

For May/Nov25

Smart Book

Indirect tax laws

Sum-Art

SUMMARY MODULE - PART 1



CA Ramesh Soni

CHARTMASTER'S

SUM-ART

(A Summary book with ART)

on

INDIRECT TAX LAWS

For

CA | CS | CMA Final

May & Nov 2025 onwards

CA RAMESH SONI

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CHARTMASTER'S SUM-ART

On Indirect Tax Laws

For CA | CS | CMA

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CHARTMASTER's GST

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Introduction

- Taxable event under GST law is supply of goods or services or both. Hence no supply no GST.
- However, before we learn supply lets first learn what are goods and services, because only if something qualifies as goods or services, GST can be imposed on it.

Goods	Services
Means	Means
Every kind of movable property	Anything other than goods
Excludes	Excludes
<ul style="list-style-type: none"> • Money • Securities 	<ul style="list-style-type: none"> • Money • Securities
But includes	But includes
<ul style="list-style-type: none"> • actionable claim, • growing crops, grass and things attached to or forming part of the land • which are agreed to be severed before supply or under a contract of supply. 	<ul style="list-style-type: none"> • activities relating to the use of money or its conversion by cash or by any other mode,
	From
	One form, currency/denomination
	to another form, currency or denomination for which a separate consideration is charged.
	Explanation - clarified that "services" includes facilitating/arranging transactions in securities.

Circular on Priority Sector Lending Certificates (PSLCs)

Issue: Whether Priority Sector Lending Certificates (PSLCs) are outside the purview of GST and therefore not taxable?

Clarification:

- There is no exemption on trading in PSLCs
- PSLCs are goods & not securities,
- Sale of PSLC by bank is supply of goods u/s 7(1)(a) and taxable,
- Nature of supply - interstate & IGST is applicable.
- Moreover RCM is applicable on PSLCs.

Author: Having learned about goods and services, now let's, go ahead and learn about supply.

So what is supply?

- Supply is the taxable event occurrence of which results in GST being levied.
- Section 7 of the CGST act defines supply, hence only if an activity/transaction falls within the definition, GST will be levied on the activity or transaction.

Hence, let's go ahead and understand section 7 of the CGST act 2017.

Section 7: Scope of Supply

Section 7(1): For the purposes of this Act, the expression "supply" includes—

Section 7(1)(a):

- All forms of supply of goods or services or both
- such as sale, transfer, barter, exchange, licence, rental, lease or disposal
- made or agreed to be made
- for a consideration by a person
- in the course or furtherance of business;

Notification: Relaxation on sale of old and used motor vehicle held as capital assets

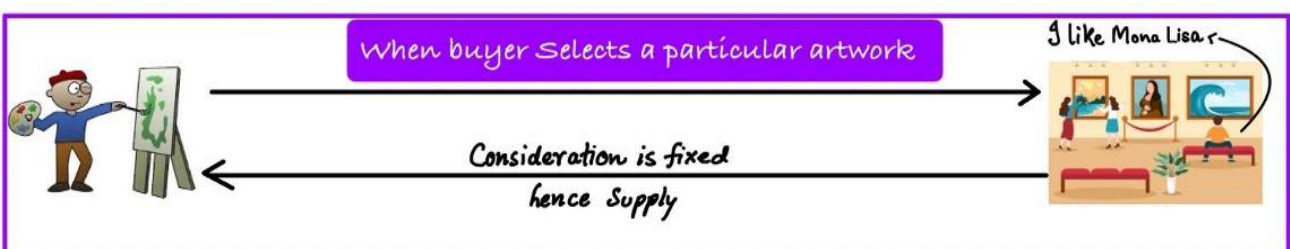
- Generally gst is payable on transaction value, however margin scheme may be availed on sale of motor vehicle held as capital asset.
- If depreciation is claimed: GST payable on selling price - WDV
- If depreciation is not claimed: GST payable on selling price - purchase price.

Circular: Art works sent by artists to galleries for exhibition

Issue: Artists give their work of art to galleries where it is exhibited. However, no consideration flows from the gallery to the artist when the art works are sent to the gallery for exhibition, is it supply?

Clarification:

- At the time of sending to art galleries for exhibition: No consideration: not a supply.
- When a buyer selects a particular art work displayed at the gallery: it's a sale for a consideration, hence supply.



Clarification on taxability of salvage/ wreck value earmarked in the claim assessment of the damage caused to the motor vehicle

Issue: Whether the insurance company is liable to pay GST on the salvage/ wreckage value earmarked in the claim assessment of the damage caused to the motor vehicle?

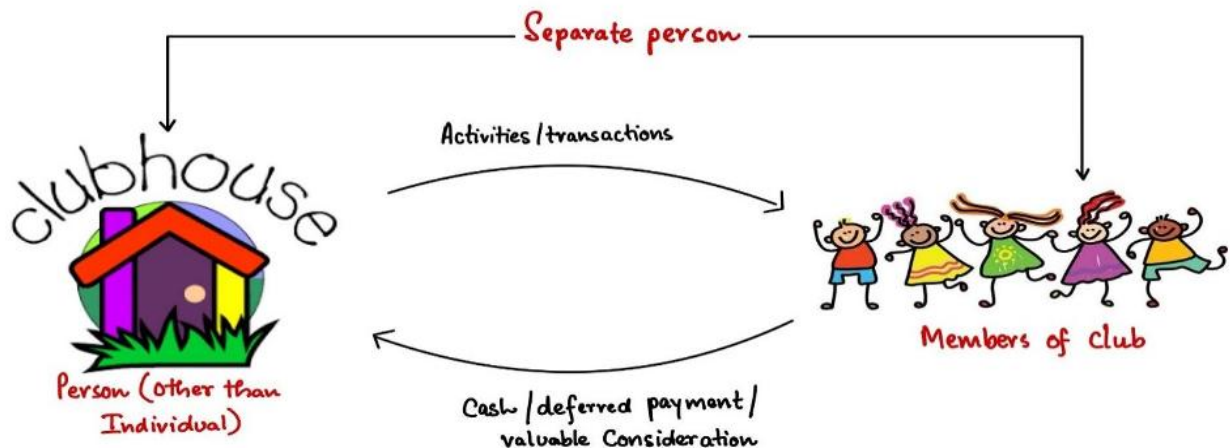
Clarification:

- If an insurance claim is settled by deducting the value of salvage/wreckage from the claim amount, the salvage remains the property of the insured, and there's no GST liability for the insurance company on this salvage value.
- If an insurance claim is settled for the full amount without deducting the value of the salvage, the salvage becomes the property of the insurance company, which must pay GST on the supply of the salvage to the buyer.

Section 7(1)(aa)

- the activities or transactions, by a **person, other than an individual,**
- to its **members or constituents** or vice-versa,
- for cash, deferred payment or other valuable consideration.

Explanation clarified that the person and its members or constituents shall be deemed to be two separate persons.



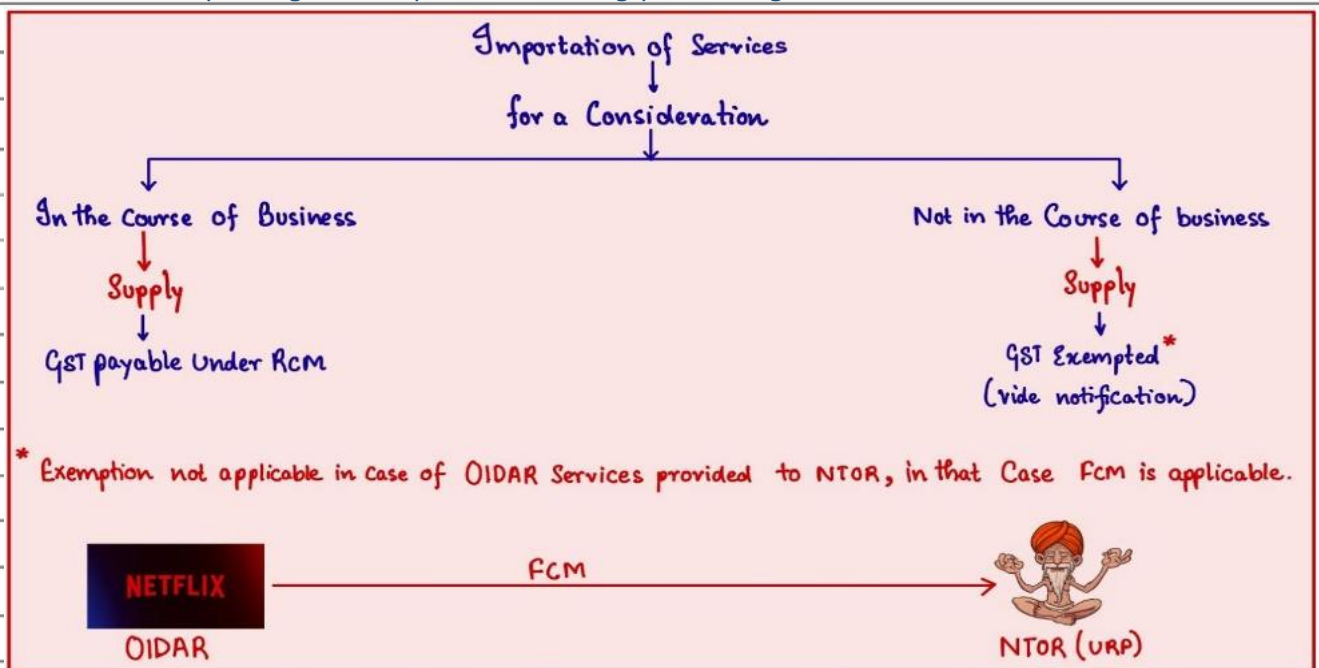
Section 7(1)(b):

Importation of services,

- For a **consideration**
- Whether or not in the course or furtherance of **business**

Additional points:

- GST is payable under RCM by recipient in case any service supplied by any person from outside India to any person in India other than NTOR.
- Also exemption has been provided vide notification for services received from outside India for non-business purpose
- However, the exemption is not available if online information database access and retrieval services (OIDAR) services are received from outside India by Non taxable online recipient (NTOR), in that case the GST is payable under FCM i.e. forward charge mechanism by the OIDAR supplier.
- Additional discussion on OIDAR shall be done in the chapter of imports under GST.
- NTOR - Any unregistered person including person registered as TDS deductor.



Section 7(1)(c): Deemed supply (Supply without consideration)

The activities specified in **Schedule I** made or agreed to be made without a consideration.

Four activities have been specified in Schedule I, Let us now analyse each of them one by one:

Para 1: Permanent transfer/disposal of business assets where ITC has been availed on such assets:

Conditions to be satisfied to qualify as supply

1. There must be disposal or transfer of business assets
2. Transfer must be on permanent basis.
3. Input tax credit has been availed on such assets.

Hence, Permanent transfer or disposal will not cover the following assets

1. Business assets on which ITC is blocked under GST.
2. Business assets though eligible for ITC, ITC has not been availed by the registered person.

Para 2: Supply of goods, services or both between related person/ distinct persons as specified in section 25, when made in the course or furtherance of business:

Exception: Gifts not exceeding Rs 50,000 in value in a FY by an employer to an employee shall not be treated as supply of goods or services or both.

Related persons - Mnemonic: SCOPE + Family + Sole agent

S: Stock/Shares: Any third person owns/controls/holds at least 25% of voting stock/ shares of both of them;

C: Control: One of them directly/indirectly controls the other, Both of them are directly/indirectly controlled by a third person, Together they directly/indirectly control a third person.

O: Officer/Director: Such persons are officers or directors of one another's businesses

P: Partners: Such persons are legally recognised partners in business

E: Employer & Employee: Such persons are employer and employee

+ Family: Spouse & Children (SC), parents, grand-parents, brothers & sisters (PGBS)-dependent.

+ Sole agent: sole agent or sole distributor or sole concessionaire, shall be deemed to be related.

Distinct persons (as specified in section 25)

Separate registration makes distinct person: A person who has obtained or is required to obtain more than one registration, whether in one state/UT or more than one state/UT shall, in respect of each such registration, be treated as distinct person for the purpose of this act.

Examples:

- Ram has an electronics shop registered in Bangalore (Karnataka) and another electronic shop in Mangalore (Karnataka) and he has obtained separate registration for both the shops. Ram shall be treated as distinct person in respect of both registrations.
- Ram, a Chartered Accountant, has a registered head office in Karnataka. He has also obtained registration in Delhi in respect of his newly opened branch office. Ram shall be treated as distinct persons in respect of registrations in Karnataka and Delhi.

Establishment in another state is a separate person: Where a person has obtained or is required to obtain registration in a state or union territory in respect of an establishment, has an establishment in another state or union territory, then such establishments shall be treated as establishments of distinct persons for the purpose of this act.

Example: Ram has electronics shop registered in Bangalore (Karnataka) and a liquor shop in Tamil Nadu. Since supply of alcoholic liquor for human consumption is a non-taxable supply i.e., exempt supply, Ram is not required to obtain registration in the state of Tamil Nadu. In such a situation the electronic shop and liquor shop shall be treated as establishment of distinct person.

Circular: Interstate movement of various modes of conveyance, carrying goods or passengers or for repairs & maintenance between distinct persons

Issue: Whether inter-state movement of various modes of conveyance, carrying goods or passengers or for repairs and maintenance, between distinct persons as specified in section 25(4) of the CGST act, 2017, [except for further supply of the same conveyance is leviable to IGST?]

Clarification:

- Inter-state movement of conveyances carrying goods/passengers/both: shall be treated 'neither as a supply of goods nor as a supply of service' & hence not leviable to IGST.
- On Repairs and maintenance or work done: applicable CGST/SGST/IGST, as the case may be, shall be leviable
- If movement is for further supply of conveyance: Treated as supply and IGST leviable.

Circular: Interstate movement of rigs, tools & spares and all goods on wheels (like cranes)

Issue: Whether the inter-state movement of various modes of conveyance, between distinct persons as specified in section 25(4) of the CGST Act, 2017, carrying goods or passengers or both; or for repairs and maintenance, [except in cases where such movement is for further supply of the same conveyance] is leviable to GST?

Clarification:

- Inter-state movement rigs, tools & spares and all goods on wheels shall be treated 'neither as a supply of goods nor as a supply of service' & therefore not be leviable to IGST.
- On Repairs and maintenance or work done: applicable CGST/SGST/IGST, shall be leviable
- If movement is for further supply of conveyance: Treated as supply and IGST leviable.

Para 3: Principal to Agent supply or vice-versa

Supply of goods

- by a principal to his agent, where the agent undertakes to supply such goods on behalf of the principal is considered as supply.
- by an agent to his principal, where the agent undertakes to receive such goods on behalf of the principal is considered as supply.

Author's comment: Points to be noted:

- Only supply of goods is covered and not supply of services.
- This section covers only transactions without consideration.
- Supply of services between principal and agent will be covered only if for a consideration.

Circular explaining scope of Principal-agent relationship in the context of Schedule I

Issue: How to determine whether the agent is an agent in terms of Schedule I?

Clarification:

- Where the invoice for further supply is being issued by the agent in his name then, any provision of goods from the principal to the agent would fall within the fold of the said entry.
- Where the invoice is issued by the agent to the customer in the name of the principal, such agent shall not fall within the ambit of Schedule I of the CGST Act.
- Similarly, where the goods being procured by the agent on behalf of the principal are invoiced in the name of the agent then further provision of the said goods by the agent to the principal would be covered by the said entry.
- In other words, the crucial point is whether or not the agent has the authority to pass or receive the title of the goods on behalf of the principal.

Para 4: Import of services by a person from a related person or from his establishments located outside India, without consideration, in the course or furtherance of business

Examples:

1. Ram Ltd. of Mumbai imports business support services from its head office located in USA. The head office has rendered such services free of cost to its branch office. Services received by Ram Ltd. will qualify as supply even though the head office has not charged anything from it.
2. Ram, a proprietor registered in Karnataka, has sought architect services from his son located in London, with respect to their new home constructed house in Karnataka. Although services have been received by Ram is without any consideration from his son - a related person, still it will not qualify as supply since the same has not been received in course or furtherance of business.

Section 7(1A): Activities or transactions to be treated as supply of goods/services

Where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods/services as referred to in Schedule II;

Schedule II is as follows:

1. Transfer of title/right in goods

- (a) any transfer of the title in goods: supply of goods;
- (b) any transfer of right in goods/of undivided share in goods without the transfer of title thereof: supply of services;
- (c) any transfer of title in goods under an agreement which stipulates that property in goods shall pass at a future date upon payment of full consideration as agreed: supply of goods.

2. Land and Building

- (a) any lease, tenancy, easement, licence to occupy land - Supply of Services
- (b) any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly - Supply of Services

Circular on Issue related to taxability of 'tenancy rights' under GST - Pagadi system

Issue: Whether Transfer of tenancy rights to a new tenant against consideration would attract GST although stamp duty & registration charges have been levied on such transfer?

Clarification:

- The activity of transfer of 'tenancy rights' is covered under the scope of supply and taxable.
- However, grant of tenancy rights in a residential dwelling for use as residence against tenancy premium or periodic rent or both to unregistered person is exempt.
- Merely because a transaction or a supply involves execution of documents which may require registration and payment of registration fee and stamp duty, would not preclude them from the scope of supply of goods and services and from payment of GST.

Issue: Whether services provided by outgoing tenant by way of surrendering the tenancy rights against consideration in the form of a portion of tenancy premium would be liable to GST?

Clarification: As regards services provided by outgoing tenant by way of surrendering the tenancy rights against consideration in the form of a portion of tenancy premium is liable to GST.

3. Any treatment or process which is applied to another person's goods: supply of services.

Circular on rethreading of tyres & Bus body building

Whether rethreading of tyres is a supply of goods or services?

Activity	SOG/SOS
Supplier buys old tyres, does the re-treading and supplies re-treaded tyres.	Supply of goods.
Supplier only does re-threading on old tyres for customers, using rubber & other material.	Supply of service.

Whether activity of bus body building, is a supply of goods or services?

Activity	Supply of Goods or Service
If the Bus body building entity build a bus by working on the chassis that is owned by him & supplies bus.	Supply of goods
Only building the body of the bus on the chassis provided by a customer and charging fabrication charges.	Fabrication of body on chassis is the principal supply, and it is a supply of service.



4. Transfer of Business Assets

(a) where goods forming part of the assets of a business are transferred/disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, such transfer or disposal is a supply of goods by the person;

(b) where, by or under the direction of a person carrying on a business, goods held or used for the purposes of the business are

- put to any private use or
- are used, or made available to any person for use, for any purpose other than a purpose of the business,
- the usage or making available of such goods is a supply of services;

(c) where any person ceases to be a taxable person,

- any goods forming part of the assets of any business carried on by him
- shall be deemed to be supplied by him in the course or furtherance of his business immediately before he ceases to be a taxable person,

unless-

- (i) Business is transferred as a going concern to another person; or
- (ii) Business is carried on by a personal representative who is deemed to be a taxable person.

5. Supply of Services

(a) Renting of immovable property

Author's comment: Land and building has already been covered under para 2, hence this para covers all other immovable property like telecommunication towers, furniture, etc.

(b) Construction of complex, building, civil structure, etc.

Except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.

(c) Temporary transfer or permitting use or enjoyment of any intellectual property right.

Author's comments: IPR means patents, trademarks, copy rights, etc.

(d) Development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of IT software

(e) Agreeing to obligation

- to refrain from an act, or
- to tolerate an act or situation, or
- to do an act

Author's comments: Refrain: stop oneself from doing something, Tolerate: allow the occurrence/practice of (something that one dislikes/disagrees with) without interference

(f) Transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration.

6. Composite Supplies

The following composite supplies shall be treated as a supply of services, namely: —

(a) **works contract** as defined in section 2(119); and

(b) **Restaurant service** [supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption)], where such supply or service is for cash, deferred payment or other valuable consideration.

Works contract means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract.

Circular: Applicability of GST on Location Charges or Preferential Location Charges (PLC) collected along with consideration for sale/transfer of residential/commercial properties

- Allowing choice of location of the apartment is integral part of supply of construction services and therefore, PLC is part of consideration charged for supply of construction services before issuance of completion certificate.

- Therefore, PLC paid along with the consideration for the construction services of residential/commercial/industrial complex forms part of composite supply where supply of construction services is the main service and PLC is naturally bundled with it and are eligible for same tax treatment as the main supply of construction service.

GST applicability on liquidated damages, compensation and penalty arising out of breach of contract or other provisions of law

Questions about the taxability of activities or transactions as a supply of service, such as agreeing to refrain from an act, tolerating an act or situation, or doing an act, have been examined under para 5(e) of Schedule II of the CGST Act.

Agreeing to refrain from an act includes non-compete agreements, builders refraining from extra construction for compensation, or industrial units pausing operations for a neighboring school's benefit.

Agreeing to tolerate an act or situation covers cases like a shopkeeper allowing a hawker to operate nearby or an RWA accepting payment for tolerating loudspeakers.

Agreeing to do an act involves scenarios like an industrial unit installing zero-emission equipment at the request and cost of a neighboring RWA, even without a legal requirement.

The description "agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act" was intended to cover services such as described above. However, over the years doubts have persisted regarding various transactions being classified under the said description.

Some of the important examples of such cases are Service Tax/GST demands on -

- (i) Liquidated damages paid for breach of contract;
- (ii) Compensation given to previous allottees of coal blocks for cancellation of their licenses pursuant to Supreme Court Order;
- (iii) Cheque dishonor fine/penalty charged by a power distribution company from the customers;
- (iv) Penalty paid by a mining company to State Government for unaccounted stock of river bed material;
- (v) Bond amount recovered from an employee leaving the employment before the agreed period;
- (vi) Late payment charges collected by any service provider for late payment of bills;
- (vii) Fixed charges collected by a power generating company from State Electricity Boards (SEBs) or by SEBs/DISCOMs from individual customer for supply of electricity;
- (viii) Cancellation charges recovered by railways for cancellation of tickets, etc.

A perusal of the entry at serial 5(e) of Schedule II would reveal that it comprises the aforementioned three different sets of activities viz. (a) the obligation to refrain from an act, (b) obligation to tolerate an act or a situation and (c) obligation to do an act.

Above three activities must comply with the following conditions:

1. There must be an expressed or implied agreement or contract must exist
2. Consideration must flow in return to this contract/agreement

Taxability of these transactions is discussed in greater detail in the following paragraphs.

Liquidated Damages

- Liquidated damages are payments for ensuring contract performance, not for tolerating breaches.
- They compensate for loss due to contract breach but are not a remedy or desired outcome of the contract.
- Such damages are not considered a supply and are not taxable, as they merely compensate the aggrieved party without involving an agreement to refrain from or tolerate an act.

Examples of such cases are:

- (1) damages resulting from damage to property, negligence, piracy, unauthorized use of trade name, copyright,
- (2) penalty stipulated in a contract for delayed construction of houses,
- (3) forfeiture of earnest money by a seller in case of breach of 'an agreement to sell' an immovable property by the buyer or by Government or local authority in the event of a successful bidder failing to act after winning the bid, for allotment of natural resources.

On the contrary, consider the following examples:

- (1) A contract may provide that payment by the recipient of goods or services shall be made before a certain date and failure to make payment by the due date shall attract late fee or penalty.
- (2) A contract for transport of passengers may stipulate that the ticket amount shall be partly or wholly forfeited if the passenger does not show up.
- (3) A contract for package tour may stipulate forfeiture of security deposit in the event of cancellation of tour by the customer.
- (4) A contract for lease of movable or immovable property may stipulate that the lessee shall not terminate the lease before a certain period and if he does so he will have to pay certain amount as early termination fee or penalty.
- (5) Some banks similarly charge pre- payment penalty if the borrower wishes to repay the loan before the maturity of the loan period.

The above payments, even though they may be referred to as fine or penalty, are actually payments that amount to consideration for supply, and are subject to GST, in cases where such supply is taxable.

Since these supplies are ancillary to the principal supply for which the contract is signed, they shall be eligible to be assessed as the principal supply. Naturally, such payments will not be taxable if the principal supply is exempt.

Cheque dishonour fine/ penalty

- The supplier wants payment to be received on time & does not want cheque to be dishonoured.
- Fines or penalties for dishonoured cheques are imposed to penalize and deter such acts, not to tolerate them.
- Therefore, **cheque dishonour fines or penalties are not considered payment for any service and are not taxable.**

Penalty imposed for violation of laws

- Penalties for violations such as traffic, pollution, or mining laws are not considered payment for any supply and are not taxable.
- These fines deter violations, not tolerate them, and there is no agreement allowing violations in exchange for fines.
- Consequently, fines imposed by the government or local authorities for breaking laws, by-laws, rules, or regulations are **not subject to tax.**

Forfeiture of salary or payment of bond amount in the event of the employee leaving the employment before the minimum agreed period

- Forfeiture of salary or bond recovery for premature quitting is to discourage non-serious candidates from employment.
- These amounts are penalties, not consideration for tolerating premature quitting.
- The employee receives nothing in return for these payments.
- Thus, **these amounts are not taxable as consideration** for tolerating an act or situation

Late payment surcharge or fee

- Accepting late payments with interest/late fees is a service naturally bundled with the main supply (e.g., electricity, water, telecom).
- This facility is common and provided by most service providers worldwide.
- Even if considered as tolerating late payment, it is ancillary to the principal supply and should be assessed as such.
- **It should be taxed at the same rate as the main supply** (e.g., electricity, water, telecom, gas).
- However, this does not apply to cheque dishonour fines, which were discussed earlier.

Fixed charges for power

- Electricity prices include a minimum fixed charge and a variable per unit charge.
- Minimum fixed charges remain constant regardless of electricity consumption.
- These charges are not for tolerating under-consumption; both fixed and variable charges are for the sale of electricity.
- **Electricity is exempt from GST, so these charges are not taxable**

Cancellation charges

- Cancellation fees are commonly charged by service providers (e.g., hotels, travel, transportation) for the costs involved in making and canceling arrangements.
- These fees are part of a composite supply of services that includes booking, transportation facilities, and basic necessities.
- Allowing cancellations with fees is naturally bundled with the principal supply of services and should be assessed as such.
- **GST on cancellation charges is assessed at the same rate as the main service**, such as air or rail transport.

Forfeiture of earnest money

- Forfeiture of earnest money in property sales or government bids is simply a flow of money, with no return benefit to the buyer or bidder.
- These forfeitures are penalties to compensate for losses and discourage non-serious buyers or bidders, not for tolerating contract breaches.
- **Such payments are not considered as consideration for any supply and are not taxable**

Section 7(2): Notwithstanding anything contained in sub-section (1),

(a) Activities or transactions specified in Schedule III or

(b) Such activities or transactions undertaken by the CG, SG, or any local authority in which they are engaged as public authorities,

- as may be **notified** by the Government
- On the recommendations of the Council

shall be treated neither as a supply of goods nor a supply of services.

