits u/s 65,
 - b) Direct for a special audit u/s 66 or,
 - c) Inspection, search & seizure proceedings, or,
 - d) Initiation of determination of tax & other dues u/s 73 or 74.
3. PO shall wherever possible, quantifying the amt of tax, interest & any other amt payable in relation to such discrepancy.

ASSESSMENT OF NON-FILERS [S. 62]

1. When a registered person does not file its returns u/s 39 of CGST Act or final return u/s 45 on cancellation of registration under section 45 of the CGST Act proper officer will issue a NOTICE to regd. Person u/s 46 of CGST Act requiring him to **file returns within 15 days of issuance of such notice**. (Notice u/s 46 will be issued when a person does not file return within 5 days from such due date.) (System Generated Message comes 3 d before due date)
2. If a person **does not file return even after 15 days from issuance of notice u/s 46**, then proper officer will **PASS ASSESSMENT ORDER u/s 62 of CGST Act, 2017** & may do best judgment assessment and issue a best judgment assmt. order
3. **BJAO shall be issued within 5 years** from due date filing of annual return (i.e. 31st December of succeeding FY) to which such non-filing/payment relates.
4. If, however, a registered person **furnishes a 'valid return' within 60 days of the service** (+60 days extension possible on payment of Rs. 100 per day late fee beyond first 60 days) of assessment order, **the said assessment order shall be deemed to be withdrawn**. (Interest u/s 50 and late fees u/s 47 would be levied for late Payment of tax)

ASSESSMENT OF UNREGISTERED PERSONS [S. 63]

Applicability: As per Section 63 of CGST Act, where a person who is liable to pay tax but has:

- ❖ Liable to obtain registration, fails to obtain registration, or
- ❖ Whose registration has been cancelled u/s 29(2)

Then, as per Rule 100 of CGST Rules, a notice (FORM GST ASMT-14) will be issued to defaulter seeking reply within 15 days.

Assessment order (FORM GST ASMT-15) shall be passed within 5 years from due date applicable for filing annual return for the financial year to which default relates. Opportunity of being heard shall be given before passing order. (Proviso 1 to section 63)

Analysis: Assessment order can be passed u/s 63 on account of cancellation by proper officer u/s 29(2). It would mean that, on one hand proper officer can cancel the registration and would take up the matter u/s 63

SUMMARY ASSESSMENT [S. 64]

Summary assessments can be initiated to protect the interest of revenue with the previous permission of Additional Commissioner/Joint Commissioner when:

- ❖ The proper officer has **evidence** (NOT JUST REASON TO BELIEVE) 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.

When a Taxable person is unascertainable then person in charge would be deemed to be taxable person (Proviso to section 64(1))

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, 74A**

AUDITS UNDER GST [S. 65 OF CGST ACT]

“Audit” **MEANS THE EXAMINATION OF RECORDS, RETURNS AND OTHER DOCUMENTS** maintained or furnished **BY THE REGISTERED PERSON** (thus, Audit cannot be of unregistered persons) under this Act or the rules to verify the correctness of turnover declared, taxes paid, refund claimed and input tax credit availed, and to assess his compliance. [S. 2(13) of CGST Act].

Particulars	Audit by Tax Authorities	Special Audits
Sections	S. 65 of CGST Act r/w R. 101 of CGST Rules	S. 66 of CGST Act r/w 102 of CGST Rules
Significance / Meaning of Audits	Conducted by department i.e. COMMISSIONER or any officer as authorised by him at such frequency as may be prescribed. The audit may be conducted at place of business of regd. Person	At any stage of scrutiny, investigation or enquiry, special audit may be ordered by officer NOT BELOW ASSISTANT COMMISSIONER, directing registered person to get his books audited by CA/CMA nominated by commissioner having regard to nature & complexity of case. <i>(Approval of Commissioner is need before directing special audit)</i>

Particulars	Audit by Tax Authorities	Special Audits
Who is the Auditor	Commissioner or any officer authorised by him	CA/CMA Nominated by Commissioner
Outcome	If Tax is found payable or erroneous refund being granted then, adjudication would be done u/s 73/74 of CGST Act	If Tax is found payable or erroneous refund being granted then, adjudication would be done u/s 73/74 of CGST Act
Time-limit to complete Audit	3 months from commencement of Audit (6 months extension possible) (15 days prior notice to be given to assessee) Commencement of Audit shall mean the ❖ Date on which the records and other documents, called for by the tax authorities, are made available or ❖ The actual institution of audit at the place of business, whichever is later.	90 days from commencement of Audit. (90 days extension is possible)
Other Points	❖ Findings of Audit, (after considering reply submitted by registered person), shall be informed to taxable person within 30 days of conclusion of audit. ❖ Where the Audit results into Tax not paid, or short paid, or erroneously refunded, officer may initiate action under section 73 or section 74, 74A (as the case may be)	❖ Expenses incurred for examination accounts & records shall be borne & paid by department. Commissioner (may not be Commissioner or Joint secretary in board) can decide expenses/remuneration ❖ Where the Audit results into Tax not paid, or short paid, or erroneously refunded, officer may initiate action under section 73 or section 74, 74A (as the case may be)

> Chapter 15

Inspection, Search and Seizure

GST inspection prevents tax evasion and ensures regulatory compliance.

Learning Objectives

- Understand the legal provisions and authorities under Sections 67 to 72 of the CGST Act regarding inspection, search, seizure, and arrest for protecting government revenue and ensuring compliance.
- Learn the circumstances and procedures under which inspection, search, and seizure can be initiated, including the requirement of “reason to believe” by officers of a specified rank.
- Distinguish between inspection (softer), search (evidence-finding), and seizure (forcible possession), and understand the rights of taxpayers during such proceedings.
- Analyze the powers and safeguards related to arrest under Section 69, including the classification of offences into cognizable and non-cognizable with related penalties and imprisonment.
- Gain knowledge of the procedures for issuing summons, accessing business premises, and the consequences of non-compliance under Section 70 and 71.
- Recognize the role and duty of other government officers (like police, customs, and revenue officials) to assist proper GST officers in enforcement actions as per Section 72.

Backdrop of Inspection, Search and Seizure

In any tax administration the provisions for Inspection, Search, Seizure and Arrest are provided to protect the interest of genuine tax payers (as the Tax evaders, by evading the tax, get an unfair advantage over the genuine tax payers) and as a deterrent for tax evasion. These provisions are also required to safeguard Government's legitimate dues. Thus, these provisions act as a deterrent and by checking evasion provide a level playing field to genuine taxpayers.

It may be mentioned that the options of Inspection, Search, Seizure and Arrest are exercised, only in exceptional circumstances and as a last resort, to protect the Government revenue.

Chapter XIV – Inspection, Search, Seizure and Arrest [Sections 67 to 72] of the CGST Act stipulates the provisions relating to inspection, search, seizure and arrest.

Important Sections

1. Power of inspection, search and seizure [Section 67]
2. Power to arrest [Section 69 read with Section 132]
3. Power to summon persons to give evidence and produce documents [Section 70]
4. Access to business premises [Section 71]
5. Officers to assist proper officers [Section 72]

INSPECTION [S. 67(1) OF CGST]

What is Inspection:

It is a softer provision than search which 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.

A proper officer **not below the rank of Joint Commissioner** (JC), may issue an authorisation to any other officer subordinate to him to carry out an inspection, if such proper officer 'has reasons to believe' that the

1. **Any TAXABLE person has:**
 - ❖ **Suppressed** any transaction relating to **supply of goods or services** or both or the stock of goods in hand or,
 - ❖ Has claimed excess credit,

- ❖ Contravened any provisions of act with an intent to evade taxes;
- 2. **ANY PERSON engaged in the business of transporting goods or an owner or operator of a warehouse** or a godown or any other place:
 - ❖ has kept 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

Analysis:

(i) **Meaning of reason to believe:**

- ❖ **“Reason to believe”** is to have knowledge of facts which, although not amounting to direct knowledge, would cause a reasonable person, knowing the same facts, to reasonably conclude the same thing.

(ii) Reason to believe is more than mere suspicion

SEARCH & SEIZURE [S. 67(2) to S. 67(12)]

“Search” - ‘Search’ involves an attempt to find something. Search, in tax/legal parlance, is an action of a government official (a tax officer or a police officer, depending on the case) to go and look through or examine carefully a place, person, object etc. in order to find something concealed or to discover evidence of a crime. The search can only be done under the proper and valid authority of law.

“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 physical custody (actual or constructive) of property by an officer under legal process. It means taking custody “forcibly” contrary to the wishes of the owner of the property. Not only inputs and capital goods may be seized but all offending property (movable and immovable), books and records, computer and database and everything that assists in the protection of Government revenue can be seized.

Search & Seizure: -

“Search” in plain language means **finding something concealed**. Whereas Seizure means taking possession of property **forcibly** by an officer under legal process.

A proper officer **not below the rank of JC**, may issue an authorisation to any other officer subordinate to him to (or may himself) search and seize any goods / documents / books / things which in his opinion would be useful for / relevant to proceedings under the GST Law, when he has reason to believe that: -

- ❖ Goods liable for confiscation are secreted.
- ❖ Books of accounts/ Documents liable to be seized are secreted. [S. 67(2)]

(Seized books of accounts/ documents shall be returned within 30 days of issue of notice for search only if not relied upon) [S. 67(3)]

Powers & Duties of Officer during Search / Seizure: -

1. PO can seize goods, books of accounts or documents. Goods can be detained if seizure is not possible (E.g. Heavy machinery) (PO shall prepare inventory of goods seized or detained) [S. 67(2) r/w 67(9)]
2. **Retained books** of accounts, **documents** or things **not relied** upon shall **be returned within 30 days** of issue of notice. If books are relied upon, they can be retained upto completion of inquiry or proceedings under Act. [S. 67(3) r/w 67(11)]
3. Proper officer shall have the **power to seal, break or open the door of any premises** or to break open any almirah, electronic devices, box where any goods or documents are suspected to be concealed. [S. 67(4)]
4. **Person** from whom books of accounts or documents are seized may **take photocopy or extract of such documents in presence of any authorized officer at a place and time indicated by the PO.**
5. **Provisional release of goods seized is possible** upon execution of **Bond** in Form GST INS -04 **for the value of the goods and furnishing of security in form of Bank Guarantee equal to amount of applicable tax (incl. SGST / UTGST / IGST / Cess) + Interest + Penalty.** [S. 67(6) r/w R. 140]
6. It shall be noted that goods released provisionally shall be mandatorily taken by person within 1 month, failing which PO has power to dispose-off the same (NN 27/2018 – CT dated 13th June, 2018)
7. **Surprise Checks by Authorised officer:** The Commissioner or an authorised officer may purchase any goods or services or both or 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. Money paid by officer shall be refunded
8. **Seized goods shall be returned if no notice** has been issued by PO **within 6 months** (or extended period of further 6 months) [S. 67(7)]
9. **Perishable / Hazardous** natured goods **can be disposed-off by PO after seizure.** However, if lower of tax amount or market value of such perishable goods is paid, then goods shall be released. [S. 67(8)]
10. **Applicability of Code of Criminal Procedure:** The provisions of Code of Criminal Procedure, 1973 relating to search and seizure shall be applicable to the GST Laws and in section 165(5) of the code of criminal procedure, the word “Magistrate” should be

read as “Commissioner”. Instead of sending copies of any record made in course of search to the nearest Magistrate empowered to take cognizance of the offence, it has to be sent to the Principal Commissioner/ Commissioner of Central Tax.

Code of Conduct for Search

- ❖ Search operations should only be conducted with the help of a search warrant.
- ❖ The searching squad must always include a lady officer.
- ❖ On arrival, the proper officers must identify themselves with an identity card.
- ❖ Before starting the search, signatures must be obtained from the people in-charge of the premise, as well as the signature of two witnesses.
- ❖ The two witnesses mentioned above must observe the search. The witnesses must belong to the locality. If none of the people in the locality agree to witness, the inhabitants of another locality must be brought in to witness. The Witnesses must be briefed on the purpose of the search.
- ❖ The officers in-charge of the search and witness must offer themselves to be personally searched both before and after the operation. Maintain register of records of search warrant
- ❖ Details of the search should be mentioned in what is called as a Panchama be signed by the witnesses, as well as the person in-charge of the premises.
- ❖ A Copy of the Panchama be given to the person in-charge of the premises.
- ❖ Search warrant must be returned to the officer who ordered the search, holds the responsibility of maintaining register of records of the search warrant.

Powers to Arrest [Section 69]

Arrest means “the taking into custody of a person under some lawful command or authority”. In other words, a person is said to be arrested when he is taken and restrained of his liberty by power or colour of lawful warrant. The arrests under GST Act can be made only under authorization from the Commissioner.

There are certain safeguards provided under section 69 for a person who is placed under arrest. These are:

- ❖ If a person is arrested for a cognizable offence, he must be informed in writing of the grounds of arrest and he must be produced before a magistrate within 24 hours of his arrest;
- ❖ If a person is arrested for a non-cognizable and bailable offence, the Deputy/ Assistant Commissioner can release him on bail and he will be subject to the same provisions as an officer in-charge of a police station under section 436 of the Code of Criminal Procedure, 1973;
- ❖ All arrest must be in accordance with the provisions of the Code of Criminal Procedure, 1973 relating to arrest.

Section 132 of the Act also prescribes which types of offences are cognizable and non-bailable and which types of offences are non-cognizable and bailable.

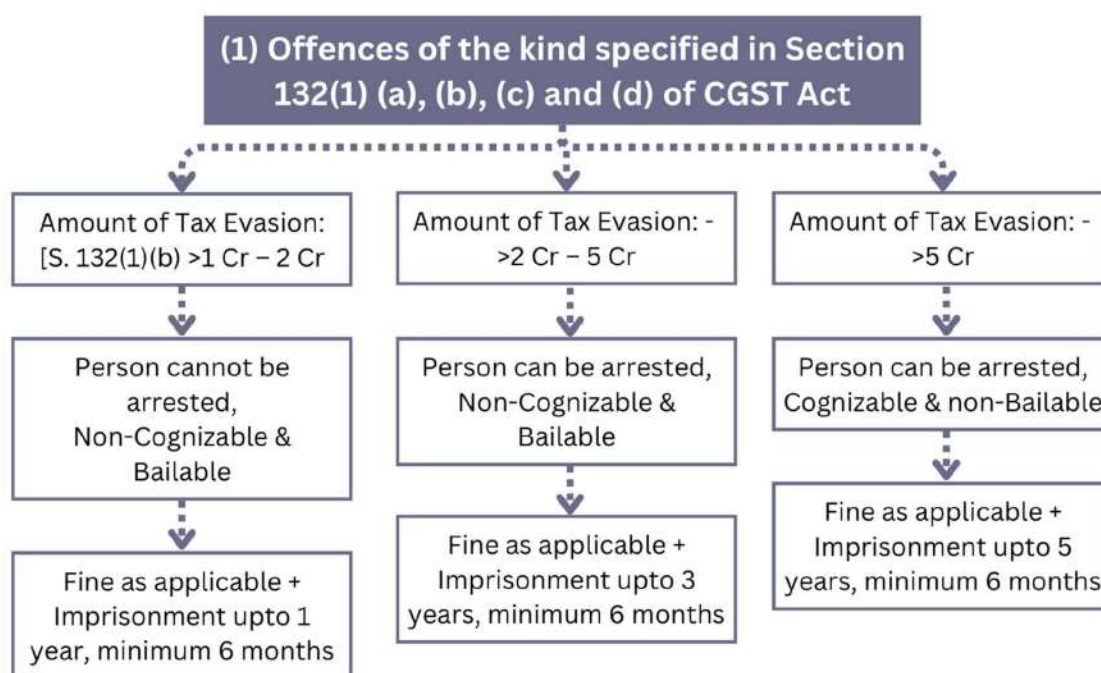
Meaning & Analysis of Cognizable Offences & Non-cognizable offences (NO OFFENCE TO ANYONE):

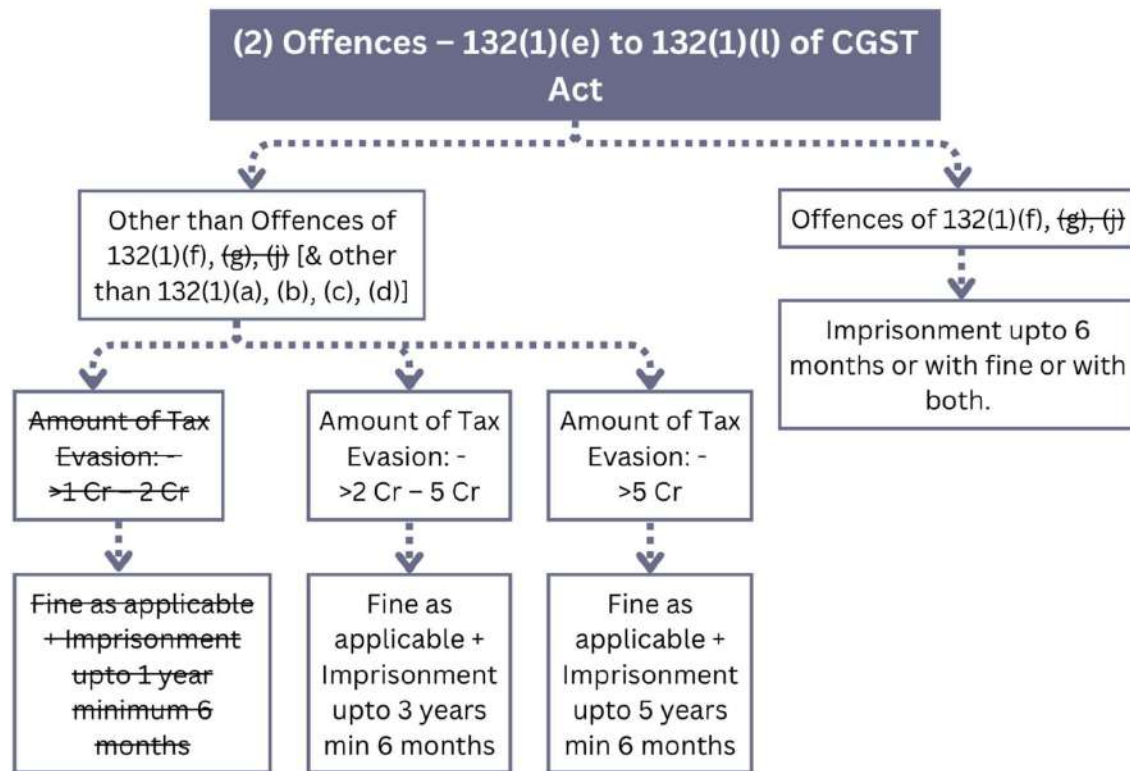
India has its own judiciary & law system, wherein there are 2 pillars i.e. Police & Courts. Further, there are some offences which are serious offences & some offences are less serious. Broadly speaking, serious offences are in the category of cognizable offences & less serious offences are non-cognizable offences.

Let me give you an example of it, if someone slaps you, the same as per IPC is a non-cognizable offence; however, if someone steals money from your pocket it is a cognizable offence. In case of cognizable offence, police have the power to arrest a person without asking court, however, in case of non-cognizable offences, police cannot do anything unless court asks it to do. Continuing same example, if someone slaps you and you go to police, please note that police have no power to arrest a person slapping. You have to move to court directly.

Similarly, in GST there are certain offences wherein police have the power to arrest a person (without courts' permission i.e. search warrant), such offences are called cognizable offences. GST Law has prescribed certain monetary limit of tax evasion which would be termed as Cognizable.

Further, Imprisonment may not mean that you have committed crime, police officer can imprison you just to ask some questions or interrogates to you. However, once you are arrested, then you are under a criminal charge. Thus, imprisonment can happen even without being arrested.





(2) Subsequent conviction for any offence under Section 132 [not just 132(1) (a), (b), (c) and (d)] he shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend to five years and with fine. (Without Any Monetary Limit)

As per Section 132(1) the person who commits, or CAUSES TO COMMIT AND RETAIN THE BENEFITS arising out of, any of the following offences shall be punishable: -

- (a) Supplies without issue of any invoice with the intention to evade tax;
- (b) Issues any invoice or bill without supply 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. [S. 132(1)(d)].
- (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) Deleted~~

- (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
- (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) Deleted~~
- ~~(k) Deleted~~
- (l) Attempts to commit, or abets the commission of any of the offences mentioned in clauses (a) to (k) of this section

POWER TO SUMMON [S. 70 OF CGST ACT]

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.

Analysis:

1. Recording statement on oath is not the conclusion of investigation but to further the investigation that the evidence or document obtained in summons proceedings will help in supporting charges against a person.
2. A person who is issued summon is legally bound to attend either in person or by an authorized representative.
3. The proceeding before the official who has issued summons is deemed to be a judicial proceeding. 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).
4. In case he gives false evidence, he can be prosecuted under section 193 of the IPC (discussed below). 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 Rs. 25,000 under section 122(3)(d) of the Act.

Authorized representatives can now appear on behalf of summoned persons to comply with summons issued by the proper officer.

ACCESS TO BUSINESS PREMISES [S. 71 OF CGST ACT]

During the course of any proceeding under this Act, the duly empowered officer can have access to any business premises, which may be required for the purpose of such enquiry. During such access, the officers can inspect the books of accounts, documents, computers, computer programs, computer software and such other things as may be required.

The following records are covered by this provision and are to be produced, if called for.

- (i) the records prepared and maintained by the registered person and declared to the proper officer in the prescribed manner.
- (ii) trial balance or its equivalent.
- (iii) statements of annual financial accounts, duly audited.
- (iv) cost audit report, if any.
- (v) the income - tax audit report, if any.
- (vi) any other relevant record.

Powers under section 71 may be contrasted with powers under section 67 to inspect premises. It may be noted that circumstances when each of these sections are applicable are not similar. Section 71 is more general in its scope and extent, whereas section 67 is applicable in specific instances and applies to specific persons/places.

It is the duty of person in charge of such premises to furnish the required documents within 15 working days from the day when such demand is made.

OFFICERS TO ASSIST PROPER OFFICERS [SECTION 72 OF CGST ACT]

The provision of section 72 of CGST Act, requires all officers of Police, Railways, Customs and those officers engaged in the collection of land revenue including village officers, third line - officers of State / UT / Central Govt engaged in collection of tax, officers of state and union territory tax to assist the proper officers in the implementation of this Act.

> Chapter 16

Demand and Recovery

Demand and recovery ensure collection of unpaid GST liabilities.

Learning Objectives

- Understand the framework of demand and recovery provisions under Sections 73 to 84 of the CGST Act, including the distinction between fraud and non-fraud cases.
- Learn the process of adjudication, from issuance of show cause notices (SCNs) to final orders, and the appeal hierarchy from adjudicating authorities up to the Supreme Court.
- Analyze the timelines, penalties, and interest applicable in demand scenarios, including the benefits of early payment and the concept of self-assessed tax.
- Gain clarity on the powers of recovery, including various modes like garnishee proceedings, sale of goods, and provisional attachment of property and bank accounts.
- Explore the provisions regarding payment of tax in installments, void transfers to evade tax liability, and the government's first charge on the property for unpaid taxes.
- Understand special provisions for misclassified tax payments (intra/inter-state), and the treatment of transactions involving fake invoices or fraudulent ITC claims.

Backdrop of Demand and Recovery

GST is a self-assessment-based system, taxpayers enjoy the liberty to assess the tax liability / refund and pay / claim the same. However, it has been observed that even if a taxpayer is a Bonafide one, he may encounter some mistakes while computing the tax liability or ascertaining the legal position on a specific transaction. Thus, there shall be room for GST officials to assess the tax liabilities [which is prescribed in provisions of assessment & audit], if the tax is payable or refund is erroneously given to the taxpayers, there is a power given to officer to raise demands with interest & penalty as may be applicable on taxpayers. However, before raising any demand, a show cause notice shall be issued to taxpayer to show cause as to why demand shall not be raised on taxpayer. A taxpayer shall file reply against such show cause notice and a personal hearing shall be carried out with proper officer, after this final adjudication order is passed by appropriate authority (proper officer issuing SCN & passing adjudication order are one and the same).

Chapter XV of the CGST Act 2017 [Sections 73 to 84] and Chapter XVIII [Rules 142 to 161] of the CGST Rules, 2017 contains various provisions relating to demands and recovery. There are parallel provisions in SGST laws of various States. The demand and recovery proceedings will be made either by Central GST Officer or State GST Officer depending on their jurisdiction over particular taxable person.

Learning about various Authorities under GST and their Roles

[1] Adjudicating Authority: -

As per section 2(4) of CGST Act, “Adjudicating authority” means any authority, appointed or authorised to pass any order or decision under this Act, but does not include the Central Board of Indirect Taxes and Customs, the Revisional Authority, the Authority for Advance Ruling, the Appellate Authority for Advance Ruling, the National Appellate Authority for Advance Ruling, the Appellate Authority, the Appellate Tribunal and the Authority referred to in sub-section (2) of section 171;

The following authorities are not permitted to pass any adjudication order or show cause notice under the GST laws: -

- The Central Board of Indirect Taxes and Customs
- Revisional Authority
- Authority for Advance Ruling
- Appellate Authority for Advance Ruling (State and National)
- Appellate Authority
- Appellate Tribunal

➤ Anti-Profiteering authority

Under the Act, the Revisional Authority, Appellate Authority and the Appellate Tribunal are empowered to pass/ issue order as they think fit, after affording the parties a reasonable opportunity of being heard. However, such powers to these authorities are limited to cases where an order has been passed by an authority of a lower rank, before it becomes a subject matter of revision/ appeal.

Please note that administrative circulars issued under section 168 will only apply to adjudicating authorities and authorities that are excluded from the scope of this definition will not be subject to those administrative circulars and are free to form their own opinion when matters that are already dealt with in those circulars, come up for consideration in any proceeding.

Adjudication authorities issue show cause notices & pass adjudication orders which is appealable at appellate authority levels.

Adjudicating Authority	Issuance of Show Cause Notice & Adjudication Order where	Revisional Authority for orders passed by Adjudicating Authorities in Column "A" [Refer Note (a)]
(A)	(B)	(C)
Joint Commissioner / Additional Commissioner	CGST tax evasion more than Rs. 1 crore IGST tax evasion more than Rs. 2 crores	Principal Commissioner or Commissioner of Central Tax
Deputy Commissioner / Assistant Commissioner	CGST tax evasion more than Rs. 10 lakhs upto 1 crore IGST tax evasion more than Rs. 20 lakhs upto 2 crores	Joint Commissioner / Additional Commissioner
Superintendent	CGST tax evasion upto Rs. 10 lakhs / IGST 20 lakhs	Deputy Commissioner / Assistant Commissioner

Notes:

(a) Revisional authority revises those orders passed by adjudicating authorities which in its view are prejudicial to the interest of revenue. There are few cases where revision of order is not possible which will be learnt in the chapter "Appeals & Revisions."

(b) In GST there are below authorities which are given powers: -

- **Adjudicating Authorities** (To issue SCN & pass orders)
- **Appellate Authorities** (First Appellate authority, GSTAT, HC, SC in sequential manner) for appeal against order of adjudicating authority

- **Revisional authority** (order of revisional authority is appealable at GSTAT not at First Appellate Authority)
- **Authority for Advance Ruling**
- **Appellate Authority for Advance Ruling** (Advance rulings pronounced by AAR are appealed by department or applicant at this level and not at Normal Appellate Authority level)

[2] Show Cause Notices

- (i) 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 cause as to why the specified amount of tax should not be demanded from him. The proper officer may, before serving of such SCN, communicate to said person, the details of any tax, interest and penalty as ascertained by him. If a person accepts the demand before issuance of show cause, then he can save penalty to certain extent. (Discussed in later part of chapter)
- (ii) The issuance of SCN grants an opportunity to such person to defend himself before adjudication. 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 confirm the tax demand or drop the same. That order is called as adjudication order or order in original.
- (iii) Such, OIO shall be appealed at appellate authority level, the order passed by appellate authority is called as order in appeal. If the order in original is prejudicial to the interest of revenue, revisional authority can revise such order or, department can file appeal against such order at appellate authority level.

SECTION 74A: DETERMINATION OF TAX LIABILITY

Introduction of Section 74A in the Finance Act, 2024, the system now incorporates a more comprehensive mechanism for handling tax scrutiny, demands and penalties for transactions and tax periods from the financial year (FY) 2024-25 onwards.

74A.

Notice on person chargeable to tax [Section 74A (1)]: Where it appears to the proper officer that any **tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised**, 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:

No Notice for Less than Rs. 1000 demand: 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 one thousand rupees.

Time Limit to issue Show cause notice [42 months] [Section 74A (2)]: The proper officer shall issue the notice under within *42 months from the due date for furnishing of annual return* for the financial year to which matter relates to or within *42 months from the date of erroneous refund*.

Statement for other periods [Section 74A (3)]: Where a notice has been issued for any period under sub-section (1), the proper officer may **serve a statement**, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods **other than those covered** under section 74(1), on the person chargeable with tax.

Statement deemed to be SCN [Section 74A (4)]: The service of such statement shall be deemed to be service of notice on such person under section 74(1), subject to the condition that the grounds relied upon for such tax periods other than those covered under section 74(1) are the same as are mentioned in the earlier notice.

Penalty Provisions in Section 74A [Section 74A (5)]

Penalties under Section 74A vary based on whether the tax discrepancy involves fraud or other reasons:

Non-Fraudulent Cases:

A penalty amounting to

- ❖ 10% of the tax due or
- ❖ Rs. 10,000,

whichever is higher will be imposed.

Fraudulent Cases:

The penalty equals the total tax due from the taxpayer.

Issuance of GST Orders [Section 74A (6) & (7)]

Subsection (6) talks about issuing order and subsection (7) talks about time limit to issue order.

The proper officer shall issue the order within 12 months from the date of issuance of notice. (Extension of 6 months is allowed)

Voluntary payment of tax to conclude proceedings [Section 74A (8) & (9)]:

(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, —

Case	Payment Stage	Payment Amount
Non-Fraudulent Cases	Before issuance of Show cause notice	Tax + Int [Penalty not to be paid]
	within 60 days of receipt of the notice	Tax + Int [Penalty not to be paid]
Fraudulent Cases	Before issuance of Show cause notice	Tax + Int + Penalty of 15% of Tax
	Within 60 days of receipt of the notice	Tax + Int + Penalty of 25% of Tax
	Within 60 days of receipt of the order	Tax + Int + Penalty of 50% of Tax

If the proper officer finds that the voluntary payment made by the taxpayer falls short of the actual liability, they may issue an SCN for the shortfall. This ensures that the total due amount is recovered in full. [S. 74A (10)]

Mandatory Payment of Penalty on Non-Payment of Self – Assessed Tax Liability [S. 74A (11)]:

Notwithstanding anything contained in sub-section (8),

A penalty amounting to

❖ 10% of the tax due or

❖ Rs. 10,000,

whichever is higher

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.

Other explanations:

- (i) The expression “**all proceedings in respect of the said notice**” shall not include proceedings under section 132;
- (ii) Where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under this section, the proceedings against **all the persons liable to pay penalty under sections 122 and 125 are deemed to be concluded.**
- (i) For the purposes of this Act, 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.

CIRCULAR ON CONVERSION OF NOTICE U/S 73/74

(This circular has no more relevance)

Issue		Clarification
Can notice issued u/s 74 be converted into section 73 notice		
How the amount shall be re-computed as per section 75(2)		
Case	SCN issued time	Impact
SCN issued u/s 74(1) converted into Section 73(1)	SCN was issued u/s Section 74(1) within 2 years 9 months from due date to file annual return	Amount can redetermined
SCN issued u/s 74(1) converted into Section 73(1)	SCN was issued u/s Section 74(1) beyond 2 years 9 months from due date to file annual return	Amount cannot be redetermined. Proceedings to be drop off.
SCN issued u/s 74(1) for multiple years together and then converted into S. 73(1)	SCN was issued for multiple years u/s Section 74(1). Some years were within 2 years 9 months and some were beyond 2 years 9 months.	Amount can redetermined only in respect of financial years wherein SCN was issued within 2 years 9 months.
Note: At first instance officer would feel that he is issuing SCN within time limit of 4 years 6 months, as this is the time limit to issue SCN u/s 74, but then it is converted into S. 73 case, thus, we are checking 2 years 9 months in all the cases		

GENERAL PROVISIONS FOR DETERMINATION OF TAX [SECTION 75 OF CGST ACT]

1. **Exclusion of stay period:** Period of Stay Shall be Excluded while computing period of completing Adjudication u/s 74A
2. **Conversion of notice from 74 to 73:** If Notice issued u/s 74 (fraud cases) is not sustainable on the ground that willful misstatement or suppression is not found, it can be converted into non-fraud case u/s 73 (Refer clarifications on next page issued by CBIC)

Where any Appellate Authority or Appellate Tribunal or court concludes that the penalty under 74A(5)(ii) (100% of tax) is not sustainable for the reason that the charges of fraud or any willful 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) (10% of tax or 10,000 whichever is higher).

3. **Time to pass order on direction of higher authority:** Order shall be issued within 2 years from the date of communication of the said direction if it is required to be issued in pursuance of the direction of the Appellate Authority or Appellate Tribunal or a court.
4. **Opportunity of being heard** shall be given where a request is made in writing from the person chargeable to tax or where adverse decision is contemplated against such person.
5. **Adjournment** for hearing can also be given on sufficient cause, but not more than 3 adjournments.
6. **Order cannot surpass SCN:** Amount of tax, interest and penalty demanded in the order shall not be in excess of what is specified in notice and no demand shall be confirmed on the grounds other than the grounds specified in the notice.
7. **Interest – Mandatory in nature:** Interest (NOT PENALTY) shall be payable even if not mentioned in SCN. In case of modification of tax by Appellate Authority/Tribunal/Court, penalty & interest shall stand modified accordingly.
8. **Deeming provision:** Proceedings deemed to be concluded if adjudication order is not passed w/i time-limit as specified in Section 73 (3 years) / 74 (5 years) of CGST Act.
9. **Exclusion in time limit to complete Adjudication:** An Issue on which decision is given prejudicial to the interest of revenue and appeal has been filed before higher authority, the period spent between date of decision of lower authority & date of decision of

higher authority shall be excluded for calculating time-limit to complete adjudication u/s 73 or 74.

Lower Authority	Higher Authority
Appellate Authority	Appellate Tribunal
Appellate Tribunal	High Court
High Court	Supreme Court

- 10. No penalty under diff section (if 73/74 invoked):** Where any penalty is imposed under section 73 or section 74, no penalty for the same act or omission shall be imposed on the same person under any other provision of this Act.

TAX COLLECTED BUT NOT PAID TO GOVERNMENT [S. 76 of CGST Act, 2017]

1. Every person who has collected from any other person any amount representing “tax under this Act,” shall pay the said amount **FORTHWITH to govt.** irrespective of whether supplies were taxable or exempt.
2. If the amount is not deposited then, notice may be issued by PO along with summary in Form GST DRC – 01 requiring to show cause & opportunity of being heard shall be given. (**NO TIME LIMIT TO ISSUE SCN UNDER THIS SEC**)
3. Final Speaking Order shall be passed by PO within 1 year from the date of issue of notice.
4. Tax shall be payable along with Interest u/s 50 from the date of collection till the date of deposit.
5. The person who has borne the incidence of the amount, may apply for the refund u/s 54.

WRONG TAX COLLECTED & PAID TO GOVT. [S. 77 of CGST Act, 2017]

- ❖ Refund of Wrong Tax paid i.e. CGST & SGST / UTGST is available (S. 54 of CGST Act)
- ❖ No Interest would be charged on late payment of IGST (S. 19 of IGST Act)
- ❖ Refund of Wrong Tax paid i.e. IGST is available (S. 20(xiii) of IGST Act r/w S. 54 of CGST Act)
- ❖ No Interest would be charged on late payment of CGST & SGST/UTGST (S. 77 of CGST Act)

(If intra-state supply is considered as inter-state supply and vice versa these provisions are applicable)

POWER OF RECOVERY & RECOVERY PROCEEDINGS [S. 78 & 79 OF CGST ACT, 2017]

Any amount payable by a taxable person in pursuance of an order passed under this Act shall be paid within 3 months from the date of service order otherwise, recovery proceedings shall be initiated.

However, If PO 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 period less than 3 months.

(Time period is 3 months to match with appeal filing time period)

MODES OF RECOVERY:

1. **Deduction out of any money owing to defaulter**
2. **Detaining and selling the goods belonging to defaulter under control of PO**
3. **Recovery from any other person who owes money to defaulter (Garnishee Proceedings)** – Garnishee is such a person from whom money is due to defaulter. Garnishee will be deemed to be discharged [S. 79(1)(c) of CGST]
4. **Collection by detention of any movable or immovable property** – Person shall pay dues within 30 days of distraint of property otherwise department will sell off the same & apply towards default in this order: - (1) Administrative Cost; (2) Recovery of Penalty, Interest & Tax Amount (3) Balance amount will be refunded to person.
5. **Recovery as arrears of Land Revenue**
6. **Recovery as fine imposed by Magistrate**
7. **Recovery through execution of a decree**
8. **Recovery through surety (for amount due by defaulter), Recovery from company in liquidation (i.e. recovery from liquidator)**

PAYMENT OF TAX IN INSTALMENTS [S. 80 OF CGST ACT, 2017]

This section permits a taxable person to make payment of an amount due (demand raised) on instalment basis (not exceeding 24 instalments). Commissioner has the power to grant permission to avail instalment payment scheme.

Non-Applicability of Instalments Payment in below cases: -

1. Self-assessed tax shown in Return (S. 80 of CGST Act)
2. Already a defaulter under GST Act or person against whom recovery proceedings are initiated. (R. 158 of CGST Rules)
3. Application for payment of tax has been rejected in PFY (R. 158 of CGST Rules)
4. Amount payable is less than Rs. 25,000/- (R. 158 of CGST Rules)

Notes:

- 1) The taxable person shall be liable to pay interest u/s 50 of CGST on the amount due from the first day such tax was due to be payable till the date tax is paid.
- 2) If default occurs in payment of any one instalment the taxable person would be required to pay the whole outstanding balance payable on such date of default itself without further notice.

TRANSFER OF PROPERTY SHALL BE VOID IN CERTAIN CIRCUMSTANCES [SECTION 81]

Where a person **AFTER any amount has been 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 **unless such transfer is made for adequate consideration, in good faith and without notice of pendency of such proceedings or without notice of such tax payable**

TAX TO BE FIRST CHARGE ON PROPERTY [SECTION 82]

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.

PROVISIONAL ATTACHEMENT [SECTION 83]

1. Where, after the initiation of any proceeding under Chapter XII (S. 59 to S. 64), Chapter XIV (S. 67 to S. 72) or Chapter XV (S. 73 to 84), 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 the taxable person or any person specified in section 122(1A), in such manner as may be prescribed (Section 115 of Finance Act, 2021 Notified vide NN 39/2021]
2. Provisional attachment shall cease to have effect after 1 year from date of provisional attachment order or on written instructions from commissioner whichever is earlier.
3. Objection can be filed within 7 days of attachment (R. 159(5) of CGST Rules)
4. Perishable / hazardous property shall be released forthwith if market price of such property or the amount that is or may become payable by the taxable person, whichever is lower is paid by taxable person. (R. 159(3) of CGST Rule)
5. Goods shall be disposed of if failed to make payment of specified amount.
6. Provisional attachment can also be done of property, debts & shares, property in custody of courts or Public Officer, interest in partnership

(Note - Provisional Attachment can be done during pendency of proceedings, however recovery proceedings can be initiated once demand is made)

CONTINUATION AND VALIDATION OF CERTAIN RECOVERY PROCEEDINGS [SECTION 84]

New notice for enhanced dues: Where notice of demand for dues is served upon a person and where appeal is filed against such order and dues are enhanced in appeal, revision, or other proceedings (**such as Insolvency Bankruptcy Code**) then proper officer shall serve another notice of demand in respect of such enhanced dues.

Enhanced dues continuation of proceedings as stood before appeal disposal: It is to be noted that the in respect of enhanced dues the proceedings may without of service of fresh notice of demand, be continued from the stage at which such proceedings stood immediately before such disposal.

Reduction of Dues: In case, where such Government dues are reduced in such appeal, revision or in other proceedings it shall not be necessary for the Commissioner to serve upon the taxable person a fresh notice of demand.

Intimation be given by Commissioner: The Commissioner shall give intimation of such reduction to him and to the appropriate authority with whom recovery proceedings is pending.

Continuation of proceedings for reduced dues: 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.

CIRCULAR ON CERTAIN ISSUES

Transaction	Penal consequences
"A" issued invoice on "B" without supply of goods	Since "A" has issued invoice without supply of goods/services, the same shall not be treated as "supply." Thus, no tax liability is arising for "A." Accordingly, ❖ No demand and recovery against 'A' under the provisions of S. 73, 74, 74A of CGST Act in respect of the same. ❖ No penal action under the provisions of section 73 or section 74, 74A is required to be taken against 'A' in respect of the said transaction. However, be liable for penal action under section 122 (1)(ii) of the CGST Act for issuing tax invoices without actual supply of goods or services or both.
"B" avails and utilises ITC passed on by "A"	❖ Since the registered person 'B' has availed and utilized fraudulent ITC on the basis of the said tax invoice, without receiving the goods or services or both, in contravention of the provisions of section 16(2)(b) of CGST Act, he shall be liable for the demand and recovery of the said ITC, along with penal action, under the provisions of section 74, 74A of the CGST Act with interest u/s 50. ❖ No penalty u/s 122 (as penalty can be levied in any one of the sections)
"B" avails and utilised ITC passed on by "A" and issues invoice on	❖ Since "B" availed incorrect ITC and has paid tax liability on a transaction which was not a "supply."

Transaction	Penal consequences
"C" without supply of goods.	❖ 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. ❖ "B" shall be liable for penal action both under section 122 (1) (ii) and section 122(1) (vii)

Any person who has retained the benefit of transactions specified under sub-section (1A) of section 122 of CGST Act, and at whose instance such transactions are conducted, shall also be liable for penal action

R. 142B: As per section 75 or as per rule 88C or 88D etc., any amount of tax or interest has become recoverable under section 79 and the same has remained unpaid; officer shall intimate said amount in DRC-01D (this would be deemed to be notice), directing the person in default to pay the said amount, along with applicable interest, or, as the case may be, the amount of interest, within seven days of the date of the said intimation and the said amount shall be posted in Part-II of Electronic Liability Register in FORM GST PMT-01. If this is unpaid, he can recover the amt.

> Chapter 17

Liability in Special Cases

Liability in special cases defines GST obligations in unique scenarios.

Learning Objectives

- Understand joint and several liability in cases like business transfer, agency relationships, and company liquidation.
- Learn the tax liability implications for legal heirs, guardians, trustees, and estate managers in case of death or incapacity of a taxpayer.
- Gain clarity on tax responsibilities of partners, directors, and members during events like retirement, dissolution, or reconstitution of entities.
- Analyze GST liability in corporate restructuring situations such as amalgamation or partition of HUFs or AOPs.
- Explore how tax dues are treated under the Insolvency and Bankruptcy Code when businesses face liquidation or winding up.

Backdrop of Liability in Special Cases

GST Law has provisions for special cases like transfer of business, where the transferee and transferor are both held liable to pay unpaid GST. These provisions come into force when there is an amount due under GST (tax, interest, penalty) which cannot be recovered from the taxpayer directly. Sections 85 to 94 of the CGST Act, 2017 deals with the liability to pay in certain cases.

LIABILITY IN VARIOUS CASES

Type of Liability	Person Responsible
1) Transfer of Business Transfer of business (in whole or in part) (e.g. Sale, Gift, Lease, Leave and license, Hire etc.) <i>Transfer of business as going concern is exempt (Unutilised credit can be transferred by filing GST ITC – 02) (S. 85 of CGST Act)</i>	<u>Liability arising prior to transfer (Liability relating to prior period): -</u> ❖ Both transferor and transferee will be jointly and severally* liable (even if amount determined after transfer) for payment of taxes, interest or penalty due upto the time of transfer of business. <u>Liability arising after transfer: -</u> ❖ Transferee shall be liable
2) Liability of agent & principal (S. 86 of CGST Act)	When agent receives or supplies taxable goods on behalf of his principal, such agent & principal shall be jointly & severally, be liable to pay tax on such goods.
3) Tax Liability on Inter - company sales made during the period of effective date of amalgamation & date of order (S. 87 of CGST Act)	As per section 87(1), if the goods or services are supplied BETWEEN SUCH AMALGAMATING COMPANIES , it shall be added in their respective turnovers and tax shall be discharged by respective entities. The amalgamating companies shall be treated as distinct companies for the period up to the date of the said order & the registration certificates of the said companies can cancel w.e.f. date of the said order.
4) Company in Liquidation (S. 88 of CGST Act)	❖ Receiver / liquidator to give intimation of his appointment to the Commissioner within 30 days of his appointment. ❖ Within 3 months from the date of such intimation, the Commissioner will notify the liquidator to set apart a sum of money that would be sufficient to discharge, in his opinion, the amount of tax, interest and penalty payable by the company. ❖ When a private company is not able to clear its dues, then every director at any time during the period, for which tax

Type of Liability	Person Responsible
	is due, would be liable jointly and severally to pay the dues. ❖ However, if any director proves to the satisfaction of the Commissioner that such non-recovery is not due to his gross neglect, misfeasance or breach of duty, the liability would not arise in the hands of such director.
5) Liability of directors of private companies (when unable to discharge tax, interest or penalty) (S. 89 of CGST Act)	❖ Director of such private company during such period will be liable to pay such dues. The liability of the Director will be relaxed only when he proves that such non-recovery of dues is not because of his gross negligence, misfeasance or breach of duty in relation to the affairs of the company. ❖ However, when a private company is converted to public company, then no such recovery of old dues can be made from the person(s) who were directors of the private limited company before such conversion. [Personal penalty imposed on such director would be levied]
6) Liability of Partners of firm (including LLP) to pay tax (S. 90 of CGST Act)	❖ Partners of the firm shall jointly and severally, be liable for such payment. <u>In case of retirement of partner</u> Intimation of retirement to be given to commissioner within one month of retirement. <u>If Intimation given within one month:</u> - Retiring partner shall be liable upto the date of his retirement <u>If Intimation not given within one month:</u> - Retiring partner shall be liable upto the date on which intimation is received by commissioner <u>In case of Dissolution of Firm (incl. LLP) (S. 93(3) of CGST Act)</u> Every person who was a partner upto the time of dissolution is jointly and severally liable to pay the tax, interest or penalty (whether determined or not till dissolution).
Meaning of Term Jointly & Severally: Joint & Several Liability means liability that may be apportioned either among two or more parties or to only a few select members of the group at the adversary's discretion. Thus, each liable party is individually responsible for the entire obligation, but a paying party may have a right of contribution and indemnity from non-paying parties. <i>For example - In case of transfer of business, wherein liability arose and determined before transfer, government can recover full amount from any of the parties i.e. Joint & Several (preferably transferor). Further, the transferor has the right to recover the same from transferee as per legal procedures laid down in Indian Contract Act.</i>	
7. Liability of Guardians, trustees or agents of a minor or any other incapacitated person (S. 91 of CGST Act)	If business has been carried on for minor or any other incapacitated person Guardian, trustee or agents of such persons shall be liable to pay tax, interest or penalty. Tax, interest or penalty shall be levied & recoverable in like manner and to the same extent as it would be determined &

Type of Liability	Person Responsible
	recoverable as if he were a major or capacitated & as if he were conducting the business himself.
8. Liability of Court of Ward (Administrator General, Official Trustee or any receiver or manager, who controls the estate) (S. 92 of CGST Act)	Any person whose business is controlled by Administrator general or Official trustee or Any receiver or manager shall be liable to pay tax, interest or penalty.
9. Liability in case of Death of Individual, Partition of HUF/AOP, Dissolution of Firm, Termination of Guardianship or Trusteeship (S. 93 of CGST Act r/w S. 53 of Insolvency Bankruptcy Code, 2016)	It is imperative to note that this Section is subject to IBC provision. In IBC, there is mention of specific order for payment in case of liquidation / winding up / dissolution of entity which goes as follows: - ❖ IBC Cost ❖ Workmen's Dues of 24 months ❖ Wages & employee dues of 12 months ❖ Unsecured debts ❖ Amount payable to CG/SG in respect of 2 years preceding liquidation / winding up / dissolution of entity. Attention shall be inclined towards last entry mentioned above; meaning thereby Tax, interest & penalty shall be payable in specific cases as per above order. 1) <u>Death of Proprietor (S. 93(1) of CGST Act): -</u> Business is continued: - Legal heir / any other person shall be fully liable Business is discontinued: - Legal heir liable to the extent of estate inherited The legal representative shall be liable to pay, out of estate of the deceased, to the extent to which estate is capable of meeting the charge. 2) <u>Partition of HUF or AOP (S. 93(2) of CGST Act):</u> 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 upto the time of the partition (whether determined or not till partition) 3) <u>Dissolution of firm (S. 93(3) of CGST Act): - Discussed in Point (6) above</u> 4) <u>Termination of Guardianship (S. 93(4) of CGST Act):</u> In case the guardian is carrying on the business on behalf of a ward or the trustee who carries the business under the trust on behalf of beneficiary, then on the termination of guardianship or trusteeship, the ward or the beneficiary is liable to pay tax, interest or penalty upto the time of such termination. (whether determined or not till partition)

Type of Liability	Person Responsible
10. Liability in other cases [Section 94]	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) Liability of Business on discontinuance / dissolution / partition: 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 (b) Liability of Partner / Member / other Person: 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 as if every such person or partner or member were himself a taxable person. (c) Change in Constitution: 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 jointly and severally, be liable to pay tax, interest or penalty due from such firm or association for any period before its reconstitution.

> Chapter 18

Advance Ruling

Advance Ruling provides clarity on GST applicability and compliance.

Learning Objectives

- Understand the concept and importance of advance ruling in providing clarity and certainty on tax matters before undertaking transactions.
- Identify the questions for which advance ruling can be sought, such as classification, tax liability, ITC admissibility, and registration requirements.
- Learn the procedural aspects including application, fees, timelines, hearing process, and binding nature of rulings on the applicant and concerned officers.
- Analyse the appellate process against AAR decisions, powers of AAAR, and the implications of differing member opinions.
- Recognise limitations such as inapplicability to cases already pending or decided, and conditions under which rulings become void or inapplicable due to changes in law or facts.

Backdrop of Advance Ruling

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 concerned 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 desirous to be registered (only such person). The advance ruling given by the Authority can be appealed before an Appellate authority for Advance Ruling (AAAR). There is time lines prescribed for passing an order by AAR and by AAAR.

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) by ensuring certainty in taxation aspects of transactions
- ❖ reduce litigation
- ❖ pronounce ruling expeditiously in a transparent and inexpensive manner

Chapter XVII – Advance Ruling [Sections 95 to 106] of the CGST Act stipulates the provisions relating to advance ruling. State GST laws also prescribe identical provisions in relation to advance ruling.

Important Points

- (i) **Applicability of Advance ruling:** The advance ruling is **binding on the applicant only & governmental authorities**, meaning thereby if an applicant has followed the advance ruling, then adjudicating authority cannot issue the order which is in contravention to the ruling pronounced by advance ruling authority.
- (ii) **Appeal by Proper officer:** If the view of advance ruling authority is **unacceptable by proper officer** (known as concerned officer or jurisdictional officer), **he shall file appeal before appellate authority for advance ruling (AAAR)**, not normal appellate authorities.

- (iii) **Deeming Fiction If Appeal Not filed:** If he fails to appeal, then it is deemed that in respect of said applicant, concerned / jurisdictional officer has accepted the ruling pronounced.
- (iv) **Applicant can File Appeal:** If an applicant is aggrieved with the advance ruling, then he can appeal before appellate authority for advance ruling (AAAR) not normal appellate authorities.
- (v) **Validity of Advance ruling:** Advance ruling will hold valid **till the law is unchanged**, once law is changed in respect to such matter, then the advance ruling shall not be applicable w.e.f. change in law.
- (vi) **Advance Ruling State Wise:** The AAR shall be located in each State/Union Territory. The Government shall appoint officers not below the rank of Joint Commissioner as member of the Authority for Advance Ruling. Thus, if a person has 2 units in 2 different states, then one advance ruling cannot be applied to both the state in which the assessee is registered. (Section 96)

IMPORTANT DEFINITIONS

1. Advance Ruling:

Advance ruling means a decision provided by the Authority (hereinafter AAR) or the Appellate Authority (AAAR) to an applicant on matters or on questions specified in section 97(2) of CGST Act or section 100(1) of CGST Act, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant; [Section 95(a)].

Analysis: Such matters or questions could be in relation to supply of goods and/or supply of services being undertaken or proposed to be undertaken by the applicant. The phrase “being undertaken” is a present continuous tense which refers to supply which is underway. It clearly demarks that, whenever a transaction is underway, the application for advance ruling can be submitted, however once the transaction of supply has been taken place, advance ruling cannot be sought for.

2. Appellate Authority

Appellate Authority means the Appellate Authority for Advance Ruling referred to in section 99. [Section 95(b)]

Analysis: In GST, there are 2 appellate authorities, first one is appellate authority which hears the appeals against adjudication authorities’ order. Another appellate authority is appellate authority for advance ruling, which hears the appeals against the orders passed by advance ruling authority.

3. Applicant

Applicant means any person registered or desirous of obtaining registration under this Act; [Section 95(c)]

Analysis: The word “applicant” refers to any person already registered or one who desires to get registered under the Act. It is not mandatory to have a registration at the time of making an application for advance ruling. However, in case of an unregistered person it is mandatory to quote his PAN unless he is a non-resident. The term ‘Person’ has been defined in section 2(84) of the Act.

Advance Ruling can be sought for the following questions:

Question No.	Question
1	Classification of any goods or services or both
	Analysis: ❖ Classification of goods or services is a very relevant question as time of supply, place of supply etc. depends upon whether the activity is supply of goods or services. ❖ It is also relevant when for determining rate of tax in case of composite supply & mixed supply. In case of composite supply, if the principal supply is of services, the rate of tax of such services shall be applicable.
2	Applicability of a notification issued under the provisions of CGST Act
	Analysis: ❖ It is very relevant to note that, only question in relation to applicability of “notification” (not circular) shall be asked before advance ruling authority. A Circular is issued by the Board or Head of the department clarifying, explaining, or interpreting certain provisions. Usually, Circular are binding on the departmental officers. They have to act based on the circulars. But they are not binding on tax payer.
3	Determination of time and value of supply of goods or services or both
	Analysis: ❖ The questions relating to place of supply cannot be asked to advance ruling authority, however, when a question of place of supply is not asked, it is impossible to ask the question of “determination of liability to pay tax on goods”. Determination of liability depends upon place of supply. One may refer the High Court decision of Sutherland Mortgage Services INC vs. Principal Commissioner, wherein it is held that, advance ruling authority can decide place of supply matters as it has to determine liability to pay tax on any supply. ❖ For exam purpose, for POS issue, advance ruling cannot be sought for.
4	Admissibility of input tax credit of tax paid or deemed to have been paid
5	Determination of the liability to pay tax on any goods or services or both [Read point (c)]
6	Whether applicant is required to be registered
7	Whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.
IMPORTANT NOTE: In respect of, Question which are already pending in any proceedings in the case of applicant & Question already decided in any proceedings in the case of an applicant, advance ruling cannot be sought. The application for advance ruling will be rejected in this case.	

PROCEDURE FOR APPLICATION TO ADVANCE RULING AUTHORITY (AAR) [S. 98]

Particulars	Provision
1. Fees for Application	Fees for applying for seeking advance ruling shall be Rs. 10,000/- <i>[Rs. 5,000/- as per CGST Act, Rs. 5,000/- as per SGST Act]</i>
2. Application shall be forwarded to officer - to check whether proceedings are pending or completed	❖ AAR shall send a copy of application to the concerned officer and call for all relevant records from the concerned officer. ❖ If question raised in application is decided or pending before any authority then Application will be rejected.
3. Speaking order	Speaking order shall be passed on rejection.
4. Time limit to pronounce the ruling by AAR	If the application is admitted, AAR shall pronounce its ruling within 90 days of receipt of application <i>(Before giving the ruling, AAR must hear the applicant/his authorised representative/ jurisdictional officer)</i>
5. Difference of Opinion	If there is a difference of opinion between the two members of AAR, they shall refer the point or points on which they differ to the AAAR for hearing the issue. If the members of AAAR are also unable to come to a common conclusion in regard to the point(s) referred to them by AAR, then it shall be deemed that no advance ruling can be given in respect of the question on which difference persists at the level of AAAR.
6. Final Copy of Advance Ruling	A copy of the advance ruling duly signed by members and certified in prescribed manner shall be sent to the applicant, the concerned officer and the jurisdictional officer.

Other Aspects:

1. **Rectification of Mistake:** The law gives power to AAR and AAAR to amend their order to rectify any mistake apparent from the record within a period of 6 months from the date of the order. If a rectification has the effect of enhancing the tax liability or reducing the quantum of input tax credit, the applicant must be heard before the order is passed. [Section 102]
2. **Binding only on Taxable person who has applied for it:** An advance ruling pronounced by AAR or AAAR shall be binding only on the applicant and on the concerned officer or the jurisdictional officer in respect of the applicant. This clearly means that an advance ruling is not applicable to similarly placed other taxable persons in the State.
3. Advance ruling shall be **binding till** the period when the **law, facts or circumstances** supporting the original advance ruling **have not changed**
4. **Advance ruling shall be void-ab-initio in below when it is found that** it is obtained by fraud or suppression of material facts or misrepresentation of facts. Order declaring it void shall be passed after hearing assessee [S. 104].

5. Speaking **Order shall state the reasons for rejection & opportunity of being heard** shall be given before passing such order. A copy of the order so made shall be sent to the applicant, the concerned officers and the jurisdictional officer.
6. AAR to examine the application along with the records called for & after hearing the applicant or his authorized representative will pass an order either admitting or rejecting the application.

APPEAL AGAINST ORDERS OF AAR BEFORE APPELLATE AUTHORITY FOR ADVANCE RULING [S. 99, 100 & 101]

Particulars	Provision
1. Who can file appeal, time-limit and fees AAAR: Appellate Authority for Advance Ruling	Appeal by Applicant: If the applicant is aggrieved with AAR, he can file an appeal before AAAR within 30 days (+30 days condonation possible on sufficient cause) from the date on which the AAR has communicated its ruling , with fees of Rs. 20,000/- (Rs. 10,000 CGST; Rs. 10,000 SGST). Appeal by CGST / SGST officer: Similarly, if the concerned or jurisdictional officer of CGST/SGST does not agree with the finding of AAR, he can also file an appeal with AAAR 30 days (+30 days condonation possible on sufficient cause) . No fees required to be paid for filing appeal by officers.
2. Concerned Officer & Jurisdictional officer	In normal circumstances, the concerned officer will be the officer in whose jurisdiction the applicant is located. Thus, it can be seen that a decision of the Appellate authority is also treated as an advance ruling. Further when the concerned officer is transferred to another jurisdiction, the AAR will be still applicable on the new officer of same jurisdiction (Jurisdictional Officer)
3. Time-limit with AAAR to dispose appeal	The Appellate Authority must pass an order after hearing the parties to the appeal within a period of 90 days of the filing of an appeal.
4. AAAR members differ on certain point - No AR be pronounced	If members of AAAR differ on any point referred to in appeal, it shall be deemed that no advance ruling is issued in respect of the question under appeal. The said authority can either confirm or modify the ruling appealed against or referred to by the AAR in case of difference of opinion.
5. Final Copy of Advance Ruling of Appellate Authority	A copy of the advance ruling pronounced by the Appellate Authority should be signed by the members, certified in the prescribed manner, and communicated to the applicant, the concerned officer, the jurisdictional officers and to the Authority.

> Chapter 19

Appeal and Revision

Appeal and revision provide dispute resolution under GST law.

Learning Objectives

- Understand the hierarchical structure of appeals under GST—starting from the Appellate Authority to GSTAT, High Court, and Supreme Court—and the time limits, procedures, and pre-deposit requirements at each level.
- Learn the role and powers of the Revisional Authority to revise erroneous or prejudicial orders, along with the conditions and limitations for revision.
- Identify the types of orders that are non-appealable and the monetary limits fixed for the department to decide whether to file an appeal.
- Analyze procedural requirements for filing, withdrawing, or rectifying appeals, including specific forms, documentation, and provisions for additional evidence.
- Understand the role and qualifications of authorized representatives in appeal proceedings and their disqualifications.
- Gain clarity on recent updates, including changes in pre-deposit limits, handling of anti-profiteering cases, and special appeal conditions beyond monetary thresholds.

Backdrop of Appeal and Revision

Tax laws impose various obligations on taxpayers. Such obligations are broadly of two kinds: levy-related (e.g. scope of levy, taxable value, tax rate etc.) and procedure-related (e.g., obtaining registration, filing of returns, manner of depositing tax etc.). The taxpayer's compliance with these obligations is verified by tax authorities (by exercising various powers such as undertaking scrutiny, audit, anti-evasion proceedings, etc.). As a result of which, sometimes there are situations of actual or perceived non-compliances. If the difference in the views persists, it results into a dispute, which is then required to be resolved.

Under tax laws, on any given set of facts and legal provisions there can be different opinions or viewpoints. Hence, it is likely that the taxpayer may not agree with the "adjudication order" passed by a tax authority. It is equally possible that the Tax Department may itself not agree with the adjudication order. It is for this reason that the tax statutes provide for an appellate mechanism to both the sides. In legal parlance, appeal is a timely resort for review by a higher authority, where parties request a formal change to an official decision.

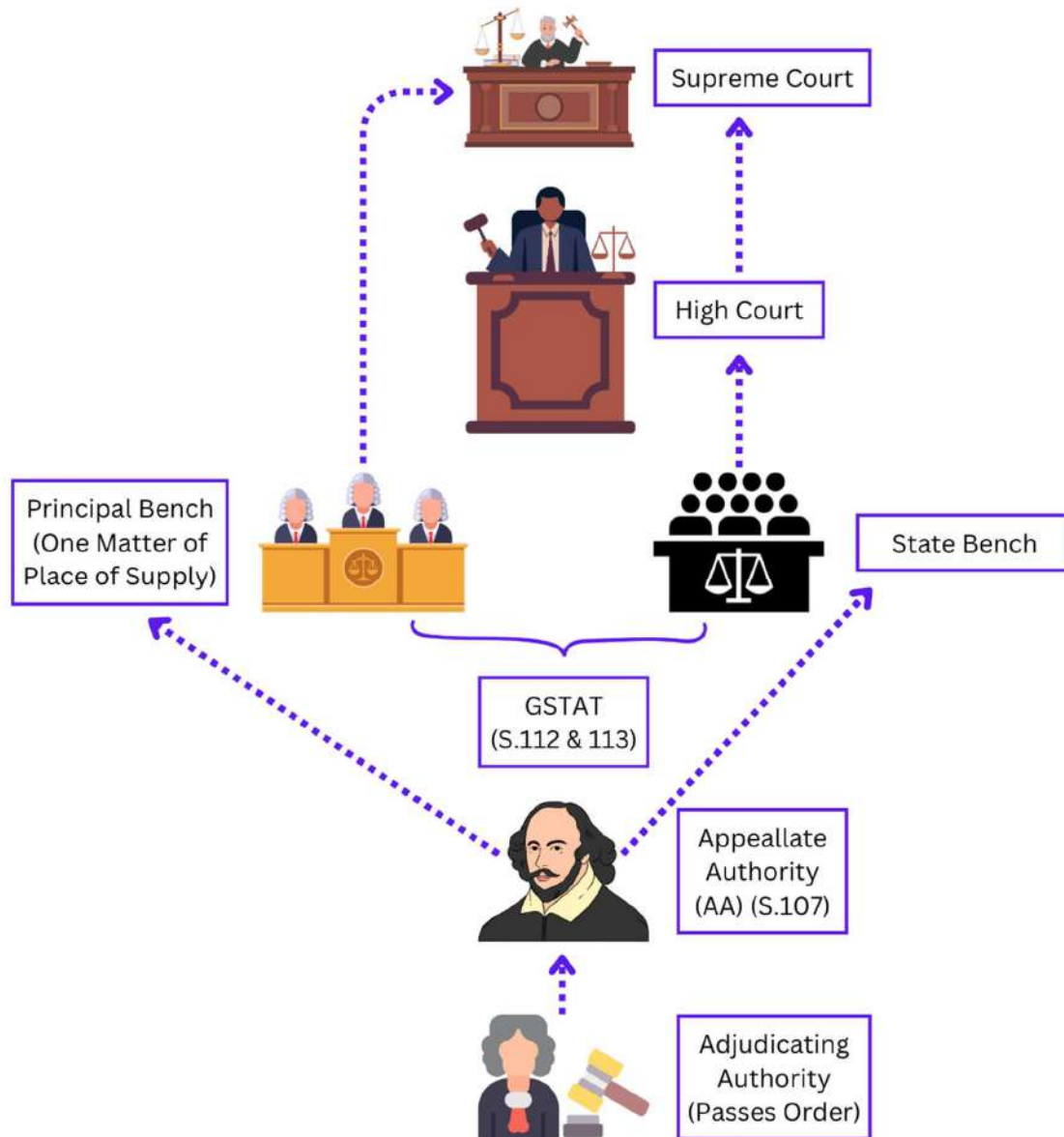
Powers of Cross Empowerment: GST law makes provisions for cross empowerment between CGST and SGST/UTGST officers to ensure that a proper officer under the CGST Act is also treated as the proper officer under the SGST/UTGST Act and vice versa. Thus, a proper officer can issue orders with respect to both, the CGST as well as the SGST/UTGST laws. GST law 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 (CGST Act). Accordingly, if any order is passed by the proper officer under, say Haryana SGST Act, any appeal/review/revision/rectification against the said order will lie only with the proper officer under the Haryana SGST Act.

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 provisions.

ANALYSIS OF ORDERS AND SCNS AMONG VARIOUS SECTIONS

Section	Start of Proceeding	Order section	Aggrieved person
Section 61	Notice in case of discrepancy (Start of proceedings)	If a person does not provide reply or reply is not satisfactory then Assessment order is passed u/s 73/74/74A (Outcome of proceedings)	Generally Aggrieved person is assessee. However, Department (Commissioner) can also be aggrieved person if adjudicating authority passes an order in favour of assessee after satisfying themselves with reply furnished.
Section 62	Notice u/s 46 (Start of proceedings)	Non-compliance leads to passing of Best Judgement Assessment order u/s 62 (Outcome of proceedings)	Aggrieved person - Assessee
Section 63	Opportunity of being heard (Start of proceedings)	Best Judgment Assessment order u/s 63 (Outcome of proceedings)	Aggrieved person – Assessee
Section 64	Summary Assessment (Start of proceedings)	Assessment order is passed u/s 64 (Outcome of proceedings)	Aggrieved person - Assessee
Section 65	Audit by Tax Authorities	In case of audit findings not accepted / liability not paid by assessee, SCN shall be issued u/s 73/74/74A, order shall be passed u/s 73/74/74A after considering reply.	Generally Aggrieved person is assessee. However, Department (Commissioner) can also be aggrieved person if adjudicating authority passes an order in favour of assessee after satisfying themselves with reply furnished.
Section 66	Special Audit	In case of audit findings not accepted / liability	Generally Aggrieved person is assessee. However, Department (Commissioner) can also be

Section	Start of Proceeding	Order section	Aggrieved person
		not paid by assessee, SCN shall be issued u/s 73/74/74A, order shall be passed u/s 73/74/74A after considering reply.	aggrieved person if adjudicating authority passes an order in favour of assessee after satisfying themselves with reply furnished.
Section 67	Inspection, search & seizure	If any demand is to be made SCN shall be issued u/s 73/74/74A, order shall be passed u/s 73/74/74A after considering reply.	Generally Aggrieved person is assessee. However, Department (Commissioner) can also be aggrieved person if adjudicating authority passes an order in favour of assessee after satisfying themselves with reply furnished.
Section 68, 129, 130	E - way Bill, Detention & confiscation	Officer who has intercepted vehicle has to pass an order in form MOV - 11 which is an order of confiscation of goods and conveyance and demand of tax, fine and penalty	Generally Aggrieved person is assessee. However, Department (Commissioner) can also be aggrieved person if adjudicating authority passes an order in favour of assessee after satisfying themselves with reply furnished.
Section 73, 74	Tax not paid/short paid/ ITC excess claimed/refund erroneously claimed	In above cases, and previous sections viz. 61, 65, 66, 67; the assessment order is issued u/s 73 (non-fraud cases), or u/s 74, 74A (Fraud cases)	Generally Aggrieved person is assessee. However, Department (Commissioner) can also be aggrieved person if adjudicating authority passes an order in favour of assessee after satisfying themselves with reply furnished.



IMPORTANT ASPECTS TO BE NOTED FOR APPEAL BY ASSESSEE

1. If Assessee is aggrieved person, then he can follow appeal procedure as per this hierarchy. The orders as per above table shall be first appealed at appellate authority, thereafter if he is still an aggrieved person, he can knock the door of higher appellate forum.
2. GSTAT is final fact-finding authority. However, if appeal involves substantial question of law, then it can be appealed before high court (against orders of SB - GSTAT). It can be further appealed at SC if HC certifies.

3. Matters of Place of supply are appealed before Principal Bench of GSTAT. The orders of PB are appealable before Supreme court (not high court) as high courts are having state jurisdiction thus may be biased w.r.t. POS issue.
4. Appeal shall be filed in specific form with pre-deposit. Pre-deposit can be paid by debiting Electronic Credit Ledger. (Some high courts have opined to pay through cash ledger). Pre-deposit is not required for appeal against denial of refunds.
5. Pre-deposit is kept to restrict frivolous appeal.
6. Adjudicating Authorities are executive organ of Indian Judiciary, whereas appellate forums including courts and tribunals are judiciary organ of Indian Law. Thus, adjudicating authorities and appellate authorities are altogether different.

IMPORTANT ASPECTS TO BE NOTED FOR APPEAL BY DEPARTMENT

1. If department is not agreeing with the order passed by adjudicating authority, then it can file review application (treated as appeal) as per hierarchy.
2. The time-limit to file appeal by department is 6 months. However, if department fails to file appeal, one more remedy is available with them i.e., revising the order passed by adjudicating authority. The authority is named as "REVISIONAL AUTHORITY". RA can revise order only after 6 months and before 3 years have not passed
3. Revisional Authority (RA) is basically the next rank of appropriate adjudicating authority. RA empowered to revise the orders passed by subordinate if it is prejudicial to the interest of revenue and have been passed without considering facts.
4. THE ORDERS OF REVISIONAL AUTHORITY ARE DIRECTLY APPEALABLE AT GSTAT (NOT AT APPELLATE AUTHORITY]
(Since RA have the ranking equal to Appellate Authority (although different authorities), the orders passed by RA, are directly appealable at GSTAT.)
5. No pre-deposit if department wants to file appeal. (to be discussed in detail)

APPEAL BEFORE APPELLATE AUTHORITY

Sr. No.	Particulars	Appeal before Appellate Authority [S. 107]
1	Orders appealable (i.e., orders against which appeal can be filed)	Aggrieved persons from orders of Adjudicating Authority (Department can also file appeal , i.e., The Commissioner may, on his own motion, or upon request from the SGST/UTGST Commissioner, examine the record of any proceedings in which an adjudicating authority has passed any decision/order under the CGST Act or SGST Act/UTGST Act to satisfy himself about the legality or propriety of such decision/order)
2	Time Limit to file appeal by ASSESSEE	3 months (+1-month condonation) from communication of order passed by adj. authority (Provisional acknowledgement is issued immediately. The date of issue of provisional acknowledgement shall be considered as the date of filing of appeal.)
3	Time Limit to file appeal by DEPARTMENT	6 months (+1-month condonation) from the date of communication order passed by adj. authority
4	Form in which appeal is to be filed	By Assessee: GST APL - 01 By Department: GST APL 03 <i>Acknowledgment would be received in GST APL - 02</i>
5	Pre-deposit to be paid Notes on pre-deposits: ❖ There is no requirement of pre-deposit at any stage if the appeal is for the purpose of refund eligibility. ❖ As per section 115 (Period), if the decision is ordered in favour of assessee, he shall get refund of pre-deposit paid along with interest @ 9% p.a. (Section 56) from date of payment of pre-	PRE-DEPOSIT WHEN APPEAL IS FILED BY TAXPAYER [S. 107(6)]: (a) 100% of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and (b) 10% of the DISPUTED AMOUNT OF TAX (NOT DISPUTED INTEREST & PENALTY) subject to Rs. 20 crores CGST & Rs. 20 crores SGST, IGST - Rs. 40 cr. (Note: Only (b) is subject to upper cap) No pre-deposit to be paid where appeal is filed by dept. Appeal shall be filed against an order under section 129(3) on payment of Pre-deposit of 25% of Penalty paid by appellant. (Inserted vide Section 116 of FA, 2021 notified by NN 39/2021) (On pmt. Of pre-deposit recovery proceedings are stayed)

Sr. No.	Particulars	Appeal before Appellate Authority [S. 107]
	deposit till the date of grant of refund.	
6	ADVISORY Time-limit to dispose appeal	TIMELIMIT - Within 1 year from date of filing of appeal, appellate authority shall pass a speaking order [107(13)]
7	Other points	❖ AA can allow on sufficient cause to add ground of appeal not specified in appeal ❖ AA cannot remand case back to Adjudicating Authority ❖ Cannot give more than 3 adjournments ❖ AA can rectify mistake apparent from record u/s 161 within 3 months from date of order ❖ SCN u/s 73 /7474A to be given for enhancing tax liability of appellant [S. 107(11)] ❖ Appellant can file application for withdrawal of the said appeal by filing an application in Form APL-01/03W. (if ack. is issued withdrawal is subject to approval by authority within 7 days of filing)

APPEAL BEFORE GST APPELLATE TRIBUNAL

Sr. No.	Particulars	Appeal before Appellate Tribunal i.e., GSTAT [S. 112, 113]
1	Orders appealable (<i>i.e., orders against which appeal can be filed</i>)	Aggrieved person from: (i) Orders passed by Appellate Authority. ❖ Having Place of Supply issue: Appeal to be filed before Principal Benches ❖ Other than place of Supply issue: Appeal to be filed before State Bench Orders by revisional Authority
2	Time Limit to file appeal by ASSESSEE	3 months <i>(+3 months condonation on sufficient cause)</i> from date of communication of decision or order passed by appellate authority or revisional authority [S. 112(1), (6)]
3	Time Limit to file appeal by DEPARTMENT	6 months <i>(+3 months condonation on sufficient cause)</i> from the date of communication of decision or order passed by appellate authority/RA [S. 112(3), (6)]
4	Form in which appeal is to be filed	By Assessee: GST APL – 05 By Department: GST APL - 07

		Memorandum of cross objection shall be filed by respondent within 45 days of the receipt of notice that appeal has been preferred (45 days extension is possible on sufficient cause) [MoCO shall be treated as appeal filed by respondent] [S. 112(5)]
5	Pre-deposit to be paid Notes on pre-deposits: ❖ There is no requirement of pre-deposit at any stage if the appeal is for the purpose of refund eligibility. ❖ As per section 115 (Period), if the decision is ordered in favour of assessee, he shall get refund of pre-deposit paid along with interest @ 9% p.a. (Section 56) from date of payment of pre-deposit till the date of grant of refund.	Fees for filing of appeal or restoration of appeal shall be Rs. 1,000 for every Rs. 1,00,000 of tax or ITC involved or the difference in tax or ITC involved or the amount of fine, fee or penalty determined in the order appealed against. However, the fee shall not exceed Rs. 25,000. [S. 112(8) r/w S. 112(10)] There shall be no fee for application made before the Appellate Tribunal for rectification of errors. PRE-DEPOSIT WHEN APPEAL IS FILED BY TAXPAYER [S. 112(8)]: (a) 100% of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and (b) 20% of the DISPUTED AMOUNT OF TAX (NOT DISPUTED INTEREST & PENALTY) subject to Rs. 20 crores CGST & Rs. 20 crores SGST, In case of IGST - Rs. 40 crores [Only (b) is subject to upper cap] (Note: Pre-deposit shall be paid in addition to what paid earlier) No pre-deposit to be paid where appeal is filed by dept.
6	ADVISORY Time-limit to dispose appeal	TIMELIMIT - Within 1 year from date of filing of appeal, appellate tribunal shall pass a speaking order [S. 113(4)]
7	Other points	❖ The Appellate Tribunal may, in its discretion, refuse to admit any such appeal where: (a) The tax or input tax credit involved or (b) The difference in tax or input tax credit involved or the amount of fine, fee or penalty determined by such order, does not exceed Rs. 50,000/-. ❖ GSTAT has the power to remand case back to AA, Adjudicating Authority or revisional authority ❖ Cannot give more than 3 adjournments ❖ The Tribunal can correct its own order for any apparent mistakes, within 3 months from date of order but it has no power of review. (S. 113)
Appeals, where the tax or input tax credit involved or the amount of fine, fee or penalty determined in any order appealed against, does not exceed Rs. 50,00,000 and which does not involve any question of law may be heard by a single Member, and in all other cases, shall be heard together by one Judicial Member and one Technical Member. 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, and such point or points shall be decided according to the majority opinion including the opinion of the Members who first heard the case.

Defect in constitution not to render proceedings invalid - 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.

Constitution of Principle Bench	President	Judicial Member	Technical Member (Centre)	Technical Member (State)
Constitution of State Benches	Judicial Member	Judicial Member	Technical Member (Centre)	Technical Member (State)

(w.e.f. 1st November, 2024 – Not applicable for CA Exams of May, 2025)

Time limit of 3 months under Section 112 for filing appeal before the GSTAT to begin from a date to be notified (and not the date when the President assumes office).

Pre-deposit amount for appeals set out in Section 107 (Appeals before Appellate Authority) and 112 (Appeals before GSTAT) have been reduced as follows:

- ❖ For appeal before the Appellate Authority, the cap is now set at Rs.20 crores for CGST and SGST, reduced from existing Rs.25 crores each.
- ❖ For appeal before the GSTAT, the pre-deposit requirement is reduced from 20% to 10%, with a maximum limit of Rs.20 crores for CGST and SGST, from existing Rs.25 crores each.

Amendments for appeal before GSTAT [Notification No.
12/2024 – Central Tax dated 10th July, 2024]

Rule 110: Appeal filed by Assessee to GSTAT & Rule 111: Appeal filed by Department to GSTAT

1. **Form to file appeal before GSTAT:** GST APL-05, along with the relevant documents, electronically and provisional acknowledgement shall be issued to the appellant by department:

As per rule 111, Department shall file appeal in GST APL – 07.

(Rest all procedure is repeated in rule 111 for department appeals, thus not re-iterated)

2. **Manual Filing of Appeal:** Manual filing also possible on general / special order
3. **Memorandum of cross objection:** shall be filed electronically in FORM GST APL-06. Manual filing also possible on general / special order
4. **Final Acknowledgment:** 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-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 seven 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.

5. **Appeal fees and restoration fees:** The fees for filing of appeal or restoration of appeal shall be Rs.1,000 for every 1 lakh rupees 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 Rs.25,000 and a minimum of Rs.5,000:

Further, 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 five thousand rupees.

6. **No fee for rectification of errors:** There shall be no fee for application made before the Appellate Tribunal for rectification of errors referred to in 112(10) of CGST Act.

**Rule 113A: Withdrawal of Appeal or Application filed
before the Appellate Tribunal [Notification No. 12/2024
– Central Tax dated 10th July, 2024]**

The appellant may, at any time before the issuance of the order under Section 113(1) of section 113, 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:

Further, 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) or 112(3), as the case may be.

Principal Bench to take over the matter on Anti-profiteering [Notification 18/2024 Central Tax dated 30th September]:

As per notification 18/2024 central tax dated 30th September, 2024, w.e.f. October 1st 2024, the Appellate Tribunal will be empowered to handle disputes related to the passing of benefits from input tax credits or tax rate reductions to consumers. This shifts the focus from the anti-profiteering authority to the Tribunal for such matters.

APPEAL BEFORE HIGH COURT AND SUPREME COURT

Sr. No.	Particulars	Appeal before HC [S. 117]	Appeal Before SC
1	Orders appealable (i.e., orders against which appeal can be filed)	Aggrieved person from: Orders passed by STATE BENCH of GSTAT provided it involves SUBSTANTIAL QUESTION OF LAW. <i>(The HC may determine any issue which has not been determined by the GSTAT (SB) or has been wrongly determined by the SB, by reason of a decision on such question of law.)</i>	Aggrieved person from: Orders passed by (i) High court, where high court certifies the case fit to be appealed before supreme court Principal Bench of GSTAT (POS Issue)
2	Time Limit to file appeal by ASSESSEE	180 days from communication of order	Governed as per code of civil procedure (Not in syllabus)
3	Time Limit to file appeal by DEPARTMENT	passed by STATE BENCH (HC has the power to condone the delay on being satisfied of sufficient cause for the same.) [S. 117(2)]	(Not in syllabus) ALL DUES as per order of GSTAT (i.e. PB) or HC shall be paid before preferring appeal to SC. [S. 119]
4	Form in which appeal is to be filed	GST APL 08	-
5	Pre-deposit to be paid Notes on pre-deposits: ❖ There is no requirement of pre-deposit at any stage if the appeal is for the purpose of refund eligibility. ❖ As per section 115 (Period), if the decision is ordered in favour of assessee, he shall get refund of pre-deposit	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.	-

Sr. No.	Particulars	Appeal before HC [S. 117]	Appeal Before SC
	paid along with interest @ 6% p.a. (Section 56) from date of payment of pre-deposit till the date of grant of refund.		
6	ADVISORY Time-limit to dispose appeal	Governed as per CPC	

REVISIONAL AUTHORITY [S. 108]

ORDERS THAT CAN BE REVISED:

Those decisions or orders passed by any officer subordinate to him is erroneous in so far as it is prejudicial to the interest of the revenue or illegal or improper or has not taken into account certain material facts.

ORDERS THAT CANNOT BE REVISED: [S. 108(2)]

(i) Non-appealable orders u/s 121 of CGST Act – In these below mentioned cases appeals cannot be filed by Assessee.

[S. 108(1), this point is arrived by reading “Subject to S. 121...”]

Following are non-appealable orders u/s 121 (ASSEESSEE cannot file appeal in these cases):

- ❖ Transfer of proceeding from one officer to another officer;
- ❖ Seizure or retention of books of account, register and other documents;
- ❖ Order sanctioning prosecution under the Act
- ❖ Order passed U/s.80 related to payment of tax & other amount in instalments.

(ii) An order against which an appeal is filed before Appellate Authority u/s 107, Appellate Tribunal u/s 112, High Court u/s 117, Supreme Court u/s 118.

As per proviso to section 108(2), the Revisional Authority may pass an order on any point which has NOT been RAISED AND DECIDED in an appeal either before the Appellate Authority, Appellate Tribunal, High Court or Supreme Court

(iii) Period of 6 months (*i.e. time-limit for department to file appeal before appellate authority or Appellate Tribunal*) has not expired or more than 3 years have expired after passing the decision or order sought to be revised.

(iv) The order has already been taken for revision at an earlier stage

(v) The order sought to be revised is a revisional order in the first place

TIME LIMIT TO PASS THE REVISED THE ORDER [Proviso to S. 108(2)]

Time-limit to revise the order: The revisional authority can revise the adjudicating authority's order

- ❖ Before the expiry of a period of 1 year from the date of the order in such appeal [Appellate authorities order] or
- ❖ Before the expiry of a period of 3 years from adjudication authorities' order*

Whichever is later.

*The time span lost between

- ❖ The date of decision of the Appellate Tribunal and the date of decision of the High Court or
 - ❖ The date of decision of the High Court and the date of decision of Supreme Court
- Shall be excluded in 3 years as per proviso to 108(2). Even the period of stay order is excluded in computing the period of limitation of three years.

ADDITIONAL EVIDENCE [RULE 112]

Rule 112 of the CGST Rules lays down that the appellant shall not be allowed to produce before the 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 (lower authority) adjudicating authority or, as the case may be, the AA.

Exceptions

1. Where the adjudicating authority or, as the case may be, the AA has (lower authority) refused to admit evidence which ought to have been admitted
 2. 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 AA; or
 3. Where the appellant was prevented by sufficient cause from producing before the adjudicating authority or, as the case may be, the AA any evidence which is relevant to any ground of appeal; or
 4. Where the adjudicating authority or, as the case may be, the AA (lower authority) has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.
- ❖ While taking evidences, reasons for its admission shall be recorded in writing
 - ❖ Reasonable opportunity shall be given by AA or GSTAT to adjudicating authority or AA to cross examine the evidence/witness, or produce any evidence in rebuttal of the additional evidence produced
 - ❖ The provisions of this rule shall not affect the power of the AA 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.

AUTHORISED REPRESENTATIVE [S. 116]

Authorised representative can be a relative, a regular employee, an advocate, a chartered accountant, a cost accountant, a company secretary, or a GST Practitioner. It is also provided that specified indirect tax gazetted officers having served for atleast 2 years, can appear as authorised representative after one year from the date of their retirement/resignation

DISQUALIFICATIONS:

The GST law also provides some disqualifications for an authorised representative. Section 116(3) lays down that below shall be disqualified to represent:

- (a) who has been dismissed or removed from Government service; or
- (b) who is convicted of an offence connected with any proceedings under the CGST Act/ SGST Act/ UTGST Act/IGST Act or under the earlier 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 and/or services; or
- (c) who is found guilty of misconduct by the prescribed authority;
- (d) who has been adjudged as an insolvent

(Note: Permanently disqualified in case of persons referred to in clauses (a), (b) and (c); and Disqualified for the period during which the insolvency continues in the case of a person referred to in clause (d).)

Other points (S. 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 under sub-section (1) of section 108, issue a summary of the order in FORM GST APL-04 clearly indicating the final amount of demand confirmed.

Appeal not to be filed in certain cases (S. 120 of CGST Act, 2017)

(Difference between Section 120 & 121 is that, in case of Section 120 – CGST / SGST, UTGST officer cannot prefer appeal in certain cases, whereas in case of Section 121 i.e. non-appealable orders, assessee cannot file appeal in certain cases)

1. This section provides for non-filing of appeal by CGST & SGST / UTGST Officer if it is below Monetary Limits specified by CBIC.
2. This provision shall not preclude such CGST & SGST / UTGST Officer from filing appeal or application in any other case involving the same or similar issues or questions of law.
3. No person, being a party in appeal or application shall contend that the officer of central tax has acquiesced in the decision on the disputed issue by not filing an appeal or application (on account of monetary limits).
4. The Tribunal or Court hearing such appeal or application shall have regard to circumstances for non-filing of appeal or application by CGST officer on account of monetary limits fixed by Board.

Example: Supposingly, government fixed the monetary limits that if Tax involved is upto Rs. 10 lakhs, department shall not file appeal. There was a case that, whether market survey services provided to recipient located outside India, fall under the purview of intermediary services or export of services. There are 2 assesses providing these services, viz., Mr. A & Mr. B.

Mr. A's tax liability is Rs. 3,00,000 if it is treated as intermediary services. However, adjudicating authority, passed order in favour of Mr. A granting it as exports. However, now department cannot file appeal, as the matter is below Rs. 10 lakhs.

In next year Mr. B entered into same transaction, and tax involved in this case was Rs. 15,00,000 (> 10 lakhs), here also, adjudicating authority passed order in the favour of Mr. B, however, here, department can file appeal as matter is more than Rs. 10 lakhs. Mr. B cannot claim that since, department did not file the appeal in case of Mr. A, it has accepted the position. It is so because, department did not file appeal due to monetary restrictions.

FIXATION OF MONETARY LIMIT FOR PROPER OFFICER TO FILE APPEAL [Circular No. 207/1/2024-GST dated the 26th June 2024]

Background of Amendment:

In Appeals and Revision chapter there is a provision which states that, Central Tax Officer cannot file appeal for the monetary limit as specified by CBIC. For Instance, if proper officer has passed an order against an regd. person which is prejudicial to the interest of revenue, however, the tax amount is below monetary limit, then, department cannot file appeal.

Clarification Issued:

Accordingly, 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:**

Appellate Forum	Monetary Limit involved in ₹
GSTAT	20 Lakhs
High Court	1 Crore
Supreme Court	2 Crore

While determining whether a case falls within the above monetary limits or not, the following principles are to be considered:

- (i) Where the dispute pertains to demand of 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 shall be considered while applying the monetary limit for filing appeal.
- (ii) Where the dispute pertains to demand of interest only, the amount of interest shall be considered for applying the monetary limit for filing appeal.
- (iii) Where the dispute pertains to imposition of penalty only, the amount of penalty shall be considered for applying the monetary limit for filing appeal.
- (iv) Where the dispute pertains to imposition of late fee only, the amount of late fee shall be considered for applying the monetary limit for filing appeal.
- (v) Where the dispute pertains to demand of interest, penalty and/or late fee (without involving any disputed tax amount), the aggregate of amount of interest, penalty and late fee shall be considered for applying the monetary limit for filing appeal.
- (vi) Where the dispute pertains to erroneous refund, the amount of refund in dispute (including CGST, SGST/UTGST, IGST and Compensation Cess) shall be considered for deciding whether appeal needs to be filed or not.
- (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.

Analysis with an Example:

Sr. No.	Case	Tax amount considered to check with Monetary Limit
1	Tax Liability 15L, Interest 3L, Penalty 2L Accepted Dues: 0	15L
2	Tax Liability 15L, Interest 3L, Penalty 2L Accepted Dues: Tax: 4L, Interest 2L, Penalty 1L	11L
3	Interest Liability: 3L, Penalty 1L	4L
4	Order disposing appeals for year FY 2018-19; 19-20 & 20-21 Tax: 3L+4L+5L = 12L Interest: 1.5L+2L+2.5L = L Penalty: 1L+1L+1L = 3L Accepted Dues: Tax: 1.5L+2L+2.5L = L Int: 75K+1L+1.25L=3L Penalty: 50K+50K+50K= 1.5L	6L (Difference between total tax & accepted tax liability)

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

(Meaning thereby in the below cases monetary limit shall not be applicable, merits of the case are to be checked)

- (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
Analysis: For example, if constitution of India states that, in case of doctrine of mutuality exists, meaning thereby a person cannot provide service to himself, however, section 7 (1) (aa) treats it as supply. Thus, if a matter arises for section 7(1) (aa), then CGST Officer can file appeal irrespective of monetary limit.
- (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

Analysis: For example, section 18(6) provides the mechanism to calculate amount of tax at the time of disposal of capital goods as tax on transaction value or ITC (-) 5% per quarter whichever is higher. However, Rule 44(6) read with Rule 44(1)(b) of CGST rules states that in case where section 18(6) applies ITC shall be reversed as per balance useful life in months. Thus, manner as per section 18(6) & 44 is not in consonance with each other. Assuming government declares 44(6) as ultra virus then officer can appeal even if it is lesser than monetary limit.

- (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) Act or the Rules made thereunder or,
- (iv) Where the matter is related to –
 - ❖ Valuation of goods or services; or
 - ❖ Classification of goods or services; or
 - ❖ Refunds; or
 - ❖ Place of Supply; or
 - ❖ 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

Analysis: For example, if a person is providing survey conducting services to client located in USA, officer took a view of section 13(2) and determined POS as LOR & allowed refund (lesser than monetary limit), still CGST officer can appeal before higher authority by applying section 13(8) which states POS as LOS. (This point involves interpretation of provision)

- (v) Where strictures/adverse comments have been passed and/or cost has been imposed against the Government/Department or their officers; or

Analysis: If an officer has already been accused of/have been guilty of misconduct in past then in respect of an order passed by such officer, department can file appeal irrespective of whether it is lesser than monetary limit.

- (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.
 - ❖ In cases where it is decided not to file appeal in pursuance of these instructions, such cases shall not have any precedent value. In such cases, the Reviewing Authorities shall specifically record that “even though the decision is not acceptable, appeal is not being filed as the amount involved is less than the monetary limit fixed by the Board.”
 - ❖ Non-filing of appeal based on the above monetary limits, shall not preclude the tax officer from filing appeal or application in any other case involving the same or similar issues in which the tax in dispute exceeds the monetary

limit or case involving the questions of law. (Already covered in section itself)

Example: Supposing, government fixed the monetary limits that if Tax involved is up to Rs. 10 lakhs, department shall not file appeal. There was a case that, whether market survey services provided to recipient located outside India, fall under the purview of intermediary services or export of services. There are 2 assesses providing these services, viz., Mr. A & Mr. B.

Mr. A's tax liability is Rs. 3,00,000 if it is treated as intermediary services. However, adjudicating authority, passed order in favour of Mr. A granting it as exports. However, now department cannot file appeal, as the matter is below Rs. 10 lakhs.

In next year Mr. B entered into same transaction, and tax involved in this case was Rs. 15,00,000 (> 10 lakhs), here also, adjudicating authority passed order in the favour of Mr. B, however, here, department can file appeal as matter is more than Rs. 10 lakhs. Mr. B cannot claim that since, department did not file the appeal in case of Mr. A, it has accepted the position. It is so because, department did not file appeal due to monetary restrictions.

- ❖ Where appeal is not filed solely on the basis of the above monetary limits, there will be no presumption that the Department has acquiesced in the decision on the disputed issues in the case of same taxpayers or in case of any other taxpayers.

Manual Filing of Appeal

Appeal has to be filed only in electronic mode. However, an appeal to the Appellate Authority may be filed manually in FORM GST APL-01 (Appeal by Assessee)/APL 03 (Dept. appeal), along with the relevant documents, only if: -

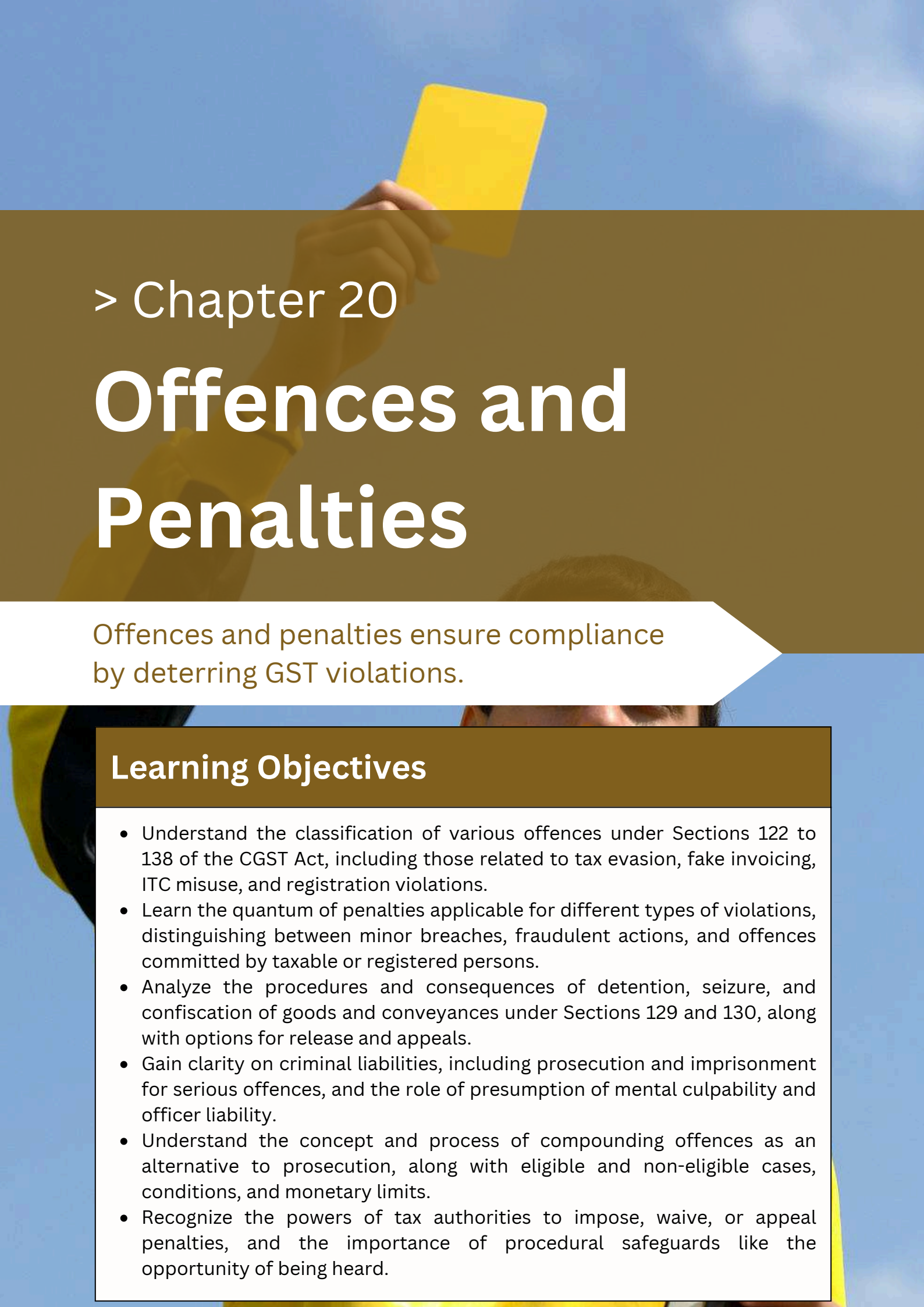
- (i) the Commissioner has so notified, or
- (ii) the same cannot be filed electronically due to non-availability of the decision or order to be appealed against on the common portal, and in such case, a provisional acknowledgement shall be issued to the appellant immediately

Withdrawal of Appeal [Rule 109C]

The appellant may, at any time before issuance of show cause notice under sub-section (11) of section 107 or before issuance of the order under the said sub-section, whichever is earlier, in respect of any appeal filed in FORM GST APL-01 or FORM GST APL-03, file an application for withdrawal of the said appeal by filing an application in FORM GST APL-01/03W.

However, where the final acknowledgment in FORM GST APL-02 has been issued, the withdrawal of the said appeal would be subject to the approval of the appellate authority and such application for withdrawal of the appeal shall be decided by the appellate authority within seven days of filing of such Application.

Further, that any fresh appeal filed by the appellant pursuant to such withdrawal shall be filed within the time limit specified in section 107(1) /107(2), as the case may be.



> Chapter 20

Offences and Penalties

Offences and penalties ensure compliance by deterring GST violations.

Learning Objectives

- Understand the classification of various offences under Sections 122 to 138 of the CGST Act, including those related to tax evasion, fake invoicing, ITC misuse, and registration violations.
- Learn the quantum of penalties applicable for different types of violations, distinguishing between minor breaches, fraudulent actions, and offences committed by taxable or registered persons.
- Analyze the procedures and consequences of detention, seizure, and confiscation of goods and conveyances under Sections 129 and 130, along with options for release and appeals.
- Gain clarity on criminal liabilities, including prosecution and imprisonment for serious offences, and the role of presumption of mental culpability and officer liability.
- Understand the concept and process of compounding offences as an alternative to prosecution, along with eligible and non-eligible cases, conditions, and monetary limits.
- Recognize the powers of tax authorities to impose, waive, or appeal penalties, and the importance of procedural safeguards like the opportunity of being heard.

Backdrop of Offences and Penalties

For effective implementation of any tax-law and to do justice to tax abiding society, certain provisions to take strict action against offenders are required. The penal provisions in many cases act as a deterrent while some provisions attract the wrath of the penal provisions even for a breach, although such an infraction of law could be a minor offence and not a venial breach of law. It is for this reason that the law maker in his wisdom has laid down general disciplines relating to penalty so as to enable the person vested with such powers does not overshoot those powers that are inherently vested in him.

While Courts have consistently laid down several guiding principles for the purpose of levy of penalties, it has been observed that the statutes are so drafted that several punitive penalties have now become mandatory. The discussion in the following paragraphs deal with the punitive provisions of GST law

Important Sections

Section No.	Description
122	Penalty for certain offences
123	Penalty for failure to furnish information return
124	Fine for failure to furnish statistics
125	General penalty
126	General disciplines related to penalty
127	Power to impose penalty of PO
128	Power to waive off
129	Detention, seizure and release of goods and conveyances in transit
130	Confiscation of goods or conveyances
131	Confiscation or penalty not to interfere with other punishments
132	Punishments for certain offences
133	Liability of officers and others
134	Cognizance of offences
137	Offences by companies
138 (Read with rule 162)	Compounding of offences
135	Presumption of culpable mental state
136	Relevancy of statements

Penalty for Certain offences - Section 122

Section 122(1): Penalty for offences committed by “TAXABLE PERSONS” [Do refer analysis after Section 122(2)]

Penalty for Below Offences made by Taxable Person:

- **₹ 10,000/- or Amount Equal to Tax evasion whichever is higher.**
(i.e. ₹ 10,000 or 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)

Offences: -**(A) Outward Supply & Transportation: -**

- i) Supplies without issue of any invoice or issues an incorrect or false invoice with regard to any such supply OR, issues invoice or bill of supply without supply [S. 122(1)(i) & (ii)] (Note 1)
- ii) Transports any taxable goods without the cover of documents as may be specified in this behalf; [S. 122(1)(xiv)] – (E-way Bill, Delivery Challan / Tax Invoice / Bill of supply are specified documents)
- iii) Supplies, transports or stores any goods which are liable to confiscation [S. 122(1)(xviii)]
- iv) Disposes off or tampers with any goods that have been detained, seized, or attached [S. 122(1)(xxi)];
- v) Suppresses his turnover leading to Tax evasion [S. 122(1)(xv)];

(B) Registration related: -

- i) A person liable to be registered but fails to obtain registration [S. 122(1)(xi)]; (S. 22 & 24 shall be referred to understand liability of person to take registration)
- ii) Issues any invoice or document by using the registration number of another registered person [S. 122(1)(xix)];
- iii) Furnishes any false information with regard to registration particulars, either at the time of applying for registration, or subsequently [S. 122(1)(xii)]

(C) Tax-Related & Officers' Duty related: -

- i) Collects any amount as tax (whether or not in contravention of provisions) but fails to pay the same to the Government beyond a period of **3 months** from the date on which such payment becomes due [S. 122(1)(iii) & (iv)];
- ii) Fails to deduct tax u/s 51, or deducts lesser than tax deductible, or where he fails to pay tax deducted to Govt. [S. 122(1)(v)];

- iii) Fails to collect Tax u/s 52, or collects lesser than tax collectible, or where he fails to pay collected tax to Govt. [S. 122(1)(vi)];
- iv) Obstructs or prevents any officer in discharge of his duties under this Act [S. 122(1)(xiii)];

(D) Purchase & Refunds: -

- i) Takes or utilizes 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 thereunder [S. 122(1)(vii)]; (Bill to Ship to Model is an exception to availing ITC without actual receipt of goods or services) (Note 1)
- ii) Fraudulently obtains refund of tax under this Act [S. 122(1)(viii)];
- iii) Takes or distributes input tax credit in contravention of section 20, or the rules made thereunder; [S. 122(1)(ix)] (Note 1)

(E) Accounts, Records & Documentation: -

- i) 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 [S. 122(1)(x)];
- ii) Fails to keep, maintain or retain books of account and other documents in accordance provisions [S. 122(1)(xvi)];
- iii) Fails to furnish information or documents called for by an officer in accordance with the provisions of this Act or the rules made thereunder or furnishes false information or documents during any proceedings under this Act [S. 122(1)(xvii)]
- iv) Tampers with, or destroys any material evidence or document; [S. 122(1)(xx)]

Note 1: In case of such offences, as per Section 122(1A) inserted vide Finance Act, 2020 [Ins. w.e.f. 01-01-2021 (vide NN 92/2020, dt. 22-12-2020) by the Finance Act, 2020 (12 of 2020) (s.126) dt. 27-03-2020] **a person who retains the benefit** of the above transaction and at whose **instance such transaction is conducted** shall be liable to penalty of an amount equivalent to the tax evaded or input tax credit availed of or passed on. The purpose of the above amendment is to penalize the person who is the ultimate beneficiary of the fraud transactions and the person at whose direction the fraud transaction has been conducted.

Section 122(2): Penalty for offences by “REGISTERED” persons

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: -

Reasons other than fraud, wilful misstatement & suppression of facts: -

₹ 10,000/- or,
10% of Tax Due whichever is higher.

Reasons of fraud, wilful misstatement & suppression of facts: -

₹ 10,000/- or,
100% of Tax Due whichever is higher.