Section 7(2)(a) read with Schedule III:

Activities/transactions shall be treated as neither supply of goods nor supply of services

Para 1: Services by an employee to the employer in the course of or in relation to his employment

Clarification on perquisite provided by the employer to its employees in terms of contractual agreement

Issue: Whether various perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are liable for GST?

Clarification: Any perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer & the employee are in lieu of the services provided by employee to the employer in relation to his employment & will not be subjected to GST.

Clarification on the taxability of ESOP/ESPP/RSU provided by a company to its employees through its overseas holding company

Issue: whether such transfer of shares/ securities by the foreign holding company directly to the employees of the Indian subsidiary company and subsequent re-imburement of the cost of such shares/ securities by the Indian subsidiary company to the foreign holding company can be considered as import of financial services by the Indian subsidiary company from the foreign holding company and whether the same can be considered as liable to GST in the hands of Indian subsidiary company on reverse charge basis.

Clarification:

- Indian companies can offer their employees shares/securities from their foreign holding companies as part of their compensation package.
- When employees of the Indian subsidiary choose this option, the shares are given directly by the foreign holding company, and the Indian subsidiary reimburses the cost of such securities to the holding company.
- For plans like Employee Stock Purchase Plan (ESPP) or Employee Stock Option Plan (ESOP) or Restricted Stock Unit (RSU), GST is not applicable on the compensation paid to the employees by the employer since trading shares/securities is neither goods nor services.
- ESOP/ESPP/RSU is part of the employee's remuneration under employment terms, covered under Schedule III Para 1.
- Reimbursement for the transfer of securities done by the Indian subsidiary to the foreign holding company on a cost-to-cost basis is not treated as import of services and is not liable for GST.
- If the foreign holding company charges an extra fee or commission for issuing ESOP/ESPP/RSU, it is seen as a service for facilitating the transaction. GST must be paid by the domestic subsidiary on a reverse charge basis for this service.

Para 2: Services by any court/Tribunal established under any law for the time being in force

Author's comment: Tribunal means the one established under any law, an Arbitral tribunal is a private tribunal constituted by parties for settlement of any dispute between themselves, services of Arbitral tribunal are services and subject to GST.

Court includes: District court, high court and Supreme Court.

Clarification on levy of GST on fees charged by Consumer Disputes Redressal Commission.

Issue: Whether GST is leviable on fees/penalty/any other amount charged by Consumer Disputes Redressal Commissions (CDRCs)?

Clarification: CDRCs (National/ State/ District) may not be tribunals literally as they may not have been set up directly under Article 323B of the Constitution. However, they are clothed with the characteristics of a Tribunal. Consequently, fee paid by litigants while registering complaints to said Commissions are not leviable to GST. Any penalty in cash imposed by or amount paid to these Commissions will also not attract GST.

Crux: CDRCs have the characteristics of a Tribunal, Consequently No GST on fees/penalty/any other amount charged by CDRCs.

Para 3: Services by Government officials (name given by author).

(a) Functions performed by the

- Members of Parliament, Members of State Legislature,
- Members of Panchayats, Members of Municipalities and Members of other local authorities;

(b) Duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or

Example: President of India, Vice President of India, Prime Minister of India, Chief Justice of India, Speaker of the Lok Sabha, Chief Election Commissioner, Comptroller and Auditor General of India, Attorney General of India, in that capacity.

(c) Duties performed by

- any person as a Chairperson or a Member or a Director
- in a body established by the CG/SG/LA and who is not deemed as an employee before the commencement of this clause.

Example: Chairman of Telecom regulatory authority of India (TRAI), Members and directors of finance commission who are not employees.

Para 4: Services of funeral, burial, crematorium/mortuary including transportation of deceased.

Para 5: Sale of land and, subject to clause (b) of para 5 of schedule II, sale of building

Particulars	Supply of Goods or Service	GST Liability
Sale of Land	Neither supply of goods nor service - Schedule III	No GST

Particulars	Supply of Goods or Service	GST Liability
Sale of building - Entire consideration received after issuance of completion certificate or first occupancy (whichever is earlier)	Neither supply of goods nor service - Schedule III	NO GST
Sale of building - where part or full consideration received before issuance of completion certificate/first occupancy (whichever is earlier)	Supply of service (schedule II- Para 5(b))	Liable to GST - Supply of service

Clarifications on applicability of GST on sale of land after levelling, laying down of drainage lines etc.

Issue: Whether GST is applicable on sale of land after levelling, laying down of drainage lines etc

Clarification:

- 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.
- It is clarified that sale of such developed land is also sale of land and is covered by Sr. No. 5 of Schedule III and accordingly does not attract GST.
- However, it may be noted that any service provided for development of land, like levelling, laying of drainage lines (as may be received by developers) shall attract GST.

Crux: Sale of developed land is also sale of land and is covered by Para 5 of Schedule III & accordingly, does not attract GST.

Para 6: Actionable claims, other than specified actionable claims.

Actionable claims are goods, supply of actionable claims is supply of goods, however GST shall be leviable only specified actionable claims.

Specified actionable claim means the actionable claim involved in or by way of—

betting;	gambling;	lottery;
casinos;	horse racing;	online money gaming;

Para 7: Supply of goods from a place in the non-taxable territory (NTT) to another place in the non-taxable territory without such goods entering into India. (Merchant trading)

Example: Ram purchased goods from China and sold it to Shyam in USA without bringing the goods in India. This transaction is neither supply of goods nor supply of services.

Para 8: High seas sales or Bond to bond transfer (In Bond sales)

(a) Supply of warehoused goods to any person before clearance for home consumption;

Example: Ram imported some goods in India but kept the goods in custom bonded warehouse without clearing it for home consumption. In the meantime, Ram sold these goods to Shyam while they were in warehouse. This transaction between Ram & Shyam is neither supply of goods nor supply of services.

(b) Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption.

Examples: Mr. P of India imported some goods from Japan. While the goods were in high seas, Mr. P sold the goods to Mr. Q in India by way of endorsement of documents of title of goods. This transaction between Mr. P and Mr. Q is neither supply of goods nor supply of services.

Notified services under section 7(2)(b)

- Services by way of any activity in relation to a function entrusted to a Panchayat under article 243G of the Constitution or to a Municipality under article 243W of the Constitution.
- Services 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.

Circular on applicability of GST on all other licenses and privileges by the government

Issue: Whether in case of all other licenses and privileges for a fee in other situations also no GST is payable?

Clarification:

- Services provided by the Government to business entities including by way of grant of privileges, licences, mining rights, natural resources such as spectrum etc. against payment of consideration in the form of fee, royalty etc. are taxable under GST.
- Tax is required to be paid by the business entities on such services under reverse charge.

Crux:

- Supply of service by way of grant of Alcoholic liquor license by the SG is out of scope of supply
- any other services by way of grant of mining right, natural resources against fees/royalty are taxable.

Schedule III - **Mnemonic to remember: BENCH FLAG**

B - Bond to Bond transfer

E - Services by an employee to the employer in the course of or in relation to his employment

N - Supply of goods from a non-taxable territory (NTT) to NTT without entering India

C - Services by any court/Tribunal established under any law for the time being in force

H - High seas sale

F - Services of funeral, burial, crematorium/mortuary including transportation of deceased

L - Sale of land and, subject to clause (b) of para 5 of schedule II, sale of building

A - Actionable claims, other than specified actionable claims.

G - Services by Government officials [MP MLA MLC, Constitutional post holders,

Section 7(3): Power of Government to notify transaction as SOG and not SOS/vice versa

Subject to sub-sections (1), (1A) and (2)

- The Government may, on the recommendations of the Council, specify, by notification
- The transactions that are to be treated as —
 - (a) a supply of goods and not as a supply of services; or
 - (b) A supply of services and not as a supply of goods.

Section 8 - Tax liability on Composite & Mixed Supply

Composite supply [Section 2(30)]

Composite supply means a supply made by a taxable person to a recipient and:

- comprises two/more taxable supplies of goods/services/both, or any combination thereof.
- are naturally bundled and supplied in conjunction with each other, in the ordinary course of business
- one of which is a principal supply.

Section 8(a): Taxability of composite supply

A composite supply comprising two or more supplies, one of which is a principal supply,
 - shall be treated as a supply of such principal supply.

Mixed supply [Section 2(74)]

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.

Section 8(b): Taxability of mixed Supply

A mixed supply comprising of

- two or more supplies
- shall be treated as supply of that particular supply which attracts highest rate of tax.

Clarification on taxability of supply of food and beverages at cinema halls.

Issue: Whether supply of food and beverages at cinema halls is taxable as restaurant service which attract GST at the rate of 5% or not.

Clarification:

- Supply of food or beverages in a cinema hall is taxable as 'restaurant service' as long as:
 - (a) the food or beverages are supplied by way of or as part of a service, and
 - (b) supplied independent of the cinema exhibition service.
- Further clarified that where the sale of cinema ticket and supply of food and beverages are clubbed together, and such bundled supply satisfies the test of composite supply, the entire supply will attract GST at the rate applicable to service of exhibition of cinema, the principal supply.

Crux:

- If food & beverages at cinema halls are supplied independently: taxable as restaurant service
- but if sale of cinema ticket and supply of food & beverage are clubbed & satisfying the test of composite supply, then rate of principal supply i.e. exhibition of cinema will apply.

Clarification on servicing of cars involving both supply of goods (spare parts) & services (labour)

Issue: Servicing of cars involving both supply of goods (spare parts) & services (labour), where the value of goods and services are shown separately, to be treated under GST?

Clarification: Where a supply involves supply of both goods & services & the value of such goods and services supplied are shown separately, the goods & services would be liable to tax at the rates as applicable to such goods & services separately.

Clarification on taxability of printing contracts

Issue: whether supply of books, pamphlets, brochures, envelopes, annual reports, leaflets, cartons, boxes etc., printed with design, logo, name, address or other contents supplied by the recipient of such supplies, would constitute supply of goods or supply of services.

Clarification:

Activity	Supply of Goods or Service
In case of printing of books, pamphlets, brochures, annual reports, where only content is supplied by the publisher/ person who owns the usage rights to the intangible inputs while the physical inputs including paper used for printing belong to printer	Supply of printing [of the content supplied by the recipient of supply] is the principal supply and therefore such supplies would constitute supply of service.
In case of supply of printed envelopes, letter cards, printed boxes, tissues, napkins, wall paper etc. by the printer using its physical inputs including paper to print the design, logo etc. (supplied by the recipient of goods).	Predominant supply is supply of goods and the supply of printing of the content is ancillary to the principal supply of goods and therefore such supplies would constitute supply of goods

Clarification on taxability of shares held in a subsidiary company by holding company

Issue: Whether the activity of holding shares by a holding company of the subsidiary company will be treated as a supply of service or not and whether the same will attract GST or not.

Clarification:

- Securities held by the holding company in the subsidiary company are neither goods nor services.
- Further, purchase or sale of shares or securities, in itself is neither a supply of goods nor a supply of 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 specific entry 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.

Crux: The activity of holding of shares of subsidiary co. by the holding co. per se cannot be treated as a supply of services by a holding co. to the said subsidiary co. and cannot be taxed.

Clarification on various doubts related to treatment of sales promotion schemes under GST

There are several promotional schemes which are offered by taxable persons to increase sales volume and to attract new customers for their products.

Taxability of two such schemes has been clarified as under:

A. Free samples and gifts:

- Free samples (without consideration) are not treated as "supply" under GST, except for activities in Schedule I of the CGST Act.
- ITC is not available for the distribution of gifts/free samples if it doesn't fall within the scope of supply.
- If it falls within the scope of supply, ITC is available.

B. Buy one get one free offer:

- Buy One, Get One Free 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 either composite or mixed supply.
- ITC shall be available to the supplier for the inputs, input services and capital goods used in relation to supply of goods or services or both as part of such offers.

Clarification on Taxability of Cost Petroleum

Production Sharing Contract

- When an oil exploration & production contractor gets a license/lease to explore/mine the petroleum crude and/or natural gas from the Government, it enters into a Production Sharing Contract (PSC) with the Government.
- The relationship of the contractors with the Government is not that of partners but that of licensor/lessor and licensee/lessee.
- As per these PSCs, when a contractor discovers oil/gas, he is at first entitled to recover the contract cost [expenses incurred in exploration, development, production and payment of royalty] involved in the extraction of oil/gas from the total sale proceeds and thereafter, he is expected to share with the Government the profit from his venture [known as profit petroleum], as per the PSC.
- The value of petroleum which the contractor is entitled to take in a year for recovery of the contract costs is called the **cost petroleum**.
- Further, the total value of petroleum produced and saved from the contract area in a particular period, as reduced by cost petroleum, is called the **profit petroleum**.
- The Government's share of profit petroleum which is the consideration paid by the contractor to the Central Government for the services of grant of license/lease to explore/mine petroleum crude and/natural gas is **exempt from GST**.
- The cost petroleum is not a consideration received by the contractor for the services provided to Government and thus not taxable per se. The reason for the same is that the contractors carry exploration and production of petroleum for themselves and not as a service to Government.
- They had acquired the right to explore, exploit and sell petroleum in lieu of royalty and a share in profit petroleum.

Crux:

- Government grants license/lease to explore/mine the petroleum crude and/or natural gas in consideration for profit petroleum, which is exempted from GST.
- The cost petroleum is not a consideration received by the contractor for the services provided to Government and thus not taxable.

Circular: Levy of GST on the service of display of name/placing of name plates of the donor in the premises of charitable organizations receiving donation/gifts from individual donors.

Issue: whether GST is applicable on donations or gifts received from individual donors by charitable organisations involved in advancement of religion, spirituality or yoga which is acknowledged by them by placing name plates in the name of the individual donor.

About donations to Charitable organisation: Individual donors provide financial help in the form of donation or gift to institutions such as religious institutions, charitable organisations, schools, hospitals, orphanages, old age homes etc. The recipient institutions place a name plate or similar such acknowledgement in their premises to express the gratitude.

When the name of the donor is displayed in recipient institution premises, in such a manner, which can be said to be an expression of gratitude and public recognition of donor's act of philanthropy (generosity) and is not aimed at giving publicity to the donor in such manner that it would be an advertising or promotion of his business, then it can be said that there is no supply of service for a consideration (in the form of donation). There is no obligation (quid pro quo) on part of recipient of the donation or gift to do anything (supply a service). Therefore, there is no GST liability on such consideration.

Hence, where all the three conditions are satisfied 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,
- GST is not leviable.

All other cases - Where the name plate is basically for promoting business of donor - Activity will fall in supply and GST is leviable.

Clarification on Joint Venture (JV) - taxable services provided by the members of JV to the JV & vice versa & inter se between the members of the JV-reg

JV being an unincorporated temporary association constituted for the limited purpose of carrying out a specified project within a time frame. Whether a cash call is merely a transaction in money

and hence not in the nature of consideration for taxable service, would depend on the terms of the Joint Venture Agreement, which may vary from case to case.

'Cash calls' are raised by an operating member of the joint venture on other members in proportion to their participating interests in the joint venture (unincorporated) to meet the expenditure on the operations to be carried out as per the approved work Programme and budget. Let us understand the taxability of cash calls with the help of following examples:

Example: 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.

In above case, cash calls will not be subject to GST since the operating member is not carrying out an activity for another for consideration. Here, the money paid for purchase of machinery is merely in the nature of capital contribution and is therefore a transaction in money.

Example: 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.

In above case, the operating member uses its own machinery and is therefore providing 'service' within the scope of 'supply' because here operating member is recovering the cost appropriated towards machinery & services from other JV members in their participating interest ratio.

Clarification on liability to pay GST in respect of warranty replacement of parts and repair services during warranty period. (Circular applicable for Jan 25 & May 25 attempt onwards)

Issue 1: When an original equipment manufacturer (OEM) provides warranty replacements or repairs without charging the customer during the warranty period, is GST payable?

Clarification:

- The original price of goods includes the cost of potential replacements or repairs during the warranty period, and GST has already been paid on this value.
- Therefore, no further GST is chargeable on warranty replacements or repairs if no additional consideration is charged.
- If additional charges are made for parts or services, GST is payable on that extra amount.

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?

Clarification:

- If a distributor provides warranty services on behalf of the manufacturer without charging the customer, no GST is payable by the distributor.

- However, if the distributor charges additional consideration for any part or service, GST will be payable on that additional amount.

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?

Clarification:

There can be 4 instances as discussed below:-

- (a) Distributor uses own stock or buys parts and charges the manufacturer. GST is payable by the distributor on this supply to the manufacturer.
- (b) Distributor requests parts from the manufacturer for replacement without separate charges. No GST is payable on this replacement.
- (c) Distributor uses stock received from the manufacturer for replacements, and the manufacturer issues a credit note. Tax liability is adjusted by the manufacturer.
- (d) Distributor uses own stock, then requests replenishment from the manufacturer via a delivery challan without separate charges. No GST is payable on this replenishment.

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?

Clarification: This is considered a supply of service by the distributor to the manufacturer, making the manufacturer the recipient of the service. Therefore, GST is payable on this service provided by the distributor.

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:

- If the extended warranty is agreed upon at the time of the original supply, it becomes part of the composite supply (with the goods) and GST is payable accordingly.
- If the extended warranty is provided by someone other than the goods supplier, it's treated as a separate supply of services and is taxable.
- If the extended warranty is agreed upon after the original supply, it's treated as a distinct supply of services, and GST liability applies to the supplier of the extended warranty services.

Note: The provisions pertaining to availability of input tax credit shall be discussed in the chapter of ITC Input Tax Credit.

India: Section 2(56) of CGST act

India means

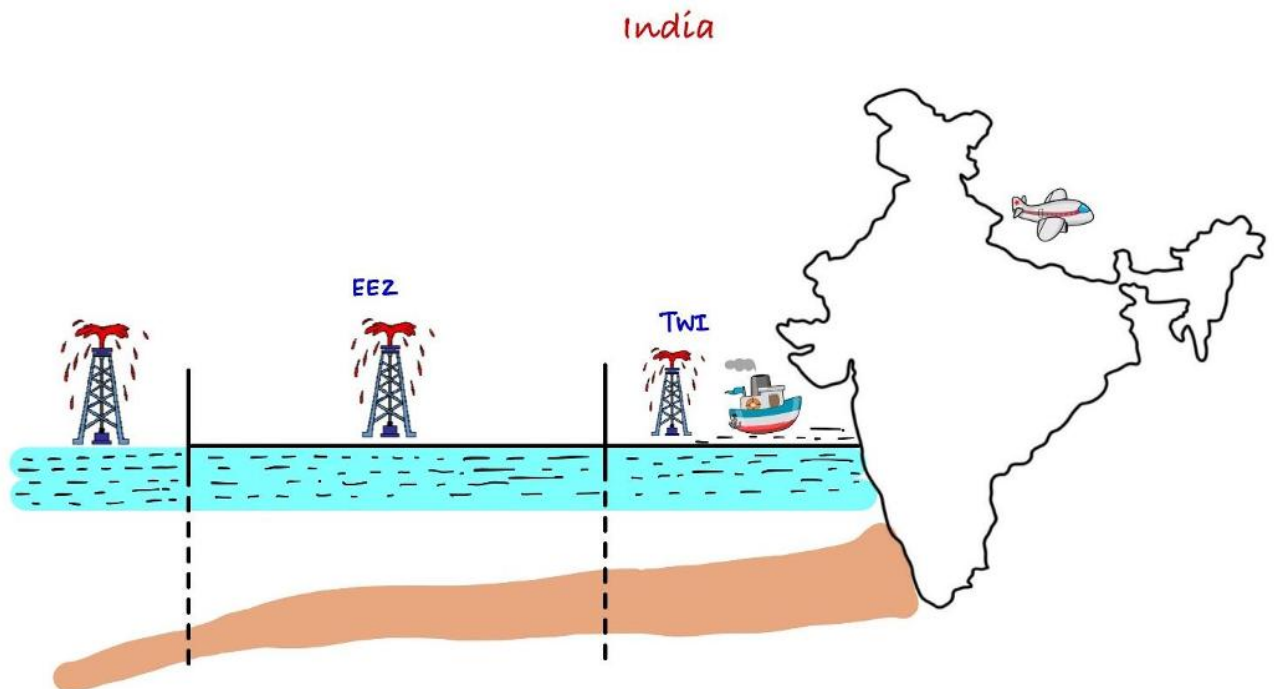
- the territory of India as referred to in article 1 of the Constitution,
- its territorial waters,
- seabed and sub-soil underlying such waters,
- continental shelf,
- exclusive economic zone or any other maritime zone as referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, and
- the air space above its territory and territorial waters

State: State includes a Union territory with Legislature

Union territory

Union territory means the territory of –

- (a) the Andaman and Nicobar Islands;
- (b) Lakshadweep;
- (c) Dadra and Nagar Haveli and Daman and Diu;
- (d) Ladakh
- (e) Chandigarh; and
- (f) other territory. (EEZ)



Section 9 of IGST act: Supplies in territorial waters

Notwithstanding anything contained in this Act, —

(a)	where the location of the supplier is in the territorial waters,	the location of such supplier;	shall, for the purposes of this Act, be deemed to be in the coastal State or UT where the nearest point of the appropriate baseline is located.
(b)	where the place of supply is in the territorial waters,	the place of supply,	

Section 7 of IGST act: Inter-State supply

(1)	Supply of goods between different states/UTS
	Subject to the provisions of section 10, supply of goods, where the location of the supplier and the place of supply are in— (a) two different States; (b) two different Union territories; or (c) a State and a Union territory, shall be treated as a supply of goods in the course of inter-State trade or commerce.
(2)	Import of goods be treated as inter-state
	Supply of goods imported into the territory of India, till they cross the customs frontiers of India, shall be treated to be a supply of goods in the course of inter-State trade/commerce.
(3)	Supply of services between different states/UTS be treated as inter-state
	Subject to the provisions of section 12, supply of services, where the location of the supplier and the place of supply are in— (a) two different States; (b) two different Union territories; or (c) a State and a Union territory, shall be treated as a supply of services in the course of inter-State trade or commerce.
(4)	Import of services be treated as be treated as inter-state
	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.
(5)	Following to be treated as Inter-state supply
	Supply of goods or services or both, — (a) when the supplier is located in India and the place of supply is outside India; (b) to or by a SEZ developer or a SEZ unit; or (c) in the taxable territory, not being an intra-State supply and not covered elsewhere in this section, shall be treated to be a supply in the course of inter-State trade or commerce.

Section 8 of IGST act: Intra-State supply

(1)	Supply of goods within same state/UT- intrastate supply
	<p>Subject to the provisions of section 10,</p> <ul style="list-style-type: none"> supply of goods where the LOS and the POS of goods are in the same State or same UT shall be treated as intra-State supply: <p>Proviso: the following supply of goods shall not be treated as intra-State supply, namely:</p> <p>(i) supply of goods to or by a SEZ developer or a SEZ unit;</p> <p>(ii) goods imported into the territory of India till they cross the customs frontiers of India; or</p> <p>(iii) supplies made to a tourist referred to in section 15.</p>
(2)	Supply of services within same state/UT- intrastate supply
	<p>Subject to the provisions of section 12,</p> <ul style="list-style-type: none"> supply of services where the LOS and the POS of services are in the same State or same UT shall be treated as intra-State supply: <p>Proviso: the intra-State supply of services shall not include supply of services to or by a SEZ developer/a SEZ unit.</p>

Explanation 1. — For the purposes of this Act, where a person has, —

- (i) an establishment in India and any other establishment outside India;
- (ii) an establishment in a State or UT and any other establishment outside that State or UT; or
- (iii) an establishment in a State or UT and any other establishment registered within that State/UT,

then such establishments shall be treated as establishments of distinct persons.

Explanation 2. — A person carrying on a business through a branch/an agency/a representational office in any territory shall be treated as having an establishment in that territory.

Circular: Services of short-term accommodation, conferencing, banqueting etc. provided to a SEZ developer/SEZ unit - whether to be treated as inter-State or intra-State supply

Issue: Services of short-term accommodation, conferencing, banqueting etc., provided to a SEZ developer or a SEZ unit shall be treated as Intrastate or Interstate supply.

Clarification & Analysis:

- As per section 7(5)(b) of the IGST Act, the supply of goods or services or both to a SEZ developer/unit shall be treated to be a supply in the course of inter-State trade or commerce.
- However, as per section 12(3)(c) of the IGST Act, the place of supply of services by way of accommodation in any immovable property for organising any functions shall be the location

at which the immovable property is located. Thus, in such cases, if the location of the supplier and the place of supply is in the same State/ UT, it would be treated as an intra-State.

- In the instant case, section 7(5)(b) of the IGST Act is a specific provision relating to supplies of goods or services or both made to a SEZ developer or a SEZ unit, which states that such supplies shall be treated as inter-State supplies.
- It is therefore, clarified that services of short-term accommodation, conferencing, banqueting etc., provided to a SEZ developer or a SEZ unit shall be treated as an inter-State supply.

Export of goods, means taking goods out of India to a place outside India;

Export of services means the supply of any service when, —

- (i) the supplier of service is located in India;
- (ii) the recipient of service is located outside India;
- (iii) the place of supply of service is outside India;
- (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India; and
- (v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8;

Section 16: Zero rated supply

(1)	Zero rated supply (ZRS) means export and supply to SEZ
	ZRS means any of the following supplies of goods or services or both, namely: (a) export of goods or services or both; or (b) supply of goods or services or both for authorised operations to a SEZ developer/unit.
(2)	ITC may be availed for making ZRS, even if such supply is an exempt supply
	Subject to the provisions of section 17(5) of the CGST Act, credit of input tax may be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply.
(3)	ZRS under bond/LUT and don't pay IGST
	A registered person making zero rated supply shall be eligible to claim refund of unutilised ITC on supply of goods or services or both, without payment of integrated tax, under bond or Letter of Undertaking, in accordance with the provisions of section 54 of the CGST Act or the rules made thereunder, subject to such conditions, safeguards and procedure as may be prescribed:

Provided that

- the registered person making ZRS of goods shall, in case of non-realisation of sale proceeds, be liable to deposit the refund so received under this sub-section along with the applicable interest u/s 50 of the CGST Act
- within 30 days after the expiry of the time limit prescribed under the FEMA, 1999 for receipt of foreign exchange remittances, in such manner as may be prescribed.

(4) ZRS on IGST payment

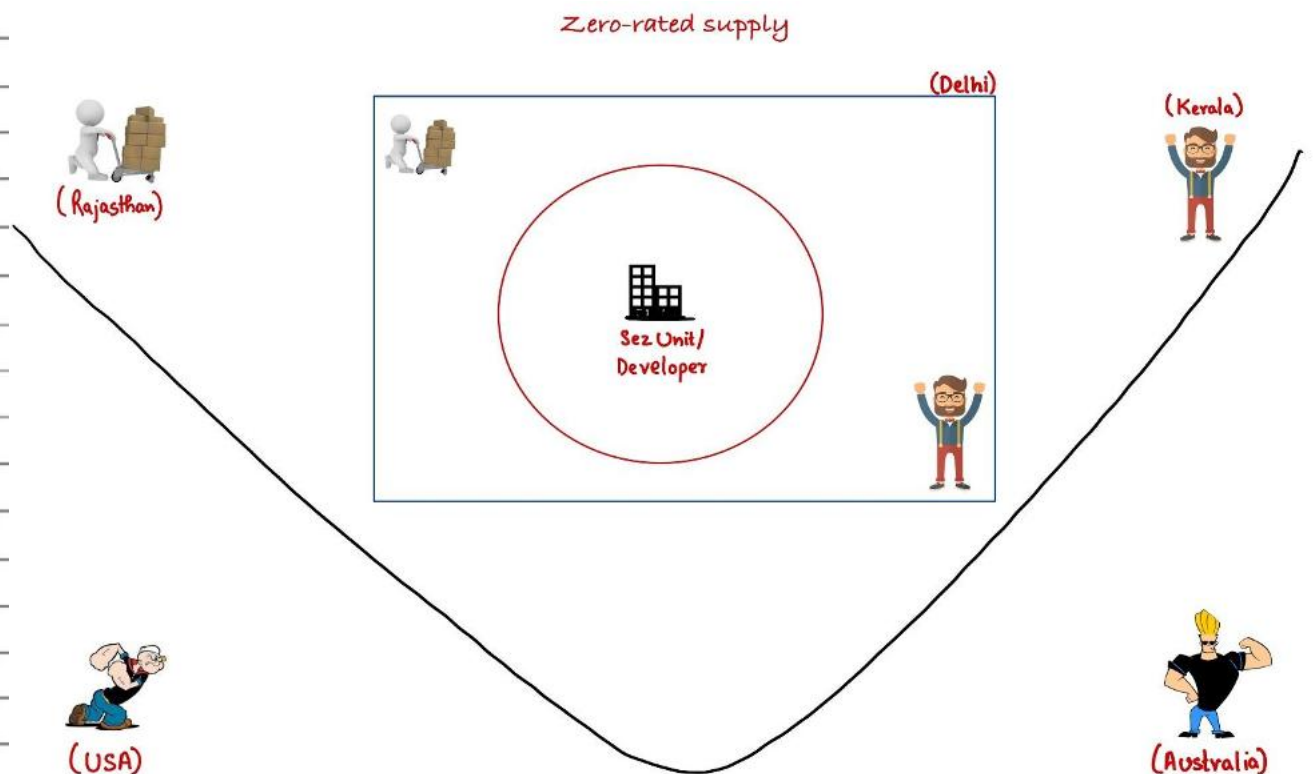
The Government may, on the recommendation of the Council, and subject to such conditions, safeguards and procedures, by **notification**, specify-

(i) a class of persons who may make zero rated supply on payment of integrated tax and claim refund of the tax so paid;

(ii) a class of goods or services which may be exported on payment of integrated tax and the supplier of such goods or services may claim the refund of tax so paid.

Notification: Following goods/services/suppliers have been notified under Section 16(4):

- (i) Class of goods or services which may be exported on payment of IGST & Claim refund of IGST: all goods/services (except specified goods - list of goods not required for exams); and
- (ii) Class of persons who may make supply of goods or services (except specified goods) to such Developer or a unit in SEZ for authorised operations on payment of IGST & claim refund of IGST paid: all suppliers to a Developer or a unit in SEZ undertaking authorised operations.
- Specified goods: Tobacco, Pan masala containing tobacco, essential oil of peppermint, etc.



Section 9 of the CGST act: Levy & collection of CGST - The Charging section

Section 9(1): CGST levied on Intra-state supply of g/s/b (except AL)

Subject to the provisions of sub-section (2),

- there shall be levied a tax called the CGST
- on all intra-State supplies
- of goods or services or both,
- except on the supply of alcoholic liquor for human consumption,
- on the value determined under section 15
- at such rates, not exceeding 20%,
- as may be notified by the Government on the recommendations of the Council (NG-RC)
- collected in such manner as may be prescribed
- and shall be paid by the taxable person.

Notification no. 1/2017, 11/2017-Central Tax (Rate): Notifying the rates applicable.

Section 9(2): CGST on 5 specified petro products (HPMAN)

The central tax on the supply of [Mnemonic - HPMAN]

- High speed diesel,
- Petroleum crude,
- Motor spirit (commonly known as petrol),
- Aviation turbine fuel
- Natural gas and

shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council (NG-RC).

Section 9(3): Reverse charge on notified goods & services

The Government may, on the recommendations of the Council, by notification,

- specify categories of supply of goods or services or both,
- the tax on which shall be paid on RCM by the recipient of such g/s/b and
- all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

Notification: Notified categories of goods on which 100% GST to be paid by recipient:

SN	Description of supply of goods	Supplier of goods	Recipient (liable to Pay)
1	Cashew nuts, not shelled or peeled	Agriculturist	Any Registered Person (RP)
2	Bidi wrapper leaves (tendu)	Agriculturist	Any RP
3	Tobacco leaves	Agriculturist	Any RP
3A	Following essential oils other than those of citrus fruit namely: - a) Of peppermint; b) Of other mints: <ul style="list-style-type: none"> • Spearmint oil (exmentha spicata), • Water mint oil (exmentha aquatic), • Horsemint oil (exmentha sylvestries), • Bergament oil (exmentha citrate), • Mentha arvensis. 	Any Unregistered Person	Any RP
4	Silk yarn	Any person who: Manufactures silk yarn from raw silk or Silk worm cocoons for supply of silk yarn	Any RP
4A.	Raw cotton	Agriculturist	Any RP
5	Supply of lottery	SG/UT/LA	Lottery distributor or selling agent
6	Used vehicles, seized & confiscated goods, old & used goods, waste & scrap	CG excluding Ministry of Railways (Indian Railways), SG/UT/LA	Any RP
7	Priority Sector Lending Certificate (PSLC)	Any registered person	Any RP
8	Metal scrap	Any Unregistered Person	Any RP

Author's comment: **Mnemonic CROPS BELT + Metal scrap**

Cashew nuts, Raw cotton, Old & used goods, used vehicles, PSLC, Silk yarn, Bidi leaves, Essential Oils, Supply of lottery, Tobacco leaves.

Notified categories of services on which 100% GST to be paid by recipient of services

S N	Category of Supply of Services	Supplier of service	Recipient (liable)
1	Supply of Services by a goods transport agency (a) Any factory registered under by the Factories Act (b) Any body-corporate established by/under any law; (c) Any society registered under Societies Registration Act/any other law for the time being in force (d) Any co-operative society established by/under any law (e) Any partnership firm (reg/un-reg) including AOPs; (f) Any person registered under GST act (g) Any Casual taxable person [Mnemonics - FBSCOOP]	Goods Transport Agency	Person mention under (a) to (g), but located in taxable territory (TT).

Proviso: RCM is not applicable if:

Services provided by a GTA to—

- (a) a Department/Establishment of CG/SG/UT;
- (b) Local authority; or
- (c) Govt agencies,

which has taken registration only for deducting TDS under section 51 & not for making a taxable supply of goods or services.

Proviso: RCM is not applicable if:

- i. the supplier has taken registration and exercised the option to pay tax on the services of GTA under forward charge; and
- ii. the supplier has issued a tax invoice to the recipient charging Central Tax at the applicable rates and has made a declaration as prescribed on such invoice issued by him.

Important notes on GTA:

- Recipient of GTA service is person who pays/liable to pay the freight.
- GTA has the following two options:
 - If it opts to pay GST under FCM: 12% GST under FCM (with ITC) & 5% GST under FCM (Without ITC).
 - If it does not opt to pay GST under FCM: Recipient pays 5% RCM.
- GTA means any person who provides services in relation to transport of goods by road and issues consignment note, by whatever name called (Consignment note means bilty)

Exemptions:Entry no. 21A:

Services provided by a GTA to an unregistered person, including an unregistered casual taxable person, other than the following recipients: **[Mnemonics - FBSCOOP]**

- any **f**actory registered under or governed by the Factories Act, 1948; or
 - any **b**ody corporate established, by or under any law for the time being in force; or
 - any **S**ociety registered under the Societies Registration Act, 1860/under any other law
 - any **C**o-operative Society established by or under any law for the time being in force; or
 - any **p**artnership firm whether registered/not under any law including association of persons;
 - any **CTP** registered under the CGST Act/ the IGST Act/the SGST Act/the UTGST Act
- are exempt.

Entry No. 21B:

Services provided by a GTA, by way of transport of goods in a goods carriage, to, –

- (a) a Department or Establishment of the CG/SG/UT; or
- (b) local authority; or
- (c) Governmental agencies,

which has taken registration for the purpose of deducting tax u/s 51 & not for making a taxable supply of goods/services.

Entry No. 21:

Services provided by a GTA, by way of transport in a goods carriage of: **[Mnemonics - RANDOM]**

- **R:** Relief materials meant for victims of natural/man-made disasters, calamities, accidents/mishap; or
- **A:** Agricultural produce;
- **N:** Newspaper or magazines registered with the Registrar of Newspapers;
- **D:** Defence or military equipments.
- **O:** Organic manure;
- **M:** Milk, salt and food grain including flour, pulses and rice;

SN	Category of Supply of Services	Supplier of service	Recipient (liable)
2	Services provided by an individual advocate including a senior advocate/firm of advocates by way of legal services, directly or indirectly.	Individual advocate/ a senior advocate/ firm of advocates.	Any business entity located in the taxable territory.

Important notes on advocates:

- Legal service means any service provided in relation to advice, consultancy/ assistance in any branch of law, in any manner & includes representational services before any court, tribunal or authority.
- LLP formed & registered under LLP Act shall also be considered as a partnership firm

Exemption: Entry no. 45: Legal services

Services provided by -

- a partnership firm of advocates or an individual as an advocate other than a senior advocate, by way of legal services to-
 - (i) an advocate or partnership firm of advocates providing legal services;
 - (ii) any person other than a business entity; or
 - (iii) a business entity with an ATO up such amount in the PFY as makes it eligible for exemption from registration under the CGST act; or
 - (iv) the CG, SG, UT, local authority, Governmental Authority or Government Entity
- a senior advocate by way of legal services to-
 - (i) any person other than a business entity; or
 - (ii) a business entity with an ATO up such amount in the preceding financial year as makes it eligible for exemption from registration under the CGST act; or
 - (iii) the CG, SG, UT, local authority, Governmental Authority or Government Entity

SN	Category of Supply of Services	Supplier of service	Recipient (liable)
3	Services supplied by an arbitral tribunal to a business entity	An arbitral tribunal	Any business entity in TT

Exemption: Exemption: Entry no. 45

Services provided by an arbitral tribunal to -

- (i) any person other than a business entity; or
- (ii) a business entity with an ATO up such amount in the preceding financial year as makes it eligible for exemption from registration under the CGST act; or
- (iii) the CG, SG, UT, local authority, Governmental Authority or Government Entity

SN	Category of Supply of Services	Supplier of service	Recipient (liable)
4	Services provided <ul style="list-style-type: none"> • by way of sponsorship to any body corporate or partnership firm. 	Any person	Any Body corporate/ partnership firm located in TT

Exemption: Entry No. 53: Sponsorship

Services by way of sponsorship of sporting events organised -

- (a) by a national sports federation, or its affiliated federations, where the participating teams or individuals represent any district, State, zone or Country;
- (b) by Association of Indian Universities, Inter-University Sports Board,
- (c) by School Games Federation of India, All India Sports Council for the Deaf, Paralympic Committee of India or Special Olympics Bharat;
- (d) by the Central Civil Services Cultural and Sports Board; as part of national games, by the Indian Olympic Association; or under the Panchayat Yuva Kreedha Aur Khel Abhiyaan Scheme.

SN	Category of Supply of Services	Supplier of service	Recipient (liable)
5	Services supplied by the CG, SG, UT, LA to a BE excluding- (1) renting of Immovable Property, and (2) services specified below- (i) Services by Department of Posts and the Ministry of Railways (Indian Railways); (ii) Services in relation to an aircraft/a vessel, inside/outside the precincts of a port/an airport; (iii) Transport of goods or passengers.	CG, SG, UT, LA	Any business entity located in TT
5A	Services supplied by the Central Government [excluding the Ministry of Railways (Indian Railways)], State Government, Union territory or local authority • by way of renting of immovable property to a person registered under the CGST act	CG, SG, UT or LA	Any person registered under the CGST act 2017

Explanation: Provisions of this notification, in so far as they apply to the CG and SGs, shall also apply to the Parliament and State Legislatures, Courts and Tribunals.

Author's comment:

- RCM applicable in respect of taxable services supplied by Courts and Tribunals such as renting of premises to telecommunication companies for installation of towers, renting of chamber to lawyers, etc.
- For complete discussion on government, read the various exemptions relating to government in the chapter of Exemption.

SN	Category of Supply of Services	Supplier of service	Recipient (liable)
5AA	Service by way of renting of residential dwelling to a registered person.	Any person	Any registered Person

Exemption: Entry No. 12: Renting of Residential house

Services by way of renting of residential dwelling for use as residence except where the residential dwelling is rented to a registered person.

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

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

Explanation 2.- Nothing contained in this entry shall apply to-

- (a) accommodation services for students in student residences;
- (b) accommodation services provided by Hostels, Camps, Paying Guest accommodations and the like.

Entry No. 12A: Renting of Residential house

Supply of accommodation services having value of supply less than or equal to Rs 20,000 per person per month provided that the accommodation service is supplied for a minimum continuous period of ninety days.

SN	Category of Supply of Services	Supplier of service	Recipient (liable)
5AB	Services by way of renting of any immovable property other than residential dwelling.	Any unregistered person	Any registered person

SN	Category of Supply of Services	Supplier of service	Recipient (liable)
5B	Services supplied <ul style="list-style-type: none"> • by any person • by way of transfer of development rights/Floor Space Index (FSI) (including additional FSI) for construction of a project by a promoter. 	Any person	Promoter
5C	Long term lease of land (30 years/more) <ul style="list-style-type: none"> • by any person against consideration 	Any person	Promoter

SN	Category of Supply of Services	Supplier of service	Recipient (liable)
	in the form of upfront amount (called as premium, salami, cost, price, development charges or by any other name) and/or periodic rent for construction of a project by a promoter.		

Exemption & analysis: Entry No: 41A & 41B:

- Supply of TDR, FSI, long term lease (premium) of land by a landowner to a developer are exempted subject to the condition that the constructed flats are sold before issuance of completion certificate and tax is paid on them.
- Exemption of TDR, FSI, long term lease (premium) shall be withdrawn in case of flats sold after issue of completion certificate.
- In case exemption is withdrawn, the liability to pay tax on TDR, FSI, long term lease (premium) has been shifted from land owner to builder under the reverse charge mechanism (RCM) - as illustrated in table above.

SN	Category of Supply of Services	Supplier of service	Recipient (liable)
6	Services supplied <ul style="list-style-type: none"> • by a director of a Company/ Body Corporate to the said company or the body corporate 	A Director (non-executive director)	The Co/Body Corporate in TT

Clarification in respect of levy of GST on Director's remuneration

Issue: Whether the remuneration paid by companies to their directors falls under the ambit of entry in Schedule III i.e., "services by an employee to the employer in the course of or in relation to his employment" or whether the same are liable to be taxed in terms of notification No. 13/2017 - Central Tax (Rate) dated 28.06.2017 (entry no.6).

The issue of remuneration to directors has been examined under following two different categories:

- leviability of GST on remuneration paid by companies to the independent directors defined in terms of section 149(6) of the Companies Act, 2013 or those directors who are not the employees of the said company; and
- leviability of GST on remuneration paid by companies to the whole-time directors including managing director who are employees of the said company.

Clarification:

- **Independent Director** - is not an employee of the company, GST payable by Company under RCM.
- **Whole time director** - as per definition under companies' act, he may be a person who is not an employee and hence,
 - If Director is working in the capacity of an employee + amount accounted as salary & TDS u/s 192 of IT act is deducted: then the same is falling in schedule III - Not a supply, hence no GST.
 - If Director is not working in the capacity of an employee + amount paid is in the nature of professional fees and not salary and TDS u/s 194J of the IT Act is deducted - Supply, GST payable by co. under RCM.

Clarification on Taxability of services supplied by director of a company in his personal capacity such as renting of immovable property to the company/body corporate.

- Those services supplied by director in the capacity of director shall be taxable under RCM
- Other services supplied by director in his personal capacity are not taxable under RCM.

SN	Category of Supply of Services	Supplier of service	Recipient (liable)
7	Services supplied <ul style="list-style-type: none"> • by an Insurance agent • to any person carrying on insurance business 	An insurance agent	Any person carrying on insurance business in TT- life/general insurance
8	Services supplied <ul style="list-style-type: none"> • by a recovery agent • to Banking Co/FI/NBFC in TT 	A recovery agent	Banking Co/ Financial institution/ NBFC in TT

SN	Category of Supply of Services	Supplier of service	Recipient (liable)
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/artistic works to a, music company, producer/the like.	Music composer, photographer, artist, or the like	Music company, producer or the like, located in the taxable territory.

SN	Category of Supply of Services	Supplier of service	Recipient (liable)
9A	Supply of services by an author by way of transfer or permitting the use or enjoyment of a copyright covered u/s 13(1)(a) of the Copyright Act, 1957 relating to original literary works to a publisher.	Author	Publisher located in the taxable territory:

Proviso: nothing contained in this entry shall apply where—

(i) the author has taken CGST registration, &

- filed a declaration with the jurisdictional CGST/SGST Commissioner, as the case may be, that he exercises the option to pay CT under forward charge & to comply with all the provisions of CGST Act, as they apply to a person liable for paying the tax in relation to the supply of any goods or services or both and
- that he shall not withdraw the said option within a period of 1 year from the date of exercising such option;

(ii) the author makes a declaration on the invoice issued by him in GST INV-I to the publisher.

Author's comment: Authors have been given an option to pay tax under FCM. If Author Choses to pay tax under FCM: he shall:

- File declaration in prescribed form with Jurisdictional CGST/SGST commissioner that he is opting to pay tax under FCM.
- Make declaration as prescribed on the invoice issued by him in form GST INV-I to the publisher.

SN	Category of Supply of Services	Supplier of service	Recipient (liable)
10	Supply of services by members of overseeing committee to Reserve Bank of India	Members	RBI

SN	Category of Supply of Services	Supplier of service	Recipient (liable)
11	Services supplied <ul style="list-style-type: none"> • by individual Direct Selling Agents (DSAs) other than a body corporate, partnership/ LLP to bank or NBFCs. 	Individual DSAs other than a body corporate, partnership or LLP.	A banking company/a NBFC in TT

Direct selling agents

- A DSA is a person who works as a referral agent for a Bank.

- Their main job is to find potential customers who want to take a loan.
- Government banks appoint Agents to bring business to Banks certain percentage is given by banks to DSAs.

Author:

- RCM is applicable only if DSA is an Individual, and hence bank will be liable to pay.
- However, if DSA is another entity (body corporate/partnership Firm) FCM will be applicable.

SN	Category of Supply of Services	Supplier of service	Recipient (liable)
12	Services provided <ul style="list-style-type: none"> • by business facilitator (BF) to a banking company 	Business facilitator (BF)	A banking company, located in the TT.
13	Services provided <ul style="list-style-type: none"> • by an agent of business correspondent to business correspondent (BC) 	An agent of business correspondent	A business correspondent, located in the TT

Exemption: Entry No. 39: Services by business facilitator

Services by the following persons in respective capacities -

- business facilitator/a business correspondent to a banking company with respect to accounts in its rural area branch;
- any person as an intermediary to a business facilitator or a business correspondent with respect to services mentioned in entry (a); or
- business facilitator or a business correspondent to an insurance company in a rural area.

Clarification on value to be adopted for computing GST on services of Business Facilitator/ a Business Correspondent to Banking Company [Circular No. 86/05/19 GST dt. 01.01.18]

Issue: What is the value to be adopted for the purpose of computing GST on services provided by BF/BC to a banking company?

Clarification:

- Banking Company is the service provider in the BF model or the BC model operated by a banking company as per RBI guidelines.
- The banking company is liable to pay GST on the entire value of service charge or fee charged to customers whether or not received via BF or BC.

SN	Category of Supply of Services	Supplier of service	Recipient (liable)
14	Services provided by way of supply of security personnel to a RP: Proviso: this entry shall not apply to, – (i) a Department or Establishment of the CG/SG/UT; or LA/Governmental agencies; registered as TDS deductor & not for making a taxable supply of g/s; or (ii) A RP paying tax under section 10	Any person except a body corporate	A registered person, located in the TT.

SN	Category of Supply of Services	Supplier of service	Recipient (liable)
15	Services provided by way of renting of a motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient, provided to a body corporate.	Any person other than a body corporate, who supplies the service to a body corporate and does not issue an invoice charging CT at the rate of 6 % (CGST) to the service recipient	Any body corporate located in the taxable territory.

Author's comment:

There are two rates applicable on the service of renting of vehicles,

- 5% with limited ITC (ITC only of input service in the same line of business) and
- 12% with full ITC.

RCM shall be applicable only, If the supplier fulfils all the following conditions: -

1. Supplier of service is other than a body-corporate;
2. does not issue an invoice charging GST @12% from the service recipient; and
3. supplies the service to a body corporate.

Illustration on Renting of motor vehicles (fuel cost is included in consideration charged):

Case	Supplier	Invoice/Document issued	Recipient	Whether RCM is applicable?
1	Ram a registered person (RP)	Tax Invoice with GST @ 5%	Shyam (an individual)	NO RCM
2	Ram a RP	Tax Invoice with GST @ 5%	Shyam limited	RCM applicable
3	Ram limited a RP	Tax Invoice with GST @ 5%	Shyam limited	NO RCM

Case	Supplier	Invoice/Document issued	Recipient	Whether RCM is applicable?
4	Ram an Unregistered person	Does not issue tax Invoice, however issues a commercial Invoice	Shyam limited	Shyam Ltd to pay GST @ 5 % under RCM.
5	Ram a RP under composition scheme - section 10(2A)	Bill of supply	Shyam limited	Shyam Ltd liable to pay GST @ 5 % under RCM.

SN	Category of Supply of Services	Supplier of service	Recipient (liable)
16	Services of lending of securities under Securities Lending Scheme, 1997 ("Scheme") of Securities and Exchange Board of India ("SEBI"), as amended.	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	Borrower i.e., a person who borrows the securities under the Scheme through an approved intermediary of SEBI.

Clarification on taxability of supply of securities under Securities Lending Scheme, 1997

Issue: Trade has requested clarification on whether the supply of securities under Securities Lending Scheme, 1997 ("Scheme") by the lender is taxable under GST.

About Securities Lending Scheme, 1997:

- Under the Scheme, lender of securities lends to a borrower through an approved intermediary to a borrower under an agreement for a specified period with the condition that the borrower will return equivalent securities of the same type or class at the end of the specified period along with the corporate benefits accruing on the securities borrowed.
- The transaction takes place through an electronic screen-based order matching mechanism provided by the recognised stock exchange in India.
- There is anonymity between the lender and borrower since there is no direct agreement between them. The lenders earn lending fee for lending their securities to the borrowers. The security lending mechanism is depicted in the diagram below: -

Clarification:

- Transaction of securities where there is disposal of securities is not supply & hence not taxable.

- Supply of services by lending securities - GST applicable
- RCM applicable and borrower liable to pay tax
- Nature of Supply: Always treat as interstate and always IGST shall be payable.
- Apart from above, the activities of the intermediaries facilitating lending and borrowing of securities for commission or fee are also taxable separately.

Clarification: Situations in which corporate recipients are liable to pay GST on renting of motor vehicles designed to carry passengers

Issue: Whether RCM is applicable on service of transportation of passengers or on renting of motor vehicle designed to carry passengers.

Clarification:

- Where body corporate hires the motor vehicle for a period of time, during which the motor vehicle shall be at the disposal of the body corporate, the body corporate shall be liable to pay GST on the same under RCM.
- where the body corporate avails the passenger transport service for specific journeys or voyages and does not take vehicle on rent for any particular period of time, the service would fall under service of transportation of passengers and the body corporate shall not be liable to pay GST on the same under RCM.

Section 9(4): RCM on specified class of registered person w.r.t specified supplies from unregistered supplier.

The Government may, on the recommendations of the Council, by notification,

- specify a class of registered persons who shall,
- in respect of supply of specified categories of goods or services or both
- received from an unregistered supplier,
- pay the tax on reverse charge basis as the recipient of such supply of goods/services/both,
- and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to such supply of goods or services or both.

SN	Category of supply of goods and services	Supplier	Recipient
1	Supply of such g/s/b [other than services by way of grant TDR, long term lease of land (against upfront payment in the form of premium, salami, development charges etc.) or FSI (incl. additional FSI)] which constitute the shortfall from the minimum value of g/s/b required to be purchased by a	Supplier of goods/service	Promotor

SN	Category of supply of goods and services	Supplier	Recipient
	promoter for construction of project, in a FY (or part of the FY till the date of issuance of CC/FO, whichever is earlier)		
2	Cement	Cement	Promoter
3	Capital goods supplied to a promoter for construction of a project on which tax is payable or paid at the rate prescribed.	Supplier of CGs	Promotor

Section 5 of the IGST act: Levy and Collection of IGST

Section 5(1): IGST is levied on Inter-state supply of g/s/b (except AL) on value (u/s 15) @ max 40%

Subject to the provisions of sub-section (2),

- there shall be levied a tax called the **IGST**
- on all **inter-State supplies** of goods or services or both,
- except on the supply of alcoholic liquor for human consumption,
- on the value determined under section 15 of the CGST Act and
- at such rates, **not exceeding forty per cent**, as may be notified by the Government on the recommendations of the Council and
- collected in such manner as may be prescribed and
- shall be paid by the taxable person:

Provided that

- the IGST on goods other than the goods as may be notified by the Government on the recommendations of the Council
- imported into India shall be
- levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act,
- on the value as determined under the said Act
- at the point when duties of customs are levied on the said goods u/s 12 of Customs Act, 1962.

NOTIFICATION No. 03/2023 -Integrated Tax

Supply of online money gaming as the goods on import of which the proviso to section 5(1) shall not apply, but on which IGST shall be levied and collected under section 5(1) of the said Act.

Author's comments:

- Difference in IGST act from CGST: Intra-state - Interstate, Rate of tax - 20% - 40%
- Import of specified actionable claim of online money gaming will be taxed under IGST as import of goods without applicability of customs duty.

Section 5(2): IGST on 5 petroleum products (HPMAN) shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council.

Section 5(3): Reverse charge under IGST on notified goods & services

SN	Category of Supply of Services	Supplier	Recipient (liable)
1	Any services supplied <ul style="list-style-type: none"> by any person located in a non-taxable territory (NTT) to any person other than Non-taxable online recipient (NTOR) 	Any person located in an NTT	Any person located in the TT Other than NTOR

NTOR means any unregistered person receiving OIDAR services located in taxable territory. Explanation: For the purposes of this clause, the expression "unregistered person" includes a person registered solely in terms of section 24(vi) i.e. a TDS deductor.

Section 5(4): RCM on specified class of registered persons w.r.t specified supplies

Author's comment: Services notified under 9(4), also notified here.