Analysis and differentiation between section 122(1) & 122(2)

- (i) As per section 122(1) of CGST Act, the offences mentioned are liable for penalty if committed by “TAXABLE PERSON”, section 2(107) of CGST Act states that, registered person or person who is liable for registration u/s 22 or 24 is a taxable person.
- (ii) Section 122(2) is specifically for registered persons 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.

For Instance: A registered exported market research services to an entity located outside India, he considered the same as export of services. However, the department contended that it is an intermediary service thus, registered person has supplied the services without payment of tax. Since this is the dispute on legal position, thus, officer will levy penalty on him u/s 122(2) not u/s 122(1).

Section 122 (3) of CGST Act, 2017

Penalty shall be levied under this section to any person who (Thus includes unregistered persons)

- (a) aids or abets any of the offences specified in Section 122(1) i.e. Part (1) of this chapter.
- (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 are liable to confiscation.

- (c) Receives / Deals with any supply of services which he knows or has reasons to believe are in contravention of any provisions;
- (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 or fails to account for an invoice in his books of account,

shall be liable to a penalty which may extend to ₹ 25,000/-

Penalty on ECO who are required to collect tax at source: As per section 122(1B) of CGST Act, Any electronic commerce operator who:

- (i) Allows a supply of goods or services or both through it by an unregistered person other than a person exempted from registration by a notification issued under this Act to make such supply;
- (ii) Allows an inter-State supply of goods or services or both through it by a person who is not eligible to make such inter-State supply; or
- (iii) Fails to furnish the correct details in the statement to be furnished under section 52 (4) of any outward supply of goods effected through it by a person exempted from obtaining registration under this Act,

shall be liable to pay a penalty of ten thousand rupees, or an amount equivalent to the amount of tax involved had such supply been made by a registered person other than a person paying tax under section 10, whichever is higher.

Section 122A.

- 1) Notwithstanding anything contained in this Act, where any person, who is engaged in the manufacture of goods in respect of which any special procedure relating to registration of machines has been notified under section 148, acts in contravention of the said special procedure, he shall, in addition to any penalty that is paid or is payable by him under Chapter XV or any other provisions of this Chapter, be liable to pay a penalty equal to an amount of one lakh rupees for every machine not so registered.
- 2) In addition to the penalty under 122A (1), every machine not so registered shall be liable for seizure and confiscation:

Provided that such machine shall not be confiscated where -

- (a) the penalty so imposed is paid; and
- (b) the registration of such machine is made in accordance with the special procedure within three days of the receipt of communication of the order of penalty.

Section 124: Failure to furnish information return

If any person required to furnish any information or return under section 151,

- ❖ Fails to furnish such information or return as may be required under that section without reasonable cause; or
- ❖ Will fully furnishes or causes to furnish any information or return which he knows to be false,

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 each day after the first day during which the offence continues subject to a maximum limit of ₹ 25,000/-

Section 125 – General Penalty

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/- (CGST)

(Same penalty u/s SGST Act, thus effectively total general penalty is ₹ 50,000/-)

For example: There is no penalty prescribed in law for late furnishing of GSTR 9C (Not 9), thus it will be leviable to penalty under this section

Section 126 - General Disciplines for levy of penalty

No penalty shall be imposed for “**minor breaches**” of tax regulations or procedural requirements and in particular, any omission or mistake in documentation which is easily rectifiable and made without fraudulent intent or gross negligence. Minor Breach means breach which has amount of tax involved less than ₹ 5,000/- i.e. “**5000 is NOT A Minor Breach**”

Section 127: Power to impose penalty in certain cases

Where the proper officer is of the view that a person is liable to a penalty and the same is not covered under any proceedings under section 62 or section 63 or section 64 or section 73 or section 74 or section 129 or section 130, he may issue an order levying such penalty after giving a reasonable opportunity of being heard to such person.

Section 128: Power to waive off penalty

The Government may, by notification, waive in part or full, any penalty referred to in section 122 or section 123 or section 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.

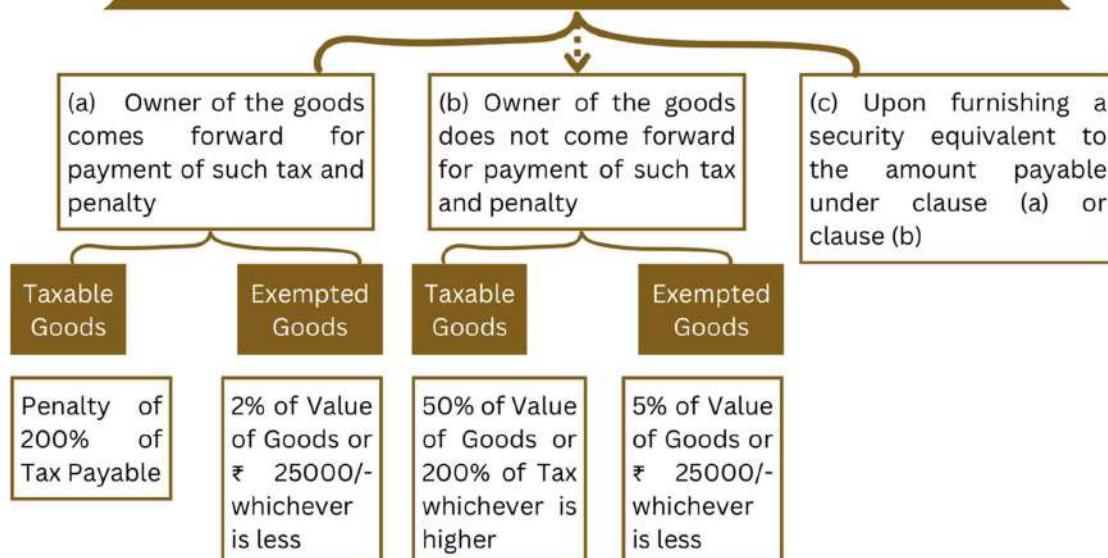
Section 129: Detention, seizure and release of goods and conveyances in transit.

- ❖ Detention means keeping or holding back either by force or otherwise;
- ❖ Confiscation means transfer of title in favour of govt.;
- ❖ Seizure means to take forcible possession

Sec	Description
129(1)	(Non-obstante clause) Where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act or the rules made thereunder, goods and conveyance and documents relating to such goods and conveyance shall be liable to detention or seizure and after detention or seizure:
129(1)(a)	Shall be released if Owner of the goods comes forward for payment of penalty
	In case of Taxable Goods:
	On payment of penalty equal to 200% of the tax payable on such goods (Amended vide NN 39/2021 CT read with Section 117 of FA, 2021)
	For example: If the taxable goods valued at ₹ 100,000/- (tax rate 12%) is being transported without documents and subject to detention, then if the owner of goods comes forward to pay penalty, the amount payable would be equal to: Penalty ₹ 24,000/- . Please note that the taxes paid under this provision would not be eligible to be claimed as input taxes by the recipient – refer section 17(5).
	In case of Exempt Goods:
	On payment of penalty of an amount equal to 2% of the VALUE OF GOODS or ₹ 25,000/-, whichever is less.
	For example: If the exempt goods valued at ₹ 1,00,000/- is being transported without documents and subject to detention, then if the owner of goods comes forward to pay the penalty the amount payable would be equal to: ₹ 2,000/- or ₹ 25,000/- whichever is lower, in this case it is ₹ 2,000.
129(1)(b)	Shall be released if owner of the goods does not come forward for payment of:
	In case of taxable Goods:
	Penalty equal to the 50% of the value of the goods or 200% of Tax payable whichever is higher (Amended vide NN 39/2021 CT read with Section 117 of FA, 2021)
	For example: If the taxable goods valued at ₹ 1,00,000/- (tax rate IGST 12%) are being transported without documents and subject to detention, then owner of goods does not come forward then penalty would be ₹ 50,000/- [i.e. 50% of value of goods] or ₹ 24,000 [i.e. 200% of tax payable] whichever is higher. Thus, ₹ 50,000/- .
	In case of Exempt Goods:
	On payment of penalty of 5% of the value of goods or ₹ 25,000 whichever is less

Sec	Description
	(Note: 10% of Value of goods or ₹ 50,000/- whichever is less, in case of exempt inter-state)
129(1)(c)	Shall be released upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) in such form and manner as may be prescribed
	No such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods
129(3)	Notice Order: The proper officer detaining or seizing goods or conveyances shall issue a notice within 7 days specifying the tax and penalty payable and thereafter within 7 days from date of SCN, pass an order for payment of tax and penalty under clause (a) or clause (b) or clause (c) (INSERTED vide NN 39/2021 CT) Notes: - ❖ This order is appealable before appellate authority within 3 months of communication of order to recipient (1 month condonation on sufficient cause) ❖ Appeal shall be filed against an order under sub-section 129(3) on payment of Pre-deposit of 25% of Penalty paid by appellant. (Inserted vide Section 116 of FA, 2021 notified by NN 39/2021). On filing appeal, the proceedings for recovery of penalty by sale of goods or conveyance detained or seized in transit shall be deemed to be stayed. (Inserted in Rules vide NN 40/2021 CT) For detailed knowledge on subject matter students can download Circular 41/2018 further amended by 64/2018 (not in syllabus)
129(4)	Opportunity of Being Heard: No or penalty shall be determined under section 129(3) without giving the person concerned an opportunity of being heard
129(5)	Deemed Conclusion: On payment of amount referred in sub-section (1), all proceedings in respect of the notice specified section 129(3) shall be deemed to be concluded

SUMMARY OF PENALTY U/S 129



CONFISCATION OF GOODS OR CONVEYANCES AND LEVY OF PENALTY [SECTION 130]

Sec	Description
130(1)	Where any person: (Earlier Section 130 was Notwithstanding, however, it is not so vide FA 2021, r/w NN 39/2021 CT) (i) Supplies or receives any goods (not services) in contravention of any of the provisions with intent to evade payment of tax; (ii) Supplies any goods liable to tax under this Act without having applied for registration; or (iii) Does not account for any goods on which he is liable to pay tax under this Act; (iv) Contravenes any of the provisions of this Act or the rules made thereunder 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 rules made thereunder unless the owner of the conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance. Then, all such goods or conveyances shall be liable to confiscation AND the person shall be liable to penalty under section 122.
130(2)	MAXIMUM fine for redemption (release) of Confiscated Goods [S. 130(2) of CGST] (a) Market value of the confiscated goods (-) Tax chargeable thereon or [Proviso 1 to section 130(2)], (b) Penalty equal to 100% of the tax payable on such goods [Proviso 2 to section 130(2)] (Amended vide S. 118 of FA, 2021 r/w NN 39/2021 – CT) whichever is higher (This is maximum fine for release of confiscated goods, however actual fine would be as officer thinks fit between (a) & (b) as above, i.e., maximum fine shall not exceed market value, but shall not be less than penalty equivalent to 100% of tax payable.)
	MAXIMUM fine for redemption (release) of Confiscated Conveyance [Proviso 3 to S. 130(2) of CGST] Tax payable on the goods being transported.
130(4)	Opportunity of being heard shall be given before passing any order
130(5)	Once Confiscated, the title of such goods or conveyance shall vest in favour of the Government
130(6)	P.O. shall have possession of confiscated things; every officer of Police (if required) shall assist P.O.
130(7)	P.O. on satisfaction that the confiscated goods or conveyance are not required in any other proceedings under this Act, can give reasonable time to person not exceeding 3 months to pay fine in lieu of confiscation, otherwise can sell off such goods.

COMPOUNDING OF OFFENCES [SECTION 138 READ WITH RULE 162 OF CGST RULES]

Meaning of Compounding:

Compounding of an offence means payment of a sum of money in monetary terms instead of undergoing prosecution. Application for compounding of an offence can be either before or after institution of the prosecution proceedings.

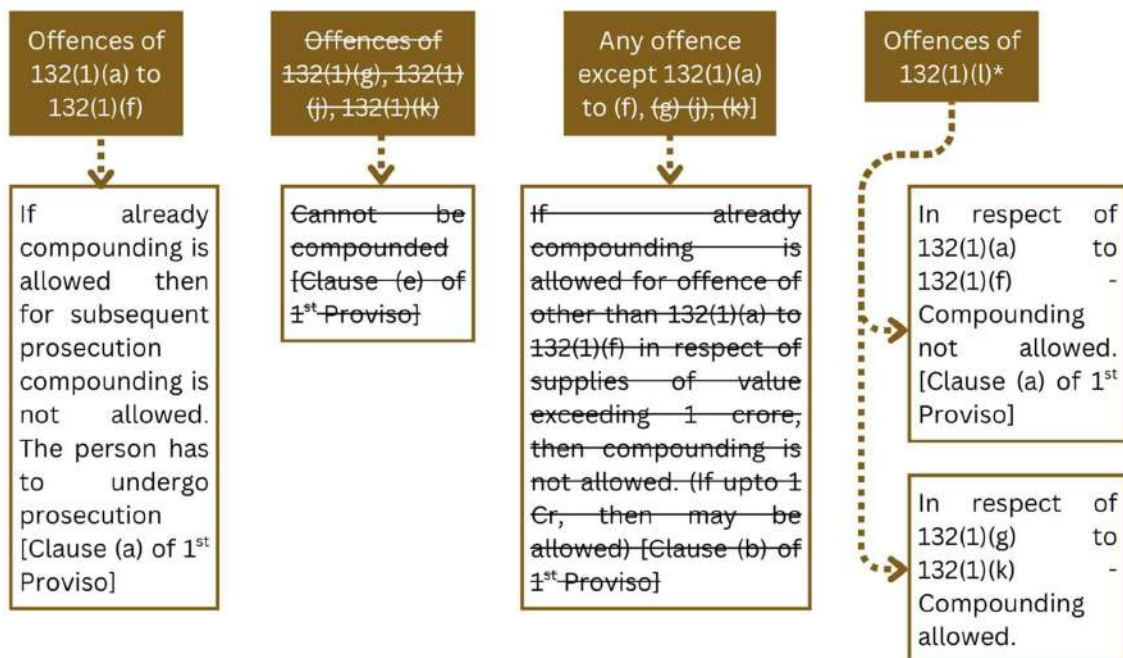
Procedure:

A person who wants to do compounding shall make an application. On receipt of the application from the applicant, the commissioner shall call for a report from the concerned officer, if it is found that applicant has co-operated in proceedings then, he may accept the application and allow compounding.

(Before rejecting - Opportunity of being heard shall be provided)

Commissioner may, by order, 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**.

Availability of Compounding in below cases:



*132(1)(l) is an offence for attempt to commit, or abets the commission of any of the offences mentioned in clauses (a) to (k) of this section

Other cases where compounding is not allowed

A person who has been accused of committing an offence under section 132(1)(b) of CGST Act [Clause (c) of 1st Proviso]

A person who has been convicted for an offence under this Act by a court [Clause (d) of 1st Proviso]

Any other class of persons or offences as may be prescribed [Clause (f) of 1st Proviso]

Other Important Points

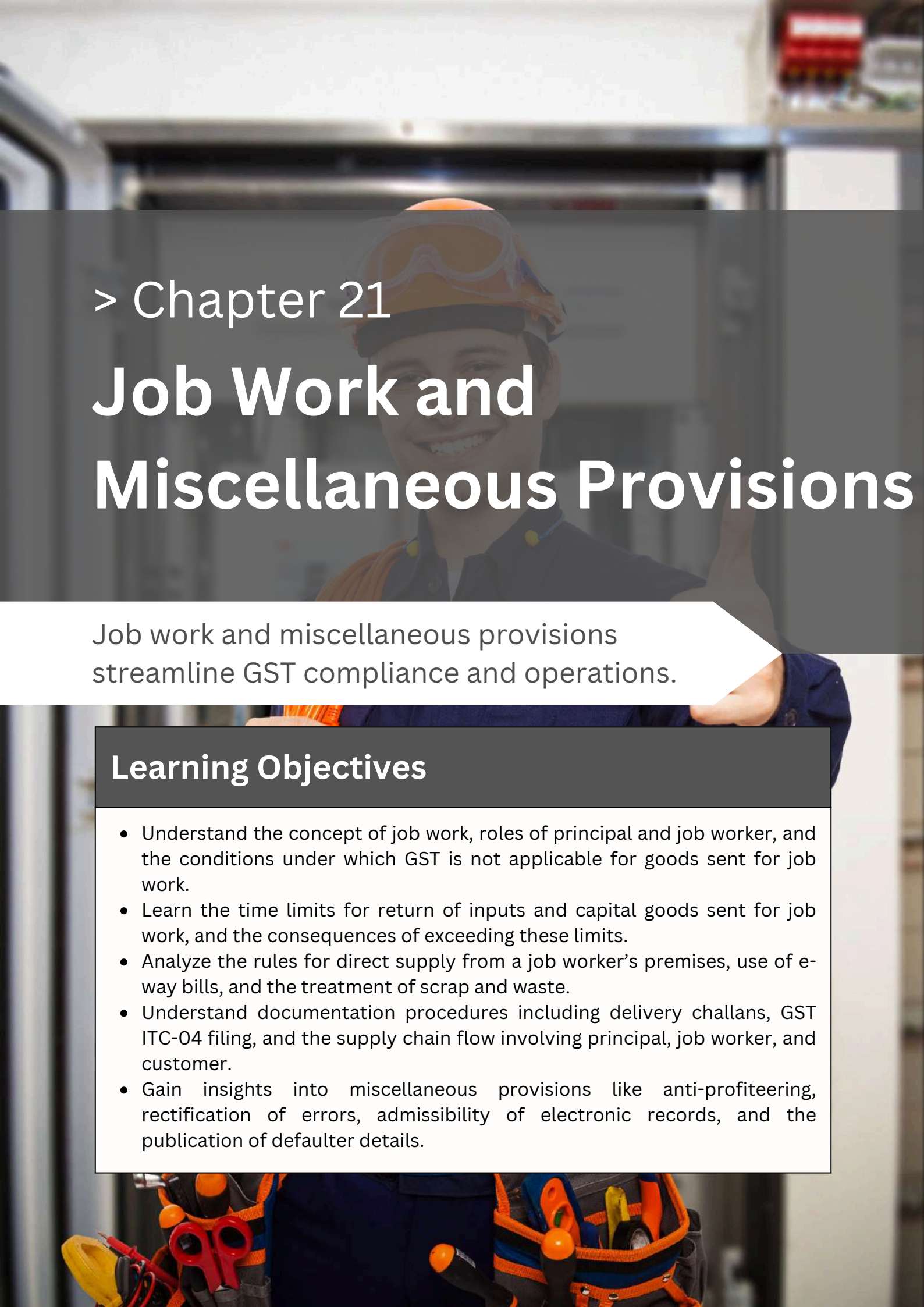
- ❖ Any compounding allowed under the provisions of this section shall not affect the proceedings, if any, instituted under any other law
- ❖ Compounding shall be allowed only after making payment of tax, interest and penalty involved in such offences

Limit for Compounding:

As may be prescribed subj. to minimum 25% of the tax involved and the maximum amount not being more than one hundred per cent. of the tax involved.

If person allowed to compound an offence, he shall pay dues within 30 days of order allowing to pay. The Commissioner shall determine the compounding amount under sub-rule (3) as per the Table below

Sr. No.	Offences	Compounding amount if offence is more than 5 crores	Compounding amount if offence is more than 2 cr. upto 5 crores
1	u/s 132(1)(a)	Up to 75% of the amount of tax evaded subject to minimum of 50% of such amount of tax evaded	Up to 60% of the amount of tax evaded subject to minimum of 40% of such amount of tax evaded
2	u/s 132(1)(c)		
3	u/s 132(1)(d)		
4	u/s 132(1)(e)		
5	u/s 132(1)(f)	25% of tax evaded	25% of tax evaded
6	u/s 132(1)(h)		
7	u/s 132(1)(i)		
8	Attempt to commit the offences or abets the commission of offences mentioned in clause (a), (c) to (f) and clauses (h) (i)	25% of tax evaded	25% of tax evaded



> Chapter 21

Job Work and Miscellaneous Provisions

Job work and miscellaneous provisions streamline GST compliance and operations.

Learning Objectives

- Understand the concept of job work, roles of principal and job worker, and the conditions under which GST is not applicable for goods sent for job work.
- Learn the time limits for return of inputs and capital goods sent for job work, and the consequences of exceeding these limits.
- Analyze the rules for direct supply from a job worker's premises, use of e-way bills, and the treatment of scrap and waste.
- Understand documentation procedures including delivery challans, GST ITC-04 filing, and the supply chain flow involving principal, job worker, and customer.
- Gain insights into miscellaneous provisions like anti-profiteering, rectification of errors, admissibility of electronic records, and the publication of defaulter details.

Backdrop of Job Work & Miscellaneous Provisions

This chapter will guide us through the procedure to send goods to Job worker and bringing back & time limits thereon.

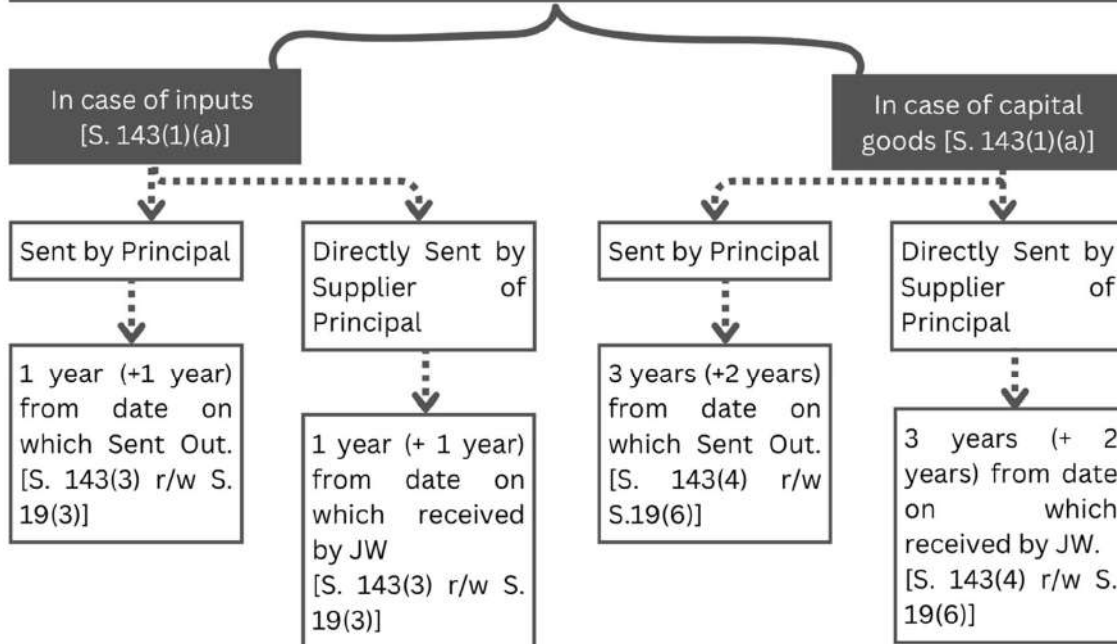
Meaning of Job Work

Job-work means any treatment or process undertaken by a person on goods belonging to another registered person [Section 2(68) of CGST Act, 2017]. We will understand each & every aspect of Job-work in detail.

Analysis of All provisions of Job-work (S. 19 & S. 143 of CGST Act, 2017 r/w Rule 45 & 55 of CGST Rules & various circulars)

- 1. Analysis of Definition – S. 2(68) of CGST Act: -**
Job-working creates the functionality of an article but repair or maintenance restores or improves the functionality already created and possessed by that article or thing. As per literal reading of definition, we understand that goods shall belong to registered principal. However, **job-worker can add his own goods as well in providing his services.**
- 2. Goods sent to Job-worker – Not a supply but ITC can be availed by Supplier: -** If principal purchases the goods and gets delivery by supplier at job worker's place of business, ITC can be availed by principal.

Time-limit for return of goods from Job – worker (JW) (other than moulds and dies, jigs and fixtures, or tools) Below Sections r/w CGST Amendment Act, 2018. Commissioner. If Goods are not returned within time period, then it would be treated as supply and GST shall be paid



3. Direct Supply from Place of business of Job-worker [S. 143(1)(b) r/w Proviso to S. 143]:

A registered person may supply goods directly from registered job-worker's place of business (PoB). However, if JW is unregistered, Principal shall add his POB as APOB. LUT shall be executed by Principal.

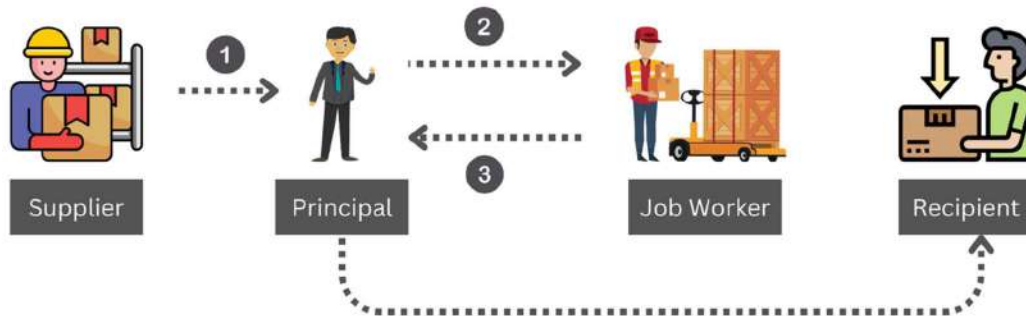
4. E – way Bill Provisions in relation to Job-work [3rd Proviso to Rule 138]: - Where goods are sent by a principal to a job worker E – way bill is mandatory irrespective of consignment value.

5. Treatment of Waste & Scrap [S. 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.

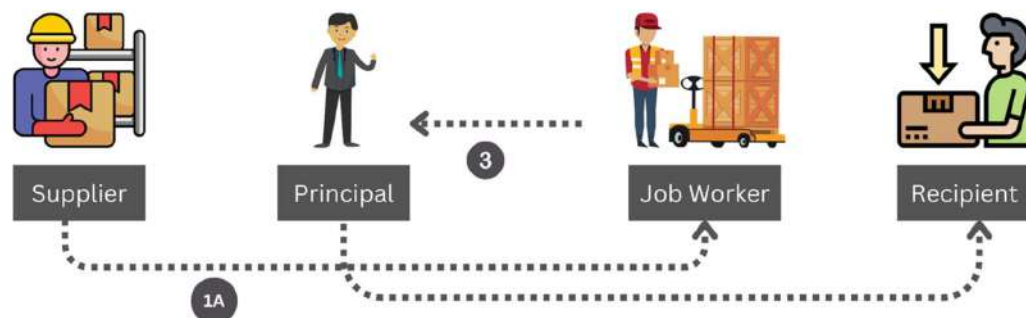
6. Time limit to file GST ITC – 04: ATO > 5 crore in PFY: Half yearly by 25th of end of half year i.e., 25th October & 25th April; ATO ≤ 5 crores: Annually - 25th April of Next FY)

7. Supply of Goods between Supplier, Principal, Job-worker & Customer of Principal – Circular No.38/12/2018 & r/w Circular 88/07/2019: - (Direction to Read – Refer Numbers simultaneously with Chart below Diagram)

8. Case (1): - Normal Supply of Goods / Capital Goods:



Case (2): - Supply directly to Job-worker: -



Case (3): - Supply of Goods Directly from Job-worker's Place of Business: -



Case (4): - Supply of Goods from Job-worker to another Job-worker & then sent to principal or sold from place of business of job-worker



If goods 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.

Transaction Code	Documentation thereof
1	Supplier will supply goods along tax invoice (R. 46 r/w S. 31) / bill of supply (R. 49 r/w S. 31) and E-way bill (if req.)
2	Principal will send goods to Job worker under cover of delivery challan (2 copies) u/r 45 r/w R. 55 of CGST Rules. Mandatory E – way Bill + GST ITC 04 as per applicability
3	The job worker should send one copy of the delivery challan along with the goods, while returning them to the principal along with an E – way bill (if JW is regd. under GST). Further, if JW is Unregd., principal shall generate E – way bill as “Inward from Unregistered.” Job-worker shall issue tax invoice u/s 31 for Job-work charges.
1A	Supplier when sends goods directly to JW of principal, supplier prepares invoice by following bill to ship to model i.e. bill to principal & ship to Job-worker.
4B	A registered person may supply goods directly from job-worker’s place of business (PoB) to recipient in India, if such POB is shown as additional PoB. It shall be deemed that principal has supplied such goods & discharged by supplier itself. [S. 143(1)(b) of CGST Act]
4C	A registered person may supply goods directly from job-worker’s place of business (PoB) to recipient in outside India, if such POB is shown as additional PoB. It shall be deemed that principal has exported such goods and LUT shall be executed by principal. [S. 143(1)(b) of CGST Act]
5A	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.

Miscellaneous Provisions

1) **S. 144 – Rebuttable Presumptions: -**

Where any document is produced by any person, or any documents are seized from any person, or document has been received from any place outside India in the course of any proceedings, it shall be deemed that such person has signed, attested, executed the same. Further anything written on same is handwriting of that person.

2) **S. 145 – Microfilms, facsimile copies of documents and computer printouts as documents are admissible as evidence.**

3) **S. 159 – Publishing Name & Particulars under GST Act: -**

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.**

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.

4) **S. 160 – No Proceedings Invalid for reason of Mistake: -**

No assessment, re-assessment, adjudication, review, revision, appeal, rectification, notice, summons or other **proceedings** done, accepted, made, issued, initiated, or purported under 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 requirements of this Act or any erstwhile law.

5) **S. 161 – Rectification of Errors apparent from records: -**

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 on its own motion** or where such error is **brought to its notice by any officer** appointed under GST Act **or by the affected person within 3 months** from the date of issue of such order or decision etc.

No such rectification shall be done after 6 months from the date of issue of such order or decision etc.

The period of 6 months shall not apply in such cases where the rectification is purely in the nature of correction of a clerical or arithmetical error, arising from any accidental slip or omission.

Where such rectification adversely affects any person, opportunity of being heard shall be given.

6) **S. 171 – Anti-profiteering**

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.

As per section 171(3A) where the anti-profiteering authority, after holding examination as required comes to the conclusion that any registered person has profited under sub-section (1), such person shall be liable to pay penalty equivalent to ten per cent. of the amount so profited.

However, no penalty shall be leviable if the profited amount is deposited within 30 days of the date of passing of the order by the Authority.

Provided that no such order shall be made after the expiry of a period of five years from the date of commencement of this Act.

Proviso and Explanation is being inserted in section 171(2) of the CGST Act, so as to empower the Government to notify the date from which the Authority under the said section **will not accept any application for anti-profiteering cases.**

Explanation in the sub-section (3A) of the said section is being inserted, so as to **include the reference of Appellate Tribunal in the Authority** under the said section so that the Appellate Tribunal may be notified by the Government to act as an Authority under the said section.

- 7) As per section 25 of IGST Act / Section 172 of CGST Act, if any difficulty arises in giving effect to any provision 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:

Exemptions [Section 11 r/w NN 12/2017 - CTR] (1/8)

Before learning exemptions under GST following points must be noted: -

- 1) The person supplying exempt supplies will have to **reverse ITC** in accordance with section 17 of CGST Act, 2017.
- 2) **Zero rated** supplies are not exempt supplies thus **ITC can be availed**.
- 3) Even though **exempt supplies are exported**, registered person **can still claim refund** of taxes paid on manufacture / procurement of such exempt supplies.
- 4) As per section 2(47) of CGST Act, 2017 "**exempt supply**" means supply of any goods or services or both which attracts **nil rate** of tax (e.g., fruits & vegetables) or which may be **wholly exempt** from tax under section 11 (to be learnt in this chapter), or under section 6 of the Integrated Goods and Services Tax Act, and includes **non-taxable supply** (e.g., petrol);
- 5) If notification exemption is issued under CGST Act, the registered person can avail the benefit of same in SGST / UTGST Act also, however vice – versa is not possible. Also, notification issued under IGST Act will only be relevant for inter-state supply purposes only not for CGST / SGST purposes.
- 6) 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 this Act or under the Integrated Goods and Services Tax Act is **not liable to take registration** under GST Act.
- 7) Section 31(3)(c) of the CGST Act provides that a registered person **supplying exempt** goods or services or both **or** paying tax under the provisions of section **10 of CGST Act (composition) & presumptive levy** shall issue, instead of a tax invoice, a **bill of supply**.
- 8) **For supplying exempt goods E-way bill is not required to be generated.**
- 9) **As per Section 11A in the CGST Act, GST cannot be recovered that was not levied or was short-levied due to a general practice.**

WAY AHEAD FOR THIS CHAPTER

EXEMPTIONS
1. Charitable Entity
2. Religious Institution
3. Agriculture Sector
4. Government Services
5. Healthcare Services
6. Education Sector
7. Banking & Financial Sector
8. Construction Industry
9. Goods Transportation
10. Passenger Transportation
11. Legal Services
12. Life Insurance
13. General Insurance
14. Leasing Services
15. Artist Services
16. Admission to various events
17. Services by Unincorporated Body / NPO / RWA
18. Miscellaneous Exemptions
19. Indepth Interlinking of Import of Services
20. IGST Exemptions

"Just when the caterpillar thought the world was ending, he turned into a butterfly."

1. CHARITABLE INSTITUTIONS

In order to avail the benefit of exemption for Charitable Trusts it has to satisfy two conditions:

- ❖ It should be registered under Section 12AA or 12AB of Income Tax Act.
- ❖ It should provide charitable activities

MEANING OF CHARITABLE ACTIVITY:

- ❖ **Care or counselling** of terminally ill person, HIV AIDS, narcotics drugs or alcohol; or public awareness of **preventive health, family planning**
- ❖ Advancement of **educational programmes** or skill development (Abandoned, orphaned or homeless children etc.)
- ❖ Advancement of **religion, spirituality or yoga**;
- ❖ Preservation of **environment** including watershed, forests and wildlife;

OTHER EXEMPTIONS RELATED TO THIS SECTOR:

❖ Training or coaching in recreational activities such as arts, culture provided by INDIVIDUAL including charitable entities is exempt.	Exempt
❖ Training or coaching in recreational activity in sports is exempt when provided by CHARITABLE ENTITY REGD UNDER 12AA/12AB	Exempt
❖ Camps where the fee charged includes cost of lodging and boarding where principal activity is charitable activity. (Circular 66/40/2018-GST dated 26-09-2018)	Exempt
❖ Hostel Accommodation for students (Circular 32/06/2018-GST dated 12-02-2018)	Taxable
❖ Import of Services (other than OIDAR)	Exempt
❖ Old age home run by 12AA/AB where consideration is up to Rs. 25,000/- per month per member to its residents aged 60 or more	Exempt (If more than Rs. 25,000/- entire would be taxable)

2. RELIGIOUS INSTITUTIONS [E. 13]

Sr. No.	Category	Taxable/Exempt
1	Conduct of religious ceremonies Religious ceremonies are life-cycle rituals including special religious poojas conducted in terms of religious texts by a person so authorized by such religious texts. Occasions like birth, marriage and death involve elaborate religious ceremonies.	100% of supplies made in this nature is exempt
2	Room rent	Taxable if Rs. 1000 or more per day
3	Renting of premises, community halls, Kalyan mandapam or open area etc.	Taxable if Rs. 10,000 or more per day
4	Charges for renting of shops or commercial spaces.	Taxable if Rs. 10,000 or more per month

3. AGRICULTURE SECTOR

Meaning of Agriculture produce: Agriculture Produce means any produce out of cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products, on which either no further processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market.

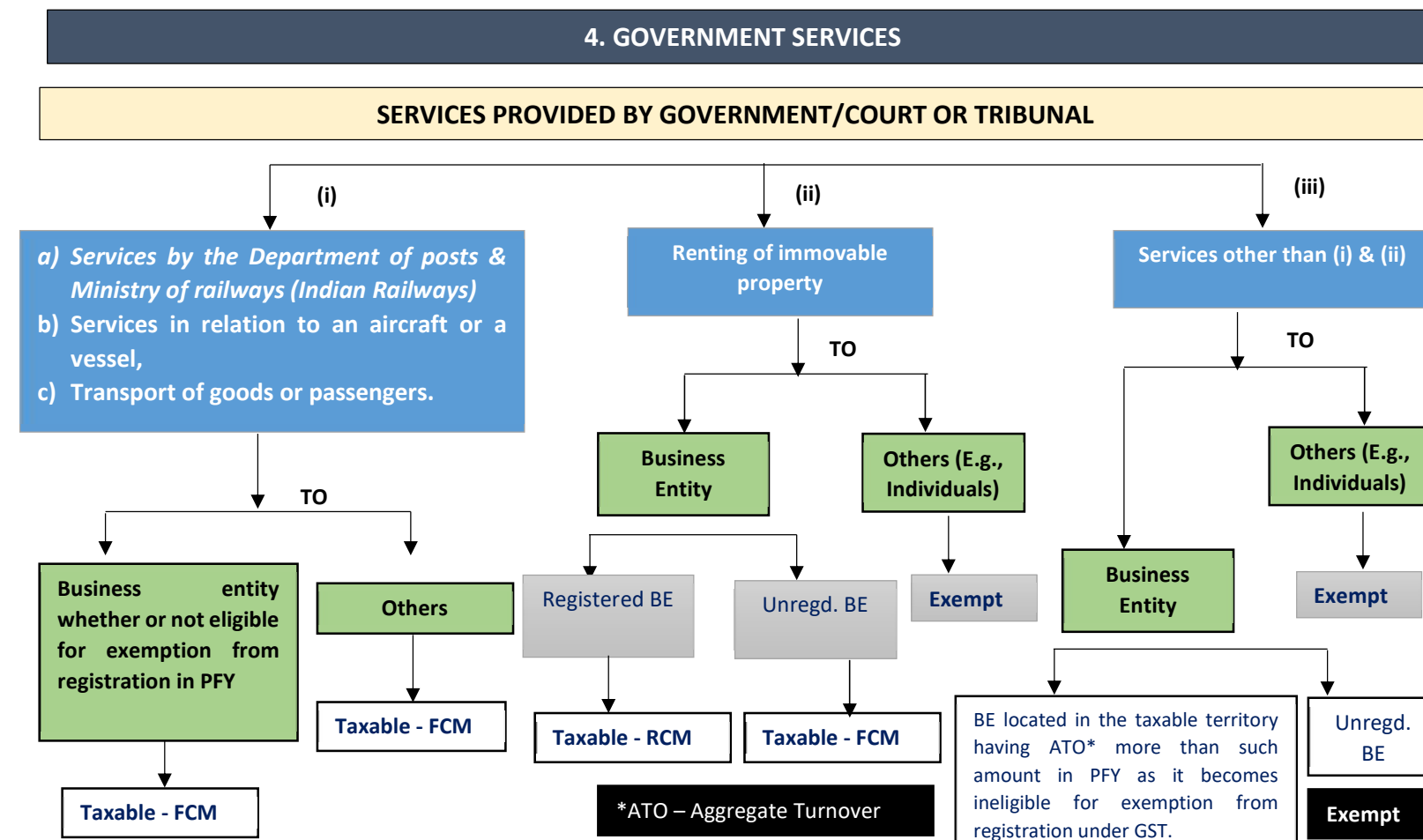
In respect of Agriculture Sector following are exempt:

- ❖ Operations on agriculture produce such as cultivation, Harvesting, Threshing, Testing of Agriculture Produce, Loading / unloading, supply of farm labor, tending, pruning, cutting, which do not alter essential characteristics for primary market are exempt.
- ❖ Renting / Leasing of Agro-machinery or Vacant Land, Services by APMC
- ❖ Agriculture extension services
- ❖ Pisciculture, sericulture, floriculture
- ❖ Whole gram pulse is agriculture produce but not normal pulse (like dal)

Other Important Points

- 1) Rubber, green tea leaves, coffee is exempt (processed coffee is taxable)
- 2) Lease of vacant land with storage shed meant for agriculture produce are exempt (for other purposes taxable)
- 3) Processed products of Black Tea, Green Tea, White Tea, Jaggery are taxable. However, whole grain pulse is exempt
- 4) Pre-conditioning, pre-cooling, ripening, waxing, retail packing, labelling of fruits and vegetables which **do not change or alter the essential characteristics** of the said fruits or vegetables are exempt
- 5) Services provided by the National Centre for **Cold Chain Development** under Ministry of Agriculture, Cooperation and Farmer's Welfare by way of cold chain knowledge dissemination are exempt.
- 6) Cleaning of **wheat outside farm, Sales commission for wheat – exempt**
- 7) **Milling of paddy into rice is taxable.**
- 8) Loading, unloading, packing, storage, or warehousing of agriculture produce including rice are exempt.
- 9) Artificial insemination of livestock (*other than horses*) are exempt.
- 10) Testing activities in relation to agriculture produce such as soil testing, animal feed testing etc. are exempt.
- 11) Services by way of storage or warehousing of cereals, pulses, fruits, and vegetables are exempt

Exemptions [Section 11 r/w NN 12/2017 - CTR] (2/8)



Important Points for Services provided BY CG/SG/UT/LA.: -

- Services of other than (i) above provided by CG/SG/UT/LA to CG/SG/UT/LA are exempt.
- For the purpose of services referred in (ii) & (iii) above, provided by CG/SG/UT/LA where **Gross consideration does not exceed Rs. 5,000 are exempt.**
- Services by CG/SG/UT/LA by way of **guaranteeing loan** taken by their undertakings or PSUs from **banking companies & financial institutions** are exempt.
- Services by CG/SG/UT/LA for **testing/calibration/safety check** or certification relating to **protection or safety of workers & consumers** are exempt.
- Issuance of passport, visa, driving license, birth certificate or death certificate are exempt
- Services provided way of **tolerating non-performance of a contract** entered into by the CG/SG/UT/LA where payments received by CG/SG/UT/LA by way of **finances, penalty** etc. for tolerating non-performance of contract are exempt.
- Excess Royalty Collection Contractor is a person to whom govt authorized to collect royalty on their behalf from mining lease holder. Mining leaseholders are liable to GST under RCM on such services. ERCC & Govt enters into contract wherein ERCC is required to collect the amount as per agreement entered. Accordingly, services supplied by a State Government to Excess Royalty Collection Contractor (ERCC) by way of **assigning the right to collect royalty on behalf of the State Government on the mineral dispatched by the mining lease holders** are exempt. This exemption is restricted to amount of GST paid by mining lease holder and ERCC shall be liable to pay GST on difference between GST exempted & GST paid by mining lease holders if GST paid by mining lease holder is less than amount of GST exempted.
- Services provided by Ministry of Railways (Indian Railways) to individuals by way of sale of platform tickets; facility of retiring rooms/waiting rooms; cloak room services; battery operated car services are exempt.
- Services provided by one zone/division under Ministry of Railways (Indian Railways) to another zone(s)/division(s) under Ministry of Railways (Indian Railways) would be exempt.

Taxable - RCM

Important Points for Services provided TO CG/SG/UT/LA.: -

- Pure services (labor contracts) or; **Composite supplies where value of goods is not more than 25% of Total value, in relation to any function entrusted to a Panchayat** under Article 243G or Article 243W
- Services by Govt. entity to CG/SG/UT/LA in form of **grants**
- Services to CG/SG/UT by way of sale of food grains, kerosene, sugar, edible oil, etc. under **Public Distribution System** against consideration in the form of commission or margin
- Services provided to the CG/SG/UT under any **insurance scheme for which total premium is paid by CG/SG/UT**
- Services provided to CG/SG/UT Administration where **75% or more of expenditure is borne by them** are exempt
- Sanitation & Conservancy services are procured by Indian Army or any other Government Ministry/Department which does not perform any functions listed in the 11th and 12th Schedule, in the manner as a local authority does for the general public, they are taxable
- Accommodation services provided by Air Force Mess and other similar messes, to their personnel or any person other than a business entity are exempt.

5. HEALTHCARE SERVICES

Health care services by a clinical establishment, an authorized medical practitioner, or para-medics. (Recognized system – Allopathy, Yoga, Naturopathy, Ayurveda, Homeopathy, Siddha, Unani) – Reiki & Acupressure Taxable

Services provided by way of transportation of a patient in an ambulance.

- Room rent charged from in-patients** in hospital is exempt if charges per day is upto Rs. 5,000/-. However, room rent charged from attendants is fully taxable. Further, the room rent charges are fully exempt irrespective of value if the room rented is ICU/ICCU/NICU/PICU.
- GST is not applicable on consultancy** by doctor.
- Treatment of Food Supplied by Hospitals:**
 - Food Supplied** directly by Hospital to **in-patients** as advised by doctor – **Exempt.** (Food Supplied to Attendant of Patient is taxable)
 - Supply of Food is outsourced** by hospital to another agency – **Agency will charge GST** & Hospital will not get ITC (as providing exempt supplies)
- GST will not be levied on Retention money.** E.g. If hospital charges Rs. 10,000/- from patient and pays Rs. 7500/- to doctors & keeps Rs. 2500/- with them for ancillary expenses, Rs. 2500 will also be exempt.
- Ambulance services by NHM – **Exempt**
- Services by recognised rehabilitation professionals are exempt**
- Veterinary services are exempt.
- Services provided as IVF (In vitro fertilisation) or ART (Assisted Reproductive Technology) are healthcare services, thus exempt.

Services provided to a Governmental Authority by way of water supply; public health; sanitation conservancy; solid waste management; and slum improvement and upgradation are exempt.

Exemptions [Section 11 r/w NN 12/2017 - CTR] (3/8)

6. EDUCATION SECTOR [E. 66]

Educational institution means an institution providing services by way of: -

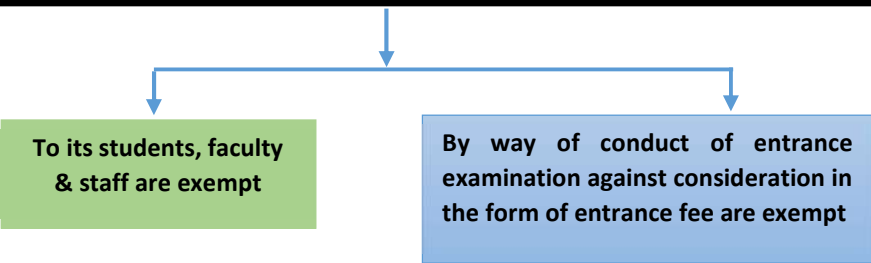
- (i) pre-school education and education up to higher secondary school or equivalent;
- (ii) education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force;
- (iii) education as a part of an approved vocational education course.

An approved vocational education course means, Trainings by NCVT & SCVT in designated trade: -

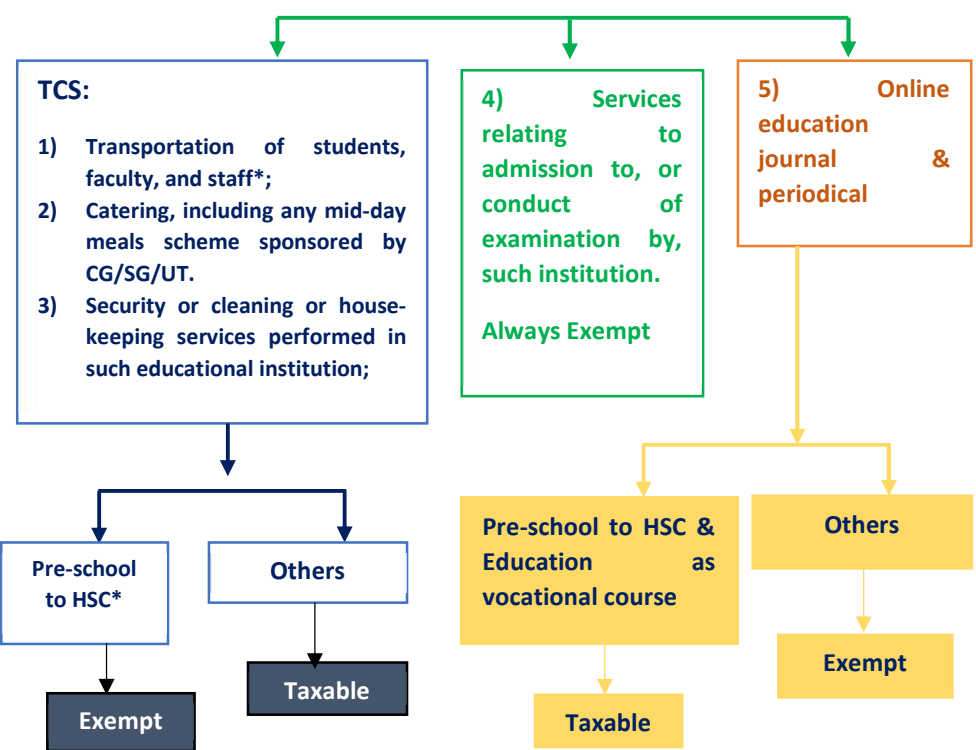
- a) Course run by an Industrial training institute/Industrial training centre affiliated to the National Council for Vocational Training (NCVT) or State Council for Vocational Training (SCVT) offering courses in designated trades notified under the Apprentices Act, 1961 or
- b) A Modular Employable Skill Course, approved by the NCVT.
- c) As per Clarifications issued by CBIC any authority, board or body set up by the CG, SG, including National Testing Agency for conduct of entrance examination for admission to educational institutions shall be treated as educational institution.

Educational Services exemption we will learn in 2 parts as below

(A) Provided BY Educational Institutions (OUTPUT SERVICES)



(B) Provided TO Educational Institutions (INPUT SERVICES)



*The supply of services, by way giving on hire the motor vehicle to a person who is providing services to educational institution providing pre-school to HSC education, are exempt. [E. 22(c)]

6. EDUCATION SECTOR [E. 66] [Continued]

- Other Important Points: -**
- 1) Education as a part of curriculum for obtaining qualification recognized under any law in India is exempt (E.g. Pursuing CA)
 - 2) Services provided by Boarding Schools along with residence & food is exempt as pre-dominant supply is of education.
 - 3) Service of giving motor vehicle on hire for transportation of students, faculty & staff to educational institution of pre-school to HSC – Exempt.
 - 4) Placement services provided to educational institutions are taxable.
 - 5) Catering services provided by educational institutions is exempt. However, if provided by third party to educational institutional providing pre-school to HSC education then its exempt, otherwise it would be taxable.
 - 6) Services by ITI (Industrial Training Institutes) including private ITI: -

Circular 55/29/2018-GST dated 9th August, 2018		
Sr. No.	Category	Exemption / Taxable
1	Vocational training provided by private ITIs in designated trades (as per apprentice act e.g. Barber/Hair Cutter/Dresser, CAD-CAM Operator-cum-Programmer, Chemical Laboratory Assistant)	Exempt
2	Vocational training provided by private ITIs in other than designated trades.	Taxable
3	Service, provided by a private Industrial Training Institute for conduct of examination against entrance fees [Sl. No. 66 of notification No. 12/2017-CT(Rate)]	Exempt

- 7) Foreign courses by private institutes are taxable, education for non-recognized qualification is taxable.
- 8) Maritime Institutes are educational institutions under GST Law and the courses conducted by them are exempt from levy of GST.
- 9) Issuance of migration certificate to the leaving or ex-students – Exempt

Summary of Taxability of Input & Output Supplies				
Services	Pre-school to HSC	Education as qualification under law (Other than pre-school to HSC)	Coaching Centre	NCVT/SCVT
INPUT SERVICES AVAILED BY THESE INSTITUTIONS				
Transportation of students, faculty and staff	Exempt	Taxable	Taxable	Taxable
Catering, including any mid-day meals scheme sponsored by CG/SG/UT (OUTDOOR CATERING)	Exempt	Taxable	Taxable	Taxable
Security, cleaning house keeping	Exempt	Taxable	Taxable	Taxable
Printing of papers content supplied by institutions, Honorarium, rental	Exempt	Exempt	Taxable	Exempt
Honorarium to paper setter	Exempt	Exempt	Taxable	Exempt
Online education journal	Taxable	Exempt	Taxable	Taxable
OUTPUT SUPPLIES PROVIDED BY THESE INSTITUTIONS				
Any Services (including catering whether or not inhouse)	Exempt	Exempt	Taxable	Exempt
Uniforms (Goods)	Taxable	Taxable	Taxable	Taxable
Entrance fees for conduct of exams	Exempt	Exempt	Taxable	Exempt

TAXABILITY OF COURSES OFFERED BY IIM (INDIAN INSTITUTE OF MGT):

W.e.f. 31st January, 2018 onwards, all **long duration programs** (one year or more) conferring degree/ diploma as recommended by Board of Governors as per the power vested in them under the IIM Act, 2017 including one- year Post Graduate Programs for Executives are **exempt from GST**

All short duration executive development programs or need based specially designed programs (less than one year) which are not a qualification recognized by law **are taxable under GST**

(7) Banking & Financial Sector

- 1) **Services by RBI are taxable. (TO RBI are also Taxable).**
Note: - Services to RBI by members of overseeing committee, GST will be paid by RBI under RCM. (Refer RCM Chapter)
- 2) Services by way of—
 - (a) **extending deposits, loans or advances** in so far as the consideration is represented by way of interest or discount (**other than interest involved in credit card services**);
 - (b) inter se **sale or purchase of foreign currency amongst banks or authorized dealers** of foreign exchange or amongst banks and such dealers are exempt.
- 3) Services provided by international finance corporation & Asian development bank are exempt.
- 4) GST shall not be charged on charges charged by bank of payment of upto Rs. 2,000/- made by any person through debit / credit card / **RuPay / BHIM UPI**. The said exemption is to encourage online transaction for small amounts made by credit card, debit card, charge card or other payment card service. (Sl. 34)
- 5) Services by an **intermediary of financial services located in a multi services SEZ** with International Financial Services Centre (**IFSC**) status to a customer located **outside India for international financial services in currencies other than Indian rupees (INR) are exempt.**
- 6) Services by the following persons in respective capacities are exempt—
 - (a) business facilitator (BF) or a business correspondent (BC) to a banking company with respect to accounts in its rural area branch; (urban area branches covered under RCM)
 - (b) any person as an intermediary to a business facilitator or a business correspondent with respect to services mentioned in entry (a); or
 - (c) business facilitator or a business correspondent to an insurance company in a rural area.

Your circumstances reflect what you have been thinking about

Exemptions [Section 11 r/w NN 12/2017 - CTR] (4/8)

8. CONSTRUCTION INDUSTRY

- Pure labour contracts** of construction, or any work of a civil structure or any other original works pertaining to the beneficiary-led individual house construction or enhancement under the Housing for **All (Urban) Mission or Pradhan Mantri Awas Yojana** are exempt.
- Services by way of erection or construction of original works pertaining to single residential unit otherwise as a part of a residential complex;
Residential complex means any complex comprising of a building or buildings, having more than one single residential unit.
- Transfer of Development Rights / FSI / Lease Land for construction of residential apartments:** -
Exemption is available to in respect of transfer of development rights, FSI made after 1-4-2019 or upfront amount for long term lease paid after 1-4-2019 to the extent of residential apartments by promoter, when sale is made by promoter during construction (i.e. consideration received before completion certificate or first occupation w.es. earlier)

Amount of Exemption on: -

TDR & FSI for Construction of residential properties OR Long-Term Lease (LTL) (>30 years) for construction of residential apartments

$$\text{GST Payable on TDR / FSI or for LTL} \times \frac{\text{Carpet Area of Residential Apt}}{\text{Total Carpet Area of Residential Apt + Commercial Apt.}}$$

Further, promoter will be liable to pay GST under RCM on un-booked flats as on date of CC or first occupation whichever is earlier as per below formula:

$$\text{GST Exempted as per above formula on TDR/FSI or for LTL Construction to the extent of residential apts.} \times \frac{\text{Carpet Area of Residential Apt which remain un-booked on date of CC or first}}{\text{Total Carpet Area of Residential Apt}}$$

In simple words, the exemption is to the extent of residential apartments booked before CC or first occupation whichever is earlier.

Location charges or preferential location charges (PLC) collected in addition to the lease premium for long term lease of land are also exempt.

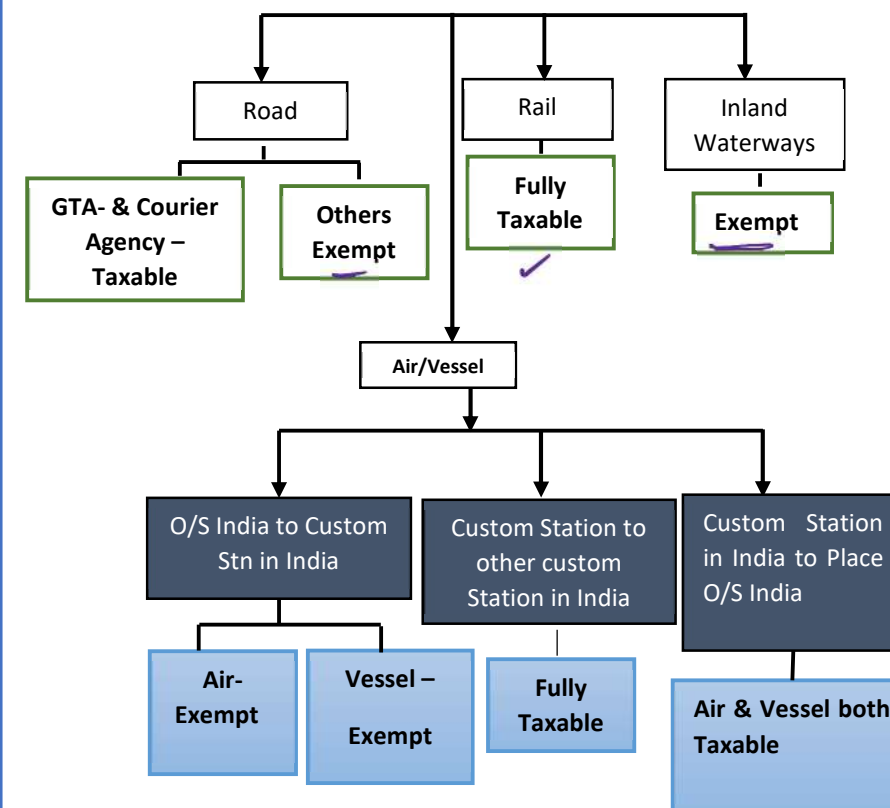
9. GOODS TRANSPORT SECTOR

Exemption on Transportation of specific goods & Value exemption:

- ❖ Agricultural produce;
- ❖ Transportation by rail or a vessel or by GTA of relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap; defence or military equipment; newspaper or magazines registered with the Registrar of Newspapers; or materials; agricultural produce; milk, salt and food grain including flours, pulses and rice; and organic manure.
- ❖ **Transportation of railway equipment or materials by rail or vessel is taxable**
- ❖ Services by way of granting National Permit to a goods carriage to operate through-out India/ contiguous States (E. 61A)

are exempt.

Exemption on Mode of Transportation of Goods

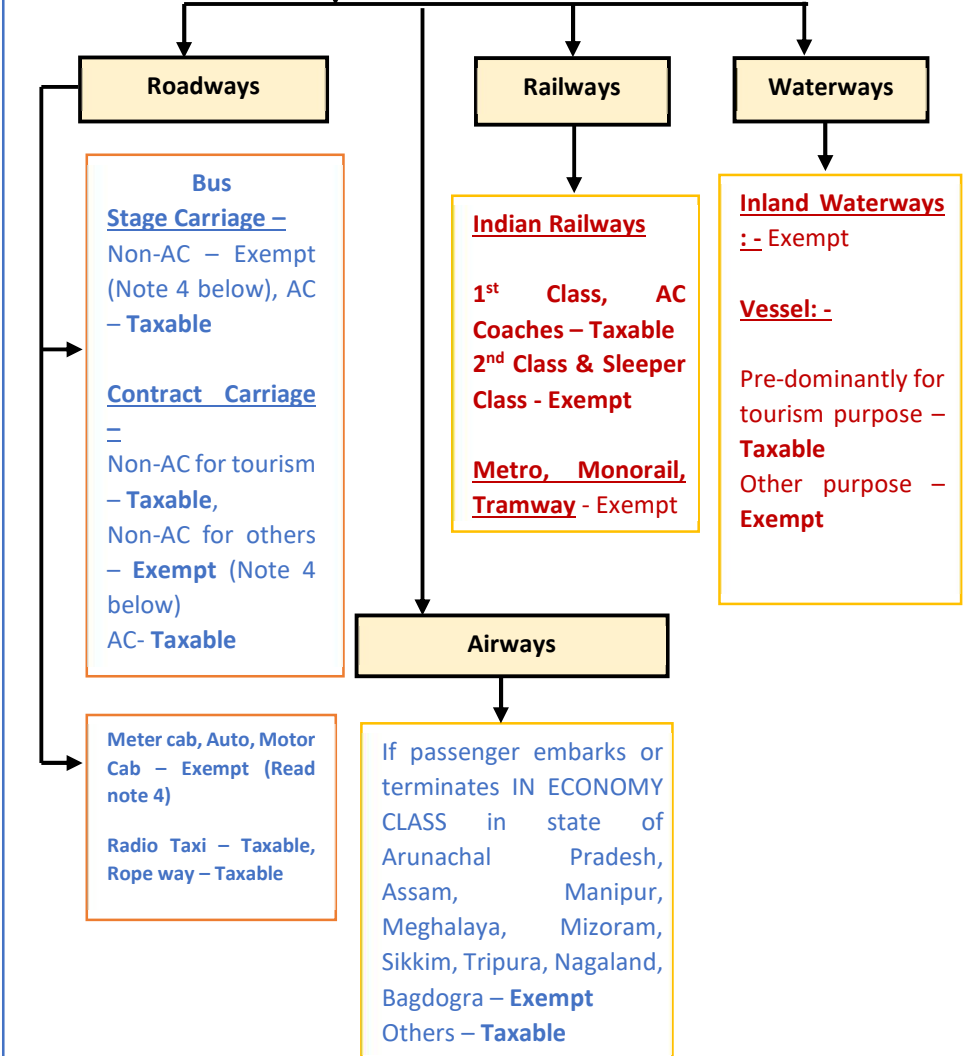


Supply through pipelines or conduit are fully taxable

Other Important Points: -

- GST on supply of services associated with transit cargo to Nepal and Bhutan are exempt. In this regard, it is clarified that exemption under Entry 9B covers services associated with transit cargo both to and from Nepal and Bhutan.
- GST is not leviable on private ferry used for passenger transportation. It is further clarified that, the expression 'public transport' used in the exemption notification only means that the transport should be open to public. Only exclusion is on transportation which is predominantly for tourism, such as services which may combine with transportation, sightseeing, food and beverages, music, accommodation such as in shikara, cruise etc.

10. PASSENGER TRANSPORT SECTOR

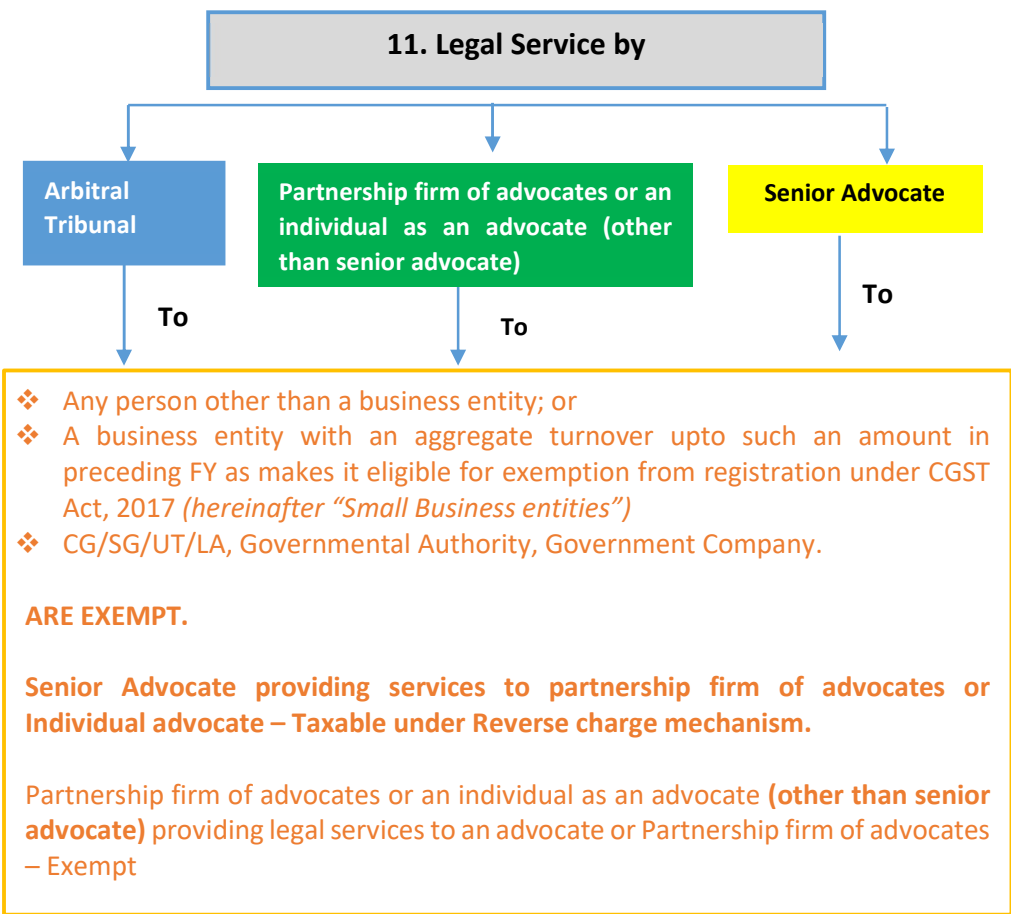


Other Important Points: -

- Services provided by a tour operator to a foreign tourist in relation to a tour conducted wholly outside India.
- Services provided by a tour operator to foreign tourist which is performed partly in India and partly outside India is exempt to the extent of the value of the tour operator service which is performed outside India. (Refer last page)
- Example of Contract Carriage, if a bus is operating between Mumbai & Delhi, it must pick up all its passengers before leaving Mumbai & must drop all its passengers at Delhi & not have any stops in between.
- Stage Carriage can be understood as a MV adapted to carry more than 6 passengers (excluding driver) at separate fares for individual depending on length of journey.
- The services would not be exempt if they are provided through an electronic commerce operator and notified under section 9(5) of CGST Act. (Please refer Section 9(5) wherein few service providers are notified in this regard)

"Whenever you see a successful person, you only see the public glories, never the private sacrifices to reach them."

Exemptions [Section 11 r/w NN 12/2017 - CTR] (5/8)



13. LIFE INSURANCE BUSINESS

- ❖ Services of life insurance business provided by way of annuity under the **National Pension System** regulated by Pension Fund Regulatory and Development Authority of India (PFRDA) under the Pension Fund Regulatory and Development Authority Act, 2013 (23 of 2013);
- ❖ Life Insurance to members of army, navy, Airforce, under group insurance scheme of CG are exempt.
- ❖ W.e.f. 1st October, 2019, Services of life insurance provided or agreed to be provided by the Central Armed Police Forces (under Ministry of Home Affairs) Group Insurance Funds to their members under the Group Insurance Schemes of the concerned Central Armed Police Force are exempt
- ❖ Coastal Guards under Naval Group Insurance Funds are also exempt.
- ❖ Life Insurance scheme **under various schemes**: - (only imp covered)
 - (i) Janashree Bima Yojna
 - (ii) Life – Micro insurance product approved by IRDA having **MAXIMUM** cover of **Rs. 2,00,000/-** are exempt
 - (iii) PM Jeevan Bima Yojana
 - (iv) PM Jan Dhan Yojana & Vaya Vandan Yojna are exempt

14. LEASING SERVICES

- Lease Long term (> 30 years) – Charges payable as upfront amount is exempt if it is
- ❖ Provided by SG Industrial Development or entity having ownership >20% of CG/SG/UT and,
 - ❖ Provided to Industrial units or developers in any industrial / financial business
- Note: - Even if upfront amount is paid in instalment, it is exempt provided it is determined.

15. ARTIST SERVICES

Services by an artist by way of a performance in folk or classical art forms of Music, or Dance, Theatre, if the consideration charged for such performance is upto Rs. 1,50,000/- are exempt. This exemption shall not apply to service provided by such artist as a brand ambassador.

16. ADMISSION TO VARIOUS EVENTS

- (i) Services by way of admission to a museum, national park, wildlife sanctuary, tiger reserve or zoo.
- (ii) Services by way of admission to a protected monument so declared under the Ancient Monuments and Archaeological Sites and Remains Act 1958 or any other law for time being in force.
- (iii) Services by way of right to admission to, -
 - ❖ Circus, dance, or theatrical performance including drama or ballet;
 - ❖ Award function, concert, pageant, musical performance or any sporting event other than a recognized sporting event;
 - ❖ recognised sporting event & planetariumwhere the consideration for admission is not more than Rs. 500 per person **are exempt**.

Service recipient	Supplier - Senior Advocate	Supplier - Individual advocate or Partnership firm of advocates (Other than Senior Advocate)
Other than B.E.	Exempt	Exempt
B.E. having turnover of less than threshold in PFY (registered in CY)	Exempt	Exempt
CG, SG, UT, LA, Govt. Authority, Govt. company	Exempt	Exempt
Individual advocate or Partnership firm of advocates or senior advocate	Taxable, RCM	Exempt
B.E. having turnover more than threshold in PFY (registered in CY)	Taxable, RCM	Taxable, RCM

12. GENERAL INSURANCE BUSINESS (ONLY IMP COVERED)

- ❖ Hutt / Cattle Insurance
- ❖ Insurance for Tribals
- ❖ PM Fasal Bima Yojna
- ❖ PM Suraksha Bima Yojna
- ❖ Nirmaya Health Insurance Scheme
- ❖ w.e.f. 1st October, 2019; Bangla Shasya Bima (Entry 35) are exempt. Note: - Re-insurance of above is also exempt.

"Try not to become a person of success, but rather try to become a person of value."

17. SERVICES BY UNINCORPORATED BODY OR NOT FOR PROFIT ORGANISATION

(i) Service by an unincorporated body or a non-profit entity registered under any law for the time being in force, to its own members by way of reimbursement of charges or share of contribution –

- ❖ As a trade union;
- ❖ For the provision of carrying out any activity which is exempt from the levy of GST;
- ❖ Up to an amount of **Rs. 7,500/-** per month per member for sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex.

Legal position on taxability of maintenance charges collected by RWA (Circular No.109/28/2019- GST dated 22nd July, 2019)

Annual Turnover	More than Rs. 20L/-	More than Rs. 20L/-	Less than or equal to Rs. 20L/-	Less than or equal to Rs. 20L/-
Charges per month per member for each residential apartment	More than Rs. 7,500/-	Less than or equal to Rs. 7,500	More than Rs. 7,500/-	Less than or equal to Rs. 7,500
Taxability	Taxable	Exempt	Exempt	Exempt
Notes	Entire amount is taxable not just in excess of Rs. 7,500/-	NA	NA	NA

ITC on Inputs / Input Services & Capital Goods

- ❖ RWAs are entitled to take ITC of GST paid by them on capital goods (generators, water pumps, lawn furniture etc.), goods (taps, pipes, other sanitary/hardware fillings etc.) and input services such as repair and maintenance services provided: -
- ❖ Amount charged by RWA is more than Rs. 7,500/- per month per member & RWA is registered under GST (i.e. annual turnover is more than Rs. 20 Lakhs).
- ❖ Further, it is important to note that if charges per member are less than or equal to Rs. 7,500/- and RWA is registered under GST, RWA shall be liable to reverse ITC as per Section 17 of CGST Act)

Work to become a resourceful person, make yourself a treasure of knowledge. Do not work only for money, it shall be a by-product. Live a life with a purpose, otherwise you will be alive without liveliness - CA Keval Mota

18. MISCELLANEOUS EXEMPTIONS (ONLY IMP)

1. Services provided to a **recognised sports body** by (a) an **individual** as a player, referee, umpire, coach or team manager for participation in a sporting event organised by a recognized sports body; (b) **another recognised sports body is exempt.**
2. **Royalty & License Fees included in transaction value u/r 10(1)(c) of Customs Valuation Rules is exempt.**
3. GTA Services to recipient registered only for the purpose of deduction of TDS is exempt.
4. Services by **sponsorship** of event organised by **National Sports Federation, Indian Sport Council for Deaf, Paralympic, Indian Olympic Association etc. are exempt**
5. Services by **National Skill development corporation / sector skill council** in relation to recognised skill development program is **exempt.**
6. Transfer of business as a going concern is exempt
7. Services by way of **renting of residential dwelling to any person other than registered person for use as residence is exempt**
8. **Services by a hotel, inn, guest house, club or campsite etc. for residential or lodging purposes are taxable**
9. Services by way of **giving on hire** to
 - ❖ To a **state transport undertaking**, a motor vehicle meant to **carry > 12 passengers**;
 - ❖ To a **GTA**, a means of **transportation of goods**; or
 - ❖ **Motor vehicle for transport of students, faculty and staff**, to a person providing services of transportation of students, faculty and staff to an **educational institution** providing services by way of **pre-school education and education upto higher secondary school or equivalent**;
 - ❖ To a local authority, an Electrically operated vehicle meant to carry more than twelve passengers; to a goods transport agency, a means of transportation of goods.**are exempt.**
 [Renting of trucks and other freight vehicles with driver for a period of time is a service of renting of transport vehicles is not eligible for exemption under notification 12/2017 – CTR.]
10. Service by way of access to a road or a bridge on payment of **toll charges or Additional toll / fees collected from non-fastag vehicle is exempt**
11. Transmission or distribution of electricity by an **electricity transmission or distribution utility – exempt.**
12. Services provided by an incubatee up to a total turnover of Rs. 50 Lakhs in a financial year subject to the following conditions, namely: -
 - the **total turnover had not exceeded Rs. 50 lakhs during the preceding financial year**;
 - and a period of **three years has not elapsed** from the date of entering into an agreement as an incubatee are exempt
13. Services by way of **public conveniences** such as provision of facilities of bathroom, washrooms, lavatories, urinal or toilets **are exempt.**
14. Service provided by (FIFA) and its subsidiaries directly or indirectly related to any of the events under FIFA U-17 Women's World Cup 2020 to be hosted in India is exempt.
15. Services by way of right to admission to the events organized under FIFA U-17 Women's World Cup 2020 whenever rescheduled are exempt.
16. Satellite launch services are exempt.

1) ANALYSING CONCEPT OF ERC CONTRACTOR

It is pertinent to note that there are two considerations flowing from miner to state govt. viz. Dead (fix) Rent at periodic interval & Royalty to State Government. Dead Rent is pre-determined amount, royalty % is determined on suitable basis such as % of sales by miner etc.

Excess Royalty Collection Contract” means a contract for specified mineral(s) and area given to collect royalty in excess of annual dead rent, on behalf of the Government from the holder of mining lease (s) under the contract whereunder the contractor shall pay a fixed amount annually to the Government as per terms of the contract.

Example if ONGC Limited has obtained license from Maharashtra State Government. Maharashtra State Govt. agrees to receive dead rent of Rs. 5,00,000/- per annum. Further, they agree that royalty shall 10% of Sales value for first 3 years i.e. contract period. Maharashtra SG appoints Mr. Kumar as a person to collect revenue for this contract. Maharashtra State assigns right to collect royalty from ABC Ltd to Mr. Kumar for Rs. 85,00,000. Thus, Mr. Kumar is treated as ERCC. Determine Taxability in below cases

- i) ONGC Ltd. was able to sell 8,30,00,000 of mineral
- ii) ONGC Ltd. was able to sell 5,50,00,000 of mineral

Let us understand taxability of above example as per Entry 65B & Notification 13/2017 – CTR.

Case (i) ONGC Ltd. was able to sell 8,30,00,000 of mineral

➤ Tax Impact on Miner – ONGC

Thus, ONGC is liable to pay GST under reverse charge as per entry no. 4 of Notification 13/2017 – CTR

Amount on which reverse charge is to be discharged: -

a) Fixed Rentals: - Rs. 5,00,000 x 3 years = 15,00,000

b) Royalty: - 8,30,00,000 x 10% = 83,00,000

Totalling to Rs. 98,00,000 x 18% = 17,64,000

(Please note that Tax has to be discharged in accordance with Time of Supply provisions)

➤ Tax Impact on ERCC Contractor i.e. Mr. Kumar

As per Entry No. 65B Mr. Kumar will get an exemption of Rs. 85,00,000. Since total tax is paid by ONGC Ltd. on amount exceeding 85,00,000/-. ERCC will not be liable to pay tax.

Case (ii) ONGC Ltd. was able to sell 5,50,00,000 of mineral

➤ Tax Impact on Miner – ONGC

Thus, ONGC is liable to pay GST under reverse charge as per entry no. 4 of Notification 13/2017 – CTR

Amount on which reverse charge is to be discharged: -

a) Fixed Rentals: - Rs. 5,00,000 x 3 years = 15,00,000

b) Royalty: - 5,50,00,000 x 10% = 55,00,000

Totalling to Rs. 70,00,000 x 18% = 12,60,000/-

(Please note that Tax has to be discharged in accordance with Time of Supply provisions)

➤ Tax Impact on ERCC Contractor i.e., Mr. Kumar

As per Entry No. 65B Mr. Kumar will get an exemption of Rs. 85,00,000 when he will pay this amount to SG (at first instance). However, since ONGC Ltd. discharged tax on Rs. 70,00,000/-, ERCC Contractor has to pay GST on shortfall of Rs. 15,00,000 [85,00,000 (-)70,00,000].

2) Liquidated Damages: -

(a) Fines / Penalties or liquidated damages payable to Government

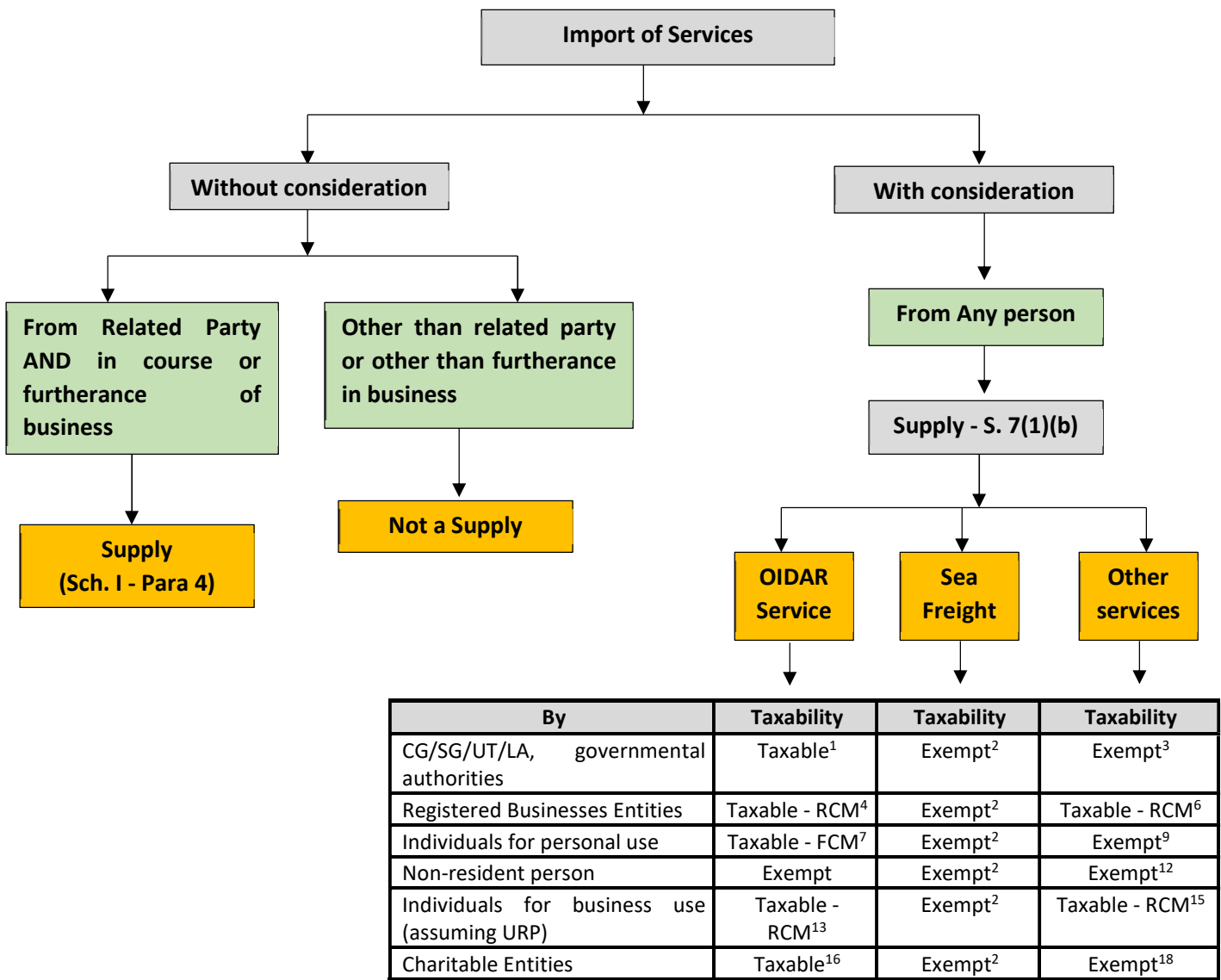
As per entry 62 of NN 12/2017 – CTR Fines / Penalties or liquidated damages payable to Government or Local Authority are Exempted, therefore, **NO GST IS CHARGED NOR EVEN PAYABLE ON RCM BASIS.**

(b) Fines / Penalties or liquidated damages payable by Government

However, as per Circular 178/10/2022, Liquidated damages will not be “supply.”

Exemptions [Section 11 r/w NN 12/2017 - CTR] (7/8)

19. INDEPTH INTERLINKING CHART FOR TAXABILITY OF IMPORT OF SERVICES
[Harmonious reading of S. 2(16) & S. 14 of IGST Act, Notification 10/2017 - IT(R), Notification 9/2017 - IT(R), Section 7 of CGST Act, Schedule I to CGST Act]



Sr. No.	Notation	Imported By	Provision
1	OIDAR Services	CG/SG/UT/LA, governmental authorities	CG/SG/UT/LA, governmental authorities are non-taxable online recipients. Services provided by OIDAR service provider located in NTT to NTOR is taxable under forward charge [S. 2(16) & S. 14 of IGST Act]
2	Sea Freight	Anyone	Exempt
3	Other Services	CG/SG/UT/LA, governmental authorities	As per Notification No. 9/2017 - IT (R) services other than OIDAR & Sea freight imported by these entities are exempt .
4	OIDAR Services	Registered Businesses Entities	Registered business entities are not non-taxable online recipients. Thus, the services imported by them would be taxable under reverse charge [Section 2(16) of IGST Act, read with Section 14 of IGST Act & Notification 10/2017 - IT (R)]
5	Sea Freight	Registered Businesses Entities	Exempt
6	Other Services	Registered Businesses Entities	Registered business entities are not non-taxable online recipients. Services received by persons other than non-taxable online recipients would be taxable under reverse charge . Thus, registered business entities would be liable to pay tax under reverse charge [Section 2(16) of IGST Act, read with Notification 10/2017 - IT (R)]
7	OIDAR Services	Individuals for personal use	Individuals using OIDAR services for personal purposes are non-taxable online recipients. Services provided by OIDAR service provider located in NTT to NTOR is taxable under forward charge [S. 2(16) & S. 14 of IGST Act]
8	Sea Freight	Individuals for personal use	Exempt
9	Other Services	Individuals for personal use	As per Notification No. 9/2017 - IT (R) services other than OIDAR & Sea freight imported by these persons are exempt. Thus, these services would be exempt .
10	OIDAR Services	Non-resident person	Services imported by non-resident person including OIDAR services, are exempt from GST by virtue of notification 9/2017 - IT (R).
11	Sea Freight	Non-resident person	Exempt
12	Other Services	Non-resident person	Services imported by non-resident person including OIDAR services, are exempt from GST by virtue of notification 9/2017 - IT (R).
13	OIDAR Services	Individuals for business use (assuming URP)	Individuals using OIDAR services for commercial purposes are not non-taxable online recipients. Thus, services provided by OIDAR service provider located in NTT to other than NTOR is taxable under reverse charge [S. 2(16) & S. 14 of IGST Act r/w NN 10/2017 - IT(R)]
14	Sea Freight	Individuals for business use (assuming URP)	Exempt
15	Other Services	Individuals for business use (assuming URP)	Unregistered business entities being other than NTOR would be liable to pay tax under reverse charge [Notification 10/2017 - CTR]
16	OIDAR Services	Charitable Entities	Charitable entities are non-taxable online recipients as they provide services other than commerce, industry or any other business or profession. Services provided by OIDAR - NTT to NTOR is taxable under forward charge . [Section 2(16) of IGST Act, read with Section 14 of IGST Act & Notification 10/2017 - IT (R)]
17	Sea Freight	Charitable Entities	Services of transportation of goods from vessel by importer would be exempt by virtue of NN 12/2023 – IT(R)
18	Other Services	Charitable Entities	As per Notification No. 9/2017 - IT (R) services other than OIDAR & Sea freight imported by these entities are exempt .

"I have not failed. I've just found 10,000 ways that won't work."

Exemptions [Section 11 r/w NN 12/2017 - CTR] (8/8)

20. MISCELLANEOUS IGST EXEMPTIONS & ANALYSIS

Sr. No.	IGST Exemptions [NN 9/2017 - ITR]
1.	Services received by the RBI, from outside India in relation to management of foreign exchange reserves are exempt
2.	Services provided by a tour operator to a foreign tourist in relation to a tour conducted wholly outside India .
3.	Services supplied by an establishment of a person in India to any establishment of that person outside India, which are treated as establishments of distinct persons [in accordance with Explanation 1 in section 8 of the IGST Act] provided the place of supply of the service is outside India [in accordance with section 13 of IGST Act].
4.	Import of services by United Nations or a specified international organisation for official use of the United Nations or the specified international organisation. 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.
5.	Intra-State supplies received by a TDS deductor from any unregistered supplier exempt from CGST. Intra-State supplies of goods or services or both received by a deductor under section 51, from any unregistered supplier, is exempt provided registration is not taken by such deductor to make any taxable supply. [There are 2 registrations for deductor, one works like TAN in income tax, i.e., to deduct tax & another to provide services i.e., normal registration.
Analysis: Thus, Tax shall not be deducted at source when unregistered persons supply to persons who are responsible to deduct tax (Government Agencies).	
6.	Services imported by unit/developer in SEZ exempt from IGST All services imported by a unit/developer in the Special Economic Zone (SEZ) for authorised operations are exempt from the whole of the integrated tax leviable thereon under section 3(7) of the Customs Tariff Act, 1975 read with section 5 of the IGST Act, 2017 [Notification No. 18/2017 IT (R) dated 05.07.2017] .
Analysis: (i) It is pertinent to note that, services imported by SEZ are exempt from GST if they are for carrying out authorised operations. Authorised operations have been notified by laws governing SEZ. Total 64 services are there which are called as authorised operations. (ii) The question here arises that, whether services provided from DTA to SEZ would be exempt or not, it is to be noted that, supply of services to SEZ is zero rated supply. Since, the supply is zero rated the question of taxability does not arise. Reverse charge is just a mechanism to pay tax by recipient only when supply is chargeable to tax. In case of SEZ, the supply is zero rated, thus, in my opinion tax is not payable under reverse charge. However, contrary views are available in market, which proclaims SEZ to claim refund of tax paid under Reverse charge.	
7.	Central Government's share of profit petroleum exempted from CGST Intra-State supply of services by way of grant of license or lease to explore or mine petroleum crude or natural gas or both, has been exempted from so much of CGST as is leviable on the consideration paid to the Central Government in the form of Central Government's share of profit petroleum as defined in the contract entered into by the Central Government in this behalf. [Notification No. 5/2018 CT (R) dated 25.01.2018] . Parallel exemption from IGST has been extended to inter-State supply of such services vide Notification No. 5/2018 IT (R) dated 25.01.2018.

SERVICES TO FOREIGN TOURIST WHERE TOUR IS PERFORMED PARTLY IN India AND OUTSIDE India [ENTRY 52A]

Tour operator service, which is performed partly in India and partly outside India, supplied by a tour operator to a foreign tourist, to the extent of the value of the tour operator service which is performed outside India are exempt.

However, value of the tour operator service performed outside India shall be such proportion of the total consideration charged for the entire tour which is equal to the proportion which the number of days for which the tour is performed outside India has to the total number of days comprising the tour, or 50% of the total consideration charged for the entire tour, whichever is less.

Further that in making the above calculations, any duration of time equal to or exceeding 12 hours shall be considered as one full day and any duration of time less than 12 hours shall be taken as half a day.

Explanation. - "foreign tourist" means a person not normally resident in India, who enters India for a stay of not more than six months for legitimate non-immigrant purposes.

Illustrations:

- A tour operator provides a tour operator service to a foreign tourist as follows: - (a) 3 days in India, 2 days in Nepal; Consideration Charged for the entire tour: Rs.1,00,000/- Exemption: Rs.40,000/- (=Rs.1,00,000 x 2/5) or, Rs.50,000/- (= 50% of Rs.1,00,000/-) whichever is less, i.e., Rs.40,000/- (i.e., Taxable value: Rs. 60,000/-);
- 2 days in India, 3 nights in Nepal; Consideration Charged for the entire tour: Rs.1,00,000/- Exemption: Rs.60,000(=Rs.1,00,000/- x 3/5) or, Rs.50,000/- (= 50% of Rs.1,00,000/-) whichever is less, i.e., Rs.50,000/- (i.e., Taxable value: Rs.50,000/-);
- 2.5 days in India, 3 days in Nepal; Consideration charged for the entire tour: Rs.1,00,000/- Exemption: Rs.54,545 (=Rs.1,00,000/- x 3/5.5) or, Rs.50,000/- (= 50% of Rs.1,00,000/-) whichever is less, i.e., Rs.50,000/-(i.e., Taxable value: Rs.50, 000/-).

"If you don't value your time, neither will others. Stop giving away your time and talents - start charging for it.

> Chapter 22

Introduction to Customs Law

Legal framework governing import-export under Indian Customs Law explained.

Learning Objectives

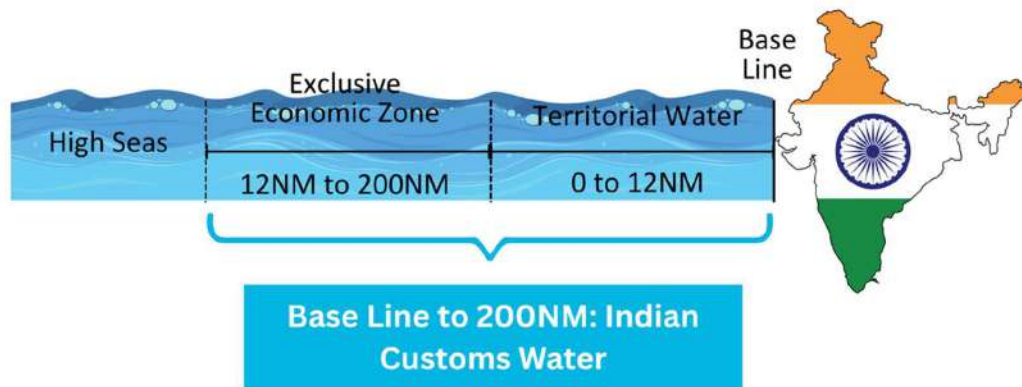
- Understand the historical background and constitutional basis for the enactment of the Customs Act, 1962, and its application to imports and exports of goods.
- Learn key definitions under customs law, such as import, export, goods, customs station, customs area, coastal goods, and foreign-going vessels.
- Analyze the significance of Indian customs waters and high sea sales, including legal documentation and GST implications.
- Gain clarity on the roles of different authorities and the responsibilities of custodians and importers under customs control.
- Understand how customs duty is levied, including the concept of tariff value and the distinction between domestic tariff area and special economic zones.

Introduction to Customs Law

The term 'customs' derives its colour and essence from the term 'custom', which means a habitual practice or course of action that characteristically is repeated in like circumstances. Duties on import and export of goods have been levied from time immemorial by all the countries. In the times, when the predominant system of governance was monarchy, it was customary for a trader bringing the goods to a particular kingdom to offer certain offerings as gifts to the King for allowing him to sell his goods in that kingdom. Over a period of time, the system of governance took a paradigm shift from monarchy in favour of democracy, thereby a need arose to regulate the same through proper act. Thus, Customs Law has been framed.

LEGISLATIVE PROVISIONS ENACTING CUSTOMS

1. Entry 83 of List I (Union List - Power with CG to collect taxes) of VII Schedule read with Article 246 of the Constitution of India, which reads as:
"83. Duties of Customs including export duties"
2. The Customs Act, 1962 on 13 December 1962 and it became effective only from 1 February 1963
 - ❖ Sea Customs Act, 1878,
 - ❖ Inland Bonded Warehouses Act, 1896 and
 - ❖ The Land Customs Act, 1924.
3. 286: No law of a State shall impose, or authorise the imposition of, a tax on the supply of goods or services or both, where such supply takes place-
 - a) outside the State; or in the course of the import of the goods or services or both into, or export of the goods or services or both out of, territory of India.
4. Import & Export of Goods [NOT IMPORT & EXPORT OF SERVICES]
5. As per section 2(22) of the Customs Act, the term goods includes, Vessels, aircrafts and vehicles, Stores, Baggage, Currency and negotiable instruments and any other kind of movable property.
6. Customs Act, 1962 + Customs Tariff Act, 1975 + Notifications + Case Laws + Customs Rules



Significance of Indian Customs Water

If a person has committed any offence punishable under customs law within the Indian customs waters, he may be arrested. Also, goods may be confiscated and vessel be stopped in the Indian customs waters if the same is found to be used in the smuggling. Further, prohibited goods can also be confiscated if brought within the Indian customs waters.

India for Oil Exploration Companies

As per Maritime Zones Act, Oil wells / petroleum companies in EEZ are also part of India, thus, when mineral is extracted and brought in India, would NOT be treated as Import. Further, when goods enter EEZ (not 12nm), it would be treated as imports in case of such oil wells / petroleum companies. (Not in Module)

High Seas

An area beyond 200 nautical miles from the base line is called High Seas. All countries have equal rights in this area.

Analysis of High Sea Sales in Simple words & Documentation [Important for Practical Life]

A high sea sale is a sale of goods by a consignee, named in the relevant bill of lading, to another buyer while the goods are en-route to their eventual destination. A high sea sale does not mean that sale transaction must be made while the vessel carrying the cargo is still on high seas. It can be made any time after the vessel has crossed the territorial waters of the

exporting country but before it enters the territorial waters of the importing country. Further, if title is transferred by endorsement of documents before clearance for home consumption, such supply is out of purview of GST by Para 8(b) of Schedule III.

High sea sales are common and beneficial to both seller and buyer. The seller secures his selling profit and without suffering charges associated with Customs clearance of goods at the port of importation. The buyer saves on domestic tax which would be otherwise payable on resale of the same goods to him by the importer (high sea seller).

It shall be noted that transaction of High seas shall be done before filing of IGM u/s 30 of Customs Act, 1962. The transaction of High Seas shall be documented as follows: -

- (i) A copy of a high sea sale agreement entered between the high sea seller and buyer;
- (ii) A copy of document of title (bill of lading) duly endorsed by the high sea seller to the high sea buyer;
- (iii) A copy of the letter addressed to the carrier (shipping line) informing about the high sea sale and the details of high sea buyer. This is essential to enable the carrier to replace the consignee's name in the IGM which is required to be filed with the Customs well before the arrival of vessel at the port of discharge; and
- (iv) High sea seller's invoice in domestic currency, in favour of the high sea buyer.

Coastal Goods

As per section 2(7) of the Customs Act, the term coastal goods mean goods, other than imported goods, transported in a vessel from one port in India to another. Under section 7(1)(d) of the Customs Act, 1962, the Central Board of Indirect Tax and Customs (CBIC), may by notification in the Official Gazette, appoint the ports which alone shall be coastal ports for the carrying on of trade in coastal goods or any class of such goods with all or any specified ports in India.

Conveyance

As per section 2(9) of the Customs Act "Conveyance" includes a Vessel, an Aircraft and a Vehicle'. The specific terms are vessel (by sea), aircraft (by air) and vehicle (by land).

Customs Area

As per section 2(11) of the Customs Act, "customs area" means the area of a customs station and includes any area in which imported goods or exported goods are ordinarily kept before clearance by Customs Authorities.

Customs port

As per section 2(12) of the Customs Act, "customs port" means any port appointed under section 7(a) of the Customs Act, to be a customs port and includes a place appointed under section 7(aa) of the Customs Act, to be an inland container depot (ICD).

Customs Airport

under section 7(a) means any airport and includes a place appointed under section 7(aa) (w.e.f. 28-5-2012) to be an air freight station.

Customs Station

As per section 2(13) of the Customs Act, "customs station" means any customs port, customs airport or land customs station. As per Section 8 of the Customs Act, 1962, the Commissioner of Customs may

- (i) Approve proper places in any customs port or customs airport or coastal port for the unloading of goods or for any class of goods;
- (ii) Specify the limits of any customs area.

Analysis:

- (i) As per Section 141 of the Customs Act, 1962, all conveyances and goods in customs area are subject to control of officers of customs for enforcing the provisions of the Customs Act, 1962.
- (ii) The receipt/storage/delivery/dispatch/any other handling of goods (import/export) in the Customs area shall be in the prescribed manner and the responsibility thereon lies on the persons engaged in such activities (i.e. Custodian of the said goods).
- (iii) CBIC empowered to permit landing of vessels and aircrafts at any place other than customs port or customs airport [Section 29(1)] w.e.f. 10-5-2013:
- (iv) The Finance Act, 2013 has amended section 29(1) to empower CBIC to permit landing of vessels and aircrafts at any place other than customs port or customs airport.

Dutiable Goods

As per section 2(14) of the Customs Act, the term is defined to mean any goods which are chargeable to duty and on which duty has not been paid. It means to say that the name of the product or goods should find a mention in the Customs Tariff Act

Entry

As per section 2(16) of the Customs Act, "entry" in relation to goods means an entry made in bill of entry, shipping bill or bill of export and includes in the case of goods imported or to be exported by post, the entry referred to in section 82 or the entry made under the regulations made under section 84 of the Customs Act.

Export

As per section 2(18) of the Customs Act, the term "export" means taking out of India to a place outside India.

Export Goods

As per section 2(19) of the Customs Act, the term "export goods" means any goods, which are TO BE TAKEN out of India to a place outside India.

Foreign Going Vessel

As per section 2(21) of the Customs Act, the "foreign going vessel or aircraft" means any vessel or aircraft for the time being in the carriage of goods or passengers between any port or airport in India and any port or airport outside India, whether touching any intermediate port or airport in India or not. The following are also included in the definition:

- (i) A foreign naval vessel doing naval exercises in Indian waters
- (ii) A vessel engaged in fishing or any other operation (like oil drilling by domestic vessel or foreign vessel) outside territorial waters
- (iii) A vessel going to a place outside India for any purpose whatsoever.

Imported stores may be consumed on board a foreign going vessel/aircraft without payment of import duty (Section 87 of the Customs Act, 1962)

Import

As per the section 2(23) of the Customs Act, the term "import" means **BRINGING** into India from a place outside India

Imported Goods

As per section 2(25) of the Customs Act, the term “imported goods” means any goods brought into India from a place outside India but does **NOT INCLUDE GOODS WHICH HAVE BEEN CLEARED FOR HOME CONSUMPTION.**

Importer

As per section 2(26) of the Customs Act, the term “importer” means in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes any owner, beneficial owner or any person holding himself out to be the importer.

However, importer also includes any person holding himself to be the importer for purpose of clearance of goods. This is the person who files the import documents. However, between the two, the owner takes precedence over person holding himself out to be the importer [Union of India v Sampath Raj Dugar, 1991 (56) ELT 739 (Bom)]. The goods being abandoned by original importer, ownership thereof continues to vest in foreign supplier. The said goods if transferred by endorsement of Bill of Lading to another person, that another person holding document of title (Bill of Lading) to be regarded as ‘importer’ under Section 2(26) of the Customs Act, 1962. [Agrim Sampada Ltd v Union of India, 2004 (168) ELT 15 (Del)]

Stores

As per section 2(38) of the Customs Act, “stores” means goods for use in a vessel or aircraft and includes fuel and spare parts and other articles of equipment, whether or not for immediate fitting.

Person In-charge: As per section 2(31) person-in-charge means

Vessel	Master
Aircraft	Commander or Pilot in charge
Train	Conductor or Guard or other person having direction of the train
Vehicle	Driver or other person in charge of the vehicle.
Others	Person in Charge

Import Report

As per Section 2(24) of the Customs Act, 1962, the “person-in-charge” of a vehicle carrying imported goods or any other person as may be notified by the Central Government shall, in the case of a vehicle, deliver to the proper officer an import report within twelve hours after its arrival in the customs station, in the prescribed form.

Tariff Value

The CBIC has the power to fix tariff values for any class of imported goods or exported goods. Fixing the tariff value for any class of imported goods or exported goods means the duty shall be chargeable with reference to such tariff value.

Domestic Tariff Area

means the whole of India (including the territorial waters and continental shelf) but does not include the areas of the Special Economic Zones (Section 2(i) of Special Economic Zones Act, 2005), 100% Export Oriented Units (EOUs)/Electronic Hardware Technology Park (EHTP)/Software Technology Park (STP)/Bio Technology Park (BTP)

Note: Customs duty can be levied only on goods imported into or exported beyond the territorial waters of India, section 12(1) of the Customs Act, 1962 (i.e. charging section) is not attracted for supplies made by a DTA unit to a unit located within the Special Economic Zone. (Tirupati Udyog)

> Chapter 23

Taxable Event

Determines when customs duty is levied on imports/exports.

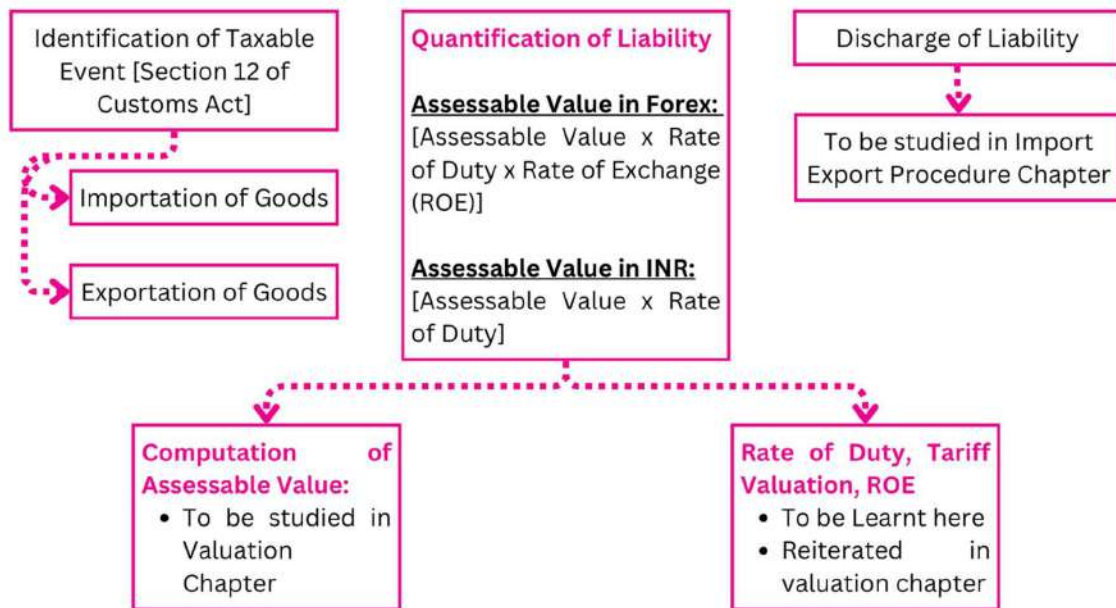
Learning Objectives

- Understand 'Taxable Event' under the Customs Act for import and export—when and how duty liability arises.
- Identify relevant dates for assessing duty, tariff valuation, and exchange rates based on different modes of import/export.
- Apply legal provisions for remission, abatement, pilferage, loss, and destruction of goods under Sections 13, 22, and 23.
- Learn the re-importation rules, including exemptions and conditions for duty relief under Section 20 and Notification 45/2017.
- Analyze concessional duty rules for specific imports, including procedures for job work, unit transfer, and penalties under the 2022 rules.