Section 9(5) of CGST act & Section 5(5) of IGST act: Discussed in Chapter of ECO.

Introduction

The Composition levy scheme is a very simple, hassle free compliance scheme for small taxpayers (traders, manufacturers and service providers). It is a voluntary and optional scheme.

Turnover in State or Turnover in Union territory

- the aggregate 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** made within a State or Union territory by a taxable person,
- **exports of goods** or services or both and
- **inter-State supplies** of g/s/b made from the State or UT by the said taxable person but
- **excludes** central tax, State tax, Union territory tax, integrated tax and cess;

Author's comment: Same as ATO, only difference word aggregate is missing. Hence, we do not aggregate All India under same PAN.

Section 2(92): Quarter

Quarter shall mean a period comprising three consecutive calendar months, ending on the last day of March, June, September and December of a calendar year;

Section 10: Composition levy

- (1) Notwithstanding anything to the contrary contained in this Act but subject to the provisions of sub-sections (3) and (4) of section 9,
- a RP, whose ATO in the PFY did not exceed **50 lakh rupees**, may opt (rule 3) to pay, in lieu of the tax payable by him under section 9(1),
 - an amount of tax calculated at such rate as may be prescribed, (rule 7) but not exceeding:
 - (a) 1% of the turnover in State or turnover in Union territory in case of **a manufacturer**,
 - (b) 2.5% of the turnover in State or turnover in UT in case of persons engaged in making supplies referred to in clause (b) of paragraph 6 of Schedule II [**Restaurant**], and
 - (c) $\frac{1}{2}$ % of the turnover in State or turnover in UT in case of other suppliers [**trader**],subject to such conditions and restrictions as may be prescribed: (rule 5)

Proviso: the Government may, by notification,

- increase the said limit of **50 lakh rupees** to such higher amount, **not exceeding Rs. 1.5 crores**, as may be recommended by the Council:

Notification No. 14/2019 CT dated 07.03.2019: Specifying turnover limit

An eligible RP, whose aggregate turnover in the PFY did not **exceed 1.5 crores**, may opt to pay, under composition, an amount of tax as prescribed under rule 7 of the CGST Rules, 2017:

Proviso: the said aggregate turnover in the PFY shall be Rs **75 lakh** in the case of a registered person, in any of the following States, namely: [**Mnemonic: M³antus**]

M - Manipur, Meghalaya, Mizoram,

A - Arunachal Pradesh

N - Nagaland,

T - Tripura,

U - Uttarakhand

S - Sikkim,

Note: RP shall be ineligible to opt for composition, if such person is a manufacturer:

[**Mnemonic: A TIP BET**]

A - Aerated Water

T - Tobacco and manufactured tobacco substitutes.

I - Ice cream and other edible ice, whether or not containing cocoa.

P - Pan masala.

B - Building bricks, Bricks of fossil meals or similar siliceous earths, Fly ash bricks or fly ash aggregates; Fly ash blocks

ET - Earthen or roofing tiles

2nd proviso to section 10(1):

- Manufacturer/trader/restaurant may supply services [other than restaurant services] of value not exceeding
- 10% of turnover in a State/UT in the PFY or Rs 5 lakhs, **whichever is higher.**

Explanation. — While calculating 10% of turnover, turnover shall exclude interest or discount.

Rule 3: Intimation for composition levy

❖ Any person who applies for registration under of rule 8(1) may give an option to pay tax u/s 10 in Part B of GST REG-01, which shall be considered as an intimation to pay tax under the said section.

Note: Rule 4:

- where the application has been submitted within a period of 30 days from becoming liable: option to pay tax under composition will be effective from the date on which the person becomes liable.

- Where an application has been submitted by the applicant after 30 days from the date of his becoming liable, the effective date of registration shall be the date of grant of registration.

❖ Already registered person switching to composition

- **Electronically file an intimation in FORM GST CMP-02**, prior to the commencement of the financial year for which the option to pay tax under the aforesaid section is exercised and
- **shall furnish the statement in FORM GST ITC-03** in accordance with rule 44(4) within a period of **60 days** from the commencement of the relevant financial year.

Note: Rule 4: The option to pay tax u/s 10 shall be effective from the beginning of the FY.

- ❖ Any intimation in respect of any place of business in any State/UT shall be deemed to be an intimation in respect of all other places of business registered on the same PAN.

Rule 7: Rate of tax of the composition levy (under CGST)

SN	Section under which composition levy is opted	Category of registered persons	Rate of tax (under CGST)
1	Sub-sections (1) and (2) of section 10	Manufacturers, other than manufacturers of notified goods	$\frac{1}{2}$ % of the turnover in the State/UT
2	Sub-sections (1) and (2) of section 10	Suppliers making supplies referred to in Schedule II - Para 6(b)	$2 \frac{1}{2}$ % of the turnover in the State/UT
3	Sub-sections (1) and (2) of section 10	Any other supplier - Traders	$\frac{1}{2}$ % of the turnover of taxable supplies of goods & services in State/UT
4	Sub-section (2A) of section 10	Registered persons eligible to opt to pay tax u/s 10 (2A)	3 % of the turnover of supplies of goods & services in the State/UT.

Author's comment: Total rate shall be double the above percent, since it will be CGST + SGST.

Rule 5: Conditions and restrictions for composition levy

(1) Compliance by person opting for composition scheme

The person exercising the option to pay tax under section 10 shall comply with the following conditions, namely: -

- he is **neither a CTP/NRTP**;

- he shall pay tax under section 9(3)/(4) on inward supply of goods or services or both;
- he was not engaged in the manufacture of goods as notified u/s 10(2)(e), during the PFY;
- he shall mention the words "composition taxable person, not eligible to collect tax on supplies" at the top of the bill of supply issued by him; and
- he shall mention the words "composition taxable person" on every notice or signboard displayed at a prominent place at his principal place of business and at every additional place or places of business.

(2) RP not required to file fresh intimation every year

The registered person paying tax u/s 10 may not file a fresh intimation every year and he may continue to pay tax under the said section subject to the provisions of the Act and rules.

Section 10(2): Person ineligible to opt for composition

The registered person shall be eligible to opt under sub-section (1), if —

- he is not a manufacturer (m) of such goods as may be notified by the Government on the recommendations of the Council; and
- he is not engaged in making any inter-State outward supplies (i) of goods or services;
- he is not engaged in making any supply of goods or services which are not leviable to tax under this Act; i.e. Non taxable supply (n)
- he is neither a NRTP nor a CTP. (n)
- he is not engaged in making any supply of services through an ECO who is required to collect tax at source under section 52; (e)
- save as provided in sub-section (1), he is not engaged in the supply of services; (s)

[Mnemonic - MINES]

❖ Multiple registered units under same PAN to opt together.

Section 10(2A):

Notwithstanding anything to the contrary contained in this Act, but subject to the provisions of sub-sections (3) and (4) of section 9,

- a RP, not eligible to opt to pay tax under sub-section (1) and sub section (2),
- whose aggregate turnover in the preceding financial year did not exceed fifty lakh rupees,
- may opt to pay, in lieu of the tax payable by him under section 9(1),
- an amount of tax calculated at such rate as may be prescribed, but not exceeding 3% of the turnover in State or turnover in Union territory,
- if he is not— [Mnemonic - Mine]

- a **manufacturer (m)** of such goods or supplier of such services as may be notified by the Government on the recommendations of the Council; and
- engaged in making any **inter-State outward supplies (i)** of goods or services;
- engaged in making any supply of goods/services which are **not leviable to tax (n)** under this Act;
- a casual taxable person or a **non-resident taxable person (n)**;
- engaged in making any supply of services through an **electronic commerce operator (e)** who is required to collect tax at source under section 52;

❖ Multiple registered units under same PAN to opt together.

Section 10(3): Composition levy shall lapse with effect from the day RP crosses ATO.

Rule 6: Validity of composition levy

- (1) Option for paying tax under composition shall be valid till RP satisfies all the conditions.
- (2) If RP ceases to satisfy conditions, he shall be liable to pay tax u/s 9(1), issue tax invoice & also file intimation in *GST CMP-04* within 7 days of such event.
- (3) RP intending to withdraw shall file *GST CMP 04* before the date of such withdrawal
- (4) Where PO has reason to believe that the RP not eligible/has contravened provisions of the act, he may issue **SCN in CMP 05** to show cause within 15 days why composition shall not be denied.
- (5) Upon receipt of notice **RP to reply in GST CMP 06** and the PO to issue **order in GST CMP 07** within 30 days, either accepting the reply, or denying the option to pay tax under section 10 from the date of the option or from the date of the event concerning such contravention.
- (6) RP, who ceases/filed an application for withdrawal/PO passed a withdrawal order shall file a **statement in GST ITC 01** containing details of the stock of inputs and inputs contained in semi-finished or finished goods held in stock by him on the date on which the option is withdrawn or denied, **within 30 days**.
- (7) Intimation/application for withdrawal/denial in respect of any place shall be deemed to be an intimation in respect of all other places of business registered on the same PAN

Circular: Denial of composition option by tax authorities and effective date thereof

Doubt: Doubts have been raised as to the date from which withdrawal from the composition scheme shall take effect in a case where the composition taxpayer has exercised such option to withdraw.

Clarification: The effective date shall be the date indicated by him in his intimation/application filed in GST CMP-04 but such date may not be prior to the commencement of the financial year in which such intimation/application for withdrawal is being filed.

Doubt: Doubts have also been raised regarding the effective date of denial of the option to pay tax under the composition scheme where action has been initiated by the tax authorities to deny such option to the composition taxpayer.

Clarification: the effective date of such denial shall be from a date, including any retrospective date as may be determined by tax authorities, but shall not be prior to the date of contravention of the provisions of the CGST Act or the CGST Rules.

Doubt: Clarification has been sought regarding the follow up action to be taken by the tax authorities when the composition option is denied to the taxpayer retrospectively.

Clarification: In such cases, proceedings would have to be initiated under the provisions of section 73/74 for determination of tax, interest and penalty for the period starting from the date of contravention of provisions till the date of issue of order in FORM GST CMP-07.

Section 10(4): A taxable person (under composition) not to collect tax, nor take ITC

Section 10(5): TP pays tax under compo even if ineligible, he shall be liable to penalty

If the PO has reasons to believe that a taxable person has paid tax under sub-section (1) or sub-section (2A), as the case may be, despite not being eligible, such person shall, in addition to any tax that may be payable by him under any other provisions of this Act, be liable to a penalty and the provisions of section 73 or 74 shall, mutatis mutandis, apply for determination of tax and penalty.

Explanation 1.— 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 upto the date when he becomes liable for registration under this Act,
- but shall not include 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.

Explanation 2. — For the purposes of determining the tax payable by a person under this section, the expression turnover in State/UT shall not include the value of following supplies, namely:

- (i) supplies from the first day of April of a financial year upto the date when such person becomes liable for registration under this Act; and
- (ii) 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.

Author's comment:

- For the purpose of Checking eligibility: ATO shall include supplies from 1st April upto date of becoming liable for registration but exclude interest/discount.
- For the purpose of paying tax: TO in state/UT shall exclude supplies from 1st April upto date of becoming liable for registration and interest/discount.

Returns and Statement to be furnished by Person under Composition

GST CMP-08 Quarterly: Furnish a statement, every quarter or, as the case may be, part thereof, containing the details of payment of self-assessed tax in GST CMP-08, till the 18th day of the month succeeding such quarter; and

GSTR-4 by 30th day of June following the end of such FY: Furnish a return for every FY or, as the case may be, part thereof in GSTR-4, till the 30th of June following the end of such FY.

Some important definitions

Registered person means a person who is registered under section 25

- but does not include a person having a Unique Identity Number.

Taxable person means a person

- Who is registered or
- liable to be registered under section 22 or section 24.

Taxable supply means a supply of goods or services or both which is leviable to tax under this Act;

Non-taxable supply means a supply of goods or services or both which is not leviable to tax under this Act or under the IGST Act;

Non-Taxable supplies: Supply of AL for human consumption and 5 petroleum products (HPMAN).

Section 2(47): Exempt supply means supply of any goods or services or both

- which attracts nil rate of tax or
- which may be wholly exempt from tax under section 11, or u/s 6 of the IGST Act, and
- includes non-taxable supply;

Aggregate turnover means the aggregate value of **[Mnemonics- TIEE]**

- **T** - all **taxable supplies**
- **I** - **inter-State supplies** of persons having the same Permanent Account Number,
- **E** - **exempt supplies**,
- **E** - **exports** of goods or services or both and

Excluding

- the value of inward supplies on which tax is payable by a person on reverse charge basis,
- central tax, State tax, Union territory tax, integrated tax and cess;
- to be computed on all India basis

Important notes:

1. ATO means PAN-wise turnover
2. Activities which are out of scope of supply [Section 7(2)], will not form part of ATO. Since they are not supply at all. For example: Salary received.
3. Outward supplies on which tax payable under RCM to be included.

Section 22 - Persons liable for registration

Section 22(1): Registration on crossing applicable aggregate turnover

Every supplier shall be liable to be registered under this act

- in state/UT, (other than special category states)
- from where he makes taxable supply of goods or services or both,
- if his aggregate turnover (ATO) in a FY exceeds 20 lakh rupees:

Proviso: Person makes taxable supplies from any of the special category states (SCS), he shall be liable to be registered if his aggregate turnover in a FY exceeds ten lakh rupees:

Notification No. 10/2019 CT: Threshold limit increased to Rs 40 lacs for specified states

The following category of persons has been exempt from obtaining registration, namely:

Any person, who is engaged in exclusive supply of goods and whose aggregate turnover in the financial year does not exceed forty lakh rupees, **except,**

(a) persons required to take compulsory registration u/s 24;

(b) persons engaged in making supplies of the following goods: **[Mnemonics - TIP BET]**

T - Tobacco and manufactured tobacco substitutes

I - Ice cream and other edible ice, whether or not containing cocoa

P - Pan masala

B - Building bricks Bricks of fossil meals or similar siliceous earths Fly ash bricks or fly ash aggregates; Fly ash blocks

ET - Earthen or roofing tiles

(c) persons engaged in making intra-State supplies in the States of

Mnemonics - MMNT	Mnemonics - PUMAS of Telangana
Manipur	Puducherry,
Mizoram	Uttarakhand
Nagaland	Meghalaya
Tripura	Arunachal Pradesh
	Sikkim
	Telangana

(d) persons exercising voluntary registration u/s 25(3), or such RPs who intend to continue with their registration.



State-wise registration limit - Crux:

Turnover Limit	States	Mnemonic
10 Lacs for Both SOG/SOS	Manipur, Mizoram, Nagaland, Tripura	M ² NT
20 Lacs for Both SOG/SOS	Puducherry, Uttarakhand, Meghalaya, Arunachal Pradesh, Sikkim, Telangana	PUMAS of Telangana
40 Lacs - SOG, 20L - SOS	Other states, Assam, J&K, HP	OAK of HP

Explanation. - a person shall be considered to be engaged exclusively in the supply of goods - even if he is engaged in 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.

Illustration on Registration requirement and Applicable ATO:

Supplier	State	Turnover (in lakhs)	ATO	ATO applicable	Remarks
Ram	Assam	Sale of Goods: 38 Interest Income: 5	43 lakhs	40 lakhs	ATO shall include interest/discount income, but Ram shall be deemed to be exclusive supplier of goods even if he is engaged in exempt supply of services where consideration is interest or discount. He shall be required registration
Shyam	Assam	Sale of Goods: 38 Interest Income: 1	39 lakhs	40 lakhs	Shyam shall not be required registration since ATO did not exceed Rs 40 lacs.

Explanation to section 22. –

- (i) ATO shall include all supplies made by the taxable person, whether on his own account or made on behalf of all his principals;
- (ii) the supply of goods, after completion of job work, by a registered job worker shall be treated as supply of goods by the principal, and included in the ATO of principal.
- (iii) Special category States shall mean the States of Manipur, Mizoram, Nagaland & Tripura.

Clarification on honorarium to the Guest Anchors

Issue: Whether GST is applicable on payment of honorarium to the Guest Anchors.

Clarification: Yes GST is applicable. It's a supply of service. However, guest anchors whose aggregate turnover in a financial year does not exceed Rs. 20 lakh (Rs. 10 lakh in case of specified Special Category States) shall not be liable to take registration and pay GST.

Section 22(2): Under old Law (existing law) registered persons:

Every person who, on the day immediately preceding the appointed day, is registered/holds a license under an existing law, shall be liable to be registered under this Act with effect from the appointed day.

Author's comments: As on today this provision is irrelevant.

Section 22(3): Transfer/Succession of business as going concern:

Where a **business carried on by a taxable person registered under this Act is transferred,**

- whether on account of succession/otherwise,
- to another person as a going concern,
- the transferee/the successor, as the case may be, shall be liable to be registered with effect from the date of such transfer or succession.

Section 22(4): Amalgamation/Demerger pursuant to a court/tribunal order:

In a case of transfer pursuant to sanction of a scheme/an arrangement for amalgamation or, as the case may be, demerger of two/more companies pursuant to an order of a High Court, Tribunal or otherwise,

- the transferee shall be liable to be registered,
- with effect from the date on which the Registrar of Companies (ROC) issues a certificate of incorporation (COI) giving effect to such order of the High Court or Tribunal.

Author's comment: If the tribunal order takes effect from a date earlier than the date of the order, now even though legally the companies stand merged from a back date, however it is not possible to issue back date GST registration, hence section 22(4) provides that such entity shall be liable to register only w.e.f. the date on which the ROC issues a COI.

Example: Ram Ltd and Shyam Ltd wanted to amalgamate into Radheshyam Ltd.

- The board approved the amalgamation on 1st Jan and they approached NCLT for amalgamation
- NCLT approved amalgamation on 25th June.

- NCLT issued order on 25th June allowing merger from retrospective date i.e., 1st March.
- Now they approached ROC for issue of certificate of Incorporation of Radheshyam Ltd.
- ROC issued certificate of Incorporation on 1st July by ROC.
- Hence, the two companies will be liable from 1st July, i.e., the date on which ROC issued COI.

Section 23 - Persons not liable for registration

Section 23(1): The following persons shall not be liable to registration, namely:

- (a) 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 IGST Act;
- (b) an agriculturist, to the extent of supply of produce out of cultivation of land

Agriculturist means an **individual/HUF** who undertakes cultivation of land—

- by own labour/labour of family, or
- by servants on wages payable in cash/kind or by hired labour
- under personal supervision/the personal supervision of any member of the family.

Examples:

SN	Particulars	Registration?
1	Petrol bunks selling only petrol & diesel	Not required
2	Petrol pumps selling Engine oil or food items along with petrol.	Required
3	Shops supplying Alcoholic liquor for human consumption	Not required
4	Shops supplying Alcoholic liquor for human consumption plus snacks	Required
5	Agriculturist owns land and does cultivation	Not required
6	Agriculturist takes land on rent and does cultivation	Not required
7	Agriculturist takes land on rent & cultivation done by servants on wages	Not required
8	Agriculturist does cultivation plus also runs a dairy.	Required

Section 23(2): Notified category of persons exempted from obtaining registration:

Notwithstanding anything to the contrary contained in section 22(1) or section 24,

- the Government may, on the recommendations of the Council, by notification,
- subject to such conditions and restrictions as may be specified therein,
- specify the category of persons who may be exempted from obtaining registration under this Act.

Note: There are various notifications issued under this section which has been explained along with section 22 and Section 24.

Circular: Registration requirement of a commission agent selling agricultural produce on behalf of agriculturist.

Query: Registration requirement of a commission agent selling agricultural produce on behalf of agriculturist.

Clarification:

- Services by any APMC or board or services provided by the commission agents for sale or purchase of agricultural produce are exempted from GST.
- Thus, such commission agents are not liable to be registered according to section 23(1)(a), if the supply of the agricultural produce, and /or other goods or services supplied by them are not liable to tax or wholly exempt under GST.
- Further, a commission agent under APMC Act makes supplies on behalf of an agriculturist.
- As per section 23(1)(b) an agriculturist who supplies produce out of cultivation of land is not liable for registration & therefore does not fall within the ambit of the term "taxable person".
- Thus, a commission agent who is making supplies on behalf of such an agriculturist, who is not a taxable person, is not liable for compulsory registration under section 24(vii).

Section: 24 - Compulsory Registration in certain cases

Notwithstanding anything contained in section 22(1), the following categories of persons shall be required to be registered under this Act,

(i) Persons making any inter-State taxable supply:

Notification u/s 23(2): Following categories of person exempted if ATO upto 20/10 lacs

1. Interstate supplier of notified handicraft goods & notified craftsmen products
 - when made by craftsmen predominantly by hand even though some machinery may also be used in the process:
 - However, such persons have obtained a PAN and have generated an e- way bill.
2. Interstate supplier of taxable services.

(ii) Casual taxable persons making taxable supply:

Casual taxable person means

- a person who occasionally undertakes transactions involving supply of g/s/b
- in the course or furtherance of business,
- whether as principal, agent or in any other capacity,
- in a State/UT where he has no fixed place of business.

Notification u/s 23(2):

- CTPs making inter-State taxable supplies of notified handicraft/craftsmen goods exempted up to Rs 20/10 lakhs.
- However, they should have obtained a PAN & have generated an e- way bill.

(iii) **Persons who are required to pay tax under reverse charge;**

Exemption: persons who are only engaged in making taxable supply of goods/services/both,
 - the total tax on which is liable to be paid on RCM basis by the recipient u/s 9(3).

Notification: Above exemption from registration not applicable to supplier of Metal scrap

Analysis: As long as the value of supply of metal scrap by a person is below the threshold limit of Rs. 40 lakhs/20 lakhs, supplier is not required to obtain registration u/s 22(1) & recipient RP pays GST under RCM.

However, once value of supply of metal scrap exceeds the threshold limit, supplier shall obtain GST registration, now RCM would not apply and the suppliers of such metal scrap shall start paying GST under forward charge mechanism.

Thus, person exclusively engaged in supply of metal scrap will not be exempted from registration.

(iv) **Person who are required to pay tax u/s 9(5);**

T - Transportation of Passenger by radio taxi, motor cab, maxi cab/any other motor vehicle

T - Transportation of Passenger by omnibus (by person except company)

H - Housekeeping services

A - Accommodation services

R - Restaurant Services

(v) **Non-resident taxable persons making taxable supply;**

Non-resident taxable person means:

- any person who occasionally undertakes transactions involving supply of g/s/b,
- whether as principal or agent or any other capacity,
- but who has no fixed place of business or residence in India.

(vi) **Persons who are required to deduct tax u/s 51, whether or not separately registered under this Act;**

(vii) **Persons who make taxable supply of g/s/b on behalf of other taxable persons whether as an agent or otherwise;**

(viii) **Input Service Distributor, whether or not separately registered under this Act;**

Input service distributor means

- an office of the supplier of goods or services or both which
- receives tax invoices issued towards the receipt of input services, &
- issues a prescribed document for the purposes of distributing credit of services
- to a supplier of taxable g/s/b having the same PAN as that of the said office.

(ix) **Persons supplying services, except supplies u/s 9(5), through such ECO** who is required to collect TCS u/s 52;

Notification u/s 23(2): Exemption from registration

- Applies to persons making supplies through an Electronic Commerce Operator (ECO) required to collect tax at source under section 52.
- Aggregate turnover in the preceding and current financial year must not exceed the registration threshold under section 22(1).

Conditions for Exemption:

- (i) Shall not make any inter-State supply of goods;
- (ii) Shall not make supply of goods through ECO in more than one State/UT;
- (iii) Shall be required to have a PAN issued under the Income Tax Act, 1961;
- (iv) Shall, before making any supply, declare on the common portal their PAN, address and the State/UT in which such persons seek to make such supply, which shall be validated;
- (v) On successful validation of PAN, such persons have been granted an enrolment number;
- (vi) Only one enrolment number shall be granted in a State/UT;
- (vii) no supply of goods shall be made through ECO unless such persons have been granted an enrolment number on the common portal; and
- (viii) Enrolment number ceases to be valid upon obtaining registration under section 25.

Notification u/s 23(2): Exemption from Registration:

- Applies to persons making supplies of services (excluding those under section 9(5)) through an ECO required to collect tax at source under section 52.
- Aggregate turnover (ATO) on an all-India basis must not exceed Rs 20 lakh in a financial year/10 lakhs in case of special category states.

(x) **Every electronic commerce operator** who is required to collect TCS at source u/s 52.

(xi) **Every person supplying OIDAR services from outside India** to a unregistered person in India [OIDAR: online information and data base access or retrieval]

(xia) **Every person supplying online money gaming from a place outside India** to a person in India;

(xii) Such other person/class of persons, notified by Government on recommendations of Council.

Section 25: Procedure for Registration

Section 25(1): Person liable to be registered shall apply within 30 days

Every person liable under sections 22/24 must apply for registration in each State/UT where they are liable, within **thirty days of becoming liable**.

Proviso: Casual/Non-Resident Taxable Person: Must apply for registration at least five days before starting business.

Proviso: Persons with units in SEZs or SEZ developers must apply for separate registration distinct from their place of business outside the SEZ in the same State/UT.

Explanation: Supply from TWI: Must register in the coastal State/UT where the nearest point of the appropriate base line is located.

Rule 8: Application for registration

(1) Every person who is liable to be registered u/s 25 and every person seeking registration voluntarily u/s 25(3) **except-**, [Mnemonic - NTO - NRTP, TDS/TCS, OIDAR, OMG]

- a non-resident taxable person; (N)
- TDS deductor; (T)
- TCS collector; (T)
- a person supplying **OIDAR** services from a place outside India to a NTOR
- a person supplying **online money gaming (OMG)** from a place outside India to person in India - shall, before applying for registration, declare his PAN, State/UT in Part A of GST REG-01 on the common portal or through a Facilitation Centre notified

Proviso: ISD shall make a separate application for registration as ISD.

(2) PAN shall be validated online by the common portal from the database maintained by CBDT & shall also be verified through separate OTPS sent to mobile no. & e-mail address **linked to PAN**.

(3) On successful verification of PAN, mobile no and Email - a temporary reference number (TRN) shall be generated and Communicated to the applicant on the said mobile no. & e-mail address.

(4) Using TRN, electronically submit an application in Part B of GST REG-01, along with documents specified in the Form.

(4A) Where an applicant, other than a person notified under section 25(6D),

- opts for Aadhaar authentication, he shall,
- undergo Aadhaar authentication and the date of submission of application shall be
 - the date of authentication of the Aadhaar number, or
 - 15 days from the submission of the application in Part B of GST REG-01, whichever is earlier.

Proviso: every application by a person, other than a person notified u/s 25(6D), who has opted for Aadhaar authentication and is identified on the common portal, based on data analysis and risk parameters, shall be

- followed by biometric-based Aadhaar authentication and
- taking photograph of the applicant where the applicant is an individual/of such individuals in relation to the applicant as notified u/s 25(6C) where the applicant is not an individual,
- along with the verification of the original copy of the documents uploaded with the application in GST REG-01 at one of the Facilitation Centres notified by Commissioner and
- the application shall be deemed to be complete only after completion of the process laid down under this proviso.