Introduction to Taxable Event

Taxability or levy of duty or tax under each taxing statute has different ingredients. One of the crucial ingredients of taxability is what is commonly known as “taxable event”. The Supreme Court has defined “as the event, the occurrence of which immediately attracts the charge”

The whole process is divided into 3 parts:



(A) TAXABLE EVENT IN CASE OF “IMPORT” OF GOODS [S. 12 OF CUSTOMS ACT]

- (a) **Basic Taxable Event:** “Taxable event” under Customs Act can be said to have occurred when the goods are ‘imported’ into India.
- (b) Goods are treated as “**imported goods**” when they cross the **territorial waters of India**, till they are “**cleared for home consumption (Bill of entry for Home consumption)**”. It is to be noted that there are 2 options available with an importer viz.,
- (i) Clear for home consumption (i.e., consumption in India) (S. 46)
 - (ii) Deposit in warehouse & clear at a later point of time (S. 46 & S. 68)

****What is Bill of Entry:** Bill of Entry is document required for clearance of goods for home consumption or depositing it into warehouse. Bill of entry shall be filed before the end of day (including holidays) preceding the day on which aircraft or vessel or vehicle carrying goods arrives at customs station for clearance. However, a bill of entry may be presented at any time not exceeding 30 days prior to expected arrival of aircraft or vessel or vehicle. In case of warehousing 2 BOE are required, one for depositing into WH & another for removing goods from warehouse

- (c) Light can be put on definition of “Imported goods”, which **excludes goods cleared for home consumption** from its ambit. Thus, **IMPORTATION BEGINS** when goods take **entry into territorial waters** i.e., 12 NM from base line.
- (d) However, practically it is ambiguous to determine that when the ship has entered 12 nm in India as there is no specific gate at 12 NM. The ambiguity has been put to rest by SC Judgements.

(e) Supreme Court Judgments:

❖ **Taxable Event - Goods cleared for home consumption:**

Garden Silk Mills: Import of goods will commence when they cross the territorial waters, but continues and is completed when they become part of the mass of goods within the country and **bill of entry for home consumption is filed u/s 46**.

(BOE is to be filed before end of next day following the day on which vessel or vehicle carrying goods arrived. (Cannot be filed 30 days prior to expected arrival)

❖ **Taxable Event - Goods cleared from warehouse:**

Kiran Spinning Mills: In case of warehoused goods, the custom barriers would be crossed when they are sought to be taken out of customs and brought to

the mass of goods in the country. Thus, in this case, taxable event would be the date on which **ex bond bill of entry** is filed u/s 68.

- (f) Section 12 begins with “Except as provided in this act”, thus, not every goods entered into TWI are taxed. There are few situations where goods have entered into TWI but duty shall not be payable. E.g. Pilferage, Remission, Abatement, Transit, Transshipment etc.

(B) TAXABLE EVENT IN CASE OF “EXPORT” OF GOODS [S. 12 OF CUSTOMS ACT]

Export of goods is complete when the goods cross the territorial waters of India. Thus, even if vessel does not reach the destination, the export is deemed to be completed on crossing of 12 NM.

RELEVANT DATE FOR RATE OF DUTY AND TARIFF VALUATION

Section 15: Section 15 of the Customs Act, 1962 specifies the relevant date for determining the **RATE OF DUTY AND TARIFF VALUATION** of imported goods. They are different for different situations as given below:

Case	Relevant Date for determining rate of duty or tariff valuation
Goods imported by vehicle at land customs station [Section 15]	Date of filing the Bill of entry under section 46 or, Date of arrival of vehicle, whichever is later .
Goods imported by a vessel at a customs port [Section 15]	Date of filing the Bill of entry under section 46 or, Date of entry inwards to vessel under section 31, whichever is later
Goods imported by aircraft at a customs airport [Section 15]	Date of filing the Bill of entry under section 46 or, Date of arrival of aircraft, whichever is later .
Goods cleared from a warehouse under section 68 [Section 15]	Date on which a bill of entry for home consumption in respect of such goods is presented. (EX-BOND BOE) (S. 68 BOE)
In the case of any other goods [Section 15]	Date of payment of duty.
Import of Goods as Baggage [Section 78]	Date when baggage declaration is filed
Import of goods as Post [Section 83]	Presentation of list of goods to proper officer or arrival of vessel whichever is later
Goods not cleared within Warehouse within time period	Date on which warehousing period expired [S. 61 r/w Case law]

Analysis:

The above is for determination of Rate of Duty as well as Tariff Valuation. There are 2 types of tariff in practical life. One where duty is fixed per unit which is called as unit specific and another would be ad-valorem which means value per unit is fixed, duty will be calculated on such fixed value. In Oil Industry, rates are changing on daily basis, thus, in case of import of oil it will be very relevant to understand tariff values.

The rate of duty and tariff valuation, if any, applicable to any export goods, shall be the rate and valuation in force

Case	Relevant Date for determining rate of duty or tariff valuation
Export of goods under section 50	Date on which Let Export Order is made <i>Let export order is the order permitting clearance and loading of the goods for exportation under section 51 prepared by proper officer</i>
Export of goods as baggage [Section 78]	Date when baggage declaration is filed
Exported as Postal Goods [Section 83]	Date on which exporter delivers goods to postal authorities

(Note: Only few export goods are liable to customs duty)

RELEVANT DATE FOR RATE OF EXCHANGE

Case	CBIC Rate of Exchg. (Not RBI Rate) on Date of: -
Goods Cleared for Home Consumption (S. 14)	Presentation of Bill of Entry
Goods Cleared for Warehousing	Presentation of Into-Bond Bill of Entry
Export of Goods	Date of presentation of shipping bill

3 types of bill of entries are there viz. Bill of entry for home consumption – For clearance on payment of duty (White colour), Bill of entry for warehousing – For keeping goods in warehouse without payment of duty (Yellow Colour), Ex bond bill of entry – For clearance from warehouse on payment of duty (Green colour)

SOME CASE LAWS FOR TAXABLE EVENTS:

Bharat Surfacants Pvt. Ltd. v. UOI 1989 (43) ELT 189: The Supreme Court held that the rate of duty and tariff valuation would be done on the date of final entry of the ship. In this case, a ship entered Bombay and made prior entry on 04.07.1981 at which time the duty was 12.5%. Since there was no space, the ship proceeded to Karachi and after that came back to Bombay on 23.07.1981 and was granted final entry on 04.08.1981 when the duty rate had been revised

to 15%. The Supreme Court held that the rate applicable would be 15% only since the formality of entry inward could be done only on 04.08.1981.

Rajkumar Knitting Mills P. Ltd. vs CC 1998 (98) ELT 292.: Date of contract is not relevant, only the date of importation is relevant

Basic import procedures [In detail we will learn later]

(The procedure is here reproduced for better understanding of pilferage, remission etc.)

IGM is filed by person-in-charge. Ship will be arrived at "Customs Port"

Person in charge gets the entry inwards and now it can enter into "Customs Area"

On the basis of entry inwards, the goods are unloaded

Proper officer supervises the goods during unloading and hands over the goods to custodian

Importer files bill of entry for home consumption along with payment of duty on self-assessment basis (in case of warehoused goods, into bond BOE is filed)

Proper officer checks the bill of entry and assess the duty, and returns the bill of entry to importer along with order of clearance of goods which is called as "Out of customs charge order". Importer shows these 2 documents along with other documents to custodian.

(In case of warehoused goods, importer files bill of entry for warehousing u/s 46 i.e., Into bond bill of entry and signs a bond equivalent to thrice the amount of duty assessed at the time of import, thus when goods are deposited in warehouse, permission for warehousing is obtain from proper officer) (We will learn in detail in Warehousing chapter)

Custodian checks the same and issues delivery order and importer takes away goods. (In case of warehoused goods, at the time of taking goods from warehouse, ex bond bill of entry has to be filed)

Pilferage [Section 13 of Customs Act]

Particulars	Analysis
MEANING OF PILFERAGE	"To steal, especially in small quantities; petty theft". Therefore, the term does not include loss of total package. Conditions for Pilferage: (i) Evidence of tampering with the packages; (ii) Should be blank space for the missing articles in the package; and

Particulars	Analysis
	(iii) The missing articles should be unit articles [and not part articles]
CONDITIONS TO BE SATISFIED FOR REMISSION OF DUTY	(i) The imported goods should have been pilfered. (ii) The pilferage should have occurred after the goods are unloaded, but before the proper officer makes the order of clearance for home consumption or for deposit into warehouse. (<i>Not actual clearance</i>) (iii) The pilfered goods should not have been restored back to the importer.
TIME PERIOD DURING WHICH PILFERAGE SHOULD HAPPEN	After the unloading thereof and before the proper officer has made an order for clearance (<i>not actual clearance</i>) for home consumption or deposit in a warehouse, the importer shall not be liable to pay the duty leviable on such goods. (If pilferage is done prior to unloading then pilferage is not be allowed)
PILFERAGE NOTICED AT THE TIME OF PHYSICAL VERIFICATION BUT AFTER ORDER HAS BEEN MADE:	When pilferage is observed after order is passed but at the time of removal of goods by the importer, then, the importer has to ask for survey either by the steamer agents or by the insurance surveyors and the report issued by them would form the basis for claiming remission. As in such the circumstances, the duty would already have been paid, the remission is allowed in the form of a refund.
DUTY BE RECOVERED FROM CUSTODIAN	Section 13 applies to the goods which are under the custody of the custodian under section 45. Any pilferage noticed during the period is on the account of the Customs formalities. Loss of duty incurred to customs department would be recovered from custodian.

Abatement of Duty on Damaged or Deteriorated Goods [Section 22]

Particulars	Analysis
Cases covered [Section 22(1)]	
Before or during unloading	If goods are damaged or deteriorated then abatement can be allowed
Other than warehoused goods: After unloading but before their examination under section 17	If goods are damaged (not deteriorated) before examination, then abatement can be allowed. Condition: It should be on account of any accident not due to any willful act, negligence or default of the importer, his employee or agent
Warehoused goods: At any time before clearance for home consumption	If goods are damaged (not deteriorated) before clearance for home consumption from warehouse, then abatement can be allowed.

	Condition: It should be on account of any accident not due to any willful act, negligence or default of the importer, his employee or agent
Value of Abatement [Sec 22(2)]	The duty on goods damaged shall be reduced to the extent of damage (%) or deterioration (%) as the case may be. Formula: (Duty on damaged goods before damage / Value before damage) x Value of Damaged/Deteriorated goods.
Who will Ascertain damage / deterioration? [Sec 22(3)]	The value of damaged or deteriorated goods may be ascertained by either of the following methods at the option of the owner: (a) The value of such goods may be ascertained by the proper officer, or (b) Sale of goods in auction by P.O. with consent of importer and the gross sale proceeds shall be deemed to be the value of such goods.

Remission of Duty on Loss, Destroyed or Abandoned goods [Section 23]

Particulars	Analysis
Cases where remission can be allowed & time limit	Any imported goods have been LOST (otherwise than as a result of pilferage) or DESTROYED , at any time before clearance for home consumption directly or from warehouse (Thus, even if order for clearance is passed, but goods were not cleared, remission can be given) The remission of duty is permissible only in the case of total loss of goods. This implies that the loss is forever and beyond recovery. The loss referred to in this section is generally due to natural causes like fire, flood, etc.
Analysis	Section 23 comes into picture after the duty has been paid and even after an order for home consumption has been passed, but before the goods are actually cleared (except actual clearance in WH after WH period) , and then it is found that they have been lost/destroyed. In that case the provision states that duty paid by importer would be refunded.
Burden to prove lost or destroyed	In the above situation, the loss/ destruction has to be proved to the satisfaction of the Assistant Commissioner or Deputy Commissioner.
Relevant Case Law CCE v Decorative Laminates (I) Pvt. Ltd. 2010 (257) ELT 61 (Kar): In this case, the assessee has deposited goods in warehouse, he did not clear within warehousing period. After warehousing period was expired, he came to clear goods and noticed some goods were lost. High Court held that, once W.H. period is expired, it is deemed that goods are	

removed. Thus, even if loss is noticed before ACTUAL removal, remission u/s 23 is not allowed because goods were deemed to be removed once such warehousing period was expired.

Relinquishment or Abandonment [Section 23]

Particulars	Analysis
Cases where relinquishment of title can be allowed	“Relinquish” means to give over the possession or control of, to leave off. The importer is unwilling or unable to take delivery of the imported goods. Some of the likely causes may be: (i) The goods may not be according to the specifications; (ii) The goods may have been damaged or deteriorated during voyage and as such may not be useful to the importer; (iii) There might have been breach of contract and, therefore, the importer may be unwilling to take delivery of the goods.
How does it happen	Relinquishment is done by endorsing the document of title, viz. Bill of Lading, Airway Bill, etc. in favour of the Principal Commissioner/Commissioner of Customs along with the invoice. If the importer does so, he will not be required to pay the duty amount.
Time limit upto which such relinquishment shall exercise	The aforementioned right can be exercised at any time before the passing of the order for clearance for home consumption or an order permitting the deposit of goods in a warehouse . Before that date, it is open to the importer to relinquish the title to the goods.

Sec 24: Denaturing

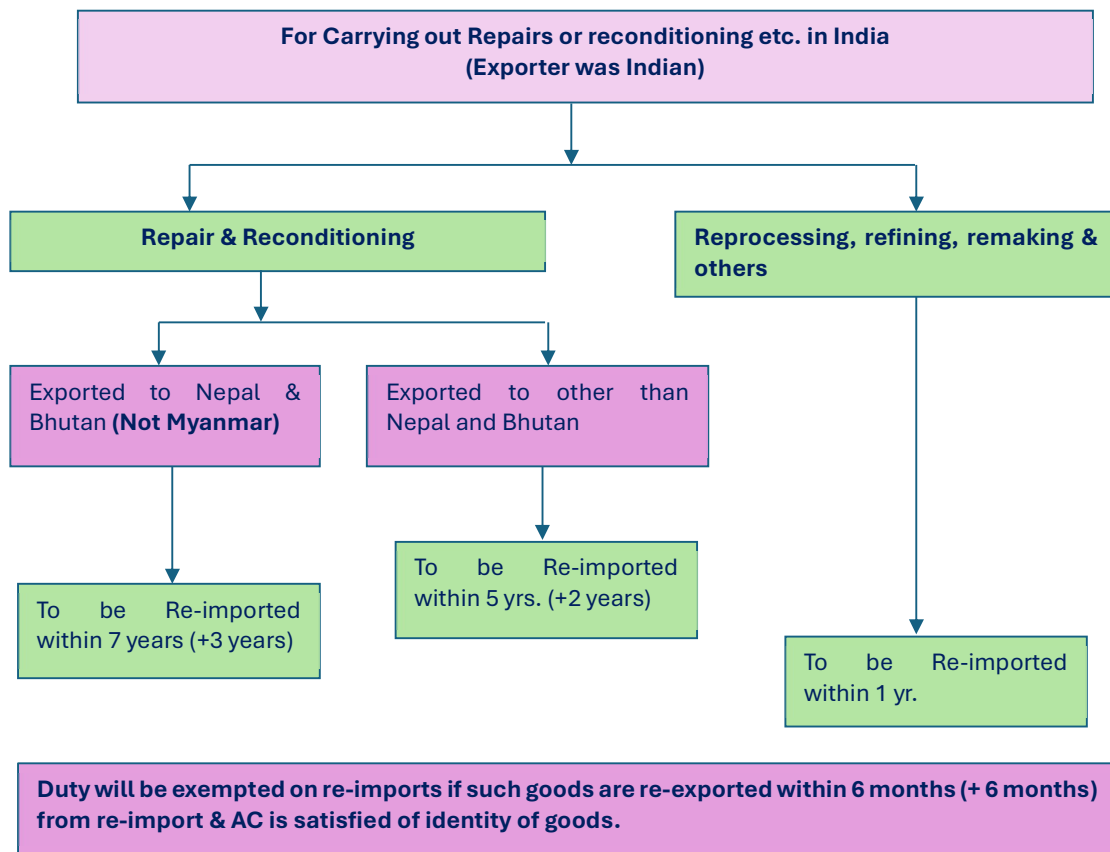
If any imported goods can be used for more than one purpose and duty is leviable on the basis of its purpose of utilisation, then denaturing or mutilation of such goods is useful. By denaturing, goods are made unfit for other purposes.

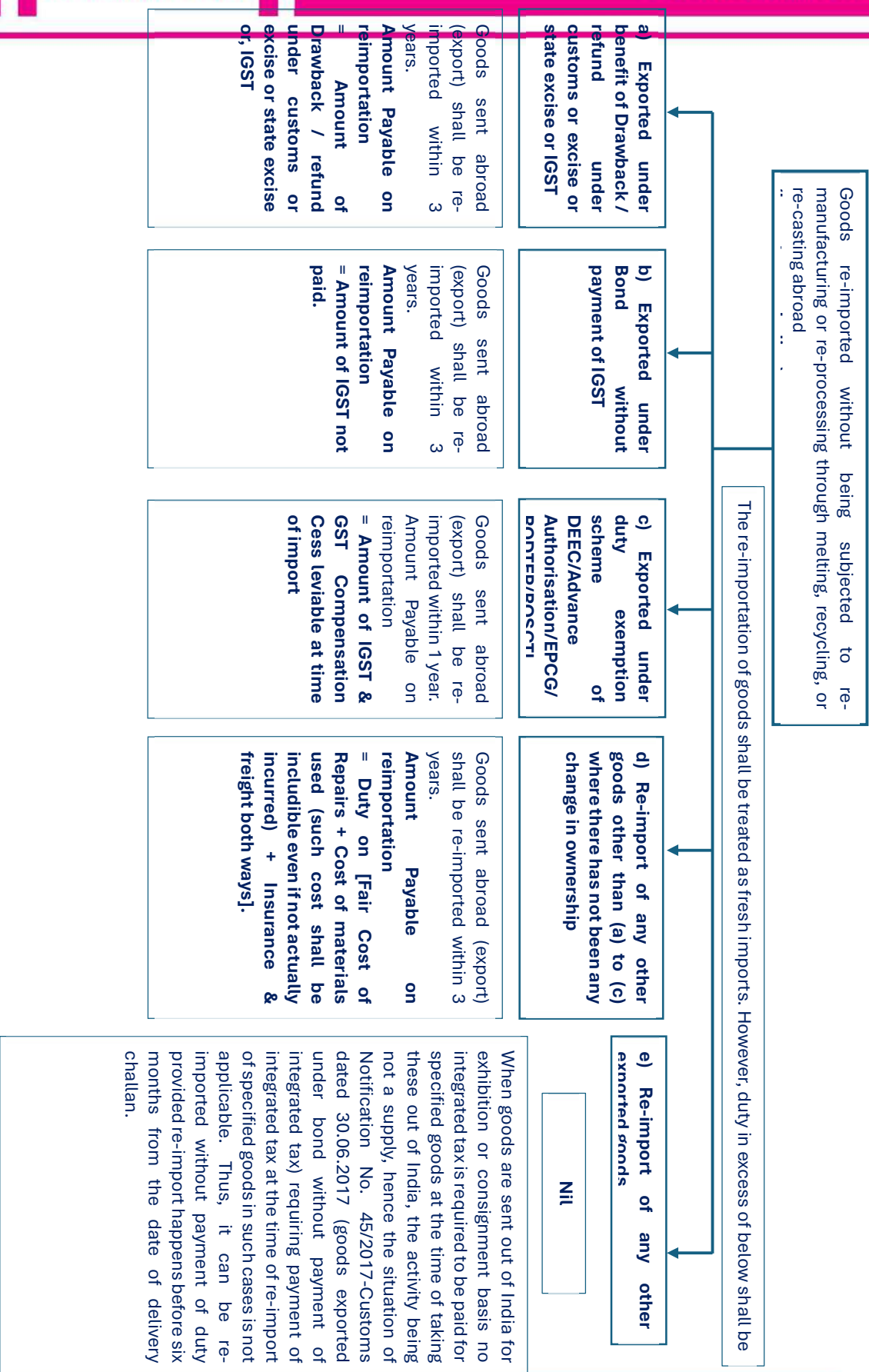
After denaturing process, goods can be used only for one purpose and accordingly duty can be levied. Denaturing of Spirit Rules, 1972 specify procedure for denaturing spirit.

Example: Ethyl Alcohol attracts higher rate of tax. Whereas, denatured ethyl alcohol can only be used for industrial purposes and hence attracts lower rate of duty. Thus, Ethyl Alcohol is denatured. Bitter chemicals are added to denature the spirits as per Rules and once they are denatured, they attract the lower duty.

RE-IMPORTATION [Section 20 of Customs Act r/w Notification No. 45/2017-Cus]

As per section 20 of Customs Act, 1962, if goods are imported into India after exportation therefrom, such goods shall be liable to duty and be subject to all the conditions and restrictions, if any, to which goods of the like kind and value are liable or subject, on the importation thereof. However, there are certain exemptions as specified below:





The above exemptions/concessions u/s 20 shall not be applicable when:

- ❖ Re-imported goods had been exported by 100% Export Oriented Undertaking (EOU) or a unit in Free Trade Zone (FTZ).
- ❖ Re-imported goods had been exported from a public/private warehouse.
- ❖ Re-imported goods which fall under Fourth schedule to the Central Excise Act, 1944 (tobacco products and petroleum products)

[Notification 45/2017 - Customs]

Central Government can give exemption from import duty / export duty on specific articles. There are 2 types of exemption, general exemption and special exemption. Where any exemption is granted subject to any condition, such exemption shall, unless otherwise specified or varied or rescinded, be valid up to 31st day of March falling immediately after two years from the date of such grant or variation.

Inward Processing of Goods (S. 25A)	Outward Processing of Goods (S. 25B)
CG may notify certain goods and exempt such of the goods which are imported for the purposes of repair, further processing or manufacture on fulfilment of below conditions: - a) The goods shall be re-exported after such repair, further processing or manufacture within 1 year from the date on which the order for clearance of the imported goods is made; b) The imported goods are identifiable in the export goods	Notwithstanding anything contained in section 20, where the CG may by notification, exempt goods which are re-imported after being exported for the purposes of repair, further processing or manufacture, as may be specified therein, from the whole or any part of duty of customs leviable thereon, subject to the following conditions, namely: - a) the goods shall be re-imported into India after such repair, further processing or manufacture within 1 year from the date on which the order permitting clearance for export is made; b) The exported goods are identifiable in the re-imported goods; and
Note: - Section 25A & 25B will be applicable only on notified goods.	

Customs (Import of Goods at Concessional Rate of Duty or for Specified End Use) Rules, 2022

The salient features of the rules are discussed hereunder:

Application [Rule 2]:

These rules shall apply where:

- (a) a notification provides for the observance of these rules;
- (b) an importer intends to avail the benefit of any notification and such benefit is dependent upon the use of the goods imported being covered by that notification for

the manufacture of any commodity or provision of output service or being put to a specified end use.

Importer to give one-time prior information [Rule 4]

- (1) The importer shall provide one-time prior information on the common portal, in prescribed form containing the following particulars, namely: —
 - (i) the name and address of the importer and his job worker, if any;
 - (ii) the goods produced or process undertaken at the manufacturing facility of the importer or his job worker, if any, or both;
 - (iii) the nature and description of goods imported used in the manufacture of goods at the premises of the importer or the job worker, if any;
 - (iv) particulars of the notification applicable on such import;
 - (v) nature of output service rendered utilizing the goods imported;
 - (vi) particulars of premises intended to be used in case of unit transfer;
 - (vii) details of the end use recipient in cases where goods imported are supplied for specified end use; and
 - (viii) the intended ports of import.
- (2) On acceptance of the information, an Import of Goods at Concessional Rate of Duty (IGCR) Identification Number (IIN) shall be generated against such information. However, such information may be updated on the common portal in case of a change in the details furnished in prescribed form.
- (3) The importer who intends to avail the benefit of a notification shall submit a continuity bond with such surety or security as deemed appropriate by the Deputy Commissioner/Assistant Commissioner of Customs having jurisdiction over the premises where the goods imported shall be put to use for manufacture of goods or for rendering output service or being put to use for a specified end use, with an undertaking to pay —
 - (a) in case of a notification that provides a duty exemption, the amount equal to the difference between the duty leviable on inputs but for the exemption and that already paid, if any, at the time of import, along with interest, at the rate fixed by notification issued under section 28AA, for the period starting from the date of import of the goods on which the exemption was availed and ending with the date of actual payment of the entire amount of the difference of duty that he is liable to pay ;
 - (b) in all cases where the notification is other than one that provides an exemption benefit, the amount equal to the assessable value of the goods being imported.

Procedure to be followed [Rule 5]

- (1) The importer who intends to avail the benefit of a notification shall be required to mention the IIN (referred to in sub-rule (2) of Rule 4) and continuity bond number and details while filing the Bill of Entry.

- (2) The Deputy Commissioner/Assistant Commissioner of Customs at the custom station of importation shall allow the benefit of the notification to the importer.
- (3) Where a Bill of Entry is cleared for home consumption, the bond submitted by the importer gets debited automatically in the customs automated system and the details shall be made available electronically to the jurisdictional Customs Officer.

Importer to maintain records [Rule 6]

- (1) The importer shall maintain an account so as to clearly indicate -
 - i. quantity and value of goods imported;
 - ii. quantity and date of receipt of the goods imported in the relevant premises;
 - iii. quantity of such goods consumed including the quantity used domestically for manufacture, quantity exported, if any, to duty fulfil the intended purpose and quantity of goods sent to an end use recipient;
 - iv. quantity of goods sent for job work and the nature of job work carried out;
 - v. quantity of goods received after job work;
 - vi. quantity of goods re-exported, if any, under rule 10; and
 - vii. quantity remaining in stock, according to bills of entry,

and shall produce the said account as and when required by the Deputy Commissioner/Assistant Commissioner of Customs having jurisdiction over the premises or where the goods imported shall be put to use for manufacture of goods or for rendering output service.

However, in case of non-receipt or short receipt of goods imported in the relevant premises, the importer shall intimate such non- receipt or short receipt immediately on the common portal in the prescribed form.

- (2) The importer shall submit a monthly statement on the common portal in the prescribed form by 10th day of the following month;

However, the importer may submit details of goods consumed in the prescribed form at any point of time, for immediate recredit of the bond which shall become a part of the monthly statement of the subsequent month.

Procedure for allowing imported goods for job work [Rule 7]

- (1) The importer shall maintain a record of the goods sent for job work during the month and mention the same in the monthly statement referred to in rule (2)
- (2) The importer shall send the goods to the premises of the job worker under an invoice or wherever applicable, through an electronic-way bill, as specified in the CGST Act, 2017, mentioning the description and quantity of the goods.
- (3) The maximum period for which the goods can be sent to the job worker shall be 6 months from the date of invoice or electronic way bill referred to in sub-rule (2).

- (4) In case the importer is unable to establish that the goods sent for job work have been used as per the particulars mentioned under rule 4, the jurisdictional Customs Officer shall take necessary action against the importer under rule 11 and 12.
- (5) The job worker shall-
- (i) maintain an account of receipt of goods, manufacturing process undertaken thereon and the waste generated, if any, during such process;
 - (ii) produce the account details before the jurisdictional Customs Officer as and when required by the said officer;
 - (iii) after completion of the job work send the processed goods to the importer or to another job worker as directed by the importer for carrying out the remaining processes, if any, under the cover of an invoice or electronic way bill.

Procedure for allowing imported goods for unit transfer [Rule 8]

- (1) The importer shall maintain a record of the goods sent for unit transfer during the month and mention the same in the monthly statement referred to in sub-rule (2) of rule 6.
- (2) The importer shall send the goods under an invoice or wherever applicable, through an e-way bill, as specified in the CGST Act, 2017, mentioning the description and quantity of the goods.
- (3) The importer shall in relation to transfer of goods to another unit: -
- (i) maintain an account of receipt of goods, manufacturing process undertaken thereon and the waste generated, if any, during such process;
 - (ii) produce the account details before the jurisdictional Customs Officer as and when required by the said officer.
 - (iii) after completion of the said process, send the processed goods back to the premises of the importer from where the goods were received or to a job worker for carrying out the remaining processes, if any, under the cover of an invoice or electronic way bill.

Procedure for supplying imported goods to the end use recipient [Rule 9]

- (1) The importer shall maintain a record of the goods supplied to the end use recipient during the month and mention the same in the monthly statement referred to in rule 6(2).
- (2) The importer shall send the goods under an invoice or wherever applicable, through an electronic way bill, as specified in the CGST, 2017, mentioning the description and quantity of the goods.
- (3) In case of supply for replenishment or export against supply, the end use recipient shall: -

- (i) maintain an account of receipt of goods, manufacturing process undertaken thereon and the waste generated, if any, during such process;
- (ii) produce the account details before the jurisdictional Customs Officer as and when required by the said officer;
- (iii) produce the relevant details to the importer for fulfilment of the benefit under the notification.

Re-export or clearance of unutilised or defective goods [Rule 10]

- (1) The importer who has availed the benefit of a notification shall use the goods imported in accordance with the conditions mentioned in the concerned notification within the period and with respect to unutilised or defective goods, so imported, the importer shall have an option to either re-export or clear the same for home consumption, within the said period, namely –
- (i) within the period specified in the notification;
 - (ii) within 6 months (+3 months) from the date of import, where the time period is not specified in the notification:

However, the said period of 6 months can be further extended by the jurisdictional Commissioner for a period not exceeding 3 months, if sufficient reason is shown that the causes for not conforming to the time period were beyond the importer's control.

- (2) Any re-export of the unutilised or defective goods referred to in sub rule (1) shall be recorded by the importer in the monthly statement by providing the details of necessary export documents:

However, the value of such goods for re-export shall not be less than the value of the said goods at the time of import.

- (3) The importer who intends to clear unutilised or defective goods for home consumption shall have an option of voluntary payment of applicable duty along with interest on the common portal and the particulars of such clearance and the duty payment shall be recorded by the importer in the monthly statement.
- (4) The importer shall have an option to clear the capital goods imported, after having been used for the specified purpose, on payment of duty equal to the difference between the duty leviable on such goods but for the exemption availed and that already paid, if any, at the time of importation, along with interest, at the rate fixed by the notification issued under section 28AA, on the depreciated value allowed in straight line method as under –
- (i) for every quarter in the first year @ 4%;
 - (ii) for every quarter in the second year @ 3%;
 - (iii) for every quarter in the third year @ 3%;
 - (iv) for every quarter in the fourth and fifth year @ 2.5%
 - (v) and thereafter for every quarter @ 2%.

Explanation. –

- (1) For the purpose of computing rate of depreciation under this rule for any part of a quarter, a full quarter shall be taken into account.
- (2) The depreciation shall be allowed from the date when the capital goods imported have come into use for the purpose as laid down in the notification, upto the date of its clearance.
- (5) The importer shall have the option of voluntary payment of the duty along with interest, through the common portal and the particulars of such clearance and the duty payment shall be recorded by the importer in the monthly statement.

Recovery of duty in certain case [Rule 11]

- (1) In the event of any failure on the part of the importer to comply with the conditions mentioned in rule 10(1), (2), (4) and (4) the Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for specified end use or for rendering output service shall take action by invoking the Bond to initiate the recovery proceedings of an amount as under –
 - (a) in case of a notification that provides a duty exemption, equal to the difference between the duty leviable on such goods but for the exemption and that already paid, if any, at the time of importation, along with interest, at the rate fixed by notification issued under section 28AA, for the period starting from the date of import of the goods on which the exemption was availed and ending with the date of actual payment of the entire amount of the difference of duty that he is liable to pay;
 - (b) in cases where the notification is other than one that provides an exemption benefit, an amount equal to the assessable value of the goods being imported.
- (2) Notwithstanding anything contained in these rules in relation to removal and processing of imported goods for job-work, the importer shall be responsible for ensuring that the said goods are used in accordance with the purposes provided in the notification and in the event of failure to do so, the Deputy Commissioner of Customs, or, as the case may be, the Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for specified end use or for rendering output service shall take action in accordance with these rules, without prejudice to any other action which may be taken under the Act, rules or regulations made thereunder or under any other law for the time being in force.

Penalty [Rule 12]

The importer or a job worker who contravenes any of the provisions of these rules or abets such contravention shall be liable to a specified penalty (₹ 2,00,000) without prejudice to any other action which may be taken under the Act, rules or regulations made thereunder or under any other law for the time being in force.

> Chapter 24

Self Assessment & Provisional Assessment

Importer/exporter calculates duty; officer may provisionally reassess.

Learning Objectives

- Understand the concept of self-assessment and when re-assessment or verification by the proper officer is required under Sections 46 and 50 of the Customs Act.
- Learn when and how provisional assessment is permitted under Section 18, including submission of bonds and securities.
- Analyze interest implications on duty differences between provisional and final assessment for both payable and refundable cases.
- Gain clarity on the procedural steps, timelines, and documentation required for provisional and final assessments.
- Understand the customs audit process under Section 99A, including audit types, procedures, penalties, and responsibilities of the auditee.

INTRODUCTION TO SELF ASSESSMENT AND PROVISIONAL ASSESSMENT

Self – Assessment:

Duty to be self-assessed by the importer/exporter while filing bill of entry u/s 46 or shipping bill u/s 50

Assessment by P.O.:

The P.O may on basis of risk evaluation criteria verify the entries made under section 46 or section 50 and the self-assessment of goods or examine the goods.

(Some major importers have been given the green channel clearance facility. It means clearance of goods is done without routine examination of the goods.)

Re-assessment of Duty:

Reassessment of duty can be done by the P.O. if self-assessment not done correctly.

Speaking Order:

Speaking order shall be passed within 15 days of re-assessment if it is contrary to self-assessment and where importer does not confirm his acceptance.

Provisional Assessment

Provisional Assessment means an assessment wherein liability is provisionally calculated by proper officer, and within some time period, after which, he finally assesses the liability. Section 18 of Customs Act, laid down the requisites of provisional assessment. Provisional assessment is allowed both in respect of imports as well as exports.

Cases where provisional Assessment can be done [S. 18(1)]

- ❖ Importer or exporter is unable to make self-assessment;
- ❖ Proper officer deems it necessary to subject any imported goods or export goods to any chemical or other test.
- ❖ P.O. wants to do further enquiry whether or not importer or exporter has furnished documents relating to such import and export.

PO may direct to pay duty on provisional basis if the importer or the exporter, as the case may be, furnishes such security as the proper officer deems fit for the payment of the deficiency.

Submission of Additional Documents for final assessment [S. 18(1A)]

As per customs regulations; the PO shall in writing, may ask for information or documents to be produced within 15 days from the date of provisional assessment order.

Scenario after Final Assessment [S. 18(2)] [Note: Final Assessment shall be done within 2 months (+3 months)]**(A) Goods cleared for home consumption:**

Importer or the exporter of the goods shall pay the deficiency (Finally Assessed Liability > Provisionally Assessed Liability) or be entitled to a refund (Final Assessed Liability < Provisionally Assessed Liability). (Interest provisions discussed in some time)

(B) Goods deposited into warehouse:

In case where Finally Assessed Liability > Provisionally Assessed Liability, for such difference, require the importer to execute a bond, binding himself in a SUM EQUAL TO TWICE THE AMOUNT OF THE EXCESS DUTY

Interest on difference between provisional assessment & final assessment [S. 18(3) & 18(4)]

	Interest Period		
Final Duty is: -	From	To	Rate of Interest p.a.
Payable by Assessee [S. 18(3)]	First day of month in which duty is provisionally assessed	Date on which tax was actually paid	15%
Refundable to Assessee [S. 18(4)]	Expiry of 3 months from date of final assessment of duty	Date on which tax was actually refunded.	6%
Circular 40/2011 - Cus: Wherever the importer or exporter pays any amount of duty before finalisation of assessment, he shall not incur interest on the amount of duty so paid for the period from the date of such payment till the finalization of assessment.			

The refund of duty and interest thereon is subject to the principle of unjust enrichment, meaning thereby, if the incidence of duty and interest has been passed on then refund cannot be claimed by importer.

Example for understanding critical aspect of concept: -

Person Imported goods of Rs. 10,00,000/-, bill of entry was presented on 15th December, 2018, rate of customs duty was 20%. Proper officer made tests on goods and assessed provisionally at value of Rs. 10,00,000/-, assessee paid Rs. 2,00,000 on provisional basis on 15th December, 2018. **Further it made voluntarily pay duty of Rs. 1,50,000/- on 20th January, 2019.** Determine amount of Interest payable if final duty is assessed on 31st January, 2019 at Rs. 4,00,000/- and it was paid on same day.

Solution: - The interest has to be charged on differential duty liability i.e. Rs. 2,00,000/- [Rs. 4,00,000 (-) 2,00,000]. However, here interest will be bifurcated into two parts i.e. on differential payment before final assessment & differential duty payment after final assessment.

Differential payment before final assessment (Voluntary Payment): -

= $1,50,000 \times 51/365 \times 15\%$ = Rs. 3144 (1st December, 2018 to 20th January, 2019)

Differential payment after final assessment: -

= $50,000 \times 62/365 \times 15\%$ = Rs. 1274 (1st December, 2018 to 31st January, 2019)

Thus, total Rs. 4418 is interest payable as per Section 18 of Customs Act.

CUSTOMS AUDIT [SECTION 99A]

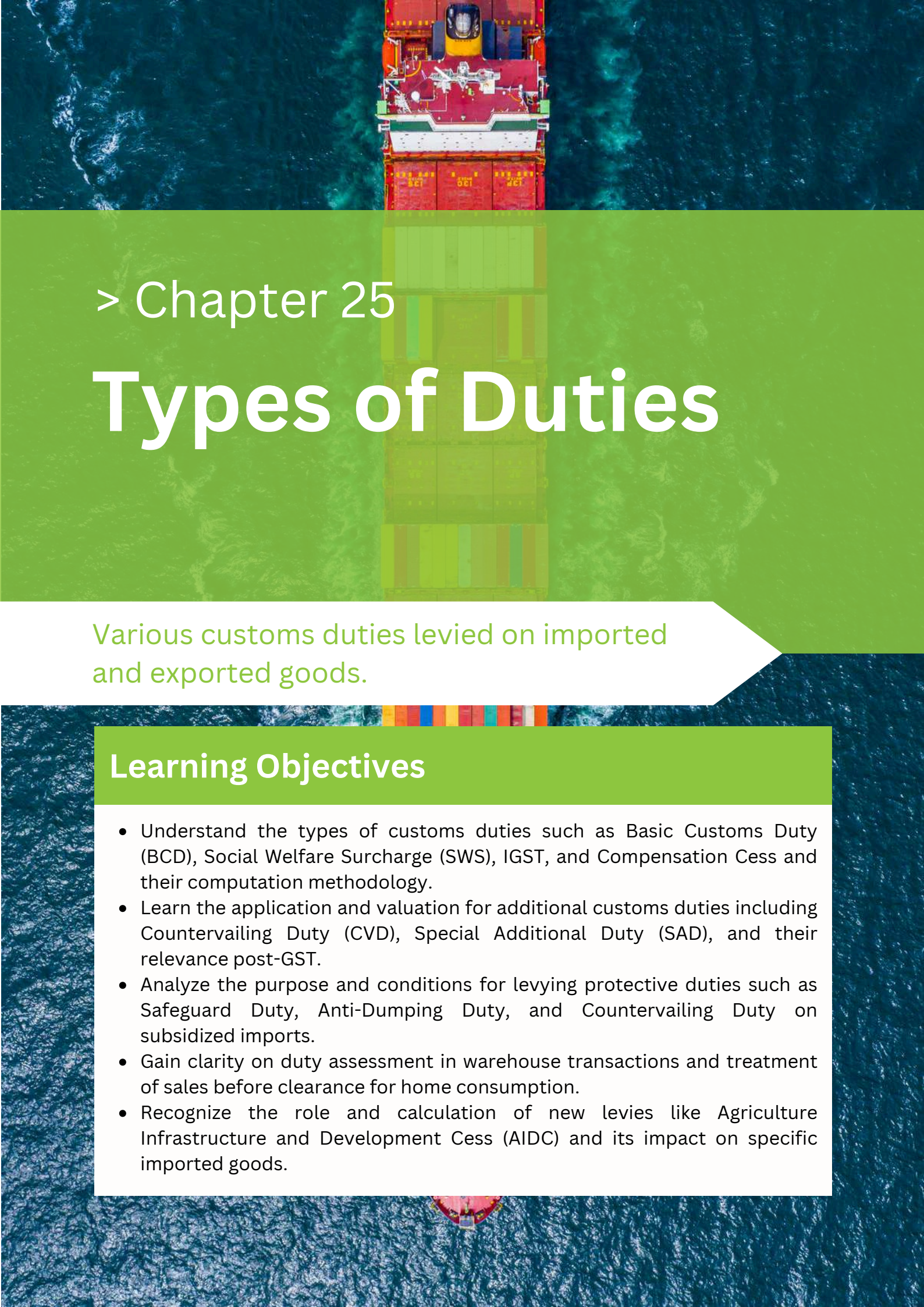
DEFINITION OF "AUDITEE":

In the 2018 Regulations, 'Auditee' is defined in 2(c) to mean "a person who is subject to an audit under section 99A of the Act and includes an importer or exporter or custodian approved under section 45 or licensee of a warehouse and any other person concerned directly or indirectly in clearing, forwarding, stocking, carrying, selling or purchasing of imported goods or export goods or dutiable goods"

SALIENT FEATURE OF THIS AUDIT PROCEDURE ARE AS FOLLOWS:

- (i) Auditee is to preserve records for conduct of this audit for a period of five years
- (ii) Risk based assessment will identify persons to be audited
- (iii) Audit will be conducted at the premises of the auditee by the authorized officers who will intimate fifteen days in advance of their schedule visit
- (iv) Based on the findings, auditee may accept the liabilities and voluntarily discharge the duty, interest and penalty, as applicable
- (v) Assistance of experts can be availed for conducting this audit such as CA, CMA or IT professionals with permission of Principal Commissioner/ Commissioner of Customs
- (vi) Contravention of these Regulations attracts penalty of Rs. 50,000

The types of audit-transaction based audit (TBA) (audit of transactions) and premise-based audit (PBA) (audit at the premises). TBA can be subsequently converted into PBA



> Chapter 25

Types of Duties

Various customs duties levied on imported and exported goods.

Learning Objectives

- Understand the types of customs duties such as Basic Customs Duty (BCD), Social Welfare Surcharge (SWS), IGST, and Compensation Cess and their computation methodology.
- Learn the application and valuation for additional customs duties including Countervailing Duty (CVD), Special Additional Duty (SAD), and their relevance post-GST.
- Analyze the purpose and conditions for levying protective duties such as Safeguard Duty, Anti-Dumping Duty, and Countervailing Duty on subsidized imports.
- Gain clarity on duty assessment in warehouse transactions and treatment of sales before clearance for home consumption.
- Recognize the role and calculation of new levies like Agriculture Infrastructure and Development Cess (AIDC) and its impact on specific imported goods.

INTRODUCTION TO TYPES OF DUTIES

Customs Duties is not limited upto basic customs duty; in order to match the value of imported goods at par with domestically manufactured goods thereby safeguarding the interests of domestic suppliers, government imposes certain other duties on imported goods. The Customs law has been divided into Customs Act, 1962; Customs Tariff Act, 1975 read with Schedule I & Schedule II to customs tariff act. The provisions regarding duties have been entrusted in Customs Tariff Act, 1975, which we are going to learn in this chapter.

Sr. No.	Particulars	Amount
DUTY COMPUTATION FORMAT for ACD u/s 3(7) & 3(9) of CTA (i.e. IGST & GST Compensation Cess)		
I	Assessable Value (To be learnt in valuation chapter)	XX
II	Basic Custom Duty (BCD u/s 12) (Rate would be given in Question) [% of I]	XX
III	Protective Duty (hereinafter P.D.) (other than V below)	XX
IV	Social Welfare Surcharge [10% of (II+III)]	XX
V	<u>Other Customs Duty</u>	
	Safeguard Duty (S. 8B of CTA)	XX
	Anti-dumping Duty (S. 9A of CTA)	XX
	Countervailing Duty (S. 9 of CTA)	XX
VI	Total (I + II + III + IV + V)	XX
VII	IGST u/s 3(7) of CTA [% of VI] (Shall not be > 40%)	XX
VIII	GST compensation cess u/s 3(9) of CTA [% of VI]	XX
IX	Cost of Importation	XX
DUTY COMPUTATION FORMAT for ACD u/s 3(1) & 3(5) of CTA (i.e. CVD & SAD)		
Sr. No.	Particulars	Amount
I	Assessable Value (To be learnt in valuation chapter)	XX
II	Basic Custom Duty (BCD u/s 12) (Rate would be given in Question) [% of I]	XX
III	Value for Levy of ACD u/s 3(1) of CTA (I+II)	XX
IV	Additional Duty of Customs (ACD) u/s 3(1) i.e. Duty in lieu of Excise Duty on an article manufactured in India (% of III)	XX
V	Protective Duty (hereinafter P.D.) (other than IX)	XX
VI	Social Welfare Surcharge [10% of (II+IV+V)]	XX
VII	Value for Levy of ACD i.e. Special Additional Duty (SAD) u/s 3(5) of CTA [% of (III+IV+V+VI)]	XX
VIII	SAD of Customs u/s 3(5) i.e. in lieu of Sales Tax on an article sold in India [% of VII]	XX
IX	<u>Other Customs Duty</u>	
	Safeguard Duty (S. 8B of CTA)	XX
	Anti-dumping Duty (S. 9A of CTA)	XX
	Countervailing Duty (S. 9 of CTA)	XX
X	Cost of Importation	XX

Basic Custom Duty

1. **Legal Provision:** Basic Customs Duty is levied under the provisions of section 12 of the Customs Act and section 2 of the Customs Tariff Act.
2. **Rates of Basic Custom Duty [Section 2 of the Customs Tariff Act]:**
Rate of Customs are specified in Customs Tariff:
 - ❖ **First Schedule (Rate of Duty on Imported Goods) and,**
 - ❖ **Second Schedules (Rate of Duty on Export Goods).**
3. Basic Customs Duty is levied on Assessable Value as calculated u/s 14 r/w Rules.
4. **Classification:** As per Harmonised System of Nomenclature (HSN)
5. **Standard rate of duty:** Generally, the standard rate of BCD is applicable.
6. **Preferential rate of duty:** Govt. has notified certain areas as preferential areas on basis of agreements between those countries. Import of goods from such areas **ATTRACT LOWER RATE OF BCD WILL BE APPLICABLE WHICH IS KNOWN AS "PREFERENTIAL RATE OF DUTY"**. Such rates are notified u/s 25 of Customs Act.
7. **Conditions to be fulfilled for preferential rate of duty:**

The importer will have to fulfill the following conditions to make the imported goods eligible for preferential rate of duty: -

- (a) At the time of importation, he should make a **specific claim** for the preferential rate.
- (b) Goods shall be **produced** or manufactured in **preferential area**.
- (c) The **area** should be **notified** u/s 4(3) of CTA
- (d) The **origin** of the goods shall **be determined as per S. 4(2) of CTA, read with rules**.

If the importer fails to discharge the above, the goods shall be liable to standard rate of duty. **Exports are kept free in purview of foreign trade policy; however, few goods are charged to export duty as a matter of policy adopted by ministry of commerce.**

SOCIAL WELFARE SURCHARGE

Social welfare surcharge (SWS) @ 10% of [BASIC CUSTOMS DUTY + P.D. other than SGD, CVD, ADD] (NOT ASSESSEABLE VALUE) when product is leviable to IGST, when the product is leviable to ACD 3(1) & 3(5), then SWS shall be calculated @ 10% of [BCD+ ACD 3(1) + P.D. other than SGD, CVD, ADD] is levied in lieu of education cesses for providing and financing education, health and social security.

SWS is levied only on Imported goods, meaning thereby it **cannot be levied on Export goods**.

SWS not leviable on few Protective Duties: SWS is levied on all Customs Duties excluding:

- (a) Safeguard measures under section 8B of the Customs Tariff Act, 1975
- (b) Countervailing duty under section 9 of the Customs Tariff Act, 1975
- (c) Anti-dumping duty under section 9A of the Customs Tariff Act, 1975
- (d) Social welfare surcharge itself on imported goods

SWS not leviable on IGST & IGST Cess: Social welfare surcharge leviable on integrated tax and goods and services tax compensation cess has been exempted vide Notification No. 13/2018-Cus dated 02.02.2018

IGST & IGST CESS U/S 3(7) & 3(9) OF CTA

INTRODUCTION: On Any imported goods, IGST is charged so as to make them par with domestically manufactured goods. Accordingly, in addition to BCD, IGST is levied as per section 5 of IGST Act read with Section 3(7) of Customs Tariff Act, IGST cess is levied u/s 3(9).

VALUE FOR LEVY OF IGST [3(8) / 3(8A) OR IGST CESS [3(10) or 3(10A)]

(i) On Goods imported and cleared by himself [S. 3(8) / 3(10)]

- ❖ IGST u/s 3(7) is levied on value as per Section 3(8) of Customs Tariff Act.
- ❖ IGST Cess u/s 3(9) is levied on value as per Section 3(10) of Customs Tariff Act.

Value as per 3(8) or 3(10): Assessable Value (+) BCD (+) SWS (+) Protective Duties (SGD, CVD, ADD). **[Refer Table 4.1]**

(ii) On goods sold in Warehouse and cleared by another person [S. 3(8A)]:

- ❖ IGST u/s 3(7) is levied on value as per Section 3(8A) of Customs Tariff Act.
- ❖ IGST Cess u/s 3(9) is levied on value as per Section 3(10A) in case of goods sold within warehouse.

Value as per 3(8A) or 3(10A): Where the goods deposited in a warehouse are sold to any person before clearance for home consumption or export, the value for levy of IGST shall be:

(A) **WHOLE GOODS SOLD: Where the whole of the goods are sold,**

- (a) Value as per Section 3(8) or
- (b) Transaction value of such goods (sold at W.H.), (Refer Note) whichever is higher.

Note: Where such goods are sold more than once, then “**last such transaction value**” shall be transaction value for the purpose of A(b) above.

(B) **PARTLY GOODS SOLD: Where any part of the goods is sold, the**

- (a) Proportionate value under section 3(8) or,
- (b) Transaction value of such goods, whichever is higher.

Note: Where such goods are sold more than once, then “last such transaction value” shall be transaction value for the purpose of B(b) above.

TAXABILITY OF UNSOLD GOODS CLEARED BY IMPORTER: The value shall be determined as per section 3(8).

Departmental Clarifications:

As per Circular No. 3/1/2018 - IGST it is clarified that IGST shall be levied and collected at the time of final clearance of the warehoused goods for home consumption i.e., at the time of filing the ex-bond bill of entry and the value addition accruing at each stage of supply shall form part of the value on which the integrated tax would be payable at the time of clearance of the warehoused goods for home consumption.

In other words, the supply of goods before their clearance from the warehouse would not be subject to the levy of integrated tax and the same would be levied and collected only when the warehoused goods are cleared for home consumption from the customs bonded warehouse.

Sale of goods within bonded warehouse [Schedule III item - CGST Act]: GST is not payable on supply of goods within warehouse before clearance for home consumption.

ADDITIONAL DUTIES OF CUSTOMS

(i) Additional duty under section 3(1)

Any article which is imported into India is also liable to a duty equal to the excise duty for the time being leviable on a like article if produced or manufactured in India. This duty is called as additional duty

Note: After introduction of GST, excise duty has been restricted to few goods such as petroleum products (crude, diesel, petrol, ATF, natural gas) and tobacco products, the above said additional duty is also restricted to the above products

(ii) Countervailing Duty u/s 3(3)

Special additional duty under sub-section (3) is levied to counter balance the excise duty leviable on raw materials, components and ingredients of the same nature as, or similar to those, used in the production or manufacture of the imported article.

In order to ensure that domestic manufacturers are at par with foreign manufacturers this duty is levied, as domestic manufacturers would have incurred tax cost as excise duty on raw materials, components used to manufacture goods which are not liable to excise duty.

(iii) Levy of special additional duty under section 3(5):

Such Additional duties are levied as additional duty to counter-balance the sales tax, value added tax, local tax or any other charges for the time being leviable on a like article on its sale, purchase or transportation in India

Due to introduction of GST, the applicability of additional duty of customs is very limited. GST is levied on all supplies of goods and /or services except supply of alcoholic liquor for human consumption.

Further, GST on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council. Thus, additional duty of customs will be levied only on the few products not leviable to GST.

PROTECTIVE DUTIES

The basic objective behind levy of protective duty is to protect the Indian Industry. Government has the power through section 6 of customs tariff act to impose protective duties. Let us learn in detail about protective duties such as Safeguard duty, anti-dumping duty & CVD on subsidized article.

SAFEGUARD DUTY

Circumstances in which safeguard duties can be imposed

- (a) Article is imported increased quantities; and
- (b) Causing or threatening to cause serious injury to domestic industry. The measures are imposed by issuing a notification in the Official Gazette.

Nature of Safeguard duty

Product and country specific

Duration of Safeguard Duty

Safeguard duty will be in force for period of **4 YEARS (6 years extension possible)** from date of its imposition.

Exemptions from Safeguard duties

- (a) Articles from one developing country: Articles originating from developing country, so long as the share of imports of that article from that country does not exceed 3% of the total imports of that article into India.
- (b) Articles originating from more than one developing country: Articles originating from more than one developing country, so long as the aggregate of imports from developing countries each with less than 3% AND import share taken together does not exceed 9% of the total imports of that article into India.

Example:

- ❖ Total Imports of Chocolate (in units): 2,500 tonnes. Import from developing Countries A, B, C, D, respectively is 70, 82, 52, 50 tonnes respectively and from developed country is 2246 tonnes.
- ❖ Thus, share of Import of A, B, C, D comes out to 2.80%, 3.28%, 2.08%, 2.00%. Thus, share of those developing countries with less than 3% is 6.88% (2.80+2.08+2.00) (does not exceed 9%)
- ❖ Thus, SGD would not be levied on imports from A, C, D.

Note: The % shall be applied as of quantity and not value based.

- (c) Imports by 100% EOU or units in a Special Economic Zone:
Safeguard duty shall not apply to articles imported by a 100% EOU/SEZ unit unless: -
 - (i) Specifically made applicable; or

- (ii) The article imported is either cleared as such into DTA or used in the manufacture of any goods that are cleared into DTA (Proportionate reversal to be done)

Note: Since, it is to protect domestic manufacturers, imports by SEZ or 100% EOU are exempted, because the imported goods by them would be any ways not be sold in Indian market. However, if they are sold in Indian market, the SGD would be applicable as mentioned in (ii) above.

PROVISIONAL LEVY:

The provisional safeguard measures shall be in force for a maximum period of 200 days from the date of its imposition.

However, if after levying provisional duty, central government is of the opinion that, it does not cause serious injury to Indian market, the collected provisional amount of duty shall be refunded. It is important to note that if short amount is collected provisionally, then excess cannot be collected as provisional levy.

All machinery provisions of the Customs Act, 1962 are applicable to safeguard duty.

COUNTERVAILING DUTY ON SUBSIDIZED ARTICLE

Circumstances in which countervailing duty can be imposed

- Any **country or territory**, directly or indirectly, **pays or bestows subsidy** upon the **manufacture or production or exportation of any article which is imported into India**. Such subsidy includes subsidy on transportation of such article.
- The importation **may/may not directly** be **from the country of manufacture/production**.
- The article, may be in the same condition as when exported from the country of manufacture or production or may be changed in condition by manufacture, production or otherwise.

Example 1: Indian Importer has imported a Calculator made in China named "Catizen". Chinese government has given subsidy to Chinese Mfg. China sends the goods to Sri Lanka, and from Sri Lanka India is importing catizen, in this case, CVD would be levied.

Example 2: Chinese people sent only the body (without buttons) to India and sent buttons separately and assembled in India, in this case also CVD would be levied.

Deeming fiction of existence of subsidy

Subsidy shall be deemed to exist if:

- Financial Contribution by Govt.:** Contribution may include direct transfer of funds like grants, loans etc., waiver of revenue due to the Government etc.
- Price support:** granted or maintained by the Government, which results in increased export of such article or reduced import of any article into the country.
- Funding Mechanism:** A Government makes payments to a funding mechanism, or entrusts or directs a private body to carry out such functions.
- Anti-circumvention measure in respect of countervailing duty on subsidized articles:** Where the Central Government, on such inquiry as it considers necessary,

is of the opinion that circumvention of countervailing duty has taken place, by either of the following ways:-
(i) by altering the description or name or composition of the article on which such duty has been imposed [Calculator brought by showing in bill of entry as video game]
(ii) by import of such article in an unassembled or disassembled form [Sent body first then sent keys & not direct calculator as whole]
(iii) by changing the country of its origin or export or in any other manner, whereby the countervailing duty so imposed is rendered ineffective [Calculator sent to Sri Lanka then Imported into India]
Amount of Countervailing Duty
The amount of countervailing duty shall not exceed the amount of subsidy paid or bestowed as aforesaid.
CVD not to be levied in certain cases
(i) Research Activity [Supplier's govt. gave subsidy to its exporters who have made research of new item]
(ii) Assistance to disadvantaged region; [Suppliers' govt. gave scheme that if Tribal area of its country makes this product and exports, we will give subsidy]
(iii) Environmental requirements [Supplier's govt. announced that, if exported the material made from bio-degradable waste, then subsidy] [In all such cases, importer's country cannot levy CVD on subsidized article]
Duration
5 years (+ 5 years) from the date of its imposition. <i>(If the review is not completed before the expiry of the period of imposition (5 years) then the duty may continue to remain in force pending the outcome of such review for a further period not exceeding 1 year.)</i>
Provisional Levy & Retrospective levy
6 months. If the final subsidy determined is less than the subsidy provisionally determined, then the Central Government shall reduce such duty and also refund the excess duty collected. If short collected provisionally, excess would not be collected. The retrospective date from which the duty is payable shall not be beyond 90 days from the date of notification
Absorption of CVD: If there is decrease in export price, however, the price at which it is resold is not decreased to such extent, the government may undertake inquiry and render CVD as ineffective to counter effect of absorption.
NON-APPLICABILITY OF CVD: Countervailing duty shall not apply to article imported by a 100% EOU or a unit in SEZ. If cleared into DTA, then CVD would be levied.

ANTI-DUMPING DUTY

Logic Behind Anti - Dumping Duty (NOT TO BE REFERRED ON LAST DAY)

The exporter having earned good profit in its own country, would not recover **FIXED COSTS (as already he has break Even)**. Thus, he can sell at VARIABLE COST (+) PROFIT, whereas in Importers country, domestic suppliers must be selling at FIXED COST (+) VARIABLE COST (+) PROFITS. Thus, this leads to dumping of goods.

Terms & Logic of Terms
(Space for discussion)

Technical Terms & Formulas (ALSO TO BE REFERRED ON LAST DAY OF EXAM)

(i) Margin of Dumping = Adjusted Normal Value (-) Export Price

In our case,

(ii) Injury Margin = Fair Selling Price (-) Landed Value

In our case,

MAXIMUM ADD =

LOWER OF

(a) MARGIN OF DUMPING OR

(b) INJURY MARGIN

Circumstances when it can be levied

When the export price of a product imported into India is less than the Normal Value of 'like articles' sold in the domestic market of the exporter, it is known as dumping.

If such dumping causes or threatens to cause material injury to the domestic industry of India.

Important Points in relation to Computation of Anti-dumping duty

Transhipped/No Comparable Price: In case the article is imported from a country other than the country of origin or where the article has merely been transhipped through the country of export or such article is not produced in the country of export or there is no comparable price in the country of export, the normal value shall be determined with reference to its price in the country of origin.

Export Price:

In relation to an article, means the price of an article exported from the exporting country or territory.

(If export price is unreliable, then, the export price may be constructed at the price at which the imported articles are first resold to an independent buyer. If not sold to independent buyer, then reasonable means)

Normal Value: Comparable price, in the ordinary course of trade, for the like article when destined for consumption in the exporting country.	
Injury margin is the margin adequate to remove the injury to the domestic industry.	
In case of circumvention, government may extend the anti-dumping duty to such article or an article originating in or exported from such country, as the case may be [Sub-section (1A)] [Circumvention is already explained in CVD on subsidised articles]. If the said duty is revoked temporarily, the period of such revocation shall not exceed one year at a time.	
Provisional	6 months
Retrospectively	90 days
Period of Levy	5 years (+ 5 years) (In case of pending review, further 5 yrs)
Exemption	Imported by 100% EOU or SEZ. However, if they sell in DTA then ADD would be levied

Other Provisions:

- (a) As per section 9B of CTA, no article shall be subjected to both CVD & ADD (except in certain situations laid down in S. 9B)
- (b) An Appeal can be filed u/s 9C of CTA within 90 days of order, an appeal filed under this section shall be accompanied by a fee of Rs. 15,000. Every application made before the CESTAT (i.e., Tribunal). It may condone delay in filing appeal
- (c) Appeal for grant of stay or for rectification of mistake or for any other purpose; or for restoration of an appeal or an application, shall be accompanied by a fee of Rs. 500.

AGRICULTURE INFRASTRUCTURE AND DEVELOPMENT CESS ON NOTIFIED ITEMS

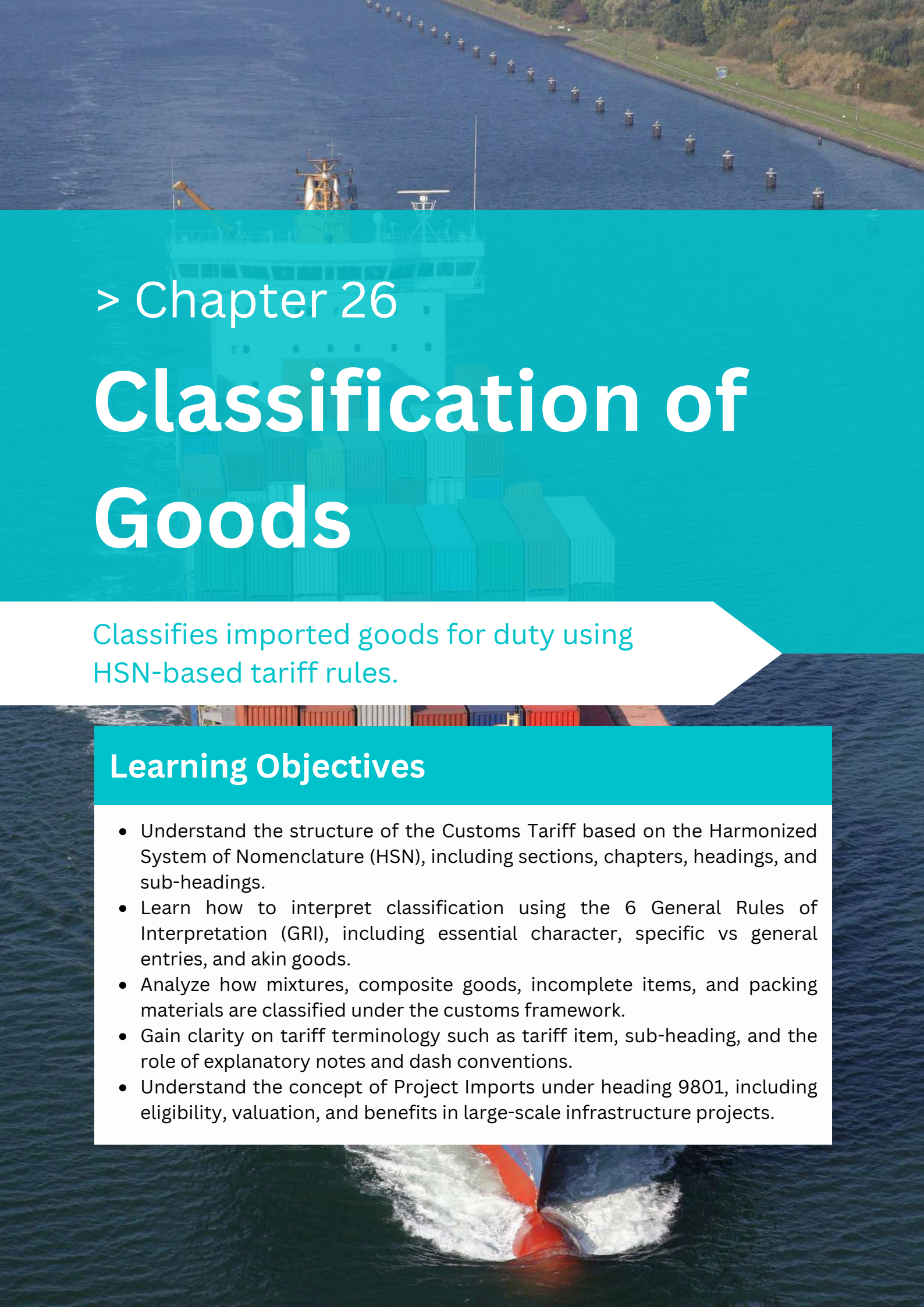
An Agriculture Infrastructure and Development Cess (AIDC) has been levied on import of **specified goods at the notified rate**.

For instance, some of the notified goods are apples, kabuli chana, various types of coal, urea, silver (including imports by eligible passengers), Silver Dore, Gold (including imports by eligible passengers), Gold Dore etc. This **cess is used to finance the improvement of agriculture infrastructure** and other development expenditure.

Where the duty is leviable on the goods at **any percentage** of its value, then, for the purposes of calculating the AIDC, the **value of such goods is calculated in the same manner as the value of goods** is calculated for the purpose of customs duty **under section 14 of the Customs Act, 1962**.

The AIDC on imported goods is in addition to any other duties of customs chargeable on such goods, under the Customs Act, 1962 or any other law for the time being in force.

All Machinery provisions of customs act are applicable to this cess as well.



> Chapter 26

Classification of Goods

Classifies imported goods for duty using HSN-based tariff rules.

Learning Objectives

- Understand the structure of the Customs Tariff based on the Harmonized System of Nomenclature (HSN), including sections, chapters, headings, and sub-headings.
- Learn how to interpret classification using the 6 General Rules of Interpretation (GRI), including essential character, specific vs general entries, and akin goods.
- Analyze how mixtures, composite goods, incomplete items, and packing materials are classified under the customs framework.
- Gain clarity on tariff terminology such as tariff item, sub-heading, and the role of explanatory notes and dash conventions.
- Understand the concept of Project Imports under heading 9801, including eligibility, valuation, and benefits in large-scale infrastructure projects.

INTRODUCTION TO CLASSIFICATION OF GOODS

We know that in dictionary, if we want to find meaning of some word, we can easily find due to the way it has been structured, in similar manner, there is a system through which rate of duty can be found out through Tariff.

Customs Tariff Act, 1975 is derived from the Harmonized commodity description and coding system (HS), which is an internationally accepted system for naming and classifying commodities.

Along the lines of HSN, the Customs Tariff Act, 1975 has a set of General Rules of Interpretation of the First Schedule i.e. Import tariff schedule which inter alia contains General Explanatory notes. There are in total 6 rules of interpretation.

In first Schedule (Import Duty Rates) there are 98 chapters, comprising of 21 sections.

- (i) **Sections:** A group of chapters representing a particular class of goods
- (ii) **Chapters:** Each section is divided into various chapters and sub-chapters. Each chapter contains goods of specific class
- (iii) **Chapter Notes:** They are mentioned at beginning of each chapter
- (iv) **Heading:** Each chapter is divided into various headings
- (v) **Sub-heading:** Each heading is divided into various sub-headings

1. GENERAL EXPLANATORY NOTES

- (a) Relevance of one dash ["-"], two dash ["--"] and three dash ["---"]:
The description of an article or group of articles under a 'heading' is preceded by "-". It denotes that the said article or group of articles shall be taken to be sub-classification of the article or group of article covered by the said heading.
- (b) There is a column of Preferential Rate in Tariff - Example: 0808 [Heading] 11 [Sub-heading] 00 [Tariff Item]: : 0808 11 00

Chapter 08

Edible Fruit & Nut; peel of citrus fruit or melons

Chapter Notes:

(1) This chapter does not cover inedible nuts or fruits

(2) *****

Tariff Item	Description of Goods	Units	Standard Rate	Preferential Rate
0801 (Heading)	Coconuts, Brazil nuts and cashew nuts, fresh or dried, whether or not shelled or peeled			
08011100	- Coconuts:	Kg.	70%	60%
	- - Desiccated	Kg.	70%	60%
	- - inner shell (endocarp):	Kg.	70%	60%
	- - - Fresh	Kg.	70%	60%
"Desiccated" has to be read with reference to Coconuts i.e., Desiccated Coconuts. "Fresh" has 3 dash thus, it has to be read with reference to previous two dash heading. In this case we have to read it as "Fresh inner shell". Fresh is a sub-classification of inner shell (endocarp).				

2. ADDITIONAL NOTES

- (a) **"Heading"**, means a description by a **4-digit** number and **includes all sub-headings** of tariff items the first four-digits of which correspond to that number;
- (b) **"Sub-heading"**, in respect of goods, means a description by a **6-digit number** and **includes all tariff items** the first six-digits of which **correspond** to that number;
- (c) **"Tariff item"** means a description of goods in the list of tariff provisions accompanying **eight-digit number and the rate of customs duty**;

3. GENERAL RULES FOR INTERPRETATION

Rule 1: General Rule of Classification

- ❖ Titles of sections, chapters and sub-chapters do not have any legal force. **[Saurashtra Chemicals v. CC 1986 (23) ELT 283 (Tri-LB) [approved by SC]**
- ❖ Terms of headings read with relative section and chapter notes are legally relevant
- ❖ When classification is possible through description in heading, subheading, chapter note, section notes, rules shall not be resorted to. **[Track Parts Corporation v. CC (1992)]**

Rule 2(a): Classification of incomplete / unfinished goods

Incomplete or unfinished article shall be classified as complete article for the purpose of classification as long as it has essential character of completed article.

Example: A car without seats would still be classified as car.

Rule 2(b): Classification of Mixtures/Combinations of a Material/Substance with Other Materials/Substances

Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances.

Example: "Calcutta Meetha pan" which is a mixture of various items, primary ingredient being pan leaf. The product contained 70% of dry dates and mixture of spices and sweetener. It was held that classification, as per Rule 2(b) and 3(b) ought to be under "Fruits, Nuts and Other Edible parts" under CETH 20.08 and not "pan masala". [Dhariwal Industries v. CCE]

Rule 3(a): Prefer the Specific entry over the general entry

The heading which provides the most specific description shall be preferred to headings providing a more general description.

Example: Kitchen sink is more appropriately covered under "sanitaryware" rather than "household articles of iron and steel".

Rule 3(b): Essential character test for Mixtures or Composite Goods

In the case of mixtures or composite goods, resort is to be had to determining the material/ component of the product which gives it its essential character.

Example: Floor tiles containing 13.3% PVC (plastic), 84.9% limestone with plastic as binder is to be classified as 'article of stone, cement' as per the test of 'essential character'.

Rule 3(c): If both are specific – latter the better**Rule 4: Akin goods**

Goods which cannot be classified in accordance with the above rules shall be classified under the heading appropriate to the goods to which they are most akin.

Example: Hanging Clock (not in tariff) can be classified as wall clock.

Rule 5: Classification of packing containers and packing materials

Camera cases, musical instrument cases, and similar containers, supplied with main product shall also be classified as main product (Camera, Musical instrument etc.). However, if camera case is itself a product, then it shall be classified as camera cases only (and not as camera)

Rule 6: Goods are comparable at the same level only

The sub-headings within the same heading are comparable with each other, but not with sub - headings under any other heading. Accordingly, the heading is to be first determined, and then the sub-heading has to be ascertained

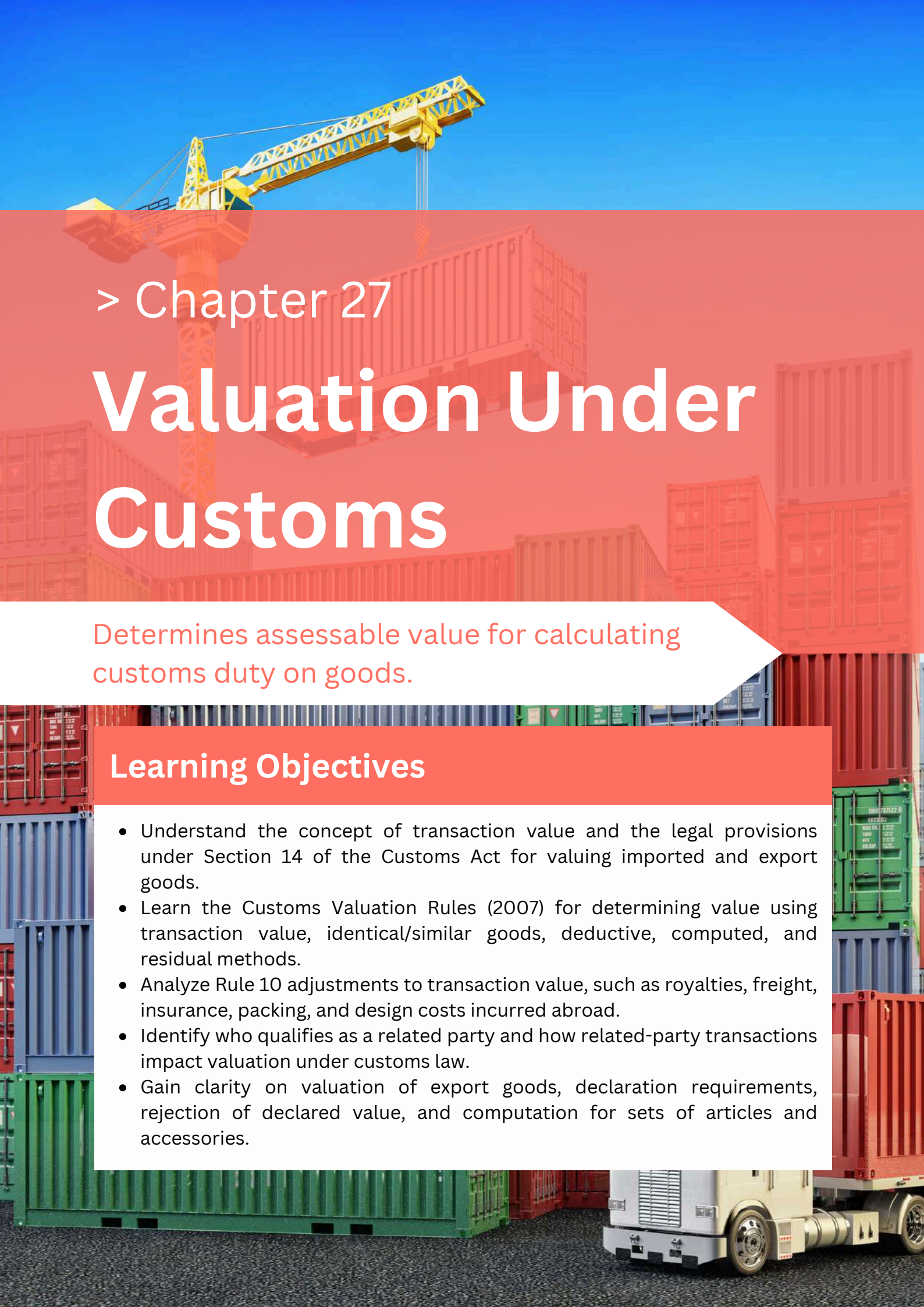
4. PROJECT IMPORTS

Setting up of project in India may require number of machines and equipments to be imported. Importation may spread over a period of time and thus, assigning values and paying heavy customs duty on imported machineries making initial project costly. Thus, project imports have been introduced under heading 9801 of CTA. In GST Regime, IGST under project import scheme would be classified under heading 9801 and IGST @ 18% will be levied.

Machineries, instruments, apparatus, and appliances for R&D, components of raw material for manufacture of aforesaid items etc utilised for initial setting up of project or substantial expansion of existing project are covered under this heading.

Spares etc. essential for maintenance of plant and equipment are eligible only upto 10% of value of goods and can be imported under project import.

Following are eligible project imports – Industrial Plant, Irrigation project, power project, mining project, oil & other mineral exploration project etc.



> Chapter 27

Valuation Under Customs

Determines assessable value for calculating customs duty on goods.

Learning Objectives

- Understand the concept of transaction value and the legal provisions under Section 14 of the Customs Act for valuing imported and export goods.
- Learn the Customs Valuation Rules (2007) for determining value using transaction value, identical/similar goods, deductive, computed, and residual methods.
- Analyze Rule 10 adjustments to transaction value, such as royalties, freight, insurance, packing, and design costs incurred abroad.
- Identify who qualifies as a related party and how related-party transactions impact valuation under customs law.
- Gain clarity on valuation of export goods, declaration requirements, rejection of declared value, and computation for sets of articles and accessories.

INTRODUCTION TO VALUATION

Once the duty liability arises, such duty can be calculated only on the assessable value. As per section 2(41) of the Customs Act, 1962 the term value means in relation to any goods as the value thereof determined in accordance with the provisions of sections 14(1) and sections 14(2) of the Customs Act, 1962.

Flow of Chapter:

Sr. No.	Particulars
Valuation of Imported Goods	
1.	Valuation of Imported goods - Transaction value (hereinafter TV) [Section 14], and exchange rates
2.	Valuation Rules for Imported goods [Rule 1 to Rule 9 of Customs Determination of Valuation Rules (Imported Goods)]
Valuation of Export Goods	
3.	Valuation of Export goods - Transaction value [Section 14]
4.	Valuation Rules for Export goods

Few terms used in International Market

(1) Ex-Factory Price	It is the price of the goods at the factory gate. It includes cost of production and manufacturer's margin of profit without cost of freight for outward delivery of goods.
(2) F.A.S. (Free Alongside)	It is the cost at which the export goods are delivered alongside the ship, ready for shipment. It includes ex-factory + local freight + local taxes.
(3) F.O.B. (Free on Board)	Technically there is not much of a difference between FAS and FOB cost. FOB means the stage at which the goods are placed on board the conveyance carrying the vessel. It can be said to include FAS + loading charges + export duty/cess.
(4) C.I.F. (Cost Insurance Freight)	It is the cost at which the goods are delivered at the Indian port (F.O.B. + Insurance + Freight). It covers cost of goods.

As per section 14(1) of the Customs Act, 1962 valuation based on transaction value is applicable for export as well as imported goods.

Transaction Value for the purpose of Import is:

- (i) Price at which such or like goods are ordinarily sold or offered for sale
- (ii) for delivery at the time and place of importation
 - ❖ The 'place of importation', as observed by the Supreme Court in the case of Garden Silk Mills Ltd Versus Union of India 1993 (113) E.L.T. 358 (S.C)

means the place where the imported goods reach the landmass of India in the Customs area of the port, airport or land customs station, or if they are consumed before reaching the landmass of India, the place of consumption. [Read with Rule 2(da)]

- (iii) **in the course of international Trade**
 - ❖ Not normal price of domestic markets of either of the countries
- (iv) **When Seller and buyer have no interest in the business of each other (unrelated) and**
 - ❖ See related party defined in rule 2
- (v) **Price is the sole consideration for sale**
 - ❖ Adjustments to be done as per rule 10
- (vi) **At rate of exchange as on the date of presentation of Bill of Entry as fixed by the CBIC.**

Section 14 has been amended by the Finance Act, 2022 to include provisions for rules enabling the Board to specify the additional obligations of the importer in respect of a class of imported goods whose value is not being declared correctly, the criteria of selection of such goods, and the checks in respect of such goods. This amendment is a measure to address the issue of undervaluation in imports.

Customs Valuation (Determination of Value of Imported Goods) Rules, 2007

Rule 1: Customs Valuation (Determination of Value of Imported Goods) Rules, 2007
Rule 2: Definitions
"Goods of the same class or kind" Means imported goods that are within a group or range of imported goods produced by a particular industry or industrial sector and includes identical goods or similar goods; "Identical Goods" - To be discussed in Rule 4 "Similar Goods" - To be discussed in Rule 5
Related Persons (Person includes Legal Person - Explanation I): Persons shall be deemed to be "related" only if - (i) they are officers or directors of one another's businesses; Example: Mr. A is a major shareholder (owner) of A Ltd and Mr. B is a major shareholder (owner) of B Inc. If Mr. A is appointed as an Officer/director in B Inc, and Mr. B is appointed as officer/director in A Ltd, then A Ltd & B Inc are related entities (ii) they are legally recognised partners in business; Example: - Mr. A & Mr. B are partners in AB & Co. then Mr. A & Mr. B are related persons. (iii) they are employer and employee; Example: - Mr. A is an employee in branch Mumbai of Alex Inc. Then Alex Inc & Mr. A are related persons. (iv) any person directly or indirectly owns, controls or holds five per cent or more of the outstanding voting stock or shares of both of them; Example: If Mr. A has 6% shares in Redmi Inc & 7% shares in Xiaomi Ltd. then, Redmi Inc & Xiaomi Ltd. are said to be related. (Mr. A & Redmi Inc shall not be related in this case) (v) one of them directly or indirectly controls the other; Example: - Here it is important to understand the meaning of "control", control would mean to own > 50% of share-holding & playing significant role in corporate policy etc. Any person controlling any company is a related party. (vi) both of them are directly or indirectly controlled by a third person; Example: - Mr. A has power to appoint BOD of ABC Ltd & PQR Inc., thus, ABC Ltd & PQR Inc are related persons. (vii) together they directly or indirectly control a third person; or Example: - If A Ltd and B Inc together control X Ltd, then A Ltd and B Inc are treated as related person (viii) they are members of the same family. Explanation II: Persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other shall be deemed to be related for the purpose of these rules, if they fall within the criteria of this sub-rule.

Rule 3 of Customs Valuation Rules, 2007 r/w Rule 10, 12 (Analysis of Rule 10 is done on next page)

Subject to rule 12 (rejection of TV), the value of imported goods shall be the transaction value adjusted in accordance with provisions of rule 10

Particulars	Amount
Free on-board Value (<i>FOB value is value of goods excluding carriage, insurance and freight, i.e. domestic price in the country of origin.</i>)	XX
+ Commission or Brokerage incurred by buyer (except buying commission - " <i>Buying Commission means fees paid by the importer to his agent for the service of representing him abroad in the purchase of the goods being valued</i> ") [R. 10(1)]	XX
+ Value of materials / tools, dies, moulds, & similar items if supplied by the buyer to the seller at free of cost or at reduced cost and used in Imported goods [Added to the extent that such value has not been included] (Refer Analysis @ Pt. 8 on next page) [R. 10(1)]	XX
+ Royalty or license fee, payable by the buyer to the seller or third party as a condition of the sale. [R. 10(1)] [Added to the extent that such value has not been included]	XX
+ Any payment agreed as a 'condition-of-sale' or to satisfy an obligation of the seller [Added to the extent that such value has not been included] [R. 10(1)]	XX
+ Cost of non-returnable container [R. 10(1)]	XX
+ Cost of packing whether for labour or materials [R. 10(1)]	XX
+ Design, Development, Engineering, Art work, design work, and plans and sketches done abroad [Added to the extent that such value has not been included] [R. 10(1)]	XX
+ Warranty Charges [Extra Set of Accessories to cover transit not to be added] (Analysis + [R. 10(1)])	XX
+ Value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods accruing to seller [R. 10(1)]	XX
+ Inspection charges at request of buyer / under the contract [Analysis + R. 10(1)] (Expenditure incurred after arrival not to be added)	XX -
Revised FOB for Customs (RFOB) or CUSTOMS FOB	XX
+ Freight*, [If mode of transport is VESSEL OR VEHICLE] Actual Cost is given – Actual cost [R. 10(2)] r/w Provisos Actual Cost not given – 20% of RFOB [R. 10(2)] r/w Provisos	XX
+ Freight* [If mode of transport is AIR] [R. 10(2)] r/w Provisos Actual cost or 20% of RFOB whichever is less, (Actual Cost is not given – 20% of RFOB)	XX
+ Insurance (Actual) – If Actual is not given = 1.125% of RFOB [R. 10(2)]	XX
TOTAL (RFOB + FREIGHT + INSURANCE) [ASSESSABLE VALUE OR Cost Insurance Freight (CIF) VALUE]	XX

*Freight shall be read as, "cost of transport, loading, unloading, and handling charges associated with delivery of imported goods to the place of importation"

As per explanation to rule 10, the above shall include ship demurrage charges on chartered vessel, lighterage or barge charges. Please refer analysis - Next page
(The word "Freight" is only used for sake of simplicity & convenience)

Earlier, loading, unloading handling charges (collectively known as landing charges) were added in CIF @ 1%. The Hon'ble SC had ruled in the case of M/s Wipro Ltd. Vs Assistant Collector of Customs-2015 that the landing charges to be added to the value of goods, should be based on actual charges incurred, and not notional 1%.

ANALYSIS OF RULE 10 & SPECIAL POINTS FOR SOLVING QUESTIONS

Sr. No.	Analysis
1.	Tool Costs: APPORTIONED COST of tools are not consumed immediately by the importer; may be added in first consignment itself on request of importer. Example: If to manufacture a shirt abroad, a special scissor is required to be sent by recipient (Indian), and such scissor can be used only for 10 times. Then at the time of first import, 1/10 th of value of scissor shall be added in assessable value. However, importer may request to add full cost in first consignment itself.
2.	Lighterage & Barge Charges Charges for bringing goods from outer anchorage to the jetty are called as barging/lighterage charges. The cost of transport of the imported goods includes the ship demurrage charges on chartered vessels, lighterage or barge charges . The most common doubt by students is whether lighterage, barge charges, shall be added after adding freight or freight is to be considered as all inclusive In case of "Air", lighterage & barge is not possible DEMURRAGE charges (other than ship demurrage) payable to port trust authorities FOR DELAY IN CLEARING GOODS are NOT TO BE ADDED in the transaction value [Commissioner of Customs v Essar Steel Ltd. (2015)]
3.	Canalizing Agent It is INCLUDIBLE in the assessable value of imported goods. Since the canalizing agent is not the agent of the importer nor does he represent the importer abroad, purchases by canalizing agency from foreign seller and subsequent sale by it to Indian importer are independent of each other.
4.	Cost of Inland Container or Container freight station In case of goods imported by sea, stuffed in a container for clearance in an Inland Container Depot (ICD) or Container Freight Station (CFS), cost of freight from the port of entry to ICD or CFS shall NOT BE INCLUDED in the cost of transport referred to in rule 10(2)(a).
5.	Royalty, License Fees Post Importation (as a condition of sale) [Explanation to Rule 10] An 'Explanation' has been added to Rule 10(1) [erstwhile Rule 9(1)] to clarify that the royalty, licence fee or any other payment for using a process, when they are otherwise

Sr. No.	Analysis
	includible in terms of clause (c) or (e) of Rule 10(1), shall be added to the price actually paid or payable, notwithstanding the fact that such goods may be subjected to the said process after their importation.
6.	Cost of Transshipment [6th Proviso to Rule 10(2)]
	Costs related to transshipment of goods (from ports to ICDs; port to port, port to CFS, Airport to Airport etc.) within India WILL BE EXCLUDED.
7.	Rate of Exchange
	For Imported Goods, rate of exchange shall be taken CBIC rate as on date of presentation of bill of entry. Rate of duty shall be taken as on date of bill of entry or entry inwards whichever is later.
8.	Analysis of "Added to the extent that such value has not been included"
	Example: Mr. A (India) wants to buy sherwani from Dubai from Mr. Maqsood. The sherwani readymade costs Dirham 10,000/-; however, Mr. A does not want button already studded, but wants special Kuwaiti buttons to be embedded in its worth Dirham 1,500. Mr. Maqsood says, the original button would not be very useful after its removal from that Sherwani. Thus, he says he would not be able to reduce price of Dirham 10,000/-. Thus, in this case, even if buttons are given free of cost by importer, it would not be added in A.V., because original price was not reduced to such extent.

OTHER RULES RELATING TO VALUATION OF IMPORTED GOODS

RULE 4: TRANSACTION VALUE OF IDENTICAL GOODS | RULE 5: SIMILAR GOODS

If transaction value cannot be determined by applying aforementioned rules, then it shall be determined by applying rule 4 to rule 9 sequentially.

Note: If transaction value is not determinable as per RULE 4 (IDENTICAL GOODS), then RULE 5 has to be applied

DEFINITION OF IDENTICAL GOODS:

"Identical goods" means imported goods -

- (i) which are same in all respects, including physical characteristics, quality and reputation as the goods being valued except for minor differences in appearance that do not affect the value of the goods;
- (ii) **country of production shall be same;** and
produced by the
 - ❖ **same person** who produced the goods, or;
 - ❖ where no such goods are available, **goods produced by a different person,**
 - ❖ but shall **not include** imported goods where **engineering, development work, art work, design work, plan or sketch undertaken in India** were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods;

(Example: if Mr. A, imports "Apple iPhone is from US, from Mr. X; then Mr. X selling same phone to another person in India shall be taken. If Mr. X only sells to Mr. A, then another

supplier supplying same goods shall be taken. If that is also not available then we go for similar goods i.e., Rule 5)

DEFINITION OF SIMILAR GOODS:

"Similar goods" means imported goods -

- (i) which although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable with the goods being valued having regard to the quality, reputation and the existence of trade mark;
- (ii) produced in the country in which the goods being valued were produced; and
- (iii) produced by the same person who produced the goods being valued, or where no such goods are available, goods produced by a different person, but shall not include imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods;

Valuation of IDENTICAL GOODS

(a) Reference to Timing: The value of imported goods shall be the transaction value of identical goods sold for export to India and imported at or **ABOUT THE SAME TIME AS THE GOODS BEING VALUED.**

(b) Commercial Level & Quantity: The transaction value shall be at same commercial level in substantially same quantity.

Example: Distributor Imported 10,000 KG of Raw Material @ 300 Rs. At the same time below persons imported. Thus, TV he is declaring @ 30,00,000/-

Retailer	1000 KG	900
Super stockist	1,00,000 KG	300
Distributor	11,000	485
Thus, PO may take TV as 48,50,000/-		

(c) Adjusting the difference of commercial level & quantity: Where TV cannot be found by above (a) & (b), value of identical goods sold at a different commercial level or in different quantities or both, **adjusted** to take account of the difference attributable to commercial level or to the quantity or both.

Example: In above example suppose, if more than 10,000 KG are imported then supplier gives discount of 10%. Now we have to adjust the price as, 485 is 90%, how much is 100% i.e., 538.88. Thus, 53,88,890/- (rounded off) is the TV as per rule 4

IN RELATION TO IDENTICAL GOODS: As per rule 4(3); in applying this rule, if more than one transaction value of identical goods is found, the **LOWEST SUCH VALUE SHALL BE USED** to determine the value of imported goods.

IN RELATION TO SIMILAR GOODS: Rule 4 shall be applicable to value similar goods. [Rule 5(2)]

(Except definition, all other things remain same)

Rule 6: Determination of value where value cannot be determined under rules 3, 4 and 5

If the value of imported goods cannot be determined under the provisions of rules 3, 4 and 5. Rule 7 & 8 shall be applied in Same order unless permitted by PO

Rule 7: Deductive Value method

As per rule 7(1): The value of imported goods shall be based on the **unit price (SALE PRICE IN India)** at which the imported goods or identical or similar imported goods are **SOLD in the greatest aggregate quantity** to persons who are **not related** to the sellers:

Analysis with Example:

Price	Units sold at that price
21	5,000
20	4,500
21	2,100
20	1,000
18	2,500

Thus, **unit price at which** greatest aggregate quantity is sold is Rs. 21. As per deductive value method we will start with Rs. 21.

Particulars	Amount (Rs.)
Unit Sale price at which greatest aggregate quantity is sold of imported goods when sold to unrelated buyers in India	XX
Less: - (a) Commission paid in India for sale	XX
(b) Profit on such sale & General Exp	XX
(c) Cost of transport and insurance within India	XX
(d) Customs duty and other taxes payable for importation	XX
(e) Value addition made by processing	XX
Transaction Value for the purpose of Customs	XX

NO GOODS IMPORTED AT OR ABOUT THE TIME OF IMPORTATION:

Unit price shall be price at imported goods or identical or similar imported goods are sold in India, at the earliest date after importation **BUT BEFORE THE EXPIRY OF 90 DAYS AFTER SUCH IMPORTATION.**

Rule 8: Computed Value Method

As per rule 8, subject to the provisions of rule 3, the value of imported goods shall be based on a computed value,

Particulars	Amount (Rs.)
Cost of materials for production of imported goods.	XX
+ Cost of fabrication and other processing charges	XX
+ Amount of profit & General Expenses	XX
(+) Value of expenses under rule 10 (2) i.e. cost of transport, insurance, loading, unloading and handling charges	XX
Transaction Value for the purpose of Customs	XX

Rule 9: Residual Method

The value shall be determined using reasonable means consistent with the principles and general provisions of these rules and on the basis of data available in India. The residuary method can be considered if valuation is not possible by any other method. [Sanjay Chandiram v. CC 1995 (77) E.L.T. 241 (S.C.)]

Rule 11: Declaration by the Importer

The importer shall declare value and furnish all documents or information called for by the proper officer for the purposes of valuation. Wrong declaration of value under Rule 10 may call for penal provisions in Customs Act, 1962.

Rule 12: Rejection of Declared Value

If the proper officer feels that the declaration made under Rule 11 are not fair values, he may reject it as not suitable in the determination of Transaction value under Rule 3, after procuring further information or documents.

Rule 13: Notes specified in the schedule to these rules are meant to render help in the interpretation of these rules

VALUATION OF EXPORT GOODS [SECTION 14 r/w RULES]

VALUATION AS PER SECTION 14:

In case of export goods, the transaction value shall be the

- ❖ Price actually paid or payable for the goods
- ❖ when sold for export from India for delivery
- ❖ At the time and **place of exportation**

where the buyer and seller of the goods are not related and price is the sole consideration for the sale.

Rate of Exchange: In case of export goods the conversion in value shall be done with reference to the rate of exchange prevalent on the date of filing shipping bill (vessel or aircraft) or bill of export (vehicle) under section 50.

Case Law: In case of Samar Timber Corporation v. ACC 1995 (79) E.L.T. 549 (Bom.), it was held that relevant date in respect of rate of duty payable is the date of presentation of Bill of Entry and not date of re-presentation after correction.

CUSTOMS VALUATION (DETERMINATION OF VALUE OF EXPORT GOODS) RULES, 2007**Rule 2: Definitions**

In these rules, unless the context otherwise requires, -

- (a)** “Goods of like kind and quality” means export goods which are identical or similar in physical characteristics, quality and reputation as the goods being valued, and perform the same functions or are commercially interchangeable with the goods being valued, produced by the same person or a different person.

(b) "Transaction value" means the value of export goods within the meaning of sub-section (1) of section 14 of the Customs Act, 1962 (52 of 1962).

(c) Related party: Definition is same as learnt in earlier paras.

Rule 3: Determination of Method of Valuation

As per rule 3(1), subject to rule 8, the **VALUE OF EXPORT GOODS SHALL BE THE TRANSACTION VALUE**. Further as per rule 3(2), the transaction value shall be accepted even where the buyer and seller are related, provided that the relationship has not influenced the price.

If value could not be determined as per rule 3, then shall be arrived by applying RULE 4 TO RULE 6 SEQUENTIALLY.

Rule 4: Determination of Export value by comparison

The value of the export goods shall be based on the **TRANSACTION VALUE OF GOODS OF LIKE KIND AND QUALITY EXPORTED AT OR ABOUT THE SAME TIME TO OTHER BUYERS IN THE SAME DESTINATION COUNTRY OF IMPORTATION** or in its absence another destination country of importation adjusted in accordance with the provisions of sub-rule (2).

Adjustment of Difference: Difference shall be adjusted as regards to commercial level, quantity, freight, insurance etc.

Rule 5: Computed Value Method

Rule 6: Residual Method

Reasonable means consistent with the principles and general provisions of these rules provided that local market price of the export goods may not be the only basis for determining the value of export goods.

Rule 7: Declaration by exporter

The exporter shall furnish a declaration relating to the value of export goods in the manner specified in this behalf.

Rule 8: Rejection of Declared Value

If proper officer has a reason to doubt the truth or accuracy of value of goods, he can ask the exporter to furnish further documents. After receiving such further information, or in the absence of a response of such exporter, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, he can reject the value as per rule 3.

SPECIAL PROVISION FOR SET OF ARTICLES AND ACCESSORIES

Section 19 of the Customs Act provides that, where goods consist of a set of articles, duty shall be calculated as follows: -

- (a) Articles liable to duty with **reference to quantity** shall be **chargeable to that duty**;
- (b) Articles liable to duty with **reference to value** shall, if they are liable to duty at the **same rate**, be chargeable to duty at that rate, and if they are liable to **duty at different rates**, be chargeable to duty at the highest of such rates;
- (c) **Articles not liable to duty** shall be **chargeable to duty** at the rate at which articles liable to duty with **reference to value** are liable under clause (b).

INTRODUCTION TO VALUATION:

This chapter will teach us the procedures which are to be followed to import the goods / export the goods and documentation formalities thereon.

FLOW OF THE CHAPTER [PART 1, 2, 3, 4]	
Section No.	Description
CHAPTER VI - PROVISIONS RELATING TO CONVEYANCES CARRYING IMPORTED OR EXPORTED GOODS WHICH RANGES FROM SECTION 29 TO SECTION 43	
PART 1: IMPORT PROCEDURES	
Section 29	Arrival of vessels and aircrafts in India
Section 30	Delivery of arrival manifest or import manifest or import report
Section 30A	Passenger and crew arrival manifest and passenger name record information
Section 31	Imported goods not to be unloaded from vessel until entry inwards granted
Section 32	Imported goods not to be unloaded unless mentioned in arrival manifest or import manifest or import report.
Section 33	Unloading and loading of goods at approved places only
Section 34	Goods not to be unloaded or loaded except under supervision of customs officer.
Section 35	Restrictions on goods being water-borne
Section 36	Restrictions on unloading and loading of goods on holidays, etc.
Section 37	Power to board conveyances
Section 38	Power to require production of documents and ask questions
PART 4: EXPORT PROCEDURES IN RELATION TO CONVEYANCE	
Section 39	Export goods not to be loaded on vessel until entry-outwards granted
Section 40	Export goods not to be loaded unless duly passed by proper officer
Section 41	Delivery of departure manifest or export manifest or export report
Section 41A	Passenger and crew departure manifest and passenger name record information
Section 42	No conveyance to leave without written order
Section 43	Exemption of certain classes of conveyances from certain provisions of this Chapter
CHAPTER VII - CLEARANCE OF IMPORTED GOODS AND EXPORT GOODS	
PART 2: CLEARANCE PROCEDURE FOR IMPORTED GOODS	
Section 44	Chapter not to apply to baggage and postal articles
Section 45	Restrictions on custody and removal of imported goods
Section 46	Entry of goods on importation (Bill of entry for HC or deposit into WH)
Section 47	Clearance of goods for home consumption
Section 48	Procedure in case of goods not cleared, warehoused, or transhipped within thirty days after unloading
Section 49	Storage of imported goods in warehouse pending clearance or removal
PART 3: CLEARANCE PROCEDURE FOR EXPORT GOODS	
Section 50	Entry of goods for exportation
Section 51	Clearance of goods for exportation
CHAPTER VIII - PAYMENTS THROUGH ELECTRONIC CASH LEDGER AND ELECTRONIC DUTY CREDIT LEDGER	

FLOW OF THE CHAPTER [PART 1, 2, 3, 4]	
Section No.	Description
Section 51A	Section 51A. Payment of duty, interest, penalty, etc.
Section 51B	Ledger for duty credit
CHAPTER IX - GOODS IN TRANSIT	
Section 52	Chapter not to apply to baggage, postal articles and stores
Section 53	Transit of certain goods without payment of duty
Section 54	Transshipment of certain goods without payment of duty
Section 55	Liability of duty on goods transited under section 53 or transhipped under section 54.
Section 56	Transport of certain classes of goods subject to prescribed conditions

BASIC IMPORT PROCEDURES

1. Person-in-charge submits IGM/IR
2. Officer will grant Entry Inwards after which it can enter into "Customs Area". Once berth is available the goods will be unloaded in customs area
3. Now Goods will be unloaded in Customs Area and Custodian would be responsible for the said goods until they are cleared / deposited in warehouse
4. Importer files bill of entry*, self-assesses duty and pays it.
5. Officer returns 2nd Copy of Bill of Entry to Importer known as Pass out of customs charge order
6. Importer goes to Custodian, with the Bill of Entry copy which was returned by PO
7. If documents are proper custodian issues Delivery order. Importer takes delivery

*If importer does not wish to clear the goods, but wants to deposit in warehouse, he will file into-bond bill of entry.

ANALYSIS OF PART 1: Procedure to be followed by person-in-charge

Section 30: Import General Manifest
Person-in-charge shall deliver Import general Manifest (IGM) in case of vessel/aircraft or Import report (IR) in case of vehicle. Penalty for belated filing (except sufficient cause)- upto Rs. 50,000, Time-limit to file IGM/IR: VESSEL / AIRCRAFT – IGM – Before arrival (any time), VEHICLE – IR – After arrival (within 12 hours)
Section 30A: Passenger Arrival Manifest & Crew Manifest shall be filed by Person-in-charge which shall contain passenger name record information.
Section 29: Calling of Vessel or Landing of Aircraft
❖ The vessel/aircraft should arrive in India only at customs port or airport (except for reasons of health, safety etc. on informing to nearest customs station, where there is no customs station nearby then to police officer). (CBIC may permit any other areas where they can land) ❖ Passenger or crew shall not leave the immediate vicinity of aircraft or vessel (except when necessary for reason of health, safety or preservation of life or property)
Section 31: Grant of Entry Inwards (Entry inwards date used in calculating applicable rate of duty or tariff valuation.)
Imported goods should not be unloaded until the "grant of entry inwards". Grant of Entry Inwards is an acknowledgement that Customs Department is ready to supervise the unloading of the cargo, and is prepared to assess the goods to duty.

It is not given if there is no berth for the ship to dock [Bharat Surfactants Pvt Ltd v Union of India, 1989(43) ELT 189 (SC)]
IMP POINT: Entry inwards is not applicable to unload Baggage accompanying a passenger or a member of the crew, Mail bags, Animals, Perishable goods, Hazardous goods.
Section 32: Only goods mentioned in IGM/IR should be unloaded.
Section 33: Loading and unloading of goods at approved places only
Loading and unloading of goods are to be undertaken only at places approved under section 8(a) of the Customs Act, 1962.
Section 34: Goods not to be loaded or unloaded except under the supervision of customs officer. However, there are few sea ports where 24X7 facility of loading & unloading is possible.
Section 35: Restrictions on goods being water-borne
When vessel cannot be berthed at the port (like size of vessel, hazardous nature of cargo, etc.), the cargo is ferried from or to the ships anchored at mid-sea to the port in boats, otherwise known as lighters. As per Section 35 of customs act, the goods to be water-borne shall be accompanied by boat note. Boat note is not required in case of export cargo where they accompany a shipping bill.
Section 36: Goods not to be unloaded on Sundays or holidays
Section 37: PO to be on conveyance while unloading of goods
Section 38: Person in charge is Answerable to PO, in case where some document or information is required.

ANALYSIS OF PART 2: PROCEDURE TO BE FOLLOWED BY IMPORTER

Section 45: Restrictions on custody and removal of Imported goods [CUSTODIAN]
❖ Custodian is responsible for safe custody of goods ❖ From when goods are berthed in harbour until they are cleared for home consumption or are warehoused or are exported for transshipment, goods are under custody of Principle commissioner/ commissioner of customs ❖ Port Trust Authority is custodian for import by sea, Air authority of India in case of air, Container Corporation of India in case of ICD. ❖ Goods which are pilfered, the duty shall be recovered from custodian at rate duty AS ON DATE OF FILING OF IGM/IR
Section 46: Bill of Entry (BOE)
❖ BOE is not applicable for transit and transshipment ❖ BOE is E - Application for clearance of imported goods (Manual BOE - e-filing not possible) ❖ Types of BOE: - Form I (White) – for home consumption (S. 46) - Form II (Yellow) – for warehousing (into bond). (S. 46) - Form III (Green) – for clearance of warehoused goods for home consumption (ex- bond). (S. 68) ❖ How many copies: Original for - Customs Authorities, Duplicate for Custodian, Triplicate for Importer, Quadruplicate for bankers ❖ Time - Limit to file BOE: - Normal BOE: Before the end of day (including holidays) preceding the day on which aircraft or vessel or vehicle carrying goods arrives at customs station for clearance. - CBIC may prescribe different time limits to file Bill of entry, which shall not be later than the end of day of such arrival.

Advance BOE - Not more prior than 30 days

❖ Late presentation charges:

(a) Dutiable Goods: Rs. 5,000/- per day for initial 3 days, Rs. 10,000/- per day thereafter. Total Charges shall not exceed duty payable on imported goods.

(b) Exempt Goods: Rs. 5,000/- per day for initial 3 days, Rs. 10,000/- per day thereafter. In case of exempted goods, late presentation charges shall not exceed Rs. 50,000/-.