Proviso: every application by a person, other than a person notified u/s 25(6D), who has not opted for Aadhaar authentication, 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 u/s 25(6C) where the applicant is not an individual,
- along with the verification of the original copy of the documents uploaded with the application in GST REG-01 at one of the Facilitation Centers notified by Commissioner and
- the application shall be deemed to be complete only after successful verification as laid down under this proviso.

(4B) The CG may, on the recommendations of the Council, by notification specify the States or Union territories wherein the proviso to sub-rule (4A) shall not apply.

Author: Bio metric based Aadhaar authentication can be done of a person from any state if the person is identified on the common portal, based on data analysis and risk parameters.

(5) On receipt of application, an acknowledgement shall be issued electronically in GST REG-02.

(6) Casual taxable person shall be given a temporary reference number for making advance deposit of tax and the acknowledgement shall be issued only after the said deposit.

Rule 9 - Verification of the application and approval

(1) The Application shall be forwarded to PO - PO to examine application & accompanying documents - if found to be in order, approve the grant of registration to the applicant within 7 WDs from submission.

Proviso:

(a) a person, except a person notified under section 25(6D), fails to undergo Aadhaar authentication/does not opt for Aadhaar authentication; or

(aa) a person, who has undergone Aadhaar authentication, is identified on the common portal, based on data analysis & risk parameters, for carrying out physical verification of POB; or

(b) the PO, 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 POB, the registration shall be granted within 30 days of submission of application, after physical verification of the place of business and verification of such documents as the proper officer may deem fit.

(2) PO to issue notice to seek clarification in case of deficiency in application by issuing a notice in GST REG-03 within a 7 working days (WDs) & applicant shall furnish clarification, information or documents (CID) electronically, in GST REG-04, within 7 working days (WDs).

Proviso: where-

(a) a person, except a person notified u/s 25(6D), fails to undergo Aadhaar authentication or does not opt for authentication of Aadhaar number; or

(aa) a person, who has undergone Aadhaar authentication, is identified on the common portal, based on data analysis and risk parameters, for carrying out physical verification of POB; or

(b) PO, 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 POB, the notice in GST REG-03 may be issued not later than **thirty days** from the date of submission of the application.

(3) PO Satisfied, approve grant of registration within 7 WDs from date of receipt of such CID.

(4) No reply/PO not satisfied - he may record reasons & reject application & inform applicant in GST REG 05.

(5) If the proper officer fails to take any action, -

(a) within a period of **7 working days** from the date of submission of the application in cases where the person is not covered under proviso to sub-rule (1); or

- (b) within a period of **30 days** from the date of submission of the application in cases where a person is covered under proviso to sub-rule (1); or
- (c) within a period of **7 working days** from the date of the receipt of the clarification, information or documents furnished by the applicant under sub-rule (2), the application for grant of registration shall be deemed to have been approved.

Rule 10 - Issue of registration certificate

(1) Application approved under rule 9 - a certificate of registration in GST REG-06 showing Principal place of Business (PPOB) & additional place or places of Business (APOB) shall be made available to the applicant & a GSTIN shall be assigned (15 characters) namely:

2	9	C	C	B	P	S	7	7	0	0	R	1	Z (default)	1
State code		PAN/TAN										No. of Reg. in State (1-9)	Code for regular reg.	checksum character (1-9)

- (2) If application submitted within 30 days of becoming liable, **it is effective from date person becomes liable.**
- (3) If registration applied after 30 days of becoming liable, **it is effective from date of the grant.**
- (4) Every registration certificate to be duly signed/verified through EVC by PO
- (5) In case of automatic approvals by portal, the applicant shall be communicated the registration no., and the certificate of registration within 3 days after expiry of period specified in rule 9(5).

Rule 25: Physical verification of business premises in certain cases

- (1) **Post-Registration Verification:** If physical verification is needed after granting registration, verification report and other documents, including photographs, must be uploaded in GST REG-30 on the common portal within **15 working days** after verification.
- (2) **Pre-Registration Verification:** If physical verification is required before granting registration (as per the proviso to sub-rule (1) of rule 9), the PO must complete the verification and upload the report and documents in GST REG-30 at least **five working days** before the deadline specified in the proviso.

Rule 10A: Furnishing of Bank Account Details

After registration certificate has been made available and a GSTIN assigned,

- the RP, **except** TDS deductors, TCS collectors & Suo moto RP, shall

- within a period of 30 days from the date of grant of registration, or
- before furnishing GSTR-1 or using invoice furnishing facility, whichever is earlier.

Rule 10B: Aadhaar authentication for registered person

The registered person, other than a person notified under section 25(6D),

- who has been issued a registration certificate shall, undergo Aadhaar authentication
- of the proprietor, in the case of proprietorship firm, or
- of any partner, in the case of a partnership firm, or
- of the karta, in the case of a Hindu undivided family, or
- of the Managing Director or any whole time Director, in the case of a company, or
- of any of the Members of the Managing Committee of an Association of persons or body of individuals or a Society, or
- of the Trustee in the Board of Trustees, in the case of a Trust **and**
- of the authorized signatory, in order to be eligible for the purposes as follows:

	Purpose [Mnemonic - RRR]
R	For filing application for revocation of cancellation of registration in GST REG-21 under Rule 23
R	For filing of refund application in FORM RFD-01 under rule 89
R	For refund under rule 96 of the integrated tax paid on goods exported out of India

Proviso: if Aadhaar number has not been assigned to the person, such person shall furnish the following identification documents, namely: -

- (a) her/his Aadhaar Enrolment ID slip; and
- (b)
 - (i) Bank passbook with photograph; or
 - (ii) Voter identity card issued by the Election Commission of India; or
 - (iii) Passport; or
 - (iv) Driving license issued by the Licensing Authority under the Motor Vehicles Act, 1988:

Proviso: such person shall undergo Aadhaar authentication within 30 days of allotment of Aadhaar number.

Rule 18: Display of RC and GSTIN on the name board

- (1) Every RP shall display his certificate of registration in a prominent location at his principal place of business (PPOB) & at every additional place of business (APOB)/APOBs.
- (2) Every RP shall display his GSTIN on the name board exhibited at the entry of his PPOB & at every APOB/APOBs.

Chapter 5: Registration

Section 25(2):

A person seeking registration under this Act shall be granted a single registration in a State/UT:
Proviso: a person having multiple POB in a State/UT **may** be granted a separate registration for each such POB.

Rule 11: Separate registration for multiple POBs within a State/UT.

- (1) Person having Multiple POBs within ST/UT requiring separate registration may obtain separate registration & shall be granted separate registration subject to following conditions:
 - (a) such person has more than one POBs (warehouse/godown/place where books are maintained etc.);
 - (b) such person shall not pay tax under composition for any of his POB if he is paying tax under normal levy for any other POBs;
 - (c) Pay tax on supply made between registered POBs & issue a tax invoice/ a bill of supply (BOS), for such supply.
- (2) Separate application in GST REG-01 in respect of such place of business.
- (3) Rule 9 & 10 relating to the verification & the grant of registration shall apply mutatis mutandis.

Section 25(3): Voluntary registration (VR)

A person, though not liable to be registered u/s 22/24 may get himself registered voluntarily, and all provisions of this Act, as are applicable to a registered person, shall apply to such person.

Section 25(4): Distinct person

Person who has obtained/required to obtain multiple Registration, in one state/multiple states - Such person w.r.t each registration be treated as distinct person

Section 25(5): Distinct person

Person who has obtained/required to obtain registration in 1 state/UT in respect of an establishment, has establishment in another state/UT then such establishments shall be treated as establishments of distinct persons.

Section 25(6): PAN is mandatory for grant of Registration

Every person shall have PAN issued under IT Act in order to be eligible for grant of registration

Proviso: TDS deductor may have a Tax Deduction and Collection Account No. (TAN) in order to be eligible for grant of registration.

Rule 12: Grant of registration to TDS deductor/TCS collector

(1) Submit an application, in Form GST REG-07,

(1A) A person applying for registration to deduct/collect tax, in a State/UT where he does not have a physical presence, shall

- mention the name of the State/U in PART A of the application in GST REG-07 and
- mention the name of the State/UT in PART B thereof in which the principal place of business is located which may be different from the State/UT mentioned in PART A.

(2) After due verification - PO may grant within 3 working days from the date of submission.

(3) Cancellation of registration

Where,

- on a request made in writing by a person to whom a registration has been granted or
- upon an enquiry or pursuant to any other proceeding under the Act,
- the PO is satisfied that a person is no longer liable to deduct or collect,
- the PO may cancel the registration & It shall be communicated to the said person electronically.

Aadhaar Authentication introduced with effect from 01.04.2020

Section 25(6A): For already registered person before 01.04.2020

Every RP shall undergo authentication, or furnish proof of possession of Aadhaar number, in such form and manner and within such time as may be prescribed:

Proviso: if an Aadhaar number is not assigned to the RP,

- such person shall be offered alternate and viable means of identification
- in such manner as Government may, on the recommendations of the Council, prescribe:

Proviso: in case of failure to undergo authentication/furnish proof of possession of Aadhaar no./ or furnish alternate and viable means of identification,

- registration allotted to such person shall be deemed to be invalid and
- the other provisions of this Act shall apply as if such person does not have a registration.

Section 25(6B):

On and from the date of **notification**,

- **every individual shall**, in order to be eligible for grant of registration,
- undergo authentication, or furnish proof of possession of Aadhaar number,
- in such manner as the Govt may, on recommendations of the Council, specify:

Notification: an individual shall undergo Aadhaar authentication, as specified in rule 8, in order to be eligible for registration:

Section 25(6C):

On and from the date of **notification**,

- every person, **other than an individual**,
- shall, in order to be eligible for grant of registration,
- undergo authentication, or furnish proof of possession of Aadhaar number of the
 - Karta,
 - Managing Director,
 - whole time Director,
 - such number of partners,
 - Members of managing Committee of Association
 - Board of Trustees,
 - authorised representative,
 - authorised signatory and
 - such other class of persons,
- in such manner, as the Government may, on the recommendation of the Council, specify in the said notification:

Proviso: where such person/class of persons have not been assigned Aadhaar No., such person/class of persons shall be offered alternate & viable means of identification. (rule 9)

Notification: CG, on the recommendations of the Council, hereby notifies the -

- (a) authorised signatory of all types;
- (b) Managing and Authorised partners of a partnership firm; and
- (c) Karta of a Hindu undivided family,

shall undergo authentication of possession of Aadhaar number, as specified in rule 8, in order to be eligible for registration under GST:

Section 25(6D):

Section 25(6A)/(6B)/(6C) shall not apply to such person/class of person/ State/UT, as notified.

Notified person to whom aadhaar authentication shall not apply - [Mnemonics - NDL PSU]

- **N** - Not a citizen of India; or
- **D** - a Department or establishment of the Central Government or State Government; or
- **L** - a local authority; or
- **P** - a Public Sector Undertaking; or
- **S** - a statutory body; or
- **U** - a person applying for registration u/s 25(9) i.e. Unique Identification No. [UIN] holder.

Section 25(7): NRTP

A NRTP may be granted registration on the basis of such other documents as may be prescribed.

Rule 13: Grant of registration to NRTP

(1) Application in **GST REG 09**, along with a self-attested copy of his valid passport, at least **5 days prior** to the commencement of business

Proviso: If business entity incorporated outside India, the application shall be submitted along with its tax identification number/unique no. on the basis of which the entity is identified by Govt. of that country/its PAN, if available.

(2) He shall be given a temporary reference number for making an advance deposit of tax & after deposit of tax acknowledgement shall be issued.

(3) The provisions of rule 9 & 10 shall apply mutatis mutandis.

(4) The application for registration made by a NRTP shall be duly signed/verified through EVC by his **authorized signatory who shall be a person resident in India having a valid PAN**.

Section 25(8): If a person liable but fails, PO may proceed to register

Where a person who is liable to be registered under this Act fails to obtain registration,

- the PO may, without prejudice to any action which may be taken under this Act or under any other law for the time being in force,
- proceed to register such person in such manner as may be prescribed.

Rule 16: Suo-moto registration (by PO)

(1) PO during survey/enquiry/inspection/search, finds that a person liable has failed to apply for registration, PO may register the said person on a temporary basis & issue an order in **GST REG-12**.

(2) The registration granted under sub rule (1) shall be effective from the date of such order granting registration.

(3) Every person to whom a temporary registration has been granted under sub rule (1) shall within 90 days of grant of such registration,

- Submit an application for registration in the form and manner provided in rule 8/12: or
- File an appeal against such temporary registration

In appeal case the application for registration shall be submitted within 30 days from the date of the issuance of the order upholding the liability to registration by the Appellate Authority.

(4) The provisions of rule 9 & 10 shall apply mutatis mutandis.

(5) The GSTIN assigned shall be effective from the date of the order (GST Reg 12) granting registration under sub-rule (1).

Section 25(9): Specialised Agency of UNO, MFIO, Consulate and Embassy

Notwithstanding anything contained in sub-section (1),—

(a) any specialised agency of the United Nations Organisation/any Multilateral Financial Institution (example: World bank, IMF) and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries; and

(b) any other person or class of persons, as may be notified by the Commissioner,

- shall be granted a Unique Identity Number (UIN) in such manner and for such purposes,
- including refund of taxes on the notified supplies of g/s/b received by them, as may be prescribed.

Rule 17: Assignment of Unique Identity Number to certain special entities

(1) Submit an application electronically in FORM GST REG- 13,

(1A) UIN granted to a person shall be applicable to the territory of India.

(2) The PO, upon submission of an application/receiving a recommendation from the Ministry of External Affairs, Government of India, assign a UIN & issue a RC within a period of 3 working days from the date of the submission of the application.

Rule 14. Grant of registration to a person supplying OIDAR services from a place outside India to a NTOR or to a person supplying online money gaming from a place outside India to a person in India

(1) Any person supplying

- OIDAR services from outside India to a NTOR or
- online money gaming from a place outside India to a person in India
- shall electronically submit an application for registration in GST REG-10

(2) Applicant shall be granted registration, in GST REG-06.

Section 26: Deemed Registration

- (1) Grant of RC/UIN under SGST/UTGST act, deemed grant under CGST act
- (2) Any Rejection of application under SGST/UTGST act, deemed rejection under CGST act.

Section 27: Special provisions relating to CTP and NRTP

- (1) The certificate of registration issued to CTP/NRTP shall be valid for
 - period specified in the application for registration/
 - 90 days from the effective date of registration, whichever is earlier &
 - such person shall make taxable supplies only after issuance of certificate of registration:

Proviso: The PO may extend the period of 90 days by a further period not exceeding 90 days.
- (2) A CTP/a NRTP shall, at the time of application to deposit estimated tax liability in advance.

Proviso: In case of extension, additional estimated advance tax liability to be deposited.
- (3) Amount of tax deposited, to be credited to E-cash ledger.

Rule 15: Extension in period of operation by CTP/NRTP

- (1) Application in GST REG-11 before the end of the validity of registration granted to him.
- (2) The application shall be acknowledged only on payment of additional estimated tax liability.

Clarifications of issues under GST related to CTP [Circular No. 71/45/18 GST dt. 26.10.18]

Issue: Whether the advance tax for CTP registration should be 100% of the estimated gross tax liability or after deducting eligible ITC.

Clarification:

Advance tax for CTP registration should be calculated after considering the eligible ITC available to the taxable person i.e. the "estimated net tax liability"

Issue: Representations have been received for further extension of the said period beyond the period of 180 days.

Clarification:

- Long-Running Exhibitions: Taxable persons participating in exhibitions longer than 180 days cannot be treated as Casual Taxable Persons (CTP) and must obtain normal registration.
- Registration Process:
 - Upload a copy of the allotment letter granting permission to use the exhibition premises.
 - The allotment/consent letter is proof of place of business.
 - No advance tax payment required for registration.
 - Registration can be surrendered after the exhibition ends.

Section 28: Amendment of registration

- (1) Every RP and UIN holder shall inform PO of any changes in form GST REG-14 and within 15 days of change.
- (2) PO may, on the basis of information furnished approve/reject amendments in the registration particulars in such manner and within a period of 15 WDs.
- Proviso:
1. Approval of PO shall not be required in respect of amendment of such particulars as may be prescribed.
 2. PO shall not reject application for amendment without giving OBH
- (3) Any rejection/approval of amendments under SGST/UTGST shall be deemed to be a rejection/approval under CGST Act.

Rule 19: Amendment of registration

- (1) In case of any change in any of the registration particulars furnished in GST REG-01 or GST REG-07 or GST REG-09 or GST REG-10 or for UIN in GST REG-13, the RP shall,
- within 15 days of such change,
 - submit an application in GST REG-14 along with the documents relating to such change.

Proviso:

(a) Where: Change relates to core fields

- (i) Legal name of business;
- (ii) Address of the PPOB/APOBs or
- (iii) Addition/deletion/retirement of partners/directors, Karta, Managing Committee, Board of Trustees, CEO/equivalent, responsible for the day-to-day affairs of the business, which does not warrant cancellation of registration,
 - the PO shall, approve amendment within 15 working days from date of receipt of application in GST REG-14 &
 - Issue an order in GST REG-15 electronically &
 - amendment shall take effect from the date of occurrence of event warranting such amendment;

(b) the change relating to sub-clause (i) and (iii) of clause (a) in any State/UT shall be applicable for all registrations of the RP obtained under the same PAN;

(c) where the change relates to any particulars except clause (a) i.e. non core fields, the registration certificate shall stand amended upon submission of application in GST REG-14;

(d) Change in PAN, amendment not possible - fresh registration to be obtained in GST REG-01

Proviso: Any change in mobile no./e-mail address of the authorised signatory, shall be carried out only after online verification through OTP.

(1A) Amendment to be prospective unless specific orders from commissioner

(2) PO is of the opinion that amendment is either not warranted/documents are incomplete/incorrect

- he may, within 15 WDs serve a notice in FORM GST REG-03
- requiring the RP to show cause, within 7 WDs, why application shall not be rejected.

(3) The RP shall furnish a reply in GST REG-04 within 7 WDs.

(4) Where reply found to be not satisfactory/no reply, PO shall reject application & pass an order in GST REG-05.

(5) If the proper officer fails to take any action, -

- (a) within 15 WDs from the date of submission of the application, or
 - (b) within 7 WDs from the date of the receipt of the reply to the SCN,
- the registration certificate shall stand amended to the extent applied for and the amended certificate shall be made available to the registered person on the common portal.

Section 29: Cancellation or Suspension of registration

Section 29(1): The PO may, either

- on his own motion (Suo-moto)/on an application by the RP/by his legal heirs (in case of death),
- cancel the registration, in such manner and within such period as may be prescribed, having regard to the circumstances

where, -

- (a) the business has been discontinued, transferred fully for any reason including death/ amalgamation/demerger or otherwise disposed of; or
- (b) there is any change in the constitution of the business; or
- (c) the taxable person, is no longer liable to be registered under section 22 or section 24 or intends to optout of the registration voluntarily made under section 25(3).

Proviso: during pendency of cancellation proceedings, the registration may be suspended for such period and in such manner as may be prescribed.

Rule 20 - Application for cancellation of registration - RP seeking

A RP, (other than TDS Deductor/TCS collector or a UIN holder) seeking cancellation of registration u/s 29(1) shall electronically, submit an application in GST REG-16, including therein

- the details of inputs held in stock / in SFGs/FGs 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 & may furnish, along with the application, relevant documents in support thereof,
- within a period of 30 days of the occurrence of the event warranting the cancellation.

Section 29(2): The PO may cancel registration from such date, including any retrospective date, as he may deem fit, where, -

- (a) a RP has contravened such (rule 21) provisions of the Act/the rules made thereunder; or

Rule 21-Registration to be cancelled in certain cases

The registration granted to a person is liable to be cancelled, if the said person, -

- (a) does not conduct any business from the declared place of business; or
- (b) issues invoice or bill without supply of goods or services or both in violation of the provisions of the Act, or the rules made thereunder; or
- (c) violates the Anti profiteering provisions.
- (d) violates the provision of rule 10A (furnishing of Bank account details on portal)
- (e) avails input tax credit in violation of the provisions of section 16 of the Act or the rules made thereunder; or
- (f) furnishes the details of outward supplies in FORM GSTR-1, as amended in FORM GSTR-1A if any, under section 37 for one or more tax periods which is in excess of the outward supplies declared by him in his valid return under section 39 for the said tax periods; or
- (g) violates the provision of rule 86B.
- (ga) violates the provisions of third or fourth proviso to sub-rule (1) of rule 23; or
- (h) being a registered person required to file return under section 39(1) for each month or part thereof, has not furnished returns for a continuous period of six months;
- (i) being a registered person required to file return under proviso to sub-section (1) of section 39 for each quarter or part thereof, has not furnished returns for a continuous period of two tax periods.

(b) a person paying tax under section 10 (Composition supplier) has not furnished the return for a financial year beyond 3 months from the due date of furnishing the said return; or

(c) any RP, other than a person specified in clause (b), has not furnished returns for such continuous tax period as may be prescribed (6 months/2 Quarters); or

(d) any person who has taken voluntary registration has not commenced business within 6 months from the date of registration; or

(e) Registration has been obtained by means of fraud, wilful misstatement or suppression of facts:

Proviso: During pendency of cancellation, the PO may suspend the registration.

Rule-22: Cancellation of registration - PO has reason to believe that registration is liable to be cancelled

(1) PO shall issue a notice in GST REG-17, to show cause, within 7 WDs of service of notice, as to why his registration shall not be cancelled.

(2) Reply to SCN shall be furnished in Form GST REG-18 within 7 WDs.

(3) Where a person who has submitted an application for cancellation of his registration is no longer liable to be registered or his registration is liable to be cancelled,

- the PO shall issue an order in GST REG-19, within a period of thirty days
- from the date of application submitted/the date of the reply to show cause issued under sub-rule (1), or under sub-rule (2A) of rule 21A
- cancel the registration, with effect from a date to be determined by him and notify the taxable person,
- directing him to pay arrears of any tax, interest or penalty including the amount liable u/s 29(5).

(4) Where the reply furnished under sub-rule (2), or in response to the notice issued under sub-rule (2A) of rule 21A is found to be satisfactory, PO shall drop the proceedings & pass an order Form REG - 20.

Proviso: the PO shall drop the proceedings & pass an order in REG 20

Provided that where the person instead of replying to notice served for contravention of section 29(2) (b)/(c), furnishes all pending returns and makes full payment of tax dues along with applicable interest & late fee, the PO shall drop the proceedings and pass an order in GST REG 20.

Section 29(3): Even if registration is cancelled, person shall be liable to pay dues relating to prior period to the date of cancellation whether or not such tax and other dues are determined before or after the date of cancellation.

Section 29(4): Cancellation of registration under SGST/UTGST act, deemed cancellation under CGST Act.

Section 29(5): Payment of liability upon cancellation of registration

Every RP whose registration is cancelled shall pay an amount, by way of debit in e-credit/e-cash ledger, Equivalent to

- the ITC in respect of inputs held in stock & inputs in SFs/FGs held in stock or capital goods or plant and machinery on the day immediately preceding the date of such cancellation or
 - the output tax payable on such goods,
- whichever is higher, calculated in such manner as may be prescribed.

Proviso: in case of capital goods or plant and machinery,

- the taxable person shall pay an amount equal to the ITC taken on the said CGs or p & m,
 - reduced by such percentage points as may be prescribed or
 - the tax on the transaction value
 whichever is higher.

Section 29(6): The amount payable under sub-section (5) shall be calculated as per rule 44.

Rule 44: Manner of reversal of credit under special circumstances

- (1) The amount of ITC relating to inputs held in stock, inputs contained in SFGs & FGs held in stock, & CGs held in stock shall, be determined in the following manner, namely, –
 - (a) for inputs held in stock & contained in SFGs & FGs held in stock, the ITC shall be calculated proportionately on the basis of the corresponding invoices on which credit had been availed by the registered taxable person on such inputs;
 - (b) for capital goods held in stock, the input tax credit involved in the remaining useful life in months shall be computed on pro rata basis, taking the useful life as five years (i.e. 60 months).
- (2) The amount shall be determined separately for ITC of CT, ST, UT tax and IT.
- (3) Where the tax invoices related to the inputs held in stock are not available, the RP shall
 - Estimate the amount under sub-rule (1) based on the prevailing market price of the goods on the effective date of the occurrence of the events.
- (4) The amount determined under (1) shall form part of the output tax liability of the RP and the details of the amount shall be furnished and in FORM GSTR-10 (final return).
- (5) The details furnished under sub-rule (3) shall be duly certified by a practicing-chartered accountant/ cost accountant.

Rule 21A: Suspension of registration

(1) Where a RP has applied for cancellation - Pending cancellation, the registration shall be deemed to be suspended:

- from the date of submission of the application or
- the date from which the cancellation is sought, whichever is later.

(2) Where the PO has reason to believe that registration is liable to be cancelled, he may, suspend the registration with effect from a date to be determined by him, pending the completion of the proceedings for cancellation.

(2A) Where,-

(a) a comparison of the returns furnished by a registered person under section 39 with

- the details of outward supplies furnished in FORM GSTR-1 as amended in FORM GSTR-1A if any; or
- the details of inward supplies derived based on the details of outward supplies furnished by his suppliers in their FORM GSTR-1 or in GSTR-1A of the previous tax period, if any,
- or such other analysis, as may be carried out on the recommendations of the Council, show that there are significant differences or anomalies indicating contravention of the provisions of the Act or the rules made thereunder, leading to cancellation of registration of the said person, or

(b) there is a contravention of the provisions of rule 10A by the registered person, the registration shall be suspended and the said person shall be intimated in Form GST REG-31, electronically, on the common portal, or by sending a communication to his e-mail address provided at the time of registration or as amended from time to time, highlighting the said differences, anomalies or non-compliances and asking him to explain, within a period of 30 days, as to why his registration shall not be cancelled.

(3) A RP, whose registration has been suspended under sub-rule (1) or sub-rule (2), or sub-rule (2A) shall not make any taxable supply & shall not be required to furnish any return u/s 39.

Explanation. - For the purposes of this sub-rule, the expression "shall not make any taxable supply" shall mean that the registered person shall not issue a tax invoice and, accordingly, not charge tax on supplies made by him during the period of suspension.

(3A) A RP, whose registration has been suspended under sub-rule (2) or (2A), shall not be granted any refund u/s 54, during the period of suspension of his registration.

(4) The suspension of registration under sub-rule (1) or sub-rule (2) or sub-rule (2A) shall be deemed to be revoked upon completion of the cancellation proceedings by the PO & such revocation shall be effective from the date on which the suspension had come into effect.

Provided that the suspension of registration under this rule may be revoked by the PO, anytime during the pendency of the proceedings for cancellation, if he deems fit.

Provided further that where the registration has been suspended under sub-rule (2A) for contravention of the provisions contained in clause (b) or clause (c) of sub-section (2) of section 29 and the registration has not already been cancelled by the proper officer under rule 22, the suspension of registration shall be deemed to be revoked upon furnishing of all the pending returns.

Provided also that where the registration has been suspended under sub-rule (2A) for contravention of provisions of rule 10A and the registration has not already been cancelled by the proper officer under rule 22, the suspension of registration shall be deemed to be revoked upon compliance with the provisions of rule 10A.

(5) Where any order having the effect of revocation of suspension of registration has been passed, the provisions of clause (a) of sub-section (3) of section 31 and section 40 in respect of the supplies made during the period of suspension and the procedure specified therein shall apply.

Section 30: Revocation of cancellation of registration

(1) Any RP, whose registration is cancelled by the PO on his own motion, may apply to such officer for revocation of cancellation of the registration in such manner, within such time and subject to such conditions and restrictions, as may be prescribed (Rule 23).

(2) The PO in such manner and within such period as may be prescribed, by order, either revoke cancellation of the registration or reject the application:

Proviso: the application for revocation of cancellation of registration shall not be rejected unless the applicant has been given an opportunity of being heard.

(3) The revocation of cancellation of registration under the SGST Act/UTGST Act, as the case may be, shall be deemed to be a revocation of cancellation of registration under this Act.

Rule 23: Revocation of cancellation of registration

- (1) A RP, whose registration is cancelled by the PO on his own motion, subject to rule 10B,
- may submit an application in REG-21, to such PO, **within a period of ninety days** from service of the order of cancellation of registration at the common portal;

Proviso:

1. such period may, be extended by the Commissioner/an officer authorised by him, not below the rank of Additional Commissioner/Joint Commissioner, for a **further period not exceeding 180 days**;
2. no application for revocation shall be filed, if the registration has been cancelled for the failure of the registered person to furnish returns, unless such returns are furnished and any amount due as tax and dues has been paid.
3. 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 30 days from the date of order of revocation of cancellation of registration:
4. 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 thirty days from the date of order of revocation of cancellation of registration

(2) (a) If PO is satisfied, that there are sufficient grounds for revocation, he shall revoke the cancellation by an order in REG-22 within a period of 30 days from the date of the receipt of the application.

(b) The PO may, for reason in writing, by an order in REG- 05, reject the application for revocation of cancellation.

(3) The PO shall, before passing rejection order, issue a notice in GST Reg 23 requiring the applicant to show cause as to why the application submitted for revocation should not be rejected and the applicant shall furnish the reply within a period of seven working days from the date of the service of the notice in FORM GST REG-24.

(4) Upon receipt of the information or clarification in FORM GST REG-24, the proper officer shall proceed to dispose of the application in the manner specified in sub-rule (2) within a period of thirty days from the date of the receipt of such information or clarification from the applicant.

Introduction

Essential goods/services, i.e., public consumption products/services, have been exempted. Power to grant exemption has been granted u/s 11 of CGST Act & section 6 of IGST Act.

Section 11: Power to grant exemptions from tax

Section 11(1): Power to government to exempt in public interest by notification

Section 11(2): Power to government to exempt in public interest by special Order under exceptional circumstances.

Section 11(3): Power to government to insert an explanation retrospectively in notification or order, within one year of issue and every such explanation shall have retrospective effect.

Goods exempt from tax [Not applicable for CA students]

Services exempt from tax

Notification No. 12/2017 CT (R) dated 28.06.2017/ NNo. 9/2017 IT (R) dated 28.06.2017 unless otherwise specified, has exempted the following services wholly from CGST/IGST respectively:

Charitable and Religious activities

Entry No. 1: Charitable Activities under 12AA/12AB of IT Act

Services by an entity registered under **section 12AA/12AB** of the Income-tax Act, 1961

- by way of **charitable activities**.

Charitable activities mean activities relating to -

(i) Public health by way of-

(a) Care or counselling of

- i. terminally ill persons or persons with severe physical or mental disability;
- ii. Persons afflicted with HIV or AIDS;
- iii. Persons addicted to a dependence-forming substance such as narcotics drugs/alcohol;

(b) Public awareness of

- preventive health,
- family planning or
- prevention of HIV infection;

(ii) Advancement of

- religion, (temple trusts)

- spirituality (trust helping discovering inner soul)
- yoga (trust conducting yoga camp)

(iii) Advancement of educational programmes or skill development relating to, -

- Abandoned, orphaned or homeless children;
- Physically or mentally abused and traumatized persons;
- Prisoners; or
- Persons over the age of 65 years residing in a rural area;

(iv) Preservation of environment including watershed, forests and wildlife;

Mnemonic to remember charitable Activity: PAPE

P - Public health (care or counselling or public awareness)

A - Advancement of religion, spirituality & yoga

P - Preservation of environment

E - Educational programmes or skill development

GST on Residential programmes or camps meant for advancement of religion, spirituality or yoga by religious and charitable trusts

Issue: Applicability of GST on residential programmes or camps meant for advancement of religion, spirituality or yoga where the fee charged includes the cost of boarding and lodging.

Clarification:

- Exempt: if the primary purpose is the advancement of religion, spirituality, or yoga.
- Taxable if trust primarily provides accommodation/serves food/drinks for consideration, including donations.
- Activities like fitness camps or classes (aerobics, dance, music) are taxable.

Entry No. 9D: Services by an old age home run by government/entity under 12AA/AB

Services by an old age home run by CG/SG/entity registered u/s 12AA/12AB of the IT Act

- to its **residents (aged 60 years or more)**
- against consideration up to **Rs. 25000 per month** per member,
- Proviso: consideration charged is inclusive of charges for boarding, lodging and maintenance.

Entry No. 74A: Services provided by rehabilitation professionals

Services provided by rehabilitation professionals

- by way of rehabilitation, therapy/counselling and such other activity
- at medical establishments, educational institutions,
- rehabilitation centres established by CG/ SG or UT or entity u/s 12AA/12AB of IT Act, 1961

Entry No. 13: Religious Ceremony & renting of premises

Services by a person by way of-

- (a) Conduct of any religious ceremony (poojas on occasions like birth, marriage, death, etc);
 (b) renting of precincts of

- a religious place (meant for conduct of prayers/worship) meant for general public
- owned/managed by an entity registered as a charitable/religious trust under 12AA/12AB
- or a trust or an institution registered under section 10(23C) (v) of the Income-tax Act or
- a body or an authority covered under section 10(23BBA) of the said Income-tax Act.

However, nothing contained in entry (b) of this exemption shall apply to-

- (i) Renting of rooms where charges are **Rs 1,000 or more per day**;
 (ii) Renting of premises, community halls, Kalyan mandapam or open area, and the like where charges are **Rs 10,000 or more per day**;
 (iii) Renting of shops/spaces for business/commerce where charges are **Rs 10,000/more per month**.

Entry No. 60: Services by a specified organisation

Services by a specified organisation (Kumaon Mandal Vikas Nigam Limited/Haj Committee)

- in respect of a religious pilgrimage (Kailash Mansarovar yatra and Haj)
- facilitated by the Government of India, under bilateral arrangement.

Entry No. 80: Training/Coaching

Services by way of training or coaching in -

- (a) recreational activities relating to **arts or culture, by an individual**, or
 (b) **sports by charitable entities** registered under section 12AA or 12AB of Income Tax Act.

Government Related Services

Entry No. 3: Pure services provided To Government

Pure services (excluding works contract service/composite supplies involving supply of any goods)

- provided to the CG, SG or UT or LA by way of any activity;
- in relation to any function entrusted to a Panchayat under article 243G of Constitution or
- in relation to any function entrusted to a Municipality under article 243W of Constitution.

Entry No. 3A: Composite supply up to 25% goods exempt

Composite supply of goods & services in which the VOS of goods constitutes \leq 25% of the value of the said composite supply

- provided to the CG, SG or UT or LA by way of any activity:
- in relation to any function entrusted to a Panchayat under article 243G of Constitution or
- in relation to any function entrusted to a Municipality under article 243W of Constitution

Clarification on GST applicability on sanitation and conservancy services supplied to Army

Issue: Whether GST is applicable on sanitation and conservancy services supplied to Army and other Central and State Government departments.

Clarification: Yes GST is applicable.

Such services are procured by Indian Army/any other Government Ministry/Department which does not perform any functions listed in 11th & 12th Schedule, in the manner as a local authority does for the general public, the same are not eligible for exemption under Sl. No. 3 and 3A.

Supply of pure services & composite supplies (value of goods upto 25%) by way of horticulture/horticulture works made to Central Public Works Department (CPWD).

- Public parks in government residential colonies, government offices and other public areas are developed and maintained by CPWD.
- Maintenance of community assets, urban forestry, protection of the environment and promotion of ecological aspects are functions entrusted to Panchayats and Municipalities under Articles 243G and 243W.
- **Clarified:** Pure services & composite supplies by way of horticulture/horticulture works (where the value of goods constitutes not more than 25% of the total value of supply) made to CPWD are eligible for exemption from GST under Sr. Nos. 3 & 3A.

Entry No. 4: Services in relation to municipality functions under article 243 W

Services **by a governmental authority** by way of any activity in relation to any function entrusted to a municipality under article 243W of the Constitution are exempt.

Entry No. 5: Services in relation to Panchayat functions under article 243G

Services **by a governmental Authority** by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution.

Statutory collections made by the Real Estate Regulatory Authority (RERA)

- RERA is constituted under the Real Estate (Regulation and Development) Act, 2016.
- RERA performs function of regulating the real estate development and construction of the building entrusted to them which fall under Entry No.1 and 2 of the 12th Schedule of the Indian Constitution.
- RERA is a 'governmental authority' and is covered under the scope of entry no. 4.
- It is hereby clarified that statutory collections made by RERA are covered under the entry no. 4 and thus, exempt from GST.

Entry No. 9C: Supply of services by a Govt entity to CG/SG/UT/LA in form of grants

- Supply of service by a Govt Entity to CG/SG/UT/LA/any person specified by CG/SG/UT/LA
- against consideration received from CG/SG/UT/LA, in the form of grants is exempt.

Entry No. 3B: Services provided to a Governmental Authority

Services provided to a Governmental Authority by way of - [Mnemonic - S³WP]

- S - sanitation conservancy;
- S - solid waste management; and
- S - slum improvement and upgradation.
- W - water supply;
- P - public health;

Governmental Authority means	Governmental Entity means
- an authority or a board or any other body,	- an authority or a board or any other body,
(i) set up by an Act of Parliament or a State Legislature; or	(i) set up by an Act of Parliament or a State Legislature; or
(ii) established by any Government, with 90% or more participation by way of equity or control,	(ii) established by any Government, with 90% or more participation by way of equity or control,
to carry out any function entrusted to a Municipality under 243W or to a panchayat under article 243G of the Constitution.	to carry out any function entrusted by the CG/SG/UT/LA.

District Mineral Foundations Trusts (DMFTs) set up by the SGs are Governmental Authorities & eligible for same exemptions as available to other Governmental Authority.

- **Function:** DMFTs work for the interest and benefit of persons and areas affected by mining operations.
- **Services Provided:** Include drinking water supply, environment protection, health care, education, welfare of women and children, and supply of medical equipment.
- **Cost:** Services/supplies are provided free of charge with no consideration from beneficiaries.
- **Activities:** Similar to those in the Eleventh and Twelfth Schedules of the Constitution.
- **Clarification:** DMFTs are considered Governmental Authorities and eligible for GST exemptions available to such authorities.

Entry no. 24C: Services by the Department of Posts

Services by the Department of Posts by way of [Mnemonic - PIBO]

- **P** - post card,
- **I** - inland letter,
- **B** - book post and
- **O** - ordinary post (envelopes weighing less than 10 grams).

Entry No. 6: Services by Government

Services by the CG, SG, UT, LA **excluding** the following services—

- services by the Department of Posts and the Ministry of Railways (Indian Railways);
- Services in relation to an aircraft/a vessel, inside/outside the precincts of a port/an airport;
- Transport of goods or passengers; or
- any service, except services under entries (a) to (c) above, provided to business entities.**

Clarification on applicability of GST on accommodation services supplied by Air Force Mess

Issue: whether GST is payable on accommodation services supplied by Air Force Mess Army mess, Navy mess, Paramilitary, and Police forces mess to its personnel.

Clarification:

- Services supplied by CG, SG, UT, or LA to non-business entities are exempt from GST.
- Accommodation services provided by Air Force Mess, Army mess, Navy mess, Paramilitary, and Police forces mess to their personnel/non-business entities are covered under exemption.
- The exemption applies if the messes qualify as services supplied by CG, SG, UT, or LA.

Entry No. 7: Small Business Entity

Services provided by the CG/SG/UT/LA to a business entity with an ATO up to such amount in the preceding FY as makes it eligible for exemption from registration under the CGST act.

Explanation: clarified that provisions of this entry shall not be applicable to following services:

(a) Services -

- (i) by the Department of Posts and the Ministry of Railways (Indian Railways);
- (ii) in relation to an aircraft or a vessel, inside or outside the precincts of a port/an airport;
- (iii) of transport of goods or passengers; and

(b) Services by way of renting of immovable property.

Entry No. 8: Government to Government services

Services provided by the CG/SG/UT/LA to another CG/SG/UT/LA.

However, nothing contained in this entry shall apply to services -

- (i) by the Department of Posts and the Ministry of Railways (Indian Railways);
- (ii) in relation to an aircraft or a vessel, inside or outside the precincts of a port/an airport;
- (iii) of transport of goods or passengers;

Entry No. 9: Services by Government, consideration is upto Rs. 5,000

Services provided by CG/SG/UT/LA where the consideration does not exceed Rs 5,000.

Proviso: nothing contained in this entry shall apply to -

- (i) services by the Department of Posts and the Ministry of Railways (Indian Railways);
- (ii) Services in relation to an aircraft/a vessel, inside/outside the precincts of a port/an airport;
- (iii) Transport of goods or passengers;

Proviso: In case where continuous supply of service, provided by CG/SG/UT/LA, exemption shall apply only where the consideration charged for such service does not exceed Rs 5,000 in a FY.

Entry no. 9E: Services provided by Ministry of Railways

Services provided by Ministry of Railways (Indian Railways) to individuals by way of -

- (a) sale of platform tickets
- (b) facility of retiring rooms/waiting rooms;
- (c) cloak room services;

(d) battery operated car services

Entry no. 9F: Service under Indian railways by one Zone to another Zone

Services provided by one zone/division under Ministry of Railways (Indian Railways) to another zone(s)/division(s) under Ministry of Railways (Indian Railways).

Entry no. 9G: Services provided by Special Purpose Vehicles (SPVs) to Ministry of Railways

Services provided by Special Purpose Vehicles (SPVs) to Ministry of Railways (Indian Railways)

- by way of allowing Ministry of Railways (Indian Railways)
- to use the infrastructure built and owned by them during the concession period against consideration and
- services of maintenance supplied by Ministry of Railways (Indian Railways) to SPVs in relation to the said infrastructure built and owned by the SPVs during the concession period against consideration.

Entry No. 61: Passport, Visa - Government Exclusive services

Services provided by the CG, SG, UT or LA,

- by way of issuance of passport, visa, driving licence, birth certificate or death certificate.

Entry No. 34A: Services of providing guarantee for loans

Services supplied by CG/SG/UT to their undertakings/PSUs

- by way of guaranteeing the loans taken by such undertakings or PSUs from the banking companies and financial institutions.

Entry No. 42: Telecom (old entry not important)

Services provided by the CG/SG/UT/LA

- by way of allowing a business entity to operate as a telecom service provider or use radio frequency spectrum
- during the period prior to the 01.04.2016, on payment of licence fee/spectrum user charges.

Entry No. 47: Government Services- Exclusive

Services provided by the CG/SG/UT/LA by way of-

- (i) registration required under any law for the time being in force;

(ii) testing, calibration, safety check certification relating to protection/safety of workers, consumers/public at large, including fire license, required under any law.

Examples: Domicile certificate, Certificate by factories Inspector, etc.

Entry No. 65: Merchant Overtime charges

Services provided by the CG/SG/UT by way of deputing officers **after office hours or on holidays**

- for inspection or container stuffing/such other duties in relation to import export cargo
- on payment of **Merchant Overtime charges**.

Entry No. 40: Insurance Scheme premium paid Government

Services provided to CG/SG/UT under any **insurance scheme, total premium is paid by CG/SG/UT**.

Central Government's share of profit petroleum exempted

CG, exempts the intra-State supply/interstate of services by way of **grant of license or lease to explore or mine petroleum crude or natural gas or both**, from so much of the central tax as is leviable on the consideration paid to the CG in the form of CG's share of profit petroleum.

Entry No. 62: Non-Performance/Tolerating and act- Old entry not relevant

Services provided by the CG/SG/UT/LA by way of tolerating non-performance of a contract for which consideration in the form of fines/liquidated damages is payable to the CG/SG/UT/LA.

Entry No. 63: Natural Resources - to Individual Farmer

Services provided by the CG/SG/UT/LA by way of **assignment of right to use natural resources to an individual farmer** for 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.

Entry No. 64: Natural resources - Prior to 01.04.2016 (Old entry)

Services provided by the CG/SG/UT/LA by way of assignment of right to use any natural resource where such right to use was assigned by the CG/SG/UT/LA before the 1st April, 2016: However, the exemption shall apply only to tax payable on one time charge payable, in full upfront or in instalments, for assignment of right to use such natural resource.

Entry No. 11A. Services provided by fair price shops

Service provided by **Fair Price Shops 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.

Entry No. 72: Training-Expenditure borne by government

Services provided to the CG/SG/UT administration under any **training programme for which 75% or more** of the total expenditure is borne by the CG/SG/UT administration.

Entry No. 65B: Services supplied by a SG to Excess Royalty Collection Contractor

Services supplied by a SG to Excess Royalty Collection Contractor (ERCC)

- by way of assigning the right to collect royalty on behalf of the SG on the mineral dispatched by the mining lease holders.

However, at the end of the contract period,

- ERCC shall submit an account to the SG and certify that amount of GST deposited by mining lease holders on royalty is more than GST exempted on the service provided by SG to the ERCC of assignment of right to collect royalty and
- where such amount of GST paid by mining lease holders is less than the amount of GST exempted, the exemption shall be restricted to such amount as is equal to the amount of GST paid by the mining lease holders and
- the ERCC shall pay the difference between GST exempted on the service provided by SG to the ERCC of assignment of right to collect royalty & GST paid by mining lease holders on royalty.

Passenger transportation services

Entry No. 15: Transport of passengers

Transport of passengers, with or without accompanied belongings, by -

(a) air in economy class, embarking from/terminating in an airport located in **[BATM³ANS]**

B - Bagdogra located in West Bengal,

A - Arunachal Pradesh,

T - Tripura

M³ - Manipur, Meghalaya, Mizoram,

A - Assam,

N - Nagaland,

S - Sikkim;

(b) non-air-conditioned contract carriage other than radio taxi, for transportation of passengers, excluding tourism, conducted tour, charter or hire; or

(c) non-air-conditioned stage carriage.

Proviso: Exemption for contract & stage carriage shall not apply to services supplied through an ECO u/s 9(5).

Clarification on hiring of vehicles by firms for transportation of their employees

Issue: Whether hiring of vehicles by firms for transportation of their employees to and from work is exempt under 15(b) i.e. transport of passengers by non-air conditioned contract carriage.

Clarification:

- Exemption is not applicable if the contract carriage is hired for a period of time and is at the service recipient's disposal.
- The recipient can decide the manner of usage (route and schedule) subject to the agreement with the service provider.
- Hence, hiring vehicles for transporting employees to and from work does not qualify for exemption under transport of passengers by non-air conditioned contract carriage.

Entry No. 17: Transportation of Passengers

Service of transportation of passengers, with or without accompanied belongings, by—

(a) Railways in a class other than—

(i) First class; or

(ii) An air-conditioned coach;

(b) Metro, monorail or tramway;

(c) Inland waterways;

(d) Public transport, other than predominantly for tourism purpose, in a vessel between places located in India; and

(e) metered cabs or auto rickshaws (including e-rickshaws).

Proviso: Exemption in item (e) shall not apply to services supplied through an ECO u/s 9(5).

Clarification on GST applicability on ferry ticket

Issue: Whether GST is applicable on private ferry tickets. For instance, private ferries are used as means of transport from one island to another in Andaman and Nicobar Islands.

Clarification:

- No, As per Entry 17(d), transportation of passengers by public transport, other than predominantly for tourism purpose, in a vessel between places located in India is exempted.\
- Exemption would apply to tickets purchased for transportation from one point to another, whether ferry is owned/operated by a private sector enterprise/PSU/government.

Entry No. 16: Viability GAP Funding - RCS

- Services provided to CG, by way of transport of passengers with/without accompanied belongings,
- by air, embarking from or terminating at an RCS (Regional Connectivity Scheme) airport,
 - against consideration in the form of viability gap funding:

However, exemption shall not apply on/after the expiry of a period of **3 years** from the date of commencement of operations of the regional connectivity scheme airport.

Goods transportation services

Entry No. 18: Transportation of Goods-Within India

Services by way of transportation of goods-

- (a) by road **except** the services of— a goods transport agency /a courier agency;
- (b) by inland waterways.

Clarification on renting of truck with driver

Issue: Whether transport of minerals within a mining area, say from mining pit head to railway siding, beneficiation plant etc., by vehicles deployed with driver for a specific duration of time would be covered under Entry 18 which exempts transport of goods by road except by a GTA.

Clarification:

- No, it is not exempt.
- Renting trucks and freight vehicles with drivers for a period of time is considered a service of renting transport vehicles with an operator.
- This is not the same as the service of transportation of goods by road.
- Consequently, it does not qualify for exemption under Entry 18.

Entry No. 20 & 21: Transportation of Goods - Rail, Vessel or GTA

Services by way of transportation by rail/vessel/goods transport agency from one place in India to another of the following goods - **[Mnemonic - RANDOM]**

- **R - relief materials** meant for victims of natural/man-made disasters, calamities, accidents/mishap;
- **A - agricultural produce;**
- **N - newspaper** or magazines registered with the Registrar of Newspapers;
- **D - defence** or military equipment;
- **O - organic manure.**
- **M - milk**, salt and food grain including flours, pulses and rice; and

Entry No.21A: Services provided by a GTA to an unregistered person (covered under RCM)

Services provided by a GTA to URP, including an unregistered CTP, excluding following recipients:

- any **f**actory/ registered under or governed by the Factories Act, 1948; or
- any **b**ody corporate established, by or under any law for the time being in force; or
- any **S**ociety registered under the Societies Registration Act, 1860/under any other law
- any **Co**-operative Society established by or under any law for the time being in force; or
- any **p**artnership firm whether registered or not under any law including association of persons;
- any CTP registered under the CGST Act/the IGST Act/the SGST Act/the UTGST Act are exempt.

Entry No.21B: Services provided by a GTA to TDS deductor (covered under RCM)

Services provided by a GTA, by way of transport of goods in a goods carriage, to, –

- (a) a department or establishment of the CG/SG/UT; or
- (b) local authority; or
- (c) Governmental agencies,

which has taken registration for the purpose of TDS & not for making a taxable supply of g/s.

Clarification on incidental/ ancillary services by GTA

Issue: Whether incidental/ ancillary services such as loading/ unloading, packing, unpacking, transshipment, temporary warehousing etc., provided in relation to transportation of goods by road is to be treated as part of Goods Transport Agency service, being composite supply, or these services are to be treated as separate independent supplies:

Clarification:

- Ancillary or incidental services provided by GTA in the course of transportation of goods by road, such as loading/unloading, packing/unpacking, transshipment, temporary warehousing etc. will be treated as composite supply of transport of goods.
- The method of invoicing used by GTAs will not generally alter the nature of the composite supply of service.

- However, if such services are not provided in the course of transportation of goods and are invoiced separately, then these services will not be treated as composite supply of transport of goods.

Entry No. 19: Transportation of Goods-Air from outside India

Services by way of transportation of goods by an aircraft

- from a place outside India up to the customs station of clearance in India.

Entry No. 22: Hire of Means of transport of Passenger and Goods

Services by way of giving on hire (or renting) -

- (a) to a state transport undertaking, a motor vehicle meant to carry more than 12 passengers; or
- (aa) to a local authority, an Electrically operated vehicle meant to carry more than 12 passengers; or
- (b) to a goods transport agency, a means of transportation of goods.
- (c) 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, have also been exempted from CGST [Notification No. 2/2018 CT (R) dated 25.01.2018].

Entry No. 19C: Satellite launch services

Entry No.61A: Services by way of granting National Permit to a goods carriage

Services by way of granting National Permit to a goods carriage to operate through-out India / contiguous States.

Entry No. 9B: Supply of services associated with transit cargo to Nepal & Bhutan.

Supply of services associated with transit cargo to Nepal & Bhutan (landlocked countries) are exempt.

Circular/Clarification [Circular No. 177/09/2022 GST dated 03.08.2022]

Issue: Whether Exemption under Sl. No. 9B covers services associated with transit cargo both to and from Nepal and Bhutan.

Whether GST is applicable on transportation of empty containers returning from Nepal and Bhutan to India, after delivery of transit cargo.

Clarification: Yes, Exemption under Sl. No. 9B cover services associated with transit cargo both to and from Nepal and Bhutan. Movement of empty containers from Nepal and Bhutan, after delivery of goods there, is a service associated with the transit cargo to Nepal & Bhutan and **is therefore covered by the exemption.**

Services by way of admission and Performance

Entry No. 79: Museum, National Park, Zoo, etc.

Services by way of admission to a museum, national park, wildlife sanctuary, tiger reserve or zoo.

Entry No. 79A. Services by way of Admission to Protected Monuments, etc.

Services by way of admission to a protected monument so declared under the Ancient Monuments and Archaeological Sites and Remains Act 1958/any of the State Acts.

Example of protected monuments: Taj Mahal, Red fort, etc.

Entry No. 81: Entry to Entertainment Events

Services by way of right to admission to-

(a) circus, dance, or theatrical performance including drama or ballet;

(b) award function, concert, pageant, musical performance or any sporting event **other than a recognised sporting event**;

(c) recognised sporting event,

(d) Planetarium

where consideration for admission is **upto Rs 500 per person** as referred to in (a), (b), (c), (d).

Old entry, currently irrelevant [just read one]

Entry No. 82: Services by way of right to admission to the events organised under FIFA U-17 World Cup 2017.

Entry No. 82A: Services by way of right to admission to the events organised under FIFA U-17 Women's World Cup 2020 whenever rescheduled.

Entry No. 82B: Services by way of right to admission to the events organised under AFC Women's Asia Cup 2022.

Entry No. 9A. Services provided by and to FIFA and its subsidiaries directly or indirectly related to any of the events under FIFA U-17 World Cup 2017 to be hosted in India are exempt.

Entry No. 9AA. Services provided by & to FIFA and its subsidiaries directly/indirectly related to any of the events under FIFA U-17 Women's World Cup 2020, whenever rescheduled.