Section 51A, 51B: Payment through Electronic Cash Ledger or Electronic Duty Credit Ledger

As per section 51A, first the amount shall be deposited in electronic cash ledger, and from such cash ledger, duty shall be paid. As per section 51B, customs duty can be paid through duty credit scrip.

Section 47: Clearance of Goods

Goods shall be cleared on payment of duty (refer next part for deferred payment rules). The import duty assessed on goods entered for home consumption should be paid on presentation of bill of entry or within 1 day (excl. holidays) from date on which BOE is returned to him by PO (other than deferred payment)

The rate of interest shall be not below 10% and not exceeding 36% per annum

Section 48: Disposal of Goods, If Not Cleared Within 30 days after unloading

Imported goods not cleared nor deposited in warehouse within 30 days then with the approval of the customs department and after giving notice to the importer, custodian is permitted to sell the goods by auction. (Perishable/Hazardous goods may be sold with permission within 30 days)

Section 49: Storage of imported goods in warehouse pending clearance or removal

Where in the case of any imported goods, whether dutiable or not, entered for home consumption, the Assistant Commissioner or Deputy Commissioner of Customs is satisfied on the application of the importer that the goods cannot be cleared within a reasonable time, the goods may, pending clearance, be permitted to be stored in a public warehouse, or in a private warehouse for the period not exceeding 30 days (+30 days) (not applicable in cases of animals, perishable products & hazardous goods) (ALSO KNOWN AS WAREHOUSING WITHOUT WAREHOUSING)

Such goods shall NOT be deemed to be warehoused goods for the purposes of this Act.

Deferred Payment of Import Duty Rules, 2016 read with Circular No. 52/2016-Cus dated 15.11.2016:

Information about intent to avail benefit of notification to be given to Principal Commissioner/Commissioner of Customs.

Due dates for deferred payment of import duty:

Goods corresponding to Bill of Entry returned for payment from	Due date of payment of duty, inclusive of the period (excluding holidays) as mentioned in section 47(2)
1 st Day to 15 th day of any month	16 th day of that month
16 th day till the last day of any month other than March	1 st day of following month
16 th day till the 31 st day of March	31 st March

Deferred payment not to apply in certain cases: If there is default in payment of duty by due date more than once in three consecutive months, this facility of deferred payment will not be allowed unless the duty with interest has been paid in full.

The Central Government has notified the following classes of importers who have to pay customs duty electronically, namely: -

- (i) Importers registered under Authorized Economic Operator.
- (ii) Importers paying customs duty of Rs. 10,000 or more per bill of entry

The Board has set up a dedicated payment gateway called, 'ICEGATE' through which the payments are to be made. The importer need not produce any proof of payment for the clearance of goods in case of e-payment.

BASIC EXPORT PROCEDURES

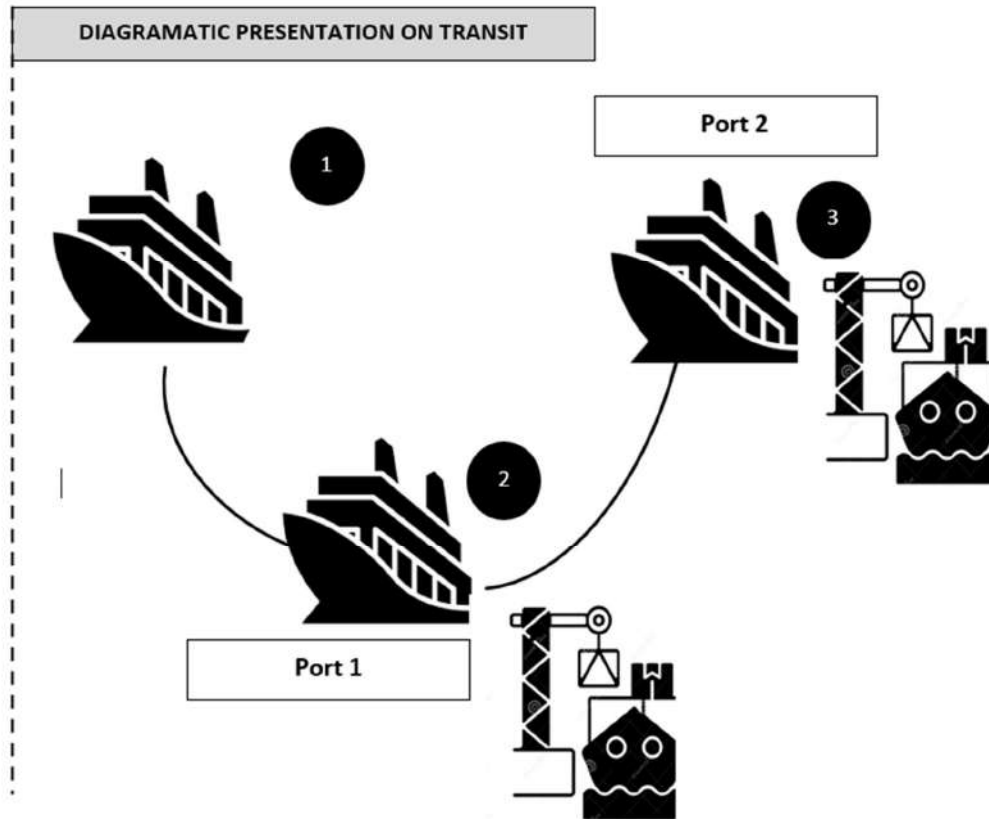
1. Exporter files Shipping Bill/Bill of Export, Commercial Invoice cum Packing List, Bill of Lading/Airway Bill/Lorry, Receipt/Railway Receipt/Postal Receipt.
2. Officer checks the above documents and issues "Let Export Order"
3. Exporter submits shipping bill & let export order to person-in-charge
4. Person in charge submits Let export order and shipping bill to customs officer and takes "entry outwards"
5. Person-in-charge can start loading of goods once entry outwards is granted
6. Submits Export general manifest and takes permission after all cargo verified and ship can be allowed to leave
7. Loading happens at customs station which is part of customs area

PART 3: CLEARANCE PROCEDURE FOR EXPORT GOODS (ON THE PART OF EXPORTER)

Section 50	Entry of goods for exportation ❖ As per section 50, exporter is required to present electronically (<i>manual can be allowed when electronic is feasible</i>) a shipping bill (<i>in case vessel or air</i>) and a bill of export, in case of export by a vehicle. ❖ Exporter to ensure authenticity, accuracy, completeness of information given
Section 51	Clearance of goods for exportation ❖ After the shipping bill is filed, they are presented for the customs appraisal. ❖ Customs officer on satisfaction of non-prohibited goods, and payment of duty and other charges payable in respect of same, issues "let export order" ❖ Deferred payment of duty can be allowed to notified exporters ❖ Delayed Duty payment may attract interest ranging from 5% to 36%
Notice of Short Export of Goods	According to the Notice of Short Export Rules, 1963, if any goods mentioned in a shipping bill or bill of export and cleared for exportation are not exported, the exporter shall, within 7 days, from the date of departure of the conveyance by which such goods were exported, furnish the prescribed information to the proper officer in respect of such goods.

PART 4: EXPORT PROCEDURES (ON THE PART OF PERSON-IN-CHARGE)	
Section 39	Export goods not to be loaded on vessel until entry-outwards granted ❖ Export goods not to be loaded on vessel (not aircraft) (other than baggage and mail bags) until entry outwards is granted.
Section 40	Export goods not to be loaded unless duly passed by proper officer: The person-in-charge of a conveyance shall not permit the loading at a customs station (a) of export goods, other than baggage and mail bags , unless a shipping bill or bill of export or a bill of transshipment, as the case may be, duly passed by the proper officer , has been handed over to him by the exporter; (b) of baggage and mail bags , unless their export has been duly permitted by the proper officer .
Section 41	Delivery of departure manifest or export manifest or export report Person-in-charge shall deliver export general manifest (EGM) in case of vessel/aircraft or export report (ER) in case of vehicle. Penalty for belated filing (except sufficient cause)- upto Rs. 50,000. (i) In the case of shipment by sea, the ship's officer gives a receipt after he has received the consignment on board the ship. This receipt is called mate receipt . It is surrendered to the steamer agent or the agent who issues the bill of lading. (ii) In the case of shipment by air, after the cargo is delivered to the airways for loading, the airways issues an air consignment note . (iii) In case of train and lorry, a railway receipt or lorry receipt is issued . (iv) EGM/ER is general declaration of particulars of the vessel, its crew and passengers , its date and port of departure; a list of ship's stores ; a list of crew's personal effects ; and a cargo declaration which is a complete list of the goods shipped from the port, goods transhipped at the port, goods lying in the vessel but not landed or transhipped ("same bottom cargo"), and dutiable goods , including arms and ammunition , forming part of the equipment of the vessel.
Section 41A	Passenger and crew departure manifest and passenger name record information shall be submitted by person-in-charge
Section 42	No conveyance to leave without written order
Section 43	Exemption of certain classes of conveyances from certain provisions of this Chapter

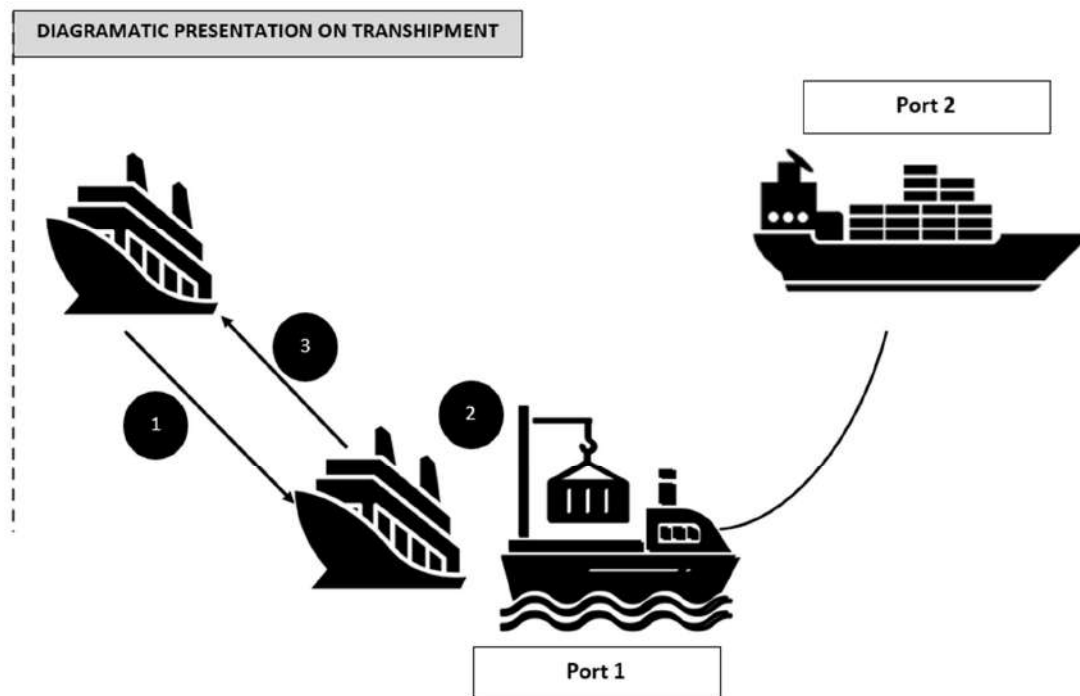
TRANSIT:



Supposingly, there are 2 places in India where this Vessel has to unload goods. Thus, vessel will unload requisite goods at Port 1 and take the balance goods for unloading at Port 2. This is called transit. (CONVEYANCE IS SAME)

The essential difference between transit and transshipment lies in the continuity of records and documentation.

TRANSSHIPMENT:



Supposingly, the vessel carries goods of 2 ports in India, however it will unload at Port 1 and transfer the goods to another vessel and go back. Such another vessel would carry the goods at Port 2. (CONVEYANCE CHANGES). This is called Transshipment.

TRANSIT	TRANSSHIPMENT
Section 53 of the Customs Act, 1962 provides for transit of goods.	Section 54 of the Customs Act, 1962 provides for transshipment of goods.
In case of transit of goods, goods are allowed to remain on the same conveyance	In case of transshipment of goods, the conveyance changes i.e., the goods are unloaded from one conveyance and loaded in another conveyance.
In case of transit of goods, there is continuity of records. There is no concept like bill of transit	In transshipment of goods, continuity in the records is not maintained as the goods are transferred to another conveyance. Bill of Transshipment has to be filed.
❖ When transit goods or transhipped goods arrive at customs station, they shall be liable to duty and shall be entered in like manner as goods are entered on the first importation. (Example if vessel carries goods for unloading at Mumbai & Chennai. Even if First landing location is Mumbai, the goods belonging to Chennai would be liable to duty in Chennai as first importation (not in Mumbai). ❖ Transit and Transshipment do not cover transport by land from one Indian land custom station to another Indian land customs station. ❖ (S. 56) Movement within Indian Territory is allowed without payment of customs duty, for goods imported from outside India for ultimate destination outside India. (Example: If movement from one port in India to another requires to touch Bangladesh borders and then it will not be levied to duty in such another port by treating it to coming from Bangladesh) ❖ (S. 56) Movement through foreign territory is allowed without payment of customs duty, for goods starting from one part of India to another part of India. (Example: Goods coming from	

Bangladesh and wants to go to Nepal, they have to touch India, in such case as well not duty shall be levied)

FACELESS ASSESSMENT

Customs officials recognised a dire need to provide uniformity and certainty in assessment practices. It was also clear that anonymity in assessment and load balancing of import documents that are required to be assessed would bring about more efficiency and help improve the speed of Customs clearances across India. This was the trigger for the conceptualization and development of Faceless Assessment.

Faceless Assessment (also referred to as virtual assessment or anonymised assessment) uses a technology platform to separate the Customs assessment process from the physical location of a Customs officer at the port of arrival. This measure will bolster efforts to ensure an objective, free, fair and just assessment.

From an importer's perspective, there will be no changes to the process of filing a Bill of entry. He will continue to file his documentation including bill of entry and supporting documents on the ICEGATE portal.

Key Objective of Faceless Assessments

- i) Anonymity in assessment for reduced physical interface between trade and Customs
- ii) Speedier Customs clearances through efficient utilisation of manpower
- iii) Greater uniformity of assessment across locations
- iv) Promoting sector specific and functional specialisation in assessment

In this respect, Central Government has permitted the following class of importers to make deferred payment of import duty: -

- (i) Importers certified under Authorized Economic Operator programme as AEO (Tier Two) and AEO (Tier-Three)
- (ii) Authorised Public Undertaking

AEO means Authorised Economic Operator approved by the Directorate of International Customs under the CBIC. Authorised Public Undertaking Means Authorised Public Undertaking approved by the Directorate of International Customs under the CBIC.

PHASED IMPLEMENTATION OF ELECTRONIC CASH LEDGER (ECL) IN CUSTOMS W.E.F. 01.04.2023 [SECTION 51A]

The Electronic Cash Ledger (ECL) functionality is covered in Section 51A of the Customs Act, 1962. It provides enabling provision whereby the importer, exporter or any person liable to pay duty, fees etc., under the Customs Act, has to make a non-interest- bearing deposit with the Government for the purpose of payment.

Section 51A (4) provides that CBIC may by notification exempt certain deposits to which provisions of Electronic Cash Ledger will not be applicable. Accordingly, in the first phase from 01.04.2023 till 30.04.2023, CBIC has exempted following deposits from the provisions of section 51A of the Customs Act -

- (i) with respect to goods imported or exported in customs stations where customs automated system is not in place;
- (ii) with respect to accompanied baggage;
- (iii) with respect to goods imported or exported at international courier terminals;
- (iv) other than those used for making electronic payment of:
 - (a) any duty of customs, including cesses and surcharges levied as duties of customs; IGST; GST Compensation Cess; interest, penalty, fees or any other amount payable under the Act, or Customs Tariff Act, 1975.

In second phase, from 01.05.2023, the exemptions cited above would continue, except for the deposits with respect to goods imported or exported at International Courier Terminals. In other words, payments relating to Courier shipments would be required to be done through ECL from 01.05.2023 onwards.

The phased introduction of ECL is aimed at leveraging technology and reforming the payment process, inter-alia related to clearance of goods as the deposit may be held in ECL by the trade for making subsequent transaction-wise payments of various types. This has potential to easing compliance in numerous ways.

INTRODUCTION TO BAGGAGE:

The term “baggage” has been defined under section 2(3) of the Customs Act in an inclusive manner, to include unaccompanied baggage as well but does not include motor vehicles. In common parlance, the term means luggage of a passenger comprising trunks or bags and personal belongings of the passenger.

When we come from outside India, we might have observed there are baggage counters, which call for declaring of self-basis in case of dutiable imports. In this chapter we will learn, how much we can bring as baggage as duty free, how much duty that shall be discharged etc.

PERSON-IN-CHARGE & RESPONSIBILITIES:

The person-in-charge of the conveyance is to file an Import General Manifest in the case of imported goods and an Export General Manifest in the case of export goods. In both the cases, “baggage goods” are required to be declared in separate sheets.

SECTIONS ASSOCIATED WITH BAGGAGE & RULES THEREOF:

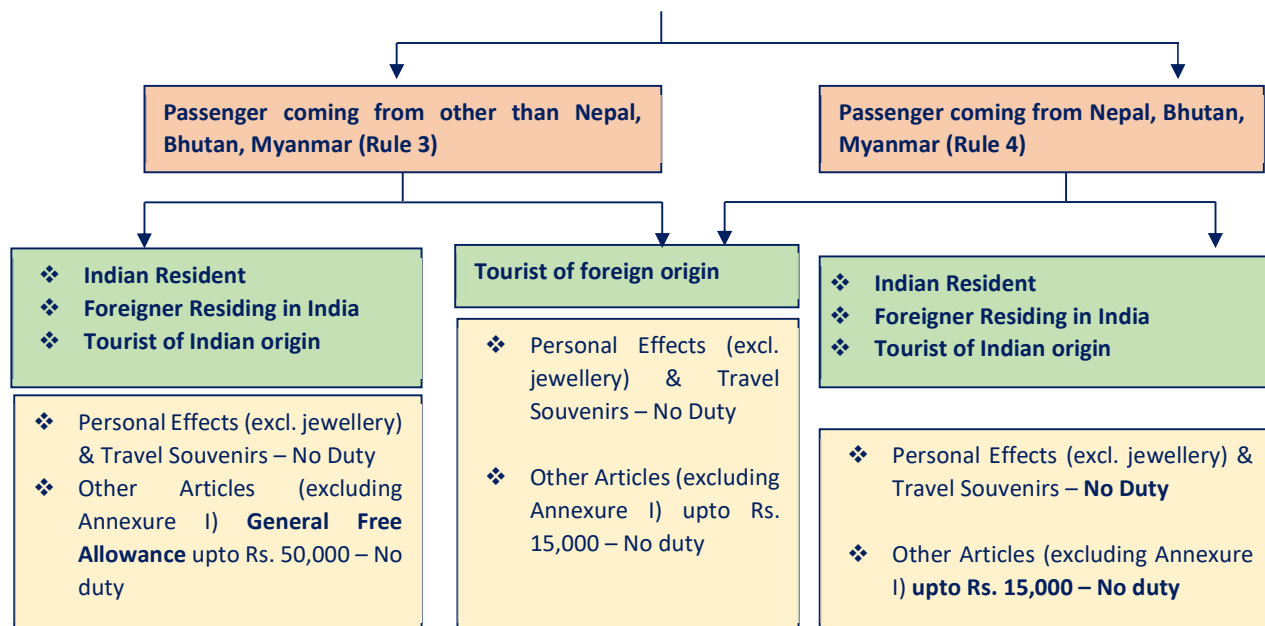
Section 77: Entry of Baggage: The owner of baggage has to declare the baggage at baggage counter and file baggage declaration form. Declaring packing list is sufficient declaration.

Section 78: Rate of Duty & Tariff Valuation: To be discussed Later

Section 79: Power to Make rules for Exemptions

PRESCRIBED RULES: BAGGAGE RULES, 2016

BAGGAGE RULES: [Rule 3 & Rule 4: GENERAL FREE ALLOWANCE]



Other Definitions:

- (a) "Infant" means a child not more than two years of age;
- (b) "Resident" means a person holding a valid passport issued under the Passports Act, 1967 and normally residing in India;
- (c) "Tourist" means a person not normally resident in India, who enters India for a stay of not more than six months in the course of any twelve months period for legitimate non-immigrant purposes;
- (d) "Personal effects" means things required for satisfying daily necessities but does not include jewellery. (E.g.: Clothing, perfume)

Exemption:

- ❖ One laptop computer when imported into India by a passenger of the age of 18 years or above (other than member of crew) is exempt from whole of the customs duty [Notification No. 11/2004 Cus. dated 08.01.2004]. **(Other than note book computer)**
- ❖ Jewellery other than ornaments is in Annexure I, (i.e., Gold Biscuits etc.) thus, a person can bring ornaments upto GFA in Rule 3 or 4 in addition to additional allowance mentioned in Rule 5 (to be discussed later)

RULE 5: - JEWELLERY ALLOWANCE FOR PASSENGER STAYING ABROAD > 1 YEAR

For Gentlemen Passenger: - Jewellery upto 20 gm weight with a value cap of Rs. 50,000

For Lady Passenger: - Jewellery upto 40 gm weight with a value cap of Rs. 1,00,000

Analysis with Examples:

Case	Solution
Within Value Cap as well as quantity cap	No Duty Payable
Within Value Cap but exceeds quantity cap	Proportionate value to be computed on excess of quantity. For e.g. Mr. A brought 25 grams gold for Rs. 40,000/-. Thus, $\text{Rs. } 40,000 / 25 \times 5 = 8000$. Duty will be levied on Rs. 8,000
Within Qty Cap but exceeds value cap	Duty to be levied on value in excess of value cap. For e.g. Mr. A brought 18 gm gold for Rs. 70,000. Thus, duty will be levied on Rs. 20,000 [70k (-) 50k]
Exceeds both cap	Duty to be levied on value in excess of value cap. For e.g. Mr. A brought 25 gm gold for Rs. 70,000. Thus, duty will be levied on Rs. 20,000 [70k (-) 50k]

RULE 6: TRANSFER OF RESIDENCE

Duration of Stay Abroad	Articles Allowed Duty Free i.e. Personal & Household articles including Annexure III excluding Annexure I & Annexure II articles upto Value of Rs. -	Conditions	Relaxation
>3 months < = 6 months	60,000/-	Indian Passenger	-
>6 months < = 1 year	1,00,000/-	Indian Passenger	-
Minimum stay >1 year during the preceding two years	2,00,000/-	Facility available only if: ➤ passenger is Indian and ➤ Not availed in last 3 yrs.	-
Minimum stay of 2 years or more.	5,00,000/-	Facility available only if: (i) Minimum 2 year stay aboard immediately preceding date of arrival	Shortfall in (i) upto 2 mths can be condoned by AC / DC early return is due to terminal leave or vacation being availed of by the passenger; or any other special circumstances.
		(ii) Total stay in India on short visit should not exceed 6 months; and	Period in excess of 6 months may be condoned by Principal Commissioner or Commissioner in special circumstances.
		(iii) Not availed in last 3 yrs.	

Other Rules

Rule 7: Currency Rule: The import and export of currency under these rules shall be governed in accordance with the provisions of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015

Rule 8: Unaccompanied Baggage: Unaccompanied Baggage is also a baggage as per baggage rules. Unaccompanied baggage shall be brought into India within 1 month of his arrival in India or such further period as the Deputy/Assistant Commissioner may allow.

The said unaccompanied baggage can also land in India upto 2 months before the arrival of the passenger. However, if the passenger is not able to arrive in India within two months due to circumstances beyond his control, the said 2 months can be extended upto 1 year for reasons to be recorded in writing.

Rule 9: Crew Baggage: Baggage rules are applicable to crew members as well. However, crew members of a vessel and aircraft will be allowed to bring items like chocolates, cheese, cosmetics and other petty gift items for their personal or family use for a value not exceeding Rs. 1500 (per day)

(Family, under these rules, includes all persons who are residing in the same house and form part of the same domestic establishment)

ITEMS SPECIFIED IN ANNEXURE I (Refer Rule 3, 4, 6)

1. Firearms. (*i.e., Guns*)
2. Cartridges of fire arms exceeding 50 (*i.e., bullets in gun*)
3. Cigarettes exceeding 100 sticks or cigars exceeding 25 or tobacco exceeding 125 gms.
4. Alcoholic liquor or wines in excess of 2 litres. (If a person brings 3 litres, then only 1 litre would be in annexure I)
5. Gold or silver in any form other than ornaments.
6. Flat Panel (Liquid Crystal Display/Light-Emitting Diode/Plasma) television.

GFA is not allowed for Annexure I items, meaning thereby, items of Annexure I brought shall be liable to duty. Rate of duty has been discussed in next part of chapter

ITEMS SPECIFIED IN ANNEXURE–II (See rule 6)

1. Colour Television.
2. Video Home Theatre System.
3. Dish Washer.
4. Domestic Refrigerators of capacity above 300 litres or its equivalent.
5. Deep Freezer.
6. Video camera or the combination of any such Video camera with one or more of the following goods, namely: -
 - (a) Television receiver;
 - (b) sound recording or reproducing apparatus;
 - (c) video reproducing apparatus.
7. Cinematographic films of 35 mm and above.
8. Gold or Silver, in any form, other than ornaments.

ITEMS SPECIFIED IN ANNEXURE III (See rule 6)

1. Video Cassette Recorder or Video Cassette Player or Video Television Receiver or Video Cassette Disk Player.
2. Digital Video Disc player.
3. Music System.
4. Air-Conditioner.
5. Microwave Oven.

6. Word Processing Machine.
7. Fax Machine.
8. Portable Photocopying Machine.
9. Washing Machine.
10. Electrical or Liquefied Petroleum Gas Cooking Range
11. Personal Computer (Desktop Computer)
12. Laptop Computer (Note book Computer)
13. Domestic Refrigerators of capacity up to 300 litres or its equivalent.

3. RATE OF DUTY ON BAGGAGE

Section 79 read with Notification No. 26/2016-Customs dated 31st March, 2016 as amended by Corrigendum dated 2nd April, 2016

Any article the value of which exceeds the duty-free allowance admissible to such passenger or member under the Baggage Rules, 2016.	35% ad valorem + 10% SWS. Thus, effective rate of duty, 38.50%
On the unaccompanied baggage.	35% ad valorem + 10% SWS. Thus, effective rate of duty, 38.50%
Annexure I - 1. Firearms. (<i>i.e., Guns</i>) 2. Cartridges of fire arms exceeding 50 (<i>i.e., bullets in gun</i>) 3. Cigarettes exceeding 100 sticks or cigars exceeding 25 or tobacco exceeding 125 grams.	100% ad valorem + 10% SWS [Rate is 100% through Chapter 9803.]
4. Alcoholic liquor or wines in excess of 2 litres. 5. Gold or silver in any form other than ornaments. 6. Flat Panel (Liquid Crystal Display/Light-Emitting Diode/Plasma) television.	35% ad valorem + 10% SWS [Refer Note below]
Author's Note: Constantly in student's mind, a question is there, whether rate of 100% is applicable on items 4, 5, 6 or 35% rate is applicable. In this regard, please note that, when NN 26/2016-Cus was issued on 31 st March, 2016, the notification stated that rate of tax for ALL ITEMS OF annexure I items would be 100%, however, on 2 nd April, 2016 issued a corrigendum, which amended NN 26/2016 - Cus to the effect that, only 1 st 3 items of annexure I would be chargeable to tax @ 100% read with Chapter 9803. Thus, whatever has been mentioned above is appropriate, which is in line with ICAI SM as well. PLEASE NOTE THIS IS NOT AMENDMENT, RATHER THIS IS LAW ITSELF.	

INTRODUCTION TO DRAWBACK:

Duty drawback means refund of import duty paid on imported goods, if such goods are exported thereafter or are used in manufacture of export goods. There are 2 sections which deal with drawback viz.,

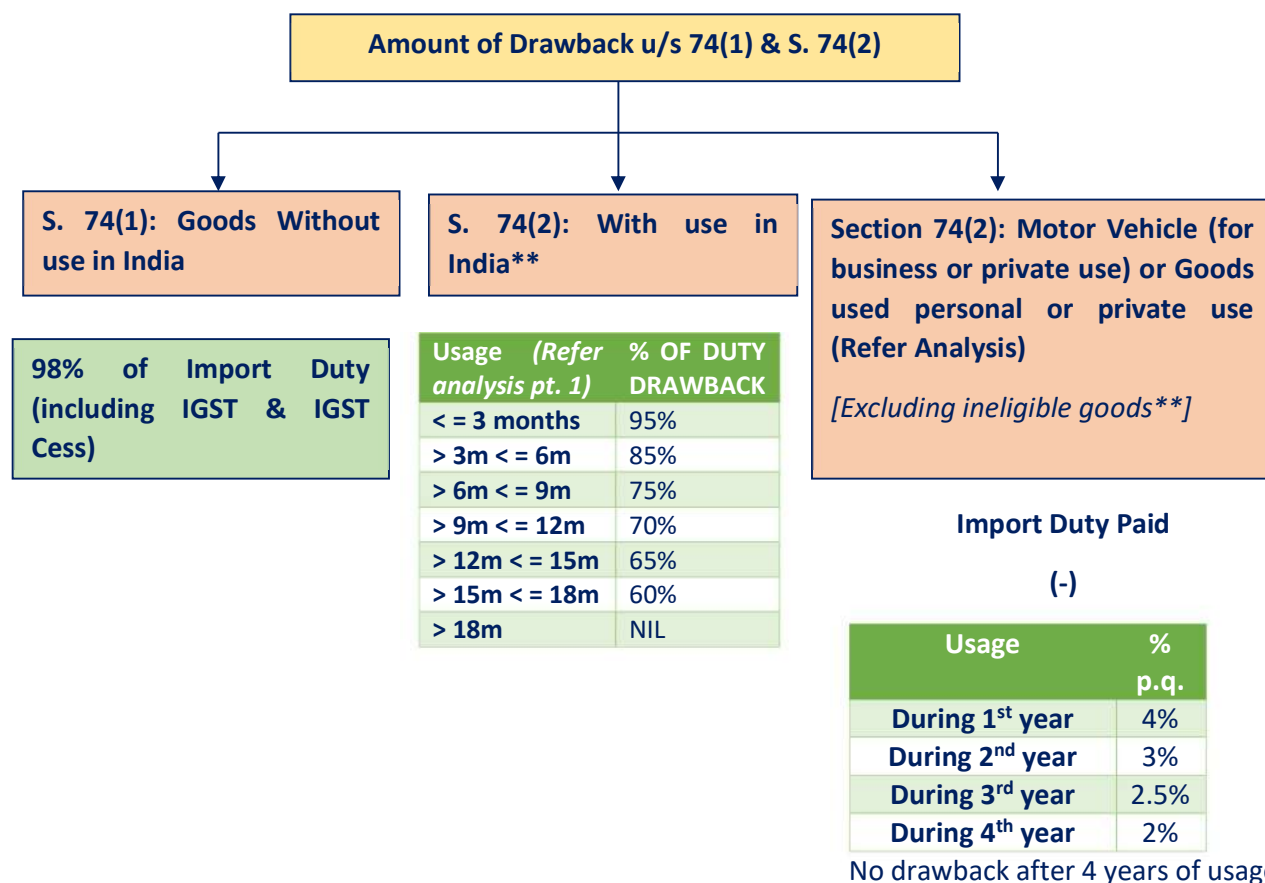
- (i) **Section 74 read with re-export of imported goods (drawback of customs duties) rules, 1995:** This section r/w said rules covers the goods which were imported and then re-exported **as it is** (without change in identity) out of India whether or not with or without use. This section provides the refund of import duties (**including IGST & IGST Cess**) paid on imported goods.
- (ii) **Section 75 read with Customs & Central Excise Duties Drawback Rules, 2017:** This section r/w said rules provides refund of import duties paid (**excluding IGST**), on imported goods which are used in **MANUFACTURING OF EXPORT GOODS**. Refund of IGST & IGST Cess is not allowed u/s 75 of customs act, it is allowed as per Section 54 of CGST Act.
- (iii) Drawback is basically the scheme where first import duties are paid and then refund is obtained, however, in FTP we will be able to learn schemes like EOU, SEZ, DFIA, Advance Authorisation which are available to procure inputs / CG **without payment of customs duty for manufacture or processing of goods within India and export of such final products thereof.**

2. DIFFERENTIATION, COMMON POINTS & ANALYSIS OF SECTION 74 & SECTION 75

Duty Drawback u/s 74 of Customs Act	Duty Drawback u/s 75 of Customs Act
Cases & Manner of Drawback: When imported goods on which duty (including IGST & IGST Cess) is paid are (i) Entered for export and order u/s 51 is passed i.e., Let export order (ii) To be exported as baggage and the owner of the baggage files declaration u/s 77 of Customs Act (iii) To be exported as Postal articles u/s 84 AS SUCH then 98% of Import duty paid shall be given away as drawback. [S. 74(1)] (The goods should be capable of being easily identified as the goods, which were originally imported) When goods are exported with use, then drawback is given as per reduced rates (Discussed later)	When the imported goods are used in manufacture of export goods, the import duty (excluding IGST & IGST Cess) paid on imported goods is refunded as drawback u/s 75 of Customs Act. Manner of Drawback: All Industry Rate (AIR): Government has fixed the rate for all industries at which drawback is allowed. Such rate is called as All Industry Rate (AIR) (Rule 3 & Rule 4) (General Cases) Brand Rate (BR): Where AIR is not fixed for certain product, an exporter has to make application for fixation of brand rate for its product 3 months from let export order date. (Rule 6) Special Brand Rate (SBR): Where AIR fixed for that product is less than 80% of the duties actually paid by importer, then he shall apply for special brand rate within 3 months from let export order date. (Rule 7)

Relevant Set of Rules: Re-export of imported goods (drawback of customs duties) Rules, 1995	Relevant Set of Rules: Customs & Central Excise Duties Drawback Rules, 2017
Goods can be exported as baggage	Goods cannot be exported as baggage
Time - limit to export the goods ❖ S. 74(1): Re-exported as such: 2 years from the date of payment of duty on the importation (extension possible on sufficient cause). ❖ S. 74(2): Re-exported with use: Generally, 18 months, 4 years in case of motor car & goods for personal and private use.	There is no time - limit to export goods.
Time - limit to file drawback claim: Within 3 months from Let export order date (Extension of 3 months)	Within 3 months from Let export order date (Extension of 3 months by Assistant /Deputy Comm. + Extension of 6 months by Comm.)
Duties refunded: Basic Customs Duty, ADD, CVD, SGD, IGST & IGST Cess are available as refund	Basic Customs Duty, ADD, CVD, SGD, ~~IGST & IGST Cess~~ are available as refund
Identity: Goods shall be identifiable at the time of export	Goods may or may not be identifiable
Value addition: There is NO requirement of Minimum Value Addition	There shall not be any negative value addition
Foreign Exchange: No requirement to bring the export proceeds in Convertible Foreign Exchange	Foreign currency to be brought as per FEMA regulations. If not brought then, drawback granted would be recovered back.
Application for Drawback: Drawback claim shall be filed by the applicant	Shipping Bill / Bill of Export by default is drawback Claim when let export order is given in case of AIR. Claim is to be filed separately in case of BR / SBR
For the purpose of Drawback: Export means; (i) Supply of goods outside India (ii) Supply of goods by DTA to SEZ (iii) Supply of stores to Foreign Going Vessel / Aircraft It is very important to understand that, duty drawback is allowed in case where goods supplied as stores. Accordingly, it has been included in the definition of exports. Even if imported goods are merely tested though not used, it will be treated as “used” after importation and thus, Section 75 will be applicable.	

RATE OF DUTY DRAWBACK



No drawback after 4 years of usage

Example: If used for 1 year 4 months, then, 78% of Import duty paid would be refunded [100% (-) 4x4 (-) 3x2] = 78%

4. ANALYSIS OF SECTION 74

1. **For the purpose of Section 74(1) & 74(2) period of Usage** for computing drawback under Section 74(2) is calculated from the **Date of Payment of import duty till the date of let export order date.** However,
 - (a) **In case of Provisional Assessment** under Section 18, time limit is counted from date of Provisional Payment of Import Duty and NOT from date of finalization of Provisional Assessment.
 - (b) **In case of Warehousing**, time limit is counted from date of clearance of goods for Home Consumption on Payment of Import Duty and NOT from date when goods are imported in India.
2. **Inter-linking of Drawback with Stores:** As per section 88 r/w section 74, where duty paid imported goods are exported within two years then subject to certain conditions, such duty shall be repaid as drawback.

Stores	Drawback = 98% of Import Duty paid
Fuels & Lubricants	Drawback = 100% of Import Duty paid
Imported Duty paid & Supplied to Indian Naval Vessels	Drawback = 100% of Import Duty paid

3. Re-exporter must be the SAME person who imported the goods; however, it may be exported from different port. Further, the goods shall be same which were imported.
4. In case of Motor vehicles, even if it is used for business purpose or private / personal purpose, drawback shall be as per specific provision as Import duty paid as reduced by certain % as discussed above.

5. RELEVANT CASE LAWS:

In UOI v. Rajindra Dyeing and Printing Mills 2005 (180) ELT 433 (SC), it has been held that export is complete when goods cross territorial waters of India. **If ship sinks within territorial waters, export is not complete and hence duty drawback is not payable.**

In CC v. Sun Exports 35 ELT 241 (SC), it was held that export is complete **once the goods leave Indian waters** and property passes to purchasers. Even if goods return due to Engine trouble, **duty drawback is payable.**

6. ANALYSIS OF SECTION 75 & CUSTOMS, CENTRAL EXCISE DUTIES DRAWBACK RULES, 2017

Section 75 provides the refund of import duty paid (**excluding IGST & IGST Cess**) on goods which are used in manufacture of export goods. As already discussed, the duty drawback is given on the basis of AIR. If AIR is not fixed, then exporter has to apply for Brand rate. Where AIR fixed for that product is less than 80% of the duties actually paid by importer, then he shall apply for special brand rate within 3 months from export. (Rule 7)

PART A: AIR [Rule 3, 4, 5, 9]

Rule 3: AIR is fixed by Central Government.

- (i) AIR is fixed by CG considering the average incidence of duty on the importer by considering several factors and industry.
- (ii) Drawback shall be reduced taking into account
 - ❖ the lesser duty paid, if any or,
 - ❖ the rebate / refund / credit obtained, if any.
- (iii) No drawback shall be admissible
 - ❖ if the said goods are taken into use after manufacture or,
 - ❖ if the said goods are manufactured using imported materials / excisable materials on which duties have not been paid.

Rule 4: AIR can be revised by Central Government whenever deem fit

Rule 5: Relevant Date for AIR

AIR shall be considered of the relevant date as mentioned below:

Date of Let Export Order where goods are exported by filing SB/BO Export

Date of Delivery of Export Goods to Postal Authority where goods are exported by post.

Rule 9: Upper Capping for Drawback as per AIR when it is less than MP (NOT BR or SBR)

- ❖ If Drawback $\geq$ M.P. of goods in India --- No Drawback allowed [S. 76 of Customs Act]
- ❖ If Drawback $<$ M.P then Actual drawback or 1/3rd of Market Price, whichever is lower would be allowed (Rule 9)
- ❖ Drawback shall not be given when import duty has not been paid on imports.

PART B: BR / SBR [Rule 6, 7, 8]

Rule 6: Fixation of Brand Rate by Principal Comm. / Comm. on Application by Assessee

- (i) Application for BR shall be made by assessee within 3 months from Let Export Order under section 51 in respect of his product if no AIR has been fixed in Schedule
- (ii) BR is fixed by Principal Commissioner / Commissioner.

(Combined reading of Rule 6 & 7)

Authority	Extension & Fees
Assistant Commissioner / Deputy Commissioner	❖ Extension: 3 Months ❖ Fees: Lower of 1% of FOB Value or Rs.1,000
Principal Commissioner / Commissioner of Customs	❖ Extension: 6 Months ❖ Fees: Lower of 2% of FOB Value or Rs.2,000

5. ANALYSIS OF SECTION 75 & CUSTOMS, CENTRAL EXCISE DUTIES DRAWBACK RULES, 2017 [CONTINUED]

- ❖ The Applicant shall mention in his application, his desire to get provisional drawback.
- ❖ The officer may allow provisionally, drawback on signing of Bond with Surety or Security binding himself to repay back if afterwards if found in admissible.
- ❖ It is pertinent to note that:
 - (i) In case of BR, Bond is required to be executed for entire amount of drawback provisionally granted under Rule 6;
 - (ii) In case of SBR, bond is required to be executed for the difference between drawback as per Rule 3 (i.e. AIR) and drawback provisionally allowed under Rule 7.

Rule 8: Prohibition on Drawback in case of BR & SBR

Drawback is not allowed if, export Value is less than Value of Imported Materials or % of Imported notified raw material.

6. COMMON PROVISIONS FOR SECTION 74 & SECTION 75

INTEREST PROVISIONS [SECTION 75A]

Interest Period			
Drawback	From	To	Rate p.a.
Payable to Claimant (S. 75A r/w 27A)	Expiry of 1 month from date of filing claim	Date of payment	6%
Recoverable from Claimant (S. 75A r/w S. 28AA)	Date of granting of erroneous claim	Date of recovery	15%

If claimant does not pay within **two months recovery proceedings will be initiated.**

PROHIBITION ON DRAWBACK [SECTION 76]:

No drawback shall be allowed in below 2 situations

- (i) Drawback < Rs.50 or,
- (ii) Drawback >= Market Price of Export Goods

Note: The market price is as prevailing in India and not the price which exporter expects to receive from the foreign customer. [Om Prakash Bhatia v. CC 2003(155) ELT 423 (SC)]

If Export Goods likely to be smuggled back, then Central Government can prohibit or impose restrictions.

INTRODUCTION TO WAREHOUSING:

When an importer imports some goods, he has basically 2 options, one to clear goods for home consumption and second to deposit goods into custom bonded warehouse. Importer keeps goods into warehouse for several reasons such as blocking of working capital in payment of duty, storage constraints etc. Thus, on payment of few charges, the goods can be warehoused. Section 57 to 73A contains special provisions for warehousing.

1. PRE-REQUISITES AND BASIC PROVISIONS FOR WAREHOUSING & INTERLINKING WITH OTHER PROVISIONS

- (i) Goods will be allowed to be deposit in warehouse when importer **binds** himself to pay to the Government **a sum equal to thrice the amount of total duty determined**, with **such surety or security**. If Importer wishes to go for provisional assessment, then bond of thrice of provisionally assessed liability shall be signed. Further, after provisional assessment is done & where finally Assessed Liability > Provisionally Assessed Liability, for such difference, P.O. shall require the importer to execute **ADDITIONAL** bond, binding himself in a SUM EQUAL TO TWICE THE AMOUNT OF THE **EXCESS** DUTY.

E.g. If goods are deposited into warehouse, and applied for provisional assessment., and provisional order is passed for Rs. 3 Lakhs, then Bond of Rs. 9 Lakhs is required (thrice), however, if final duty is assessed at Rs. 4 lakhs, additional bond of Rs. 2 lakh (twice of excess duty would be required)

- (ii) **Remission & Warehousing:** Goods shall be cleared from warehouse within time-limit as prescribed in warehousing. If goods are not cleared within warehousing period, it is called as Improper removal, accordingly, remission on goods damaged is not allowed [Decorative Laminates case law]
- (iii) **Stores & Warehousing:** Ship stores like liquors, cigarettes, preserved food etc. are imported into India and supplied to vessels according to their requirements. The said stores can be stored in warehouse.
- (iv) **Procedure:** An importer who intends to get his goods warehoused shall file an into-bond bill of Entry [Bill of entry for Warehousing] which is assessed to customs duty at the port of import (only assessed duty is not paid). At the time of taking the goods for home consumption **ex-bond bill of entry shall be filed**

(v) **Relevant Date for Rate of Exchange & Rate of Duty**

Rate of Duty & Tariff Value	Ex-bond bill of entry date
Rate of exchange	Into-bond bill of entry date
Goods not cleared from warehouse within warehousing period	Rate of duty as on date of deemed removal

(vi) **Sale of Goods within warehouse:** No GST is levied if goods are sold within warehouse before clearance for home consumption [Schedule III to CGST Act]. The person who is clearing goods shall be liable to pay duty (incl. IGST & IGST Cess)

(vii) **Provisions of Section 69:** If the goods are imported and stored in warehouse. After manufacturing in warehouse, if they are exported, only export duty (if applicable) is payable [Import duty is not payable as goods were never cleared.

2. TYPES OF WAREHOUSES [Section 57, 58, 58A]

Warehouse means a public warehouse licensed under section 57 or a private warehouse licensed under section 58 or a special warehouse licensed under section 58A by Principal Commissioner of Customs/Commissioner of Customs [Section 2(43)]

A customs bonded warehouse can be established at any place in India, if approved by the licensing officer. There are three types of warehouses public warehouse, Private Warehouse & Special Warehouse.

Public & Private Warehouses: They are such warehouses, where goods can be deposited by importer who shall be licensee. They are under record- based controls & not under customs lock.

Special Warehouses: Special Warehouses remain under physical control of proper officer (under customs lock). Such warehouses will be caused to be locked by the proper officer and no person will enter the warehouse or remove any goods therefrom without the permission of the proper officer.

(Note: The license is not required to be renewed annually. Further, it is not transferable & valid till its cancellation/surrender. License would be cancelled on written request of the licensee)

3. CANCELLATION OF LICENSE [Section 58B]

- ❖ Warehousing license can be cancelled [after providing opportunity of being heard] if licensee **contravenes any of the provisions.**
- ❖ **During the pendency** of an enquiry under this section, **operations** of the warehouse may be **suspended** meaning thereby no goods can be deposited
- ❖ When **license is cancelled**, the warehoused goods shall be removed to another warehouse or shall **be cleared for home consumption/export within 7 days** from receipt of order of cancellation (extension possible)
- ❖ Even if license is cancelled when goods were in warehouse, the provisions of customs law continue to apply.

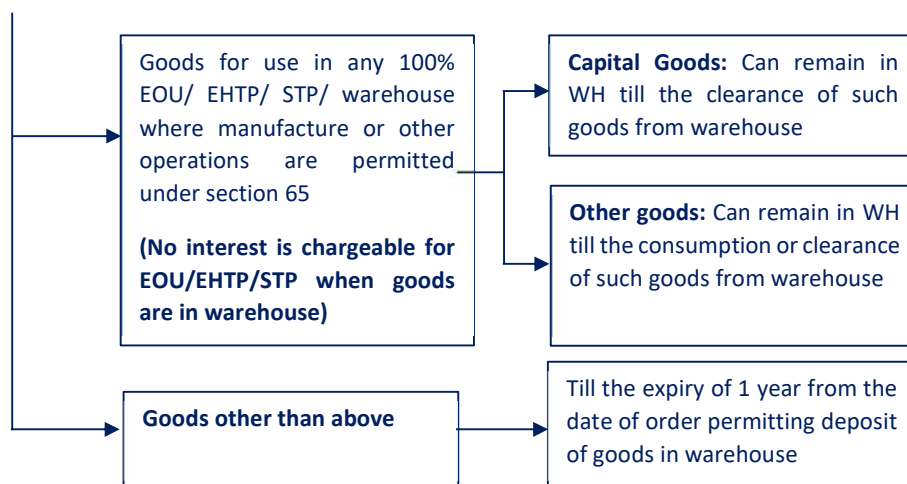
4. WAREHOUSING BOND [Section 59]

- ❖ An importer desirous of warehousing the goods without paying customs duties needs to execute an **indemnity bond** by **binding himself to comply with all provisions**, to **pay all duties and interest** within due dates, to **pay fines and penalties (if any)**. **Security** for warehousing goods shall also **be furnished** of such amount as officer deem fit.
- ❖ There can be 2 types of Bonds viz., **Consignment bond or general bond**. **Consignment Bond** is for an amount equal to **THRICE THE DUTY AMOUNT INVOLVED**.
- ❖ Asst. Comm. /DC can permit general Bond which is a kind of running account bond not for a specific consignment but for a specific period. Here bond is made w.r.t. past imports and duty thereon, anticipated imports. (Bond remains valid even if goods are transferred from one warehouse to another)
- ❖ Bond shall be cancelled by PO if goods covered by bond are cleared for home consumption or exported or transferred or are otherwise duly accounted for and all dues are cleared.

5. PERMISSION FOR WAREHOUSING [Section 60]

Once the importer has furnished the stipulated bond and security, the proper officer may make an order permitting the deposit of the goods in a warehouse. Such order may also be made electronically through the risk evaluation criteria

6. WAREHOUSING PERIOD [Section 61]



INTEREST ON WAREHOUSED GOODS

Interest will be payable if goods remain in the warehouse beyond 90 days from the date on which the order permitting deposit of goods in a warehouse under section 60 is made.

Rate of Interest	Period of Interest	Amount on which interest is calculated
15% p.a.	From the expiry of the 90 days till the date of payment of duty on the warehoused goods	Duty payable at the time of clearance of the goods

Notes:

- ❖ If no customs duty is payable at the time of clearance of goods from warehouse, no interest is payable. [Case Law: Pratibha Processors v. UOI]
- ❖ Goods which are not removed from the warehouse after the expiry of the period permitted for warehousing or extended, are deemed to be improperly removed in terms of section 72. The rate of duty applicable in such case will be the rate in force on the date of deemed removal, i.e. the date on which the permitted period or its permitted extension comes to an end.

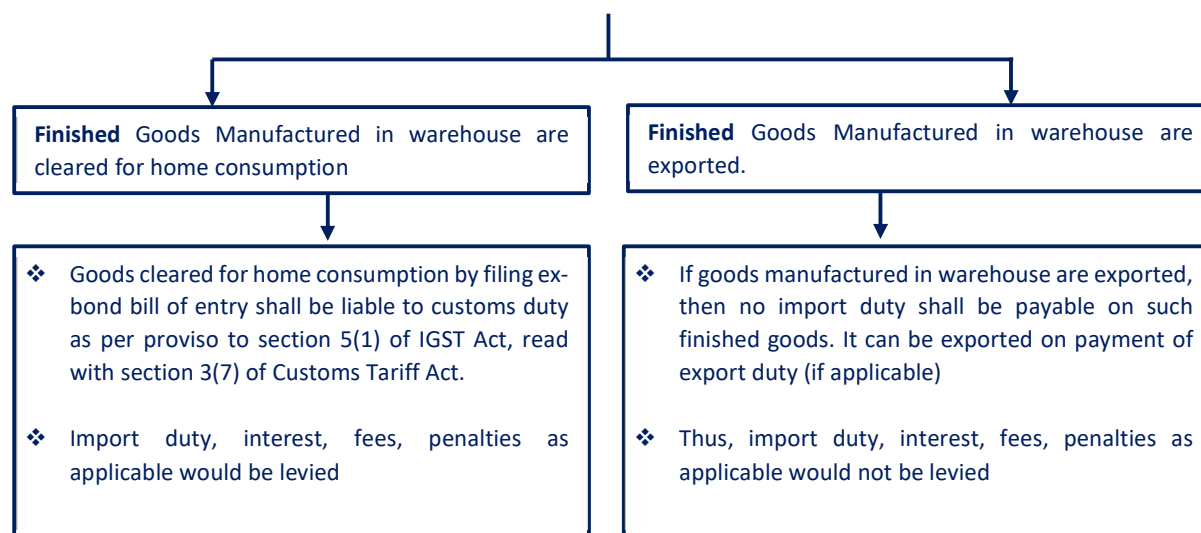
7. OWNER'S RIGHT TO DEAL WITH WAREHOUSED GOODS [S. 64]

When the imported goods are warehoused, the temporary possession and the custody of the goods are passed on to the warehouse keeper. However, owner can anytime access goods, inspect the goods, ensure that goods do not deteriorate or get damaged during storage in warehouse, sort the goods, sell the goods.

8. OPERATIONS IN WAREHOUSE & TREATMENT OF SCRAP [S. 65 & S. 66]

In Private Bonded warehouses / Special Warehouses, manufacture can take place (Not Public Bonded warehouses). Permission for in-bond manufacturing facility can be given by the Principal Commissioner/ Commissioner of Customs.

Section 65 enables conduct of manufacture and other operations in a Customs bonded warehouse.