Entry No. 9AB: Services provided by and to Asian Football Confederation and its subsidiaries directly/indirectly related to any events under AFC Women's Asia Cup 2022 to be hosted in India

Entry No. 78: Artist

Services by an artist by way of a performance in folk or classical art forms of-

(a) music, or

(b) dance, or

(c) theatre,

if the consideration charged for such performance is **not more than Rs 1,50,000**.

However, the exemption shall not apply to service provided by such artist as a brand ambassador.

Agriculture related services

Agricultural produce means

- any produce out of cultivation of plants & 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/such processing is done as is usually done by a cultivator which does not alter its essential characteristics but makes it marketable for primary market.

Entry No. 54: Agriculture related services

Services relating to

- cultivation of plants and
- rearing of all life forms of animals (example: beeding fish, rearing silk worm, etc.) **except** the rearing of horses,
- for food, fibre, fuel, raw material/other similar products or agricultural produce by way of—
 - (a) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection/testing;
 - (b) supply of farm labour;
 - (c) processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market;
 - (d) renting/leasing of agro machinery/vacant land with or without a structure incidental to its use;

- (e) loading, unloading, packing, storage or warehousing of agricultural produce;
- (f) agricultural extension services;
- (g) services by any Agricultural Produce Marketing Committee/Board/services provided by a commission agent for sale or purchase of agricultural produce.

Agricultural extension means the application of scientific research & knowledge to agricultural practices through farmer education or training.

Entry No. 24: Rice related services

Services by way of loading, unloading, packing, storage or warehousing of rice.

Clarifications regarding applicability of GST (Circular No. 16/16/2017-GST)

Issue: Is GST applicable on warehousing of agricultural produce such as tea (i.e., black tea, white tea etc.), processed coffee beans or powder, pulses (de-husked or split), jaggery, processed spices, processed dry fruits, processed cashew nuts etc.?

Clarification:

- GST rate on loading, unloading, packing, storage, or warehousing of agricultural produce is Nil.
- Agricultural produce is defined as produce from cultivation/rearing for food, fiber, fuel, raw material, or similar products, with no or minimal processing that doesn't alter its essential characteristics.
- Tea (black, green, white) is a processed product made in factories and not considered agricultural produce for GST exemption.
- Green tea leaves are considered agricultural produce.
- Coffee: processed coffee is not considered agricultural produce; green coffee beans are.
- Jaggery is not agricultural produce.
- Pulses (dehusked or split) are not considered agricultural produce as dehusking/splitting is typically done by millers, not farmers.
- Whole pulse grains like gram, rajma, etc. are considered agricultural produce.

Entry No. 24A: Services by way of warehousing of minor forest produce.

Minor Forest Produce: tamarind, curry leaf, bamboo, honey, tendu leaves, medicinal plants & herbs, etc.

Just for knowledge: Major Forest produce: Sandalwood, Social Forestry that includes timber.

Entry No. 24B: Warehousing services

Services by way of storage or warehousing of cereals, pulses, fruits and vegetables.

Entry No. 55: Intermediate Process

Carrying out an intermediate production process as job work

- in relation to cultivation of plants & rearing of all life forms of animals, except horses,
- for food, fibre, fuel, raw material or other similar products or agricultural produce.

Clarification on taxability of custom milling of paddy into rice

Issue: whether custom milling of paddy by Rice millers for Civil Supplies Corporation is liable to GST or is exempted?

Clarification:

- Milling of paddy is not an intermediate production process in relation to cultivation.
- It occurs after cultivation and harvesting of paddy.
- Processing of paddy into rice is done by rice millers, not cultivators, and changes the essential characteristics of paddy.
- Therefore, milling of paddy into rice is not considered an intermediate production process related to cultivation of plants or agricultural produce.

Entry No. 55A: Services by way of artificial insemination of livestock (other than horses).

Livestock is commonly defined as domesticated animals raised in an agricultural setting to produce labour and commodities such as meat, eggs, milk, fur, leather, and wool.

Entry No. 57: Fruits and Vegetables

Services by way of pre-conditioning, precooling, ripening, waxing, retail packing, labelling

- of fruits & vegetables which do not change/alter their essential characteristics.

Entry No. 58: NCCD Agriculture

Services provided by the National Centre for Cold Chain Development under the Ministry of Agriculture, Cooperation and Farmer's Welfare by way of cold chain knowledge dissemination.

Note: NCCD provides courses through which it provides knowledge about cold chain facility, such activities are exempt.

10A: Electricity distribution utilities extending electricity upto tube well of farmer

Services supplied by electricity distribution utilities

- by way of construction, erection, commissioning, or installation of infrastructure for extending electricity distribution network
- upto the tube well of the farmer or agriculturist for agricultural use.

Healthcare related services

Entry No. 74: Health Care Services

Services by way of -

(a) Health care services by [Mnemonic - CAP]

- (i) a clinical establishment,
- (ii) an authorised medical practitioner or
- (iii) para-medics:

- Proviso: Exemption not applicable to services provided by a clinical establishment by way of providing room having room charges exceeding Rs. 5000 per day to a person.
- [In case of Intensive Care Unit/Critical Care Unit/Intensive Cardiac Care Unit/Neo natal Intensive Care Unit - no cap on room charges - complete exemption]

(b) Services provided by way of transportation of a patient in an ambulance, other than those specified in (a) above.

Health care services means any service by way of [Mnemonic - DTC for PAIID in AYUSHAN]

- diagnosis or treatment or care (DTC) for
- pregnancy, abnormality, illness, injury, deformity (PAIID)
- in any recognised system of medicines in India (AYUSHAN) and
- Includes services by way of transportation of the patient to and from a clinical establishment,
- but does not include hair transplant/cosmetic/plastic surgery, except when undertaken to restore/reconstruct anatomy/functions of body affected due to congenital defects, developmental abnormalities, injury or trauma.

Recognised system of medicine in India are: Mnemonic - AYUSHAN

A - Allopathy

Y - Yoga

U - Unani

S - Siddha

H - Homeopathy

A - Ayurveda

N - Naturopathy

Clinical establishment means

- a hospital, nursing home, clinic, sanatorium or any other institution that offers services or facilities requiring **DTC for PAIID** in any recognised system of medicines in India (**AYUSHAN**)
- or a place established as an independent entity or a part of an establishment to carry out diagnostic or investigative services of diseases.

Authorised medical practitioner means

- a medical practitioner registered with any of the councils of the recognised system of medicines established or recognised by law in India and
- includes a medical professional having the requisite qualification to practice in any recognised system of medicines in India as per any law for the time being in force.

Entry No.46: Veterinary clinic

Services by a **veterinary clinic** in relation to health care of animals or birds.

Clarifications relating to health care

1. Rent of rooms provided to in-patients in hospitals is **exempt upto Rs. 5000** per day to a person.
2. Services provided by senior doctors/ consultants/ technicians to Hospital is **Exempt**
Issue: Hospitals hire senior doctors/ consultants/ technicians & pay them consultancy charges and there is no employer-employee relationship between them.
Clarification: Covered under healthcare services which are exempt from GST.
3. Retention money: Amount charged by hospitals from the patients is **exempt since charged for healthcare.**
Issue: Hospitals charge the patients, say, Rs 10,000/- and pay to the consultants/technicians only Rs 7,500/- and keep the balance for providing ancillary services which include nursing care, infrastructure facilities, paramedic care, emergency services, checking of temperature, weight, blood pressure, etc.
Clarification:
 - Going through the definition of health care services, it can be inferred that hospitals also provide healthcare services.
 - The entire amount charged by them from the patients including the retention money and the fee/payments made to the doctors etc., is towards the healthcare services and is exempt.

4. Food supplied to the In-patients is exempt

Issue: GST applicability on food supplied to patients by clinical establishments.

Clarification:

- Food supplied to the in-patients as advised by the doctor/nutritionists is a part of composite supply of healthcare and not taxable.
- Food supplied by a hospital to patients (not admitted)/their attendants/visitors are taxable.

5. In vitro fertilization

Issue: Whether GST is applicable on services by way of Assisted Reproductive Technology (ART) procedures such as In vitro fertilization (IVF).

Clarification:

- No, the abnormality/ailment of infertility is treated using ART procedure such as IVF.
- Services by way of IVF are covered under health care services, hence exempt.

6. GST on Ambulance services provided to government by private service providers under NHM

National Health Mission (NHM) is a flagship programme of the government of India wherein the CG provides technical and financial support to States to strengthen healthcare systems including for free ambulance services (Dial 102/108). Many states are operating the ambulance service on outsourced model and these services are funded under the NHM and provided free of cost to all patients.

Issue: Whether private service providers are liable for payment of GST?

Clarification:

- Functions of 'Health and sanitation' is entrusted to Panchayats under Article 243G
- Function of 'Public health' is entrusted to Municipalities under Article 243 W.
- Thus, ambulance services are an activity in relation to functions entrusted to Panchayats and Municipalities under Articles 243G and 243W of the Constitution.
- Since ambulance services are an activity in relation to functions entrusted to Panchayats and Municipalities under Article 243G and 243W, same would be exempt as under:
 - Entry 3 if it is a pure service and not a composite supply involving supply of any goods, and
 - Entry 3A if it is a composite supply of goods and services in which the value of supply of goods constitutes not more than 25% of the value of the said composite supply.

7. Services other than health care services in clinical establishment's premises

Supply of services other than healthcare services such as renting of shops, auditoriums in the premises of the clinical establishment, display of advertisements etc. will be subject to GST.

Entry No. 45: Legal Services (discussed with RCM)

Services provided by -

a. an arbitral tribunal to -

- (i) any person other than a business entity; or
- (ii) a business entity with an aggregate turnover up such amount in the preceding financial year as makes it eligible for exemption from registration under the CGST act; or
- (iii) CG/SG/UT/LA/governmental authority/government entity.

b. a partnership firm of advocates or an individual as an advocate, by way of legal services to-

- (i) an advocate or partnership firm of advocates providing legal services;
- (ii) any person other than a business entity; or
- (iii) a business entity with an aggregate turnover up such amount in the preceding financial year as makes it eligible for exemption from registration under the CGST act; or
- (iv) CG/SG/UT/LA/governmental authority/ government entity

c. a senior advocate by way of legal services to-

- (i) any person other than a business entity; or
- (ii) a business entity with an aggregate turnover up such amount in the preceding financial year as makes it eligible for exemption from registration under the CGST act; or
- (iii) the CG/SG/UT/LA/Governmental Authority or Government Entity.

Education & Skill

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.

Approved vocational education course means,

- (i) a course run by an Industrial Training Institute/ Industrial Training Centre affiliated to the National Council for Vocational Education and Training/State Council for Vocational Training (SCVT) offering courses in designated trades notified under the Apprentices Act, 1961 or
- (ii) a Modular Employable Skill Course, approved by the NCVT, run by a person registered with the Directorate General of Training, Ministry of Skill Development and Entrepreneurship.

Entry No. 66: Educational Institutions

Services provided -

(a) **by** an educational institution to its student, faculty and staff;

(aa) **by** an educational institution by way of conduct of entrance examination against consideration in the form of entrance fee

(b) **to** an educational institution, by way of, -

(i) transportation of students, faculty and staff;

(ii) catering, including any mid-day meals scheme sponsored by the CG/SG/UT

(iii) security or cleaning or house-keeping services **performed in such educational institution;**

(iv) services relating to admission to, or conduct of examination by, such institution;

(v) supply of online educational journals or periodicals

Item (b) sub-items (i), (ii) and (iii) shall not apply to an educational institution

- providing education as a part of a curriculum for obtaining a qualification
- education as a part of an approved vocational education course

Further Item (b) sub-items (v) shall apply to an institution providing services by way of, -

- pre-school education and education up to higher secondary school or equivalent; or
- education as a part of an approved vocational education course

Also clarified that

- the Central and State Educational Boards shall be treated as Educational Institution for the limited purpose of providing services by way of conduct of examination to the students.
- any authority, board or body set up by the CG or SG including National Testing Agency for conduct of entrance examination for admission to educational institutions shall be treated as educational institution for the limited purpose of providing services by way of conduct of entrance examination for admission to educational institutions.

Entry No. 66A: Affiliation service provided to Government schools

Services of affiliation provided

- by a Central or State Educational Board or Council or any other similar body, by whatever name called,
- to a school established, owned or controlled by the Central Government, State Government, Union Territory, local authority, Governmental authority or Government entity.

Clarifications/Circulars

Clarification regarding affiliation provided by universities to school

- The activity of affiliation is to monitor and ensure whether the institution possesses the required infrastructure in terms of space, technical prowess, financial liquidity, faculty strength, etc. and is thereby eligible for the privileges to conduct the course/program of study for the degree/title extended by the University to the students enrolled in such institutions.
- The affiliation services provided by the universities are not related to the admission of students to such colleges or the conduct of examinations by such colleges.
- Clarified that the affiliation services provided by universities to their constituent colleges are not covered within the ambit of exemptions provided to educational institutions.

Clarification on affiliation provided by central and state educational boards or councils or other similar bodies to schools

- The activity of affiliation carried out by educational boards or councils, or other similar bodies, is to monitor and ensure whether the schools possess the required infrastructure, finances, faculty strength etc. and are thereby eligible for the privileges to operate under the aegis of said boards or councils.
- The affiliation services are not related to the admission of students to such schools or the conduct of examinations by such schools.
- Clarified by CBIC that such services of affiliation, provided to schools by Central or State educational boards or councils, or other similar bodies, by whatever name called, are taxable
- However, affiliation services provided by Central and State educational boards or Councils, or other similar bodies to GOVERNMENT SCHOOLS i.e. schools established, owned or controlled by the CG, SG, UT, LA, Governmental authority or Government entity are exempt vide Entry 66A of Exemption Notification.

Clarification regarding applicability of GST on supply of food in Anganwadis and Schools

Issue: whether serving of food in schools under Mid-Day Meals Scheme would be exempt if such supplies are funded by government grants and/or corporate donations?

Clarification:

- Services provided to an educational institution by way of catering including mid- day meals is exempt from GST whether funded by government grants/corporate donations.
- Anganwadi provides pre-school non formal education, hence its an educational institutions.
- Hence, serving of food to Anganwadis shall also be covered by exemption, whether sponsored by government or through donation from corporates.

Clarification regarding GST on supply of various services by Central and State Board (such as National Board of Examination)

Issue: Taxability of various services supplied by Centre and State Boards such as National Board of Examination (NBE). These services include

- (i) entrance examination on charging a fee for admission to educational institution,
- (ii) input services for conducting such entrance examination for students,
- (iii) Accreditation of educational institutions or professional so as to authorise them to provide their respective services.

Clarification:

- (i) GST is exempt on services by Central/State Boards (including NBE) by conduct of entrance examination for admission to educational institution [under S. No. 66 (aa)].
- (ii) GST is also exempt on input services relating to admission to, or conduct of examination, when provided to such Boards [under S. No. 66 (b) (iv)].
- (iii) GST @ 18% applies to other services provided by such Boards, namely of providing accreditation to an institution or to a professional.

Clarifications regarding GST on College Hostel Mess Fees

Issue: clarification regarding the taxability and rate of GST on services by a college hostel mess.

Clarification:

- The educational institutions have mess facility for providing food to their students and staff.
- Such facility is either run by the institution/ students themselves or is outsourced to a third person. Supply of food or drink provided by a mess/canteen is taxable at 5% without ITC.

Scenario 1: If the catering services is one of the services provided by an educational institution to its students, faculty and staff, then the same is exempt. [Sl. No. 66(a)]

Scenario 2: If the catering services, i.e., supply of food/drink in a mess/canteen, is provided by anyone other than the educational institution, then it is a supply of service to the concerned educational institution and attracts GST.

Clarification on GST rate applicable on supply of food & beverage by educational institution

Issue: whether supply of food and drinks by an educational institution to its students is eligible for exemption.

Clarification:

- Supply of all services by an educational institution to its students, faculty and staff is exempt under Sl. No. 66.

- Hence, supply of food and beverages by an educational institution to its students, faculty and staff, where such supply is made by the educational institution itself, is exempt under Sl. No. 66 w.e.f. 01-07-17 itself.
- However, such supply of food and beverages by any person other than the educational institutions based on a contractual arrangement with such institution is leviable to GST@ 5%.

Clarification on applicability of GST exemption to the DG Shipping approved maritime courses conducted by Maritime Training Institutes of India

Issue: A representation has been received regarding applicability of GST exemption to the Directorate General of Shipping approved maritime courses conducted by the Maritime Training Institutes of India.

Clarification:

- Maritime Training Institutes and their training courses are approved by the Director General of Shipping which are duly recognised under Merchant Shipping Act read with the Rules.
- Therefore, Maritime Training Institutes are educational institutions under GST Law and the courses conducted by them are exempt from levy of GST.

Clarification on applicability of GST on application fees, issuance of eligibility & Migration certificate

Issue: Whether GST is applicable on application fee charged for entrance or the fee charged for issuance of eligibility certificate for admission or for issuance of migration certificate.

Clarification: Fee charged-

- From prospective students for entrance or admission,
- from prospective students for issuance of eligibility certificate to them in the process of their entrance/admission.
- For issuance of migration certificates by educational institutions to the leaving or ex-students.

Applicability of GST on programmes conducted by the Indian Institutes of Managements (IIMs)

- All the IIMs are educational institutions as they provide education as a part of a curriculum for obtaining a qualification recognized by law for the time being in force.
- 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. Such long duration courses are exempt.
- IIMs also provide various short duration/short term programs for which they award participation certificate to the executives/ professionals as they are considered as participants of the said programmes. These certificates are not any qualification recognized by law. Such short duration executive programs attract GST.

Approved flying training courses conducted by flying training organisations (FTO) approved by the DGCA

- Directorate General of Civil Aviation (DGCA) approves Flying Training Organizations (FTOs) as well as also approves flying training courses and
- mandates the requirement of course completion certificates to be issued to successful candidates in terms of the Aircraft Act, 1934 and the rules prescribed thereunder.
- Therefore, the approved flying training courses conducted by FTOs approved by DGCA, wherein the DGCA mandates the requirement of a completion certificate are exempt
- These are services provided by educational institutions to its students, faculty and staff are exempt from levy of GST.

Entry No. 69: Skill (Entry amended)

Any services provided by -

- (a) the National Skill Development Corporation set up by the Government of India;
- (b) the National Council for Vocational Education and Training;
- (c) an Awarding Body recognized by the National Council for Vocational Education and Training;
- (d) an Assessment Agency recognized by the National Council for Vocational Education and Training;
- (e) a Training Body accredited with an Awarding Body that is recognized by the National Council for Vocational Education and Training, in relation to-
 - (i) the National Skill Development Programme or any other scheme implemented by the National Skill Development Corporation; or
 - (ii) a vocational skill development course under the National Skill Certification and Monetary Reward Scheme; or
 - (iii) any National Skill Qualification Framework aligned qualification or skill in respect of which the National Council for Vocational Education and Training has approved a qualification package.

Entry No. 70: Services of assessing bodies

Services of assessing bodies empanelled centrally by the Directorate General of Training, Ministry of Skill Development & Entrepreneurship by way of assessments under the Skill Development Initiative Scheme.

Entry No. 71: Deen Dayal Upadhyaya Grameen Kaushalya Yojana - DDUGKY

Services provided by training providers (Project implementation agencies) under Deen Dayal Upadhyaya Grameen Kaushalya Yojana (DDUGKY) implemented by the Ministry of Rural

Development, Government of India by way of offering skill or vocational training courses certified by the **National Council for Vocational Education and Training**.

Entry No. 72: Training-Expenditure borne by government

Services provided to the CG/SG/UT administration under any training programme for which 75% or more of the total expenditure is borne by the CG/SG/UT administration.

Coaching services supplied by coaching institutions and NGOs under the central sector scheme of 'Scholarships for students with Disabilities [Circular No. 164 /20 /2021-GST]

Issue: GST on free coaching services provided by coaching institutions and NGOs under the central scheme of "Scholarships for students with Disabilities" where entire expenditure is provided by Government to coaching institutions by way of grant in aid.

Clarification: Services provided by any institutions/ NGOs under the central scheme of 'Scholarships for students with Disabilities' where total expenditure is borne by the Government is covered under entry 72 and hence exempt from GST.

Insurance services

Entry No. 28: Life insurance services- National Pension System

Services of life insurance business provided by way of annuity under the National Pension System.

Entry No. 29: Life insurance services - Members of the Army, Navy and Air Force

Services of life insurance business provided/agreed to be provided by the Group Insurance Funds to members of the Army, Navy & Air Force, respectively, under Group Insurance Schemes of CG.

Entry No. 29A: Life insurance services - Coastal guard

Services of life insurance provided/agreed to be provided by the Naval Group Insurance Fund to the personnel of Coast Guard under the Group Insurance Schemes of the Central Government.

Entry No. 29B: Life insurance services - CAPF

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.

Entry No. 35: General Insurance Business

Services of general insurance business provided under following schemes -

- (a) Hut Insurance Scheme
- (b) Cattle Insurance under Swarna jaynti Gram Swarozgar Yojna (earlier known as Integrated Rural Development Programme)
- (c) Scheme for Insurance of Tribals
- (d) Janata Personal Accident Policy and Gramin Accident Policy
- (e) Group Personal Accident Policy for Self-Employed Women
- (f) Agricultural Pumpset and Failed Well Insurance
- (g) premia collected on export credit insurance;
- (h) Restructured Weather Based Crop Insurance Scheme (RWCIS) or the Modified National Agricultural Insurance Scheme, approved by the GOI & implemented by the Ministry of Agriculture;
- (i) Jan Arogya Bima Policy;
- (j) Pradhan Mantri Fasal BimaYojana (PMFBY) (Rashtriya Krishi Bima Yojana);
- (k) Pilot Scheme on Seed Crop Insurance;
- (l) Central Sector Scheme on Cattle Insurance;
- (m) Universal Health Insurance Scheme;
- (n) Rashtriya Swasthya Bima Yojana;
- (o) Coconut Palm Insurance Scheme;
- (p) Pradhan Mantri Suraksha Bima Yojna;
- (q) Niramaya Health Insurance Scheme implemented by the Trust constituted under the provisions of the National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999.
- (r) Bangla Shasya Bima.

Entry No. 36: Services of life insurance business - Janashree, AA, Micro insurance and PM

Services of life insurance business provided under following schemes -

- (a) Janashree Bima Yojana;
- (b) Aam Aadmi Bima Yojana;
- (c) **Life micro-insurance product** as approved by the IRDA, having maximum amount of cover of **2 lakhs**.
- (d) Varishtha Pension BimaYojana;
- (e) Pradhan Mantri Jeevan Jyoti BimaYojana;
- (f) Pradhan Mantri Jan DhanYogana;
- (g) Pradhan Mantri Vaya Vandana Yojana.

Entry No.36A. Reinsurance

Services by way of reinsurance of the insurance schemes specified in serial number 35/36/40.

Circular: Applicability of GST and availability of ITC in respect of certain services.

Issue: Is GST leviable on General Insurance policies provided by a SG to employees of the SG/ Police personnel/employees of Electricity Department/students of colleges/ private schools etc.

(a) where premium is paid by State Government and

(b) where premium is paid by employees, students etc.?

Clarification:

- Services provided to the CG, SG, UT under any insurance scheme for which total premium is paid by the CG, SG, UT are exempt from GST under Sl. No. 40.
- Services provided by SG by way of general insurance to employees of the SG/ Police personnel, employees of Electricity Department/students are exempt vide entry 6, which exempts Services by CG, SG, UT or local authority to individuals.

Miscellaneous services

Entry No.2: Services by way of transfer of Going Concern business

Services by way of transfer of Going Concern business as a whole or an independent part thereof.

Entry No. 12: Renting of Residential house (amended)

Services by way of renting of residential dwelling for use as residence except where the residential dwelling is rented to a registered person.

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

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

Explanation 2.- Nothing contained in this entry shall apply to-

(a) accommodation services for students in student residences;

(b) accommodation services provided by Hostels, Camps, Paying Guest accommodations and the like.

Entry No. 12A: Renting of Residential house

Supply of accommodation services having value of supply less than or equal to twenty thousand rupees per person per month provided that the accommodation service is supplied for a minimum continuous period of ninety days.

Entry No. 30: ESI

Services by the Employees State Insurance Corporation to persons governed under the Employees' State Insurance Act, 1948.

Entry No. 31: EPFO

Services provided by the Employees Provident Fund Organisation to the persons governed under the Employees Provident Funds and the Miscellaneous Provisions Act, 1952.

Entry No. 31A: CMPF

Services by Coal Mines Provident Fund Organisation to persons governed by the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948.

Entry No. 31B: NPS

Services by National Pension System (NPS) Trust to its members against consideration in the form of administrative fee

Entry No. 23: Service by way of access to a road or a bridge on payment of toll charges.

Circular/clarification [Circular No. 177/09/2022 GST dated 03.08.2022]

Issue: Whether the overloading charges at toll plazas/additional toll fees collected in the form of higher toll charges from vehicles not having fastag are exempt from GST.

Clarification: Yes it is exempt. Overloading charges at toll plazas/Higher toll charges from vehicles not having Fastag: Same treatment as given to toll charges. Hence exempt.

Entry No. 25: Electricity

Transmission or distribution of electricity by an electricity transmission or distribution utility.

Issue: Whether the activities carried by DISCOMS against recovery of charges from consumers under State Electricity Act are exempt from GST?

Clarification: Service by way of transmission or distribution of electricity by an electricity transmission or distribution utility is exempt from GST. The other services such as,
 (i) Application fee for releasing connection of electricity;
 (ii) Rental Charges against metering equipment;
 (iii) Testing fee for meters/transformers, capacitors etc.;
 (iv) Labour charges from customers for shifting of meters or shifting of service lines;
 (v) charges for duplicate bill
 provided by DISCOMS to consumer are taxable.

Entry No. 25A: Supply of services by way of providing metering equipment on rent

Supply of services by way of providing

- metering equipment on rent,
- testing for meters/transformers/capacitors etc.,
- releasing electricity connection, shifting of meters/service lines, issuing duplicate bills etc.,
- which are incidental or ancillary to the supply of transmission and distribution of electricity provided by electricity transmission and distribution utilities to their consumers.

Entry No. 27: Interest on Loans & Advances

Services by way of—

- (i) 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);
- (ii) Inter se sale or purchase of foreign currency amongst banks or authorised dealers of foreign exchange or amongst banks and such dealers.

Clarification regarding taxability of the transaction of providing loan by an overseas entity to its Indian related entity or by a person in India to a related person

Issue: Whether the activity of providing loans by an overseas affiliate to its Indian affiliate/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:

Where no consideration is charged by the person from the related person, or by an overseas affiliate from its Indian party, for extending loan/credit, other than by way of interest/discount, it cannot be deemed to be a "Supply of service" between the said related persons in the form of

processing/facilitating/administering the loan in terms of section 7(1)(c) read with paras 2 and 4 of Schedule I of the CGST Act, 2017

Entry No. 27A: Services provided by a banking company to Basic Saving Bank Deposit

Services provided by a banking company to Basic Saving Bank Deposit (BSBD) account holders under Pradhan Mantri Jan Dhan Yojana (PMJDY).