9. Treatment of Waste or Scrap is depended on Finished Goods

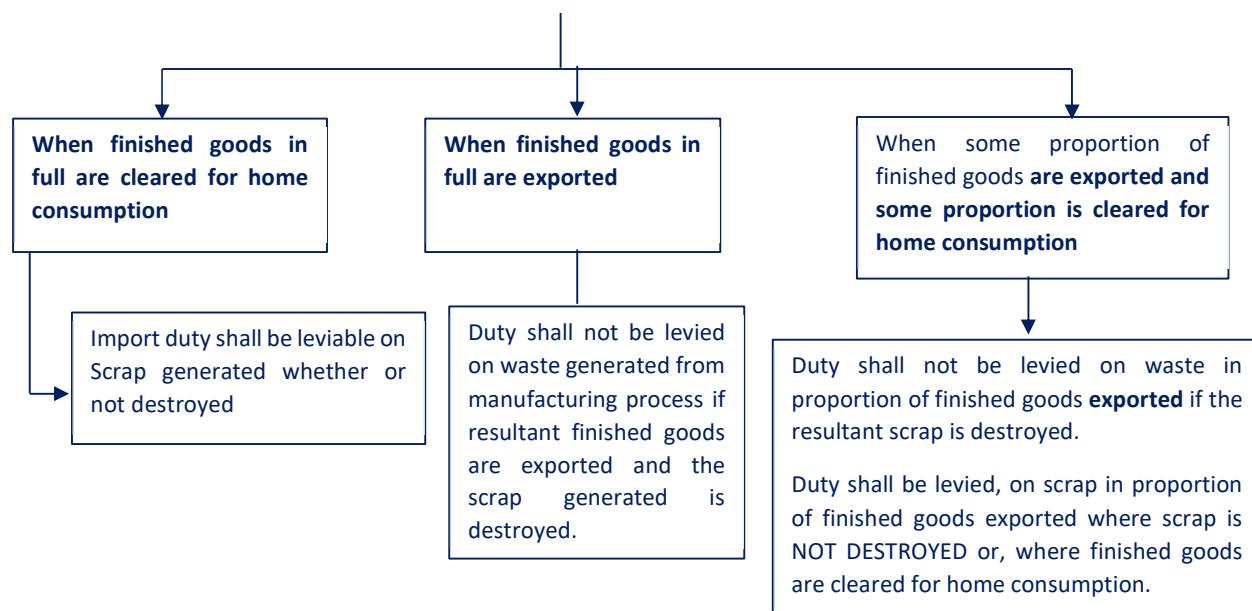
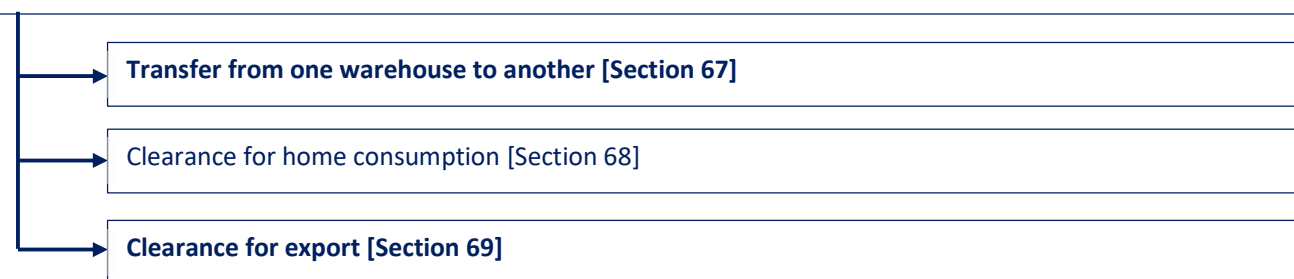


Illustration: Supposingly, imported “product A” 10 kg and stored in warehouse, further, locally procured “product B” 5 kg taken to warehouse for manufacturing product C, which came out to 12 kg. Waste 3 kg (Product A: 2 kg, Product B: 1 kg)

- (i) **If 12 kg is exported:** Then No duty shall be payable on 2 kg of waste generated in proportion to imported item if it is destroyed. However, if it is not destroyed, then duty will be levied on 2 Kg of waste.
- (ii) **If 12 kg is cleared for home consumption | Destroyed (Independent cases):** Duty shall be levied on 2 kg of waste even if it is not destroyed.
- (iii) **If out of 12 kg, 9 kg is exported and 3 kg is cleared for home consumption | Destroyed (Independent cases):**
 - (a) **Scrap Destroyed:** Then, duty will not be levied on 1.5 kg ($2 \times 9/12$), However, duty will be levied on 0.5 kg ($2 \times 3/12$).
 - (b) **Scrap Not Destroyed:** Duty shall be levied on 2 kg of waste

10. REMOVAL OF GOODS FROM WAREHOUSE [S. 67, 68, 69]



ANALYSIS OF THESE SECTIONS:

Section 67: Transfer from one warehouse to another
Goods can be cleared from one warehouse to another warehouse on approval of proper officer. This transfer would be without payment of duty.
Section 68: Clearance for Home Consumption
❖ Bill of Entry: Importer who has deposited his goods into warehouse shall file bill of entry for home consumption u/s 68 and shall pay the assessed duty to clear this goods. This bill of entry is also called as “Ex-bond bill of Entry” ❖ Order permitting clearance: Once the proper officer is satisfied that all the amounts payable by the owner of the goods including duty, interest, any penalty payable on the warehoused goods, have been paid, he may permit removal of the goods from the warehouse and pass a suitable order for clearance. ❖ Relinquishment of Title: The importer can relinquish (give away) the title of his warehoused goods upon payment of penalties that may be payable in respect of the goods and upon such relinquishment, he shall not be liable to pay duty thereon. <i>(If it appears that offence have been committed, not allowed to relinquish title)</i>
Section 69: Clearance for Export
❖ As per section 69, if warehoused goods are exported then no import duty, shall be payable on such goods. It can be exported on payment of export duty (if any applicable). Further, goods can be given on board as stores without payment of import duty. ❖ A shipping bill/bill of export/label or declaration accompanying the goods should be presented in respect of the warehoused goods sought to be cleared for export. ❖ If GOI is of the opinion that goods of any specified description are likely to be smuggled back into India, then it can by issuing notification restrict the export.

11. ALLOWANCE FOR VOLATILE GOODS [S. 70]

There might be few goods, which are subject to normal loss owing to volatility of such goods and manner of their storage such as aviation turbine fuel, petroleum products etc. Thus, there is generally a difference between the bonded quantity and the quantity at the time of removal from the warehouse. In this case **neither the importer nor the warehouse keeper can be asked to bear the duty burden of this loss.**

No duty shall be payable by importer when warehouse goods are found to be deficient in quantity on account of natural loss, the Assistant/Deputy Commissioner of Customs may remit the duty.

Remission u/s 23 is a general provision, however, remission u/s 70 is for specific goods and loss due to nature of goods such as evaporation etc.

12. IMPROPER REMOVAL [S. 71 & S. 72]

Goods would be deemed to be improperly removed from warehouse in below cases:

- ❖ Where any warehoused goods are removed from a warehouse in contravention of **section 71**
- ❖ Where any warehoused goods have not been removed from a **warehouse within warehousing period u/s 61**

- ❖ Where any goods in respect of which a **bond has been executed under section 59** and which have not been cleared for home consumption or export are not duly accounted for to the satisfaction of the proper officer.

In case the owner fails to pay duty chargeable on account of warehoused goods together with interest, fine and penalties payable, the officer may detain or sell off the sufficient quantity of goods by giving the importer notice.

Section 73 (Cancellation of Bond) is already discussed with section 59

13. WAREHOUSE KEEPER & CUSTODY [S. 73A]

Section 73A makes the **warehouse keeper as a custodian of the warehoused goods** and prescribes the **provisions for custody and removal of warehoused goods**. It stipulates that all warehoused goods will remain in the custody of the person who has been granted a licence under section 57/58/58A until they are cleared for home consumption/ transferred to another warehouse/ exported/ removed as otherwise provided under Customs Act.

Import / export of goods by post or courier [Section 83 & Section 84]

Relevant date for Rate of duty and tariff valuation in respect of goods imported or exported by post [Section 83]

IN CASE OF IMPORTS: Relevant date for rate of duty on imports by post is

- ❖ The date of submission of the list by the post-master or
- ❖ The date of arrival of the vessel,

whichever is later.

IN CASE OF EXPORTS:

The rate of duty and tariff value applicable to any goods exported by post or courier shall be the rate and valuation in force on the date on which the **exporter delivers such goods to the postal authorities** or the authorized courier for exportation.

Power to deal with postal articles containing goods contraband or liable to duty [Section 24 of the Indian Post Office Act]

Where a postal article suspected to contain any goods of which the import by post or the transmission by post is prohibited or anything is liable to duty, the officer in charge of the post office writing to the addressee, initiating him to attend, either in person, or by an agent, within a specified time at a post office. In his presence, the officer shall open the parcel. If he fails to attend, then in his absence the parcel can be checked.

Power to deliver articles to customs authorities [S. 24A of Indian Post Office Act]

Customs Authority can order any postal office to deliver the imported goods to it instead to importer, if they suspect that such goods are prohibited, or duty has not been paid. The power is provided in section 24A of the Indian Post Office Act.

STORES [SECTION 85 TO SECTION 90]

The term “stores” has been defined under section 2(38) of the Customs Act to mean

- ❖ **Goods** for use in a vessel or aircraft and includes fuel and spare parts and
- ❖ **Other articles** of equipment, whether or not for immediate fitting,
- ❖ It also includes items like **food, drink, medicines, life-saving equipment** like oxygen and life boats, articles or equipment used for entertainment, in addition to fuel, spare parts and other equipment.

These items are not imported into or exported out of India; however, sections are made to ensure control over such goods.

WAREHOUSING OF STORES [SECTION 85]

Goods **can be stored in custom bonded warehouse** & whenever required they can be given on vessel for consumption. It is important to note that, there is **no requirement to sign bond** for deposit in warehouse. Further, the proper officer **may permit the goods to be warehoused without the goods being assessed to duty**.

TRANSIT & TRANSHIPMENT OF STORES [SECTION 86 & SECTION 87]

Transit: Any stores imported in a vessel or aircraft, **may remain on board** such vessel or aircraft, without payment of duty, while it is in India. (Transit - Section 86)

Transshipment: Any stores imported in a vessel or aircraft **may**, with the permission of the proper officer be **transferred to any vessel or aircraft** as stores for consumption therein. (Transshipment - Section 87)

Consumption on FOREIGN GOING A/C or VESSEL: Section 87 of the Customs Act provides that any imported stores on board a vessel or aircraft (other than stores to which section 90 applies) may, without payment of duty, be consumed during the period such vessel or aircraft is a foreign going vessel or aircraft.

In other words, **no duty is leviable as long as the vessel/aircraft is a foreign going vessel/ aircraft**. However, **if** the vessel/aircraft **ceases** to be so and converts to a total run/local flight, **then duty will be chargeable on** the stores in **UNCONSUMED** on board. The stores which were consumed will not be liable to duty.

*Note: There are many entities who are engaged in cargo transport for instance, Air India, Go Air, etc. their service line includes goods transport as well as passenger transports. Such entities' itself would be liable to pay duty on **UNCONSUMED** stock of stores as importer when vessel ceases to be foreign going.*

APPLICABILITY OF SECTION 69 TO STORES: [SECTION 88]

As per section 69, goods which are imported and deposited into warehouse shall not be liable to import duty, unless they are cleared for HC. Further, if such goods are exported, only export duty (if applicable) then shall be payable and would be allowed to export (no import duty is payable).

This provision is applicable to stores as well.

APPLICABILITY OF DRAWBACK PROVISIONS U/S 74 TO STORES: [SECTION 88]

As per section 74, where duty paid imported goods are exported within two years then subject to certain conditions, such duty shall be repaid as drawback.

Stores	Drawback = 98% of Import Duty paid
Fuels & Lubricants	Drawback = 100% of Import Duty paid
Imported Duty paid & Supplied to Indian Naval Vessels	Drawback = 100% of Import Duty paid

SUPPLY OF INDIGENOUS GOODS AS STORES [SECTION 89]

If indigenous goods are supplied as stores, they can be done without payment of export duty (if applicable), in appropriate quantities as officer may deem fit having regard to length of travel, no. of passengers/crew members

STORES SUPPLIED TO INDIAN NAVY SHIPS [SECTION 90]

Imported Stores, for the use in a ship or, supplied free to crew members by government in accordance with condition of services, of the Indian Navy may without payment of duty be consumed on board the ship of Indian Navy.

INTRODUCTION TO REFUND

Sometimes customs duty is found to have been paid in excess of what was actually leviable on the goods. This may happen for various reasons, like error or lack of information. In such cases, refund of excess amount of duty paid can be claimed. Refund of any excess interest paid by the importer/exporter can also be claimed.

1. Refund of Import Duty [Section 27 of Customs Act]

Eligible person: The claim for refund of duty or interest can be made by

- (i) the person who paid the duty or interest in excess; or,
- (ii) the person who bore the incidence of such duty or interest.

shall present a claim in Form-R, along with copies of documents/ records supporting his declaration that he has not passed on the duty incidence.

Time-limit to claim refund: 1 year from relevant date.

Relevant Date:

Case	On or before 1 year from
Normal Cases	The date of payment of such duty or interest [Section 27(1)].
Duty paid by buyer	The date of purchase of the goods [Explanation to Section 27(1)].
Exemption of duty by a special order issued under section 25(2)	The date of issue of such order [Section 27(1B)(a)]
Refund of duty arising as a consequence of any judgment, decree, order or direction of the appellate authority, Appellate Tribunal or any court	Date of such judgment, decree, order or direction [Section 27(1B)(b)]
Provisional payment of duty under section 18	Date of adjustment of duty after the final assessment, or in case of re-assessment, from the date of such re-assessment [Section 27(1B)(c)].
Duty paid under protest**	1 year time - limit is not applicable

**In some cases, we may not agree with the departments' view, in such cases, assessee pays duty under protest stating that once higher authority decides the case in favour of assessee, such duty shall be refunded.

Protest Provision under GST: There is no specific provision under GST for duty paid under protest, however, while filing DRC 03, an assessee needs to mention "Tax paid under Protest" and submit a letter to department stating his payment is under protest. In such cases, tax may be refunded to him once case is decided in his favour.

Minimum Amount for Refund: Minimum Duty amount shall be Rs. 100 or more [Section 27(1) third proviso]].

Incidence shall not be passed: Documentary evidence to be furnished to prove that incidence of the duty/interest for which refund claim has been filed is not passed on to any other person. Section 28D presumes that, incidence of duty has been passed on to the buyer, unless the contrary is proved.

2. Doctrine of Unjust Enrichment & Processing of Refund Claim [S. 27(2)]

The doctrine of “unjust enrichment” implies that no person should enrich himself at the cost of others. Section 28D presumes incidence has been passed unless contrary is proved (by importer).

In following situations, the amount of duty and interest found refundable, instead of being credited to the Consumer Welfare Fund, is to be paid to the applicant:

(Wherever “exception” written it denotes exception to doctrine of unjust enrichment)

- (a) if the importer or the exporter, as the case may be, has **not passed on the incidence** of such duty and interest to any other person;
- (b) if imports were made by an **individual for his personal use [exception]**;
- (c) if the **buyer (Not importer)** who has **borne the duty and interest**, has **not passed on the incidence** of such duty and interest to any other person;
- (d) if amount found refundable relates to **export duty paid** on goods which has **returned** to exporter as specified in section 26 **[exception]**;
- (e) if amount relates to **drawback of duty** payable under **section 74 and 75 [exception]**;
- (f) if the **duty or interest was borne by a class of applicants** which has been notified for such purpose in the Official Gazette by the Central Government. **[exception]**
- (g) if the **duty paid in excess** by the importer **before an order** permitting clearance of goods **for home consumption** is made where **[exception]** -
 - (i) such **excess payment** of duty is **evident from the bill of entry** in the case of self-assessed bill of entry; or
 - (ii) the duty **actually payable** is **reflected in the reassessed bill of entry** in the case of reassessment.

[Relevant Case Law: Mafatlal Industries Ltd. v. U.O.I. (1997)]

3. Interest on Delayed refund [Section 27A]

The interest is to be paid for the period beginning from the **date immediately after the expiry of 3 months** from the date of receipt of such application, **till the date of refund of such duty @ 6% p.a. (Refer Note 2)**

[Rate notification: Notification No. 75/2003-Cus (NT) dated 12.09.2003.]

Notes:

1. In GST it was 60 days in place of 3 months as in customs
2. In case where refund is receivable on account of order of higher authority, the refund shall be given within 3 months from date of order.

(The interest on delayed refund is payable only in respect of delayed refunds of Customs duty and no interest is payable in respect of deposits such as deposits for project imports, security for provisional release of goods etc.)

4. Refund of Export Duty in certain cases [S. 26]

Where export duty has been paid on the exportation of any goods, such duty shall be refunded to the person by whom or on whose behalf it was paid, if -

- (a) the **goods are returned** to such person otherwise than by way of re-sale;
- (b) the **goods are re-imported within one year** from the date of exportation; and

Application for Refund: An application for refund of such duty shall be made before the expiry of six months from the date on which the proper officer makes an order for the clearance of the goods.

5. Refund of Import Duty in Special Cases [S. 26A]

Section 26A provides that the import duty paid on clearance of imported goods for home consumption shall be refunded to the person who has paid such duty subject to the fulfilment of the following conditions

- (a) Goods are defective/not as per specifications
- (b) Goods identified as imported goods
- (c) No drawback claimed
- (d) Importer exports the goods/relinquishes title to goods/destroys or renders them commercially valueless within 30 days (extension possible upto 3 months) from the date on which the proper officer makes an order for the clearance of imported goods for home consumption under section 47

Application for Refund: shall be made before the expiry of **6 months from the relevant date** in such form and in such manner as may be prescribed.

Relevant Date:

In case the goods are exported out of India	Let Export order u/s 51
In case of relinquishment of title to the goods	Date of such relinquishment
In case of goods being destroyed or rendered commercially valueless	Date of such destruction or rendering of goods commercially valueless

No Refund in below cases:

- ❖ Perishable goods exceeded their shelf life
- ❖ Offence appears to have been committed under this Act or any other law for the time being in force.

The Customs Act, 1962 has separate provisions and timelines for filing appeal against an order passed by a customs officer. Appeal to the Commissioner (Appeals) is to be made within 60 days of receipt of the order against which the person is aggrieved. On the other hand, a refund claim can be filed within one year from the date of payment of duty or clearance of goods or such other event as specified in section 27. However, a refund claim cannot be a substitute for an appeal.

Foreign Trade Policy, 2023 (1/6)

Meaning of Foreign Trade Policy: Foreign Trade Policy basically sets out measures in the direction of increasing exports and reduction in imports. It provides various facilities by way of schemes so as to incentivize export sector by providing various exemptions and remissions in importation of inputs / capital goods which are to be used in export of goods.

The FTP, in general, aims at developing export potential, improving export performance, encouraging foreign trade and creating favorable balance of payments position. The policies are driven by factors like export led growth, improving efficiency and competitiveness of the Indian industries, ease of doing business etc.

1. Legislations Governing FTP

The Foreign Trade Policy, 2023 (as updated) is notified by the Central Government, in exercise of powers conferred under Section 5 of the **Foreign Trade (Development & Regulation) Act, 1992 [FTDR Act]**, as amended.

Brief Matters on which FTP works:

- (i) Facilitation and control of foreign trade
- (ii) Granting of exemptions on imports
- (iii) Appointment of Director General of Foreign Trade (DGFT)
- (iv) Regulate import and export, frame export import policy

FTP is formulated By DGFT an attached office of Ministry of Commerce & Industry, Government of India. In case of interpretational issues, the interpretation of DGFT shall be binding

Basic Features/Attributes of FTP

- (i) Categorize Exports and imports as **free | prohibited | restricted**. Imports and exports are free unless regulated
- (ii) Exports are promoted through various **promotional schemes**
- (iii) Imports of **inputs** are exempted (AA/DFIA) or **capital goods** (EPCG) when used for the purpose of exports by granting various benefits
- (iv) **Benefits to EOU, EHTP, SEZ** who are primarily engaged in exports
- (v) **Benefits extended to domestic suppliers** supplying to persons engaged in exporting goods (deemed exports etc.)
- (vi) Promotes manufacturers under “Make in India Mission”

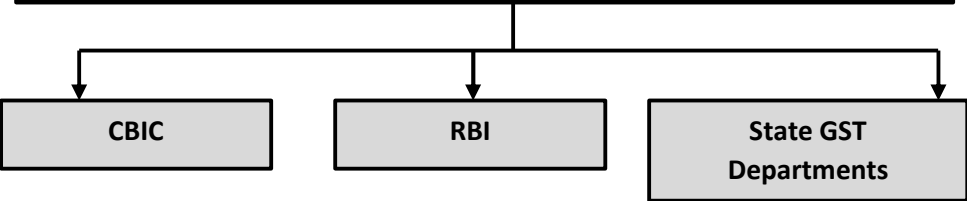
FTP shall come into force from 1st April, 2023

FTP Cannot override Tax Laws i.e., Customs Act, GST Act etc. it shall be in line with such acts

2. Measures taken in this direction

- ❖ **Mandatory documents - Only 3:** Shipping Bill/Bill of Export | Bill of Entry etc., Commercial Invoice cum Packing List, Bill of Lading/Airway Bill/Lorry Receipt/Railway Receipt/Postal Receipt.
- ❖ The facility of **24 X 7 Customs clearance** for specified imports has been made available at the 19-sea port and 17 air cargo complexes.
- ❖ **Single Window Interface for Facilitating trade** has been introduced to enable importer and exporter to lodge their clearance documents at a single point thereby providing a common platform.
- ❖ Facilitate processing of **shipping bills online before actual shipment, 7 days prior for air shipments & ICDs and 14 days for shipments by sea.**
- ❖ Applications to obtain **Importer Exporter Code** and various authorizations scrips.

3. FTP works with



4. Contents of FTP

Policy (FTP) valid from 1st April, 2023

Handbook of Procedures 2023

FTP 2023 is having 11 chapters and is issued on 1st April, 2023. Handbook of procedures 2023 contains AANF i.e., **APPENDICES AND AAYAT NIRYAT FORMS** relating to procedural aspects provided under policy and procedures. SION (Standard Input Output Norms) is also mentioned in HBP, based on SION exporters are provided the facility to make duty free import of inputs required for manufacture of export products. For example: If export order is 1000 shirts, and SION specifies 1 shirt = 2 meters, thus, only 2000 meters clothing can be imported to manufacture 1000 shirts (wastage can be provided extra)

ITC (HS) Classification: Indian Trade Classification on the basis of Harmonised System

Schedule I - Import Policy - ITC(HS) 2023
Schedule II - Export Policy – ITC(HS) 2023

5. IMPORTANT SHORT NOTES

[1] Terms and Conditions of an authorization:

Every Authorization shall be valid for prescribed period of validity and shall, inter alia, include the following terms and conditions (as applicable) in addition to such other conditions as may be specified:

- (a) Quantity, description and value of goods;
- (b) Actual User condition;
- (c) Export obligation;
- (d) Minimum Value Addition to be achieved;
- (e) Minimum export/ import price; and
- (f) Bank Guarantee/ Legal Undertaking/ Bond with Customs Authority/ RA.

No person may claim an Authorization as a right and DGFT or RA shall have power to refuse to grant or renew the same in accordance with provisions of FT(D&R) Act, rules made there under and FTP.

[2] State Trading Enterprises (STEs)

STEs are governmental and non- governmental enterprises, including marketing boards, which deal with goods for export and/or import. Any goods, import or export of which is governed through exclusive or special privileges granted to State Trading Enterprises [STE(s)], may be imported or exported by STE(s) as per conditions specified in ITC(HS). Items should be imported or exported only through State Trading Enterprises.

[3] Importer-Exporter Code (IEC):

IEC is mandatory to export any goods out of India or to import any goods into India unless specifically exempt. Permanent Account Number (PAN) is pre- requisite for grant of an IEC. Only one IEC can be issued against a single PAN.

IEC is a unique 10-digit code issued by DGFT to a person. DGFT has decided to use income tax PAN as IEC number i.e., IEC will be issued by DGFT with the difference that it will be alpha numeric (instead of 10 digits numeric at present) and will be same as PAN of an entity.

[4] Basic Policy on Import of Second-Hand Goods:

Import of second-hand capital goods, including refurbished/ re-conditioned spares (subject to conditions) shall be allowed freely. **However, second hand personal computers/ laptops, photocopier machines, air conditioners, diesel generating sets will only be allowed against authorisation.** Second hand (used) goods, [except second hand capital goods], shall be restricted for imports and may be imported only against Authorization.

Capital goods, equipments, components, parts and accessories, whether imported or indigenous, except those restricted under ITC(HS) may be sent abroad for repairs, testing, quality improvement or upgradation or standardization of technology and re- imported without an Authorization.

Import of samples of even ‘restricted’ items, is allowed without import authorisation. Exceptions are defence / security items, seeds, bees, and new drugs; these need authorisation. Duty free import of samples upto Rs. 3,00,000 for all exporters shall be allowed subject to terms and conditions of customs notification as amended.

5. IMPORTANT SHORT NOTES (CONTINUED)

[5] Third party exports:

Third-party exports means exports made by an exporter or manufacturer on behalf of another exporter(s). In such cases, export documents such as shipping bills shall indicate name of both manufacturing exporter/manufacturer and third-party exporter(s). BRC, GR declaration, export order and invoice should be in the name of third-party exporter. Such third-party exports shall be allowed under FTP.

[6] Export of gifts:

Goods, including edible items, of value not exceeding Rs, 5,00,000 in a licensing year, may be exported as a gift. However, items mentioned as restricted for exports in ITC(HS) shall not be exported as a gift, without an Authorization.

[7] Denomination of export contracts

Export contracts may be denominated either in Indian rupees or freely convertible currency, but export proceeds should be realised in freely convertible foreign currency. However, in specified cases, exports proceeds may be realized in rupees subject to fulfilment of specified conditions.

If an exporter fails to realize export proceeds within time specified by RBI, he shall be liable to return all benefits/ incentives availed against such exports and shall be liable to penal action under FT (D&R) Act and the FTP. However, if such non-realization is for reasons beyond his control, he may approach RBI for writing off the unrealized amount.

ECAs provide financial support to exporters. They support exports by insurance, guarantee and also direct lending. For instance, Export Credit Guarantee Corporation of India Ltd. (ECGC), Exim Bank, etc.

Other Important Points:

- ❖ No seizure of stock shall be made by any agency so as to disrupt manufacturing activity and delivery schedule of exports. In exceptional cases, concerned agency may seize the stock on basis of prima facie evidence of serious irregularity. However, such seizure should be lifted within 7 days unless the irregularities are substantiated.

[8] Authorised Economic Operator:

Under AEO programme of Indian Customs, a business entity engaged in international trade is granted AEO status if it is approved by Customs as compliant with supply chain security standards. Such entities are considered as trusted trade partner of Indian customs. AEO status holders get extensive benefits including preferential customs treatment in terms of reduced examination and faster processing and clearance of cargo, deferred payment of duty, direct port delivery/entry, enhanced border clearance privileges in Mutual Recognition Agreement (MRA) partner countries, greater facilitation, and self-certification. AEO programme is based on WCO's **SAFE Framework of Standards (FoS)**.

[9] Self-certification of origin of goods:

Till now, certificate of origin of goods for export was issued by the designated agencies. Now, self- certification has been enabled for "approved exporters." Manufacturers who are also status holders will be eligible for the 'approved exporter' scheme. Approved Exporters will be entitled to self-certify their manufactured goods as originating from India

6. STATUS HOLDER (IMP SHORT NOTE)

Status Holders are business leaders who have excelled in international trade and have successfully contributed to country's foreign trade. Status Holders depends on Export Performance

Status Category	Export Performance in USD Million [FOB for Actual Exports or FOR in case of Deemed Exports] [FOB Value of export earnings in free foreign currencies]
One Star Export House	3
Two Star Export House	15
Three Star Export House	50
Four Star Export House	200
Five Star Export House	800

An applicant shall be categorized as status holder upon achieving export performance during **CURRENT AND PREVIOUS THREE FINANCIAL YEARS**, as indicated above.

However, for Gems & Jewellery Sector, the performance during the current and previous two financial years shall be considered for recognition as status holder

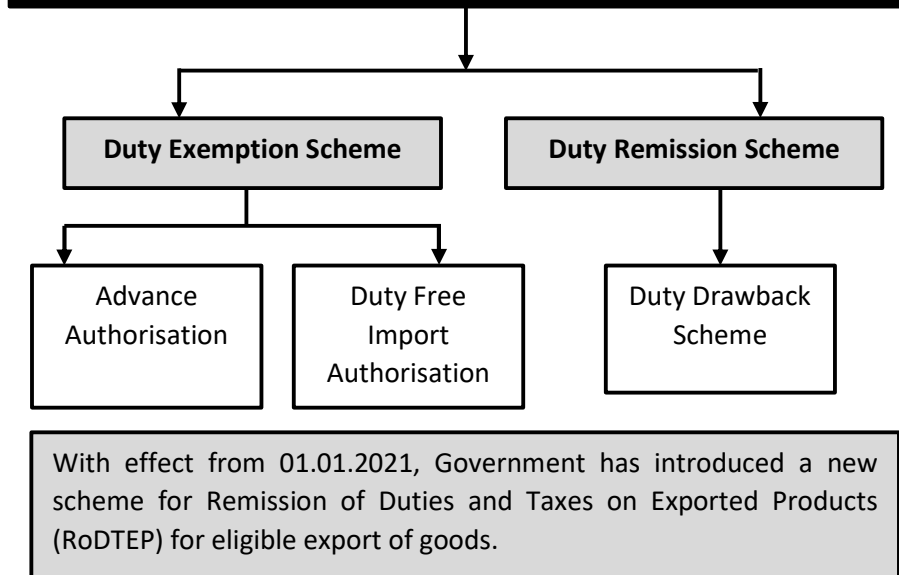
Important Points:

- In case of FOR Value - Conversion to be done as at 1st April of each FY
- Export performance of one IEC holder shall not be transferred to another
- For calculating export performance for grant of One Star Export House Status category, exports by IEC holders under the following categories shall be granted double weightage:
 - ❖ Micro and Small Enterprises, manufacturing units having ISO/BIS certification,
 - ❖ Units located in Northeastern States including Sikkim and Union Territories of Jammu, Kashmir and Ladakh and
 - ❖ Export of fruits and vegetables shall be granted double weightage once in any of these categories.
- Export of items under authorization (including Special Chemicals, Organisms, Materials, Equipment, and Technologies) shall be added for calculation of export performance.

PRIVILEGES FOR STATUS HOLDERS (V. IMP FOR SHORT NOTE)

- Authorisation and custom clearances for both imports and exports on **self-declaration basis** (Only allowed to specific exporters as per FTP 2023).
- Fixation of **Input Output Norms** on priority i.e., within 60 days by Norms Committee.
- Exemption** from compulsory **negotiation of documents through banks**. Exception are remittance/ receipts.
- Exemption from furnishing of Bank Guarantee** in Schemes under FTP unless otherwise specified.
- Two Star Export Houses and above are permitted to **establish export warehouses**.
- Manufacturers who are also status holders** (Three Star/Four Star/Five Star) will be enabled to **self-certify their manufactured goods**.
- Status holders shall be **entitled to export freely exportable items** (excluding Gems and Jewellery, Articles of Gold and precious metals) **on free of cost basis for export promotion** subject to a specified annual limit.
- The status holders would be entitled to preferential treatment and priority in handling of their consignments by the concerned agencies.
- Status Holders (other than One Star Export House) are being made "partners" in **providing mentoring and training in international trade** to specified number of trainees each year based on status they achieve.

7. SCHEMES



Basic Introduction About Schemes: (In detail to be learnt in further chapters)

Advance authorisation:

A scheme to import **INPUTS without payment of customs duty**, only when a person has export obligation in hand. Conditions and other details discussed later. Value Addition - 15%

Duty free Import Authorisation:

A scheme to import **INPUTS without payment of customs duty** (not IGST, means IGST is payable) even when a person does not have export obligation in hand. Value Addition - 20%

EPCG Scheme:

A scheme to import Capital Goods without payment of duty, and satisfy export obligation of 6 times of duty saved. IGST & IGST cess is exempt.

TOWN OF EXPORT EXCELLENCE:

Selected towns which are contributing handsomely to India's exports by producing goods of specified amount may be granted recognition as TEE. They will be provided targeted support and infrastructure development to maximize their export competitiveness and enable them to move up the value chain and also to tap new markets by granting specified privileges to them.

EXPORT PROMOTION SCHEMES (ADVANCE AUTHORISATION & DFIA SCHEME) (3/6)

Particulars	ADVANCE AUTHORISATION
Eligible person (Advance Authorisation specifies, name and description of items, Quantity, value, Aggregate CIF value of imports, FOB, FOR Value and quantity of exports)	Advance Authorization can be issued to: (1) Manufacturer exporter or merchant exporter tied to supporting manufacturer (2) Advance Authorisation for pharmaceutical products manufactured through Non-Infringing (NI) process shall be issued to manufacturer exporter only. (3) Supplies made to specified categories of deemed exports (4) Supply of 'stores' on board of foreign going vessel/aircraft provided there is specific SION in respect of items supplied.
What Can be Imported without payment of duty under this scheme	- Input that is physically incorporated in export product (making normal allowance for wastage). - Fuel, oil, catalyst which is consumed / utilized in the process of production of export product. - Spares that are required to be supplied with the export product can be imported duty-free under the advance authorisation up to a value of 10% of the CIF value of the authorisation.
Necessity of Export Obligation	YES, Export obligation shall be fulfilled within 18 months from date of issue of advance authorisation, unless otherwise specifically provided
VALIDITY OF AUTHORISATION:	AA TAKEN FOR IMPORTS BY EXPORTER: 12 months from date of issue of advance authorisation.
Time - Limit to Import Goods under Advance Authorisation	AA TAKEN FOR IMPORTS BY PERSON SUPPLYING GOODS TO EXPORTER (DEEMED EXPORT CASES) 12 months from date of issue of advance authorisation or, Project duration whichever is more
Export Obligation Period	The Export Obligation Period (EOP) of Advance Authorisations issued for such items shall be 90 days from the date of clearance of import consignment and no extension in EOP shall be allowed. Such import shall be subject to actual user condition and no transfer of imported raw material, for any purpose, including job work, shall be permitted.
Exemption from which duties	Exemption of duty from: ❖ Basic customs duty, Additional customs duty, Education cess, ❖ Anti-dumping duty, Countervailing duty, Safeguard duty, ❖ Transition product specific safeguard duty, wherever applicable, unless otherwise specified In case where goods are to be supplied to UN or international organisations for their official use or supplied to projects financed by them, then anti-dumping duty & SGD shall be payable.
Value Addition	Except for Gem & Jewellery Sector, $VA = [(A-B) \times 100]/B$ A = FOB value of export realised/FOR value of supply received (+) Notional Value of Items supplied free of cost by foreign buyer. B = CIF value of inputs covered by authorisation plus any other imported materials used on which benefit of duty drawback (DBK) is claimed or intended to be claimed (+) Notional Value of Items supplied free of cost by foreign buyer. Minimum Value Addition: 15%
Actual User Condition	AA is not be transferable even after completion of export obligation. However, Authorization holder will have an option to dispose of product manufactured out of duty-free inputs in DTA once export obligation is completed.
Annual Authorisation (Only when SION is fixed)	Exporters having past export performance (in at least preceding two financial years) shall be entitled for Advance Authorization for Annual Requirement. Annual Limit: CIF value of imports shall be upto 300% of the FOB value of physical export and/ or FOR value of deemed export in preceding financial year or Rs. 1 crore, whichever is higher.

Particulars	DUTY FREE IMPORT AUTHORISATION (DFIA)
Eligible person (Same as AA subject to certain variation)	Duty Free Import Authorisation is a duty exemption scheme wherein an exporter has to first export goods and prove his export performance, then he can apply for DFIA for importing further inputs without payment of duty. Thus, this scheme is post export scheme. A person might have paid import duty at the time of first import required for export of goods. In such case he can claim drawback u/s 75 of Customs Act & refund of IGST paid on imports u/s 54 of CGST Act. After proving exports, he can applies for DFIA and then he can import inputs, oil and catalyst which is consumed / utilised in the process of production of export product without payment of basic customs duty. However, exporters in Gems and Jewellery Sector are ineligible for DFIA scheme. No DFIA shall be issued for an export product where SION prescribes 'Actual User' condition for any input.
What Can be Imported without payment of duty under this scheme	INPUTS including oil and catalyst which is consumed / utilised in the process of production of export product
Necessity of Export Obligation	No export obligation is required at the time of importing inputs. However, Export shall be completed within 12 months from the date of online filing of application.
VALIDITY OF AUTHORISATION:	It is a post export scheme. Thus, time limit is to export goods within 12 months from online application. Further, transferrable DFIA shall be valid for 12 months from date of issue
Exemption from which duties	Goods imported under DFIA shall be exempted only from payment of Basic Customs Duty (BCD). IGST will be payable on imports.
Items which can be imported duty free import authorisation	Inputs, oil, and catalyst which is consumed / utilised in the process of production of export product
Value Addition	Except for Gem & Jewellery Sector, $VA = [(A-B) \times 100]/B$ A = FOB value of export realised/FOR value of supply received (+) Notional Value of Items supplied free of cost by foreign buyer. B = CIF value of inputs covered by authorisation plus any other imported materials used on which benefit of duty drawback (DBK) is claimed or intended to be claimed (+) Notional Value of Items supplied free of cost by foreign buyer. Minimum Value Addition: 20%
Annual Authorisation	N.A.
Other Points	❖ Merchant Exporter shall be required to mention name and address of supporting manufacturer of the export product on the export document viz. Shipping Bill/ Bill of Export / Tax Invoice for export prescribed under the GST rules. ❖ RA shall issue transferable DFIA with a validity of 12 months from the date of issue.

EXPORT PROMOTION SCHEMES (EPCG) (4/6)

Particulars	EPCG SCHEME
Eligible person	Export Promotion Capital Goods Scheme (EPCG) permits exporters to import capital goods for pre-production, production, and post-production at zero customs duty or procure them indigenously without paying duty in the prescribed manner . In return, exporter is under an obligation to fulfill the export obligation. ❖ Manufacturer exporters with or without supporting manufacturer(s), ❖ Merchant exporters tied to supporting manufacturer(s), and ❖ Service providers including service providers designated as Common Service Provider (CSP) subject to prescribed conditions.
What Can be Imported without payment of duty under this scheme	CAPITAL GOODS Capital goods may be for use in manufacturing, mining, agriculture, aquaculture, animal husbandry, floriculture, horticulture, pisciculture, poultry, sericulture, and viticulture as well as for use in services sector.
VALIDITY OF AUTHORISATION	Authorisation shall be valid for import for 24 months from the date of issue of authorisation
Which Capital Goods can be Imported under EPCG Scheme	❖ Capital Goods including capital goods in CKD/SKD condition ❖ Computer systems and software which are a part of the Capital Goods being imported ❖ Spares, moulds, dies, jigs, fixtures, tools & refractories ❖ Catalysts for initial charge plus one subsequent charge
Which Duties are exempt	BCD, SWS, and other customs duties (IGST & IGST Cess is exempt)
Necessity of Export Obligation / Condition for Authorisation	An Importer is required to fulfill achieve Specific export obligation as well as maintain average export obligation. (i) SPECIFIC EXPORT OBLIGATION (TO BE ACHIEVED): ❖ Capital Goods imported by Manufacturer of export goods: 6 times of Duty Saved, to be fulfilled in 6 years reckoned from the date of issue of authorization. ❖ Indigenous Sourcing of Capital Goods: 4.5 times of notional Customs duties saved (i.e., 75% of 6 times of Duty Saved) (ii) AVERAGE EXPORT OBLIGATION (TO BE MAINTAINED): ❖ Average export obligation (Average EO) under EPCG scheme is the average level of exports made by the applicant in the preceding 3 licensing years for the same and similar products. It has to be achieved within the overall EO period (including extended period unless otherwise specified). ❖ The Average Export Obligation (AEO) shall be fulfilled every financial year, till export obligation is completed. Exports/supplies made over and above AEO shall only be considered for fulfillment of Export Obligation. In cases where Authorization holder has fulfilled 75% or more of specific export obligation and 100% of Average Export Obligation till date, if any, in half or less than half the original export obligation period specified, remaining export obligation shall be condoned and the Authorization redeemed. Notes: (i) Duty Saved: If ITC on capital goods is taken at the time of import / procurement under deemed export, then such ITC shall be considered while computation of duty saved. If ITC is not taken, then it shall not be taken into account for computing duty saved. (ii) Deemed Exports: Person supplying to EPCG holder is a deemed export (Section 147 of CGST Act) (iii) Fulfilment of EO: EO shall be fulfilled by the authorisation holder through export of goods which are manufactured by him or his supporting manufacturer / services rendered by him, for which the EPCG authorisation has been granted. (iv) Export Obligation: - Exports (incl. deemed exports) under Advance Authorisation, DFIA, Duty Drawback, RoSCTL and RoDTEP Schemes would also be eligible for fulfilment of EO under EPCG Scheme. - EO can also be fulfilled by the Supply of Information Technology Agreement (ITA-1) items to DTA, provided realization is in free foreign exchange.
Actual User Condition	Import of capital goods shall be subject to 'Actual User' condition till export obligation is completed. After export obligation is completed, capital goods can be sold or transferred.

Prepare your notes

EXPORT PROMOTION SCHEMES (EOU, EHTP, STP, BTP) (5/6)

Particulars	EOU, EHTP, STP, BTP - SCHEME
Benefits of EOU	(A) BENEFITS IN TAXES (a) Supplies from DTA to EOU/ EHTP/ STP/ BTP units will be regarded as “deemed exports” (b) DTA can take authorizations such as AA, EPCG, DFIA etc., for making supplies to EOU (c) EOU / EHTP / STP / BTP units shall be entitled to Imported goods are exempt from basic customs duty WITHOUT BANK GUARANTEE AND WITHOUT AUTHORISATIONS. Further, IGST and GST compensation cess is exempt. (B) OTHER BENEFITS (a) Able to retain 100% of its export earnings in the EEFC account. (b) Unit will not be required to furnish bank guarantee at the time of import or going for job work in DTA, subject to fulfillment of required conditions. (c) 100% FDI investment permitted through automatic route similar to SEZ units. (d) Supplies by DTA to EOU are deemed exports, supplier would be paying taxes, refund can be claimed by supplier or recipient.
Eligibility criteria for set up of EOU Unit	It is to be noted that even if the name is export oriented unit, it may undertake DTA sales subject to certain condition and restrictions. Following are conditions to set up an EOU: ❖ Nature of Unit: Manufacturing units (not trading), including repair, re-making, reconditioning, re-engineering, rendering of services, development of software, agriculture. ❖ Investment Criteria: Minimum investment of Rs. 1 crore in plant & machinery - for establishment as EOUs. However, Board of Approvals (BoA) may also allow establishment of EOUs with a lower investment criteria. <i>Exception: Handicrafts/ Agriculture/ Floriculture/ Aquaculture/ Animal Husbandry/ Information Technology Services, Brass Hardware and Handmade jewellery sectors.</i> Domestic Entity into EOU: Existing DTA units may also apply for conversion into an EOU/ EHTP/ STP/ BTP unit. Applications for conversion into an EOU / EHTP / STP / BTP unit from existing DTA units, shall have an investment of Rs. 50 crores and above in plant and machinery OR exporting Rs. 50 crores and above annually, shall be placed before BOA for a decision.
Net foreign earnings criteria	EOU/ EHTP/ STP/ BTP shall be positive net foreign exchange earner in the block of 5 years . However, a higher value addition is specified for some sectors.
What can be exported?	❖ All exports are permissible except items that are prohibited in ITC(HS), ❖ Special Chemicals, Organisms, Materials, Equipment and Technologies (SCOMET) subject to fulfillment of the conditions indicated in ITC (HS) are permissible exports.
What can be Imported? (NOT RELEVANT FOR CA EXAM)	❖ Import of export promotion material upto a maximum value limit of 1.5% of FOB value of previous years exports. ❖ Procurement from DTA (Supplier to pay tax, refund can be claimed by either by supplier or by recipient) ❖ Bonded warehouses in DTA/ International exhibition held in India (without payment of BCD, without payment of IGST & IGST Cess) ❖ Specified goods from DTA for creating a central facility, with/without payment of duty/ taxes. ❖ Second hand capital goods ❖ Procurement and export of spares/ components, upto 5% of FOB value of exports, may be allowed to same consignee/ buyer of the export article, subject to the condition that it shall not count for NFE and direct tax benefits

Particulars	EOU, EHTP, STP, BTP – SCHEME (NOT RELEVANT FOR CA EXAM)				
13. OTHER IMPORTANT TRANSACTIONS					
Sr. No.	Transaction	Payments of benefits availed on duty free import	GST on supply	Positive NFE EOU Condition	Others
1	Sale of unutilised materials	Yes	Yes	Yes	-
2	Destruction of unutilised materials (Disposal of used packing material is allowed on payment of customs duty on transaction value)	No	Yes	Yes	Intimate customs
3	Sale of finished goods into DTA other than Gems & Jewellery (Normally EOU are supposed to export, however in certain cases they can sell to DTA)	Yes (on basis of SION)	Yes	Yes	No DTA sale shall be permissible in respect of, pepper & pepper products, marble, and such other notified items as when such DTA unit is engaged in only packaging.
4	Sale of spares as part of after sales service to same buyer (Do not confuse this with import and export of spares and components that is allowed upto 5% of FOB value of exports)	Yes	Yes	NA	Permissible up to 2% of the value of manufactured articles, cleared into DTA, during the preceding year, may be allowed for supply to the same consignee / buyer for the purpose of after-sale-service
5	Sale of by products into DTA	Yes (on basis of SION for wastage)	Yes	Yes	Proportionate reversal
6	Services in DTA	No	Yes	No	Permissible up to 50% of FOB value of exports and/ or 50% of foreign exchange earned, where payment of such services is received in foreign exchange
7	Sale of Rejected imported material	Yes	Yes	Yes (subject to condition)	Sale of rejects upto 5% of FOB value of exports shall not be subject to achievement of NFE
8	Sale of scrap/ waste/ remnants, arising out of production, in DTA	No., in cases within SION limit, exported, destruction. Yes, in case where waste is more than SION & sold in DTA	Yes	No	-

EXIT FROM EOU: Approval of DC, an EOU may opt out of scheme. Such exit shall be subject to payment of applicable IGST/ CGST/ SGST/ UTGST and compensation cess, if any, and industrial policy in force. If unit has not achieved obligations, it shall also be liable to penalty at the time of exit.

EXPORT PROMOTION SCHEMES (Deemed Exports & RoDTEP Scheme) (6/6)

DEEMED EXPORTS

MEANING OF DEEMED EXPORTS & OBJECTIVE OF DEEMED EXPORTS:

It is imperative to understand the deemed exports from a very different perspective. In all the above schemes viz. AA, DFIA, EPCG etc., we saw that benefits are given on Import of inputs / capital goods. Thus, it is indirectly encouraging imports, making domestic industry goods costlier. Accordingly, a scheme is framed, to provide the incentives to person supplying to AA, DFIA, EPCG Holder so as to make them at par with imported goods. Such scheme is called as Deemed exports.

DEEMED EXPORTS FOR GST PURPOSES & FTP PURPOSES:

1. Supply of goods by a registered person against Advance Authorisation
2. Supply of capital goods by a registered person against Export Promotion Capital Goods Authorisation
3. Supply of goods by a registered person to Export Oriented Unit

DEEMED EXPORTS FOR LIMITED PURPOSE OF FTP:

1. Supply of goods to projects or turnkey contracts financed by **multilateral or bilateral agencies/Funds notified by Department of Economic Affairs (DEA)**, under International Competitive Bidding.
2. Supply of goods to any project where import is permitted at **zero customs duty** as per customs Notification No. 50/2017-Customs dated 30.6.2017, provided supply is made against **International Competitive Bidding**.
3. Supply of goods to **mega power projects against International Competitive Bidding** (even if customs duty on imports made by such project is not zero). The ICB procedures should be followed. Supplier is eligible for benefits as specified. International Competitive Bidding (ICB) is not mandatory for mega power projects if requisite quantum of power has been tied up through **tariff based competitive bidding** or if project has been awarded through tariff based competitive bidding.
4. **Supply to goods to UN or international organisations** for their official use or supplied to projects financed by them.
5. Supply of goods to **nuclear projects through competitive bidding** (need not be international competitive bidding).

BENEFITS FOR DEEMED EXPORTS:

Deemed exports shall be eligible for any/ all of following benefits in respect of manufacture and supply of goods, qualifying as deemed exports, subject to specified terms and conditions:

- (i) Advance Authorisation/ Advance Authorisation for Annual requirement/ DFIA
- (ii) Deemed Export Drawback: Refund of drawback on the inputs used in manufacture and supply under the deemed exports category can be claimed on 'All Industry Rate' of Duty Drawback Schedule provided no CENVAT credit has been availed by supplier of goods on excisable inputs or on 'Brand rate basis upon submission of documents evidencing actual payment of basic custom duties.
- (iii) Refund of terminal excise duty for specified excisable goods

Supply of goods will be eligible for refund of ITC provided recipient of goods does not avail ITC on such goods and supply is eligible under that category of deemed exports.

RoDTEP Scheme

Particulars	Description of RoDTEP Scheme
Introduction to Remission of Duties and Taxes on Exported Products (RoDTEP)	With effect from 01.01.2021, Government has introduced a new scheme for Remission of Duties and Taxes on Exported Products (RoDTEP) for eligible export of goods. RoDTEP scheme is based on the globally accepted principle that taxes and duties should not be exported , and taxes and levies borne on the exported products should be either exempted or remitted to exporters.
Eligible exporters	All exporters of eligible RoDTEP export items are eligible for the scheme.
Mode of Reward & Reward under scheme	This scheme provides for remission of the amount in the form of duty credit scrip credited in an exporter's ledger account with customs. Rebate would be granted to eligible exporters at a notified rate as a % of FOB value with a value cap per unit of the eligible exported product, wherever required, on export of items. However, for certain export items, a fixed quantum of rebate amount per unit may also be notified. Realisation of export proceeds within time limit as per FEMA: Rebate would not be dependent on the realization of export proceeds at the time of issue of rebate. However, rebate will be deemed never to have been allowed in case of non-receipt of sale proceeds within time allowed under the Foreign Exchange Management Act, 1999.
Objective of Scheme	Remission of: (i) Duties/ taxes/ levies, at the Central, State & local level, borne on the exported product, including prior stage cumulative indirect taxes on goods & services used in production of the exported product, and (ii) Such indirect duties/taxes/levies in respect of distribution of exported products.
Usage of Scrip	Such duty credit shall be used only to pay basic customs duty on imported goods
Transferability	The duty credit scrips are freely transferable, i.e., credits can be transferred to other importers. <i>The rebate under the scheme shall not be available in respect of duties and taxes already exempted or remitted or credited.</i>
Ineligible criteria (NOT IMPORTANT YOU MAY IGNORE)	1. Export of imported goods in same or substantially the same form 2. Exports through trans-shipment, meaning thereby exports that are originating in third country but trans-shipped through India 3. Export products which are subject to minimum export price or export duty 4. Products which are restricted/prohibited under FTP 5. Supplies of products manufactured by DTA units to SEZ/FTWZ units. 6. Products manufactured in EHTP and BTP 7. Goods which have been taken into use after manufacture 8. Exports for which the electronic documentation in ICEGATE EDI has not been generated/ exports from non-EDI ports 9. Products manufactured or exported availing the benefit of Notification No. 32/1997 Cus. dated 01.04.1997 10. Deemed Exports 11. Products manufactured partly or wholly in a warehouse under section 65 of the Customs Act 12. Goods for which claim of duty credit is not filed in a shipping bill or bill of export in the customs automated system 13. Products manufactured or exported in discharge of EO against an AA/DFIA/Special AA issued under a duty exemption scheme of relevant FTP (<i>Yet to be included in ineligible criteria</i>) 14. Products manufactured/exported by a unit licensed as 100% EOU in terms of the provisions of FTP or by any of the units situated in FTZ/EPZ/SEZ (<i>Yet to be included in ineligible criteria</i>)