Entry No. 34: Acquiring bank services - Exempt up to Rs. 2,000 per transaction

Services by an acquiring bank, to any person in relation to settlement of an amount upto Rs. 2,000 in a single transaction transacted through credit/debit/charge card/other payment card service.

Explanation - Acquiring bank means any banking company, financial institution including NBFC or any other person, who makes the payment to any person who accepts such card.

Entry No. 37: Atal Pension Yojana

Services by way of collection of contribution under the Atal Pension Yojana.

Entry No. 38: Pension Scheme of SGs

Services by way of collection of contribution under any pension scheme of the State Governments.

Entry No. 39: Services by business facilitator (discussed with RCM)

Services by the following persons in respective capacities -

- (a) business facilitator/a business correspondent to a banking company with respect to accounts in its rural area branch;
- (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.

Entry No. 39A: Intermediary of financial services

Services by an International financial services centre located in a multi services SEZ with IFSC status to a customer located outside India for international financial services in currencies other than Indian rupees.

Entry No. 41: Services of Lease

Upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable in respect of service by way of granting of long-term lease of thirty years, or more) of industrial plots or plots for development of infrastructure for financial business, provided by the SG Industrial Development Corporations or Undertakings or by any other entity having 20%/more ownership of CG/SG/UT to the industrial units/the developers in any industrial/financial business area.

Explanation. — For the purpose of this exemption, the CG, SG or UT shall have 20%/more ownership in the entity directly/through an entity which is wholly owned by CG/SG/UT.

Proviso:

1. the leased plots shall be used for the purpose for which they are allotted, that is, for industrial or financial activity in an industrial or financial business area:
2. the State Government concerned shall monitor and enforce the above condition as per the order issued by the State Government in this regard:
3. in case of any violation or subsequent change of land use, due to any reason whatsoever, the original lessor, original lessee as well as any subsequent lessee or buyer or owner shall be jointly and severally liable to pay such amount of central tax, as would have been payable on the upfront amount charged for the long-term lease of the plots but for the exemption contained herein, along with the applicable interest and penalty:
4. the lease agreement entered into by the original lessor with the original lessee or subsequent lessee, or sub-lessee, as well as any subsequent lease or sale agreements, for lease or sale of such plots to subsequent lessees or buyers or owners shall incorporate in the terms and conditions, the fact that the central tax was exempted on the long term lease of the plots by the original lessor to the original lessee subject to above condition and that the parties to the said agreements undertake to comply with the same.

Clarification on availability of GST exemption on the upfront amount payable in instalments for long term lease of plots [Circular No. 101/20/2019-GST dated 30.04.19]

GST exemption on the upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable for long term lease (of thirty years, or more) of industrial plots or plots for development of infrastructure for financial business under Entry No. 41

- is admissible irrespective of whether such upfront amount is payable or paid in one or more instalments, provided the amount is determined upfront.

Clarification on preferential location charges

Issue: Whether location charges or preferential location charges (PLC) collected in addition to the lease premium for long term lease of land constitute part of the lease premium or upfront amount charged for long term lease of land and are eligible for the same tax treatment.

Clarification:

- Yes, Location charges or preferential location charges (PLC) paid upfront in addition to the lease premium for long term lease of land constitute part of upfront amount charged for long term lease of land and
- are eligible for the same tax treatment, and thus eligible for exemption under Entry 41.

Entry No: 41A & 41B: Service by way of transfer of development rights or Floor Space Index. Upfront amount payable in respect of service by way of granting of long-term lease

Supply of TDR, FSI, long term lease (premium) of land by a landowner to a developer are exempted subject to the condition that the constructed flats are sold before issuance of completion certificate and tax is paid on them.

Exemption of TDR, FSI, long term lease (premium) shall be withdrawn in case of flats sold after issue of completion certificate, but such withdrawal shall be limited to 1% of value in case of affordable houses and 5% of value in case of other than affordable houses.

Note: These entries have been stated here in simplified form as covered in ICAI study material.

Entry No. 44: Incubatee

Services provided by an Incubatee upto a total turnover of Rs 50 lakh in a FY subject to the following conditions, namely: -

- (i) the total turnover had not exceeded Rs 50 lakh during the preceding financial year; and
- (ii) a period of 3 years has not elapsed from the date of entering into an agreement as an Incubatee.

Entry No. 48: Incubator

Taxable services, provided/to be provided, by

- a Technology Business Incubator or
- a Science and Technology Entrepreneurship Park recognised by the National Science and Technology Entrepreneurship Development Board of the Department of Science and Technology, Government of India or

- bio- incubators recognised by the Biotechnology Industry Research Assistance Council, under the Department of Biotechnology, Government of India.

Entry no. 44A: Research and development services against grants

Research and development services against consideration received in the form of grants supplied by -

(a) a Government Entity; or

(b) a research association, university, college or other institution, notified under Section 35(1) (ii) or (iii) of the Income Tax Act, 1961.

The condition to be fulfilled in this case is that the research association, university, college or other institution, notified under clauses (ii) or (iii) of sub-section (1) of section 35 of the Income Tax Act, 1961 is so notified at the time of supply of the research and development service.

Entry No. 49: News related services

Services by way of collecting or providing news by

- an independent journalist,
- Press Trust of India or
- United News of India.

Entry No. 52. Organiser of Business exhibition outside India

Services by an organiser to any person in respect of a business exhibition held outside India.

Entry No. 53: Sponsorship

Services by way of sponsorship of sporting events organised -

(a) by a national sports federation, or its affiliated federations, where the participating teams or individuals represent any district, State, zone or Country;

(b) by Association of Indian Universities, Inter-University Sports Board,

(c) by School Games Federation of India, All India Sports Council for the Deaf, Paralympic Committee of India or Special Olympics Bharat;

(d) by the Central Civil Services Cultural and Sports Board; as part of national games, by the Indian Olympic Association; or under the Panchayat Yuva Kreedha Aur Khel Abhiyaan Scheme.

Entry No. 59: Foreign Diplomatic Mission

Services by a foreign diplomatic mission located in India.

Entry No. 68: Recognised sports body

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.

Entry No. 77: Non-profit Entity

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

- (a) as a trade union;
- (b) for the provision of carrying out any activity which is exempt from the levy of GST; or
- (c) up to an amount of Rs 7500 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.

Clarification on issues related to GST on monthly subscription/ contribution charged by a Residential Welfare Association from its members [Cir No. 109/28/19 GST dt. 22.07.19]

Issue: Are the maintenance charges paid by residents to the Resident Welfare Association (RWA) in a housing society exempt from GST and if yes, is there an upper limit on the amount of such charges for the exemption to be available?

Clarification: Supply of services by RWA to its members for contribution up to Rs. 7,500 per month per member are exempt

Issue: A RWA has aggregate turnover of Rs. 20 lakhs or less in a FY. Is it required to take registration and pay GST on maintenance charges if the amount of such charges is more than Rs. 7500/- per month per member?

Clarification: No. If aggregate turnover of an RWA does not exceed Rs.20 Lakh in a FY, it shall not be required to take registration and pay GST even if the amount of maintenance charges exceeds Rs. 7,500/- per month per member. RWA shall be required to pay GST on monthly subscription/ contribution charged from its members, only if such subscription is more than Rs. 7,500/- per month per member and the annual aggregate turnover of RWA by way of supplying of services and goods is also Rs. 20 lakhs or more.

Issue: Is the RWA entitled to take ITC of GST paid on input and services used by it for making supplies to its members and use such ITC for discharge of GST liability on such supplies where the amount charged for such supplies is more than Rs. 7,500 per month per member?

Clarification: Yes, if registered. ITC is available of Inputs, IS & CGs.

Issue: Where a person owns 2 or more flats in the housing society/residential complex, whether the ceiling of Rs. 7,500/- per month per member on the maintenance for the exemption to be available shall be applied per residential apartment or per person?

Clarification: The ceiling of Rs. 7,500/- per month per member shall be applied separately for each residential apartment owned by him

Issue: How should the RWA calculate GST payable where the maintenance charges exceed Rs. 7500/- per month per member? Is the GST payable only on the amount exceeding Rs. 7500/- or on the entire amount of maintenance charges?

Clarification: If amount exceeds 7500, GST shall be payable on the entire amount

Entry No. 77A: Services provided by an unincorporated body or a non-profit entity registered under any law for the time being in force

Services provided by an unincorporated body or a non-profit entity registered under any law for the time being in force, engaged in, –

- (i) activities relating to the welfare of industrial or agricultural labour or farmers; or
- (ii) promotion of trade, commerce, industry, agriculture, art, science, literature, culture, sports, education, social welfare, charitable activities and protection of environment, to its own members against consideration in the form of membership fee up to an amount of one thousand rupees (Rs 1000/-) per member per year.

Entry No. 10: Housing for All (Urban) Mission or Pradhan Mantri Awas Yojana.

Services provided by way of

- **Pure labour contracts** of
- construction, erection, commissioning, installation, completion, fitting out, **repair**, maintenance, renovation, or alteration of a civil structure or any **other original works**
- Pertaining to the beneficiary led individual house construction/enhancement
- under the Housing for All (Urban) Mission or Pradhan Mantri Awas Yojana.

Entry No. 11: Pure labour services for construction of single Residential Unit

Services by way of

- **pure labour contracts** of
- construction, erection, commissioning, or installation of **original works**
- pertaining to a single residential unit

- Otherwise, than as a part of a residential complex.

Entry No. 76: Public conveniences

Services by way of public conveniences such as provision of facilities of bathroom, washrooms, lavatories, urinal or toilets.

Entry No. 50: Public Libraries

Services of public libraries by way of

- lending of books, publications or
- any other knowledge-enhancing content or material.

Entry No. 52A. Tour operator service

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:

Proviso: 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:

Proviso: While 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/-);
 (b) 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/-);

- (c) 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/-).

Exemptions under IGST (in addition to the above) [NN. 9/2017 IT (R) dated 28.06.2017]

Entry No. 10L: Import of services by an establishment of a foreign company in India

Import of services by an establishment of a foreign company in India, which is an airline company, from a related person or from any of its other establishments outside India, when made without consideration.

Explanation: Foreign company shall have the same meaning as assigned to it in sub-section (42) of section 2 of Companies Act, 2013.

Conditions to be fulfilled:

- (i) GST at applicable rates is paid by the establishment of the foreign airline company in India on transport of goods and passengers as may be applicable.
- (ii) Ministry of Civil Aviation certifies that the establishment of the foreign company in India is that of an airline company which has been designated by the foreign government under the applicable bilateral air services agreement with India.
- (iii) Ministry of Civil Aviation certifies that on a reciprocal basis, designated Indian airlines are not subject to levy of similar taxes by whatever name called for the same services appearing under the entry, by the Government of the country designating the foreign airline company.

Entry no. 10: Services from Non-Taxable territory

Services received from a provider of service located in a non- taxable territory by -

- (a) the CG/SG/UT/LA/a governmental authority/an individual in relation to any purpose other than commerce, industry or any other business or profession;
- (b) an entity registered under section 12AA of the Income-tax Act, providing charitable activities; or
- (c) a person located in a non-taxable territory.

However, the exemption shall not apply to OIDAR services received by persons specified in entry (a) or entry (b).

Entry no. 10F: Services supplied by an establishment of a person in India to any establishment of that person outside India.

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 POS of the service is outside India.

Entry no. 10G: Import of services by United Nations

Import of services by United Nations or a specified international organisation for official use of the United Nations or the specified international organisation

Entry no. 10H: Import of services by Foreign diplomatic mission or consular post in India

Import of services by Foreign diplomatic mission or consular post in India, or diplomatic agents or career consular officers posted therein shall be exempt from IGST.

Entry no. 12AA: Intermediary services

Services provided by an intermediary when location of both supplier and recipient of goods is outside the taxable territory.

Conditions: Following documents shall be maintained for a minimum duration of five years:

- (1) Copy of Bill of Lading
- (2) Copy of executed contract between Supplier/Seller and Receiver/Buyer of goods
- (3) Copy of commission debit note raised by an intermediary service provider in taxable territory from service recipient located in non-taxable territory
- (4) Copy of certificate of origin issued by service recipient located in non-taxable territory
- (5) Declaration letter from an intermediary service provider in taxable territory on company letter head confirming that commission debit note raised relates to contract when both supplier and receiver of goods are outside the taxable territory

10D: Supply of services having place of supply in Nepal or Bhutan, against payment in INR

Entry no. 54: Services by Indian Tour operator to foreign tourist

Services provided by a tour operator

- to a foreign tourist
- in relation to a tour conducted wholly outside India.

Other Exemptions

Services imported by unit/developer in SEZ exempt from IGST [NNo. 18/2017 IT(R)]

All services imported by a unit/developer in the 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.

Author's comment: Notification 64/2017 - Customs

Exempts all imported goods by a SEZ unit/developer for authorised operations from the whole of IGST levied u/s 3(7) of customs tariff act 1975.

IGST exempted to the extent it is paid on the consideration attributable to royalty and license fee included in transaction value under rule 10(1)(c) of Customs Valuation Rules, 2007 [Notification No. 06/2018 - IT (R), dated 25.01.2018]

IGST leviable on import of services

- in relation to temporary transfer or permitting the use or enjoyment of any intellectual property right
- has been exempted to the extent of the aggregate of the duties of customs leviable under section 3(7) of the Customs Tariff Act, 1975,
- on the consideration declared under section 14(1) of the Customs Act, 1962 towards royalties and license fees included in the transaction value as specified under rule 10(1)(c) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 on which the appropriate duties of customs have been paid.

Introduction

GST is calculated as - **Value of Supply X Rate of GST**

- **Value of supply** can be told that value on which GST is payable to government, which is identified by applying section 15
- **Rate of tax** shall be notified by government on recommendation of council

Value of Supply [Section 15]

Section 15(1): Generally, value of supply = Transaction value i.e. price paid/payable

The value of a supply of goods or services or both shall be the **transaction value**,

- i.e the price actually paid or payable for the said supply
- where the supplier and the recipient of the supply are not related and
- the price is the sole consideration for the supply.

Section 15(2): Other items to be included in value of supply

The value of supply shall include-

(a) **Any taxes, duties, cesses, fees & charges other than GST**, if charged separately by supplier.

Example: Municipal tax, Excise duty, Airport fees, Entertainment tax by local bodies

(b) **Obligation of supplier met by recipient**

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/payable;

Circular whether TCS under Income tax act is to be included in value of supply

Issue: What is the correct valuation methodology for ascertainment of GST on Tax collected at source (TCS) under the provisions of the Income Tax Act, 1961?

Clarification:

- Section 15(2) of the CGST Act states that the value of supply includes taxes, duties, cesses, fees, and charges levied under any law, if charged separately by the supplier.
- TCS under the Income Tax Act, 1961 is not includible in the value of supply for GST purposes.
- TCS is considered an interim levy and does not have the character of a tax for GST valuation.

(c) **Incidental expenses, including commission and packing**, charged by supplier to recipient and
 - any amount charged for anything done by the supplier in respect of the supply of g/s/b

- at the time of, or before delivery of goods or supply of services;

Author:

- Incidental charges like transportation charges, inspection charges, additional warranty, etc.
- Commission means selling commission, Do not include buying or purchase commission.
- Packing charges: Normal, special any packing charges to be included.

(d) **Interest or late fee or penalty for delayed payment** of any consideration for any supply; and

(e) **Subsidies directly linked to the price** excluding subsidies provided by the CG and SG.

Subsidy given by CG/SG	Directly linked to price	Not includible in TV
	Not directly linked to price	Not includible in TV
Subsidy given by others	Directly linked to price	includible in TV
	Not directly linked to price	Not includible in TV

Incentive paid by MeitY to acquiring banks under Incentive scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions considered as subsidy from CG

- **Incentive Scheme:** Ministry of Electronics and Information Technology (MeitY) pays acquiring banks incentives for RuPay Debit card and low-value BHIM-UPI transactions up to ₹2000.
- **Prohibition:** The Payments and Settlements Systems Act, 2007 prohibits banks and system providers from charging customers for payments made through RuPay Debit card/BHIM-UPI.
- **Service Similarity:** Acquiring banks provide the same service for RuPay/BHIM-UPI transactions as for other digital payments, but here, CG pays incentive instead of user.
- **Nature of Incentive:** It is considered a subsidy linked to the price of the service, not a payment for services to the government.
- **Tax Exclusion:** The incentive does not form part of the taxable value of the transaction under definition of consideration and Section 15 of the CGST Act.
- **Clarification:** Incentives paid by MeitY to acquiring banks for promoting RuPay Debit Cards and low-value BHIM-UPI transactions **are subsidies and not taxable**.

Section 15(3): Other items to be excluded from value of supply

The value of the supply shall not include any discount which is given

(a) Before/at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply; and

(b) after the supply has been effected, if — **[Mnemonic - ALI]**

(i) such discount

- is established in terms of an **agreement entered** into at/before the time of such supply &

- specifically **linked to relevant invoices**; and
- (ii) **ITC** as is attributable to the discount has been **reversed** by the recipient of the supply, on the basis of document issued by the supplier.

Circular: Mechanism for providing evidence of compliance of conditions of Section 15(3)(b)(ii) of the CGST Act, 2017 by the suppliers

Currently there is no system functionality/ facility presently available on the common portal to enable the supplier or the tax officer to verify the compliance of the said condition of proportionate reversal of input tax credit by the recipient.

In view of the above, till the time a functionality/ facility is made available on the common portal to enable the suppliers as well as the tax officers to verify whether the input tax credit attributable to such discounts offered through tax credit notes has been reversed by the recipient or not:

- If said amount exceeds Rs. 5,00,000, the supplier needs to procure a certificate from the recipient, issued by the Chartered Accountant (CA) or the Cost Accountant (CMA), certifying that the recipient has made the required proportionate reversal of ITC at his end in respect of such credit note issued by the supplier.
- If said amount does not exceed Rs. 5,00,000, supplier needs to procure an undertaking/certificate from the said recipient that the said ITC attributable to such discount has been reversed by him (recipient).

Clarification on applicability of GST on delayed payment charges in case of late payment of EMIs

- EMI (Equated Monthly Installment) is a fixed monthly payment from a borrower to a lender.
- EMIs cover both interest and principal, ensuring the loan is fully paid off over time.
- If EMI is not paid on time, additional/penal interest is levied for the delay.

Issue: Whether GST is applicable on additional / penal interest on the overdue loan?
Whether such penal interest would be exempt under Entry 27 of exemption notification.

Clarification:

- As per the provisions of section 15(2)(d) of the CGST Act, the value of supply shall include interest or late fee or penalty for delayed payment of any consideration for any supply.
- Entry 27 of exemption notification, inter alia, exempts interest or discount (other than interest involved in credit card services).
- There are two transaction options involving EMI that are prevalent in the trade.
 - Seller himself gives EMI - Additional/penal interest will form part of VOS u/s 15(2)(d) of CGST act.

- Third party (finance company) gives loan - Such interest (including penal interest) is exempted under entry 27 of exemption notification 12/2017

Illustration 1:

- **Scenario:** X sells a mobile phone to Y for Rs. 40,000 with an option to pay Rs. 11,000 in four monthly installments.
- **Penal Interest:** Rs. 500 per month for delayed payments.
- **GST Applicability:** Penal interest included in the value of the mobile phone and is taxable.

Illustration 2:

- **Scenario:** Y purchases a mobile phone for Rs. 40,000 using a loan from M/s. ABC Ltd. at 2.5% monthly interest.
- **Penal Interest:** 1.25% per month for delayed loan payments.
- **GST Applicability:** Penal interest is exempt under Entry 27 for the transaction between Y and M/s. ABC Ltd.
- **Service Fees:** Any additional service fees/charges by M/s. ABC Ltd. are not exempt from GST.
- **Value of Supply:** Mobile phone value for GST purposes is Rs. 40,000.

Clarification on taxability of No Claim Bonus offered by Insurance companies

Issue: Whether No Claim Bonus (NCB) deduction can be considered as a supply provided by the insured to the insurance company for not lodging insurance claims.

Clarification:

- NCB is deducted from gross insurance premium if no claim is made during previous period(s).
- The insured is not contractually obligated to refrain from making claims in exchange for NCB.
- Therefore, NCB is not considered a supply provided by the insured to the insurance company.

Issue: Can No Claim Bonus (NCB) be considered an admissible discount for determining the value of insurance services?

Clarification:

- Section 15(3)(a) of the CGST Act allows discounts given before or at the time of supply to be excluded from the value of supply if recorded in the invoice.
- Insurance companies disclose NCB availability in policy documents and invoices.
- NCB qualifies as a permissible discount for calculating the value of insurance services.
- GST is levied on the actual insurance premium amount after deducting the NCB.

Section 15(4): When value cannot be determined u/s 15(1)

Where VOS cannot be determined under (1), the same shall be determined in manner prescribed. (rules 27 to 31)

Rule 27: VOS of goods or services where the consideration is not wholly in money

Where the supply of goods/services is for a consideration not wholly in money, the VOS shall, -
(a) be the open market value (OMV) of such supply:



(b) If OMV is not available:

Value = consideration in money + Monetary value of additional consideration (FMV)



(c) If value is not determinable under clause (a) or (b):

Value = Value of g/s/b of like kind and quality



(d) If value is not determinable under clause (a) or (b) or (c):

Value = consideration in money + such further sum equivalent to non-monetary consideration
(as determined by applying rule 30 and 31 in that order.)

Illustration: Where a new phone is supplied for Rs 20,000 along with exchange of an old phone & if the price of the new phone without exchange is Rs 24,000, the OMV of new phone is Rs. 24000.

Rule 28: Value of supply of g/s/b between distinct or related persons

(1) The VOS between distinct persons or related person, **other than where the supply is made through an agent**, shall-

(a) Be the open market value (OMV) of such supply:



(b) If OMV is unavailable: Value = Value of supply of g/s/b of like kind and quality



(c) If Value is not determinable under clause (a) or (b)

Value = Value determined by applying rule 30 and 31, in that order

Proviso: where the goods are intended for further supply as such by the recipient,

- Value, 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: where the recipient is eligible for full ITC,

- the value declared in the invoice shall be deemed to be the OMV of the goods or services.

(2) Notwithstanding anything contained in sub-rule (1), the VOS of services by a supplier to a recipient who is a related person located in India, by way of providing corporate guarantee to any banking company /financial institution on behalf of the said recipient, shall be

- deemed to be 1% of the amount of such guarantee offered per annum, or
- the actual consideration, whichever is higher.

Proviso: 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.

Clarification regarding internally generated services - where HO is providing certain services to the BOs for which full ITC is available to the concerned BOs.

Issue: In respect of internally generated services, there may be cases where HO is providing certain services to the BOs for which full ITC is available to the concerned BOs. However, HO may not be issuing tax invoice to the concerned BOs with respect to such services, or the HO may not be including the cost of a particular component such as salary cost of employees involved in providing said services while issuing tax invoice to BOs for the services provided by HO to BOs. Whether the HO is mandatorily required to issue invoice to BOs under section 31 for such internally generated services, and/ or whether the cost of all components including salary cost of HO employees involved in providing the said services has to be included in the computation of value of services provided by HO to BOs when full ITC is available to the concerned BOs?

Clarification:

- In cases where full ITC is available to a BO, the value declared on the invoice by HO to the said BO shall be deemed to be the OMV of such services, irrespective of the fact whether cost of any particular component of such services, like employee cost etc., has been included or not.
- In cases where full ITC is available to the recipient, if HO has not issued a tax invoice to the BO, the value of such services may be deemed to be declared as Nil by HO to BO, and may be deemed as OMV in terms of second proviso to rule 28.

Issue: In respect of internally generated services provided by the HO to BOs, in cases where full ITC is not available to the concerned BOs, whether the cost of salary of employees of the HO involved in providing said services to the BOs, is mandatorily required to be included while computing the taxable value of the said supply of services provided by HO to BOs?

Clarification: In respect of internally generated services provided by the HO to BOs, the cost of salary of employees of the HO, involved in providing the said services to the BOs, is not mandatorily required to be included while computing the taxable value of the supply of such services, even in cases where full ITC is not available to the concerned BO.

Issue: In case of import of services by a RP in India from a related person located outside India, the tax is required to be paid under RCM. In such cases, the RP in India is required to issue self-invoice under section 31(3)(f) and pay tax under RCM. Accordingly, in cases where the foreign affiliate is providing certain services to the related domestic entity and where full ITC is available to the said related domestic entity, how will the value of said services be determined?

Clarification: In such cases, the value of such supply of services declared in the invoice by the said related domestic entity may be deemed as open market value in terms of second proviso to rule 28(1) of CGST Rules. Further, in cases where full ITC is available to the recipient, if the invoice is not issued by the related domestic entity with respect to any service provided by the foreign affiliate to it, the value of such services may be deemed to be declared as Nil, and may be deemed as open market value in terms of second proviso to rule 28(1).

Curx:

- Invoice issued: Value declared in invoice = OMV = VOS
- Invoice not issued: VOS = OMV = Nil

Clarification on Taxability and valuation of personal guarantee by Directors and corporate guarantee by related person, for the company.

Issue: Whether the activity of providing personal guarantee by the Director of a company to the bank/ financial institutions for sanctioning of credit facilities to the said company without any consideration will be treated as a supply of service and whether the same will attract GST?

Clarification:

- Directors and companies are related persons; providing a personal guarantee is treated as a supply of service, even without consideration.
- Value is determined as open market value (OMV) under rule 28.
- RBI Guidelines prohibit the company from paying the director for the guarantee, except in exceptional cases.
- Accordingly, the OMV of the guarantee is zero, so no GST is payable.
- In exceptional cases, if remuneration is paid to the director, the taxable value is the remuneration/consideration provided.

Issue: Whether providing a corporate guarantee by a related person/a holding company to a bank/financial institution for a subsidiary considered a taxable supply of service, and what is its valuation?

Clarification:

In that case the activity is to be treated as a supply of service between related parties even when made without any consideration [section 7(1)(c) read with para 2 of Schedule I].

Value of supply of service of providing corporate guarantee shall be:

Higher of: 1% of the amount of such guarantee offered, or actual consideration.

Clarification on various issues pertaining to taxability and valuation of supply of services of providing corporate guarantee between related persons.

Rule 28(2) was inserted vide Notification No. 52/2023-Central Tax dated 26th October, 2023 to provide for a specific clause for VOS of services of providing corporate guarantee to any banking company or financial institution by an entity on behalf of a related person.

Clarifications on various issues pertaining to the taxability and valuation of the supply of services of providing corporate guarantee between related persons as per the said rule has been given below:

SN	Issue	Clarification
1	Applicability of sub-rule (2) of rule 28 of CGST Rules to corporate guarantees issued before 26th October 2023.	For corporate guarantees issued or renewed before 26th October 2023, the valuation is done as per Rule 28 as it existed before the insertion of sub-rule (2). For corporate guarantees issued or renewed on or after 26th October 2023, the valuation is done as per Rule 28(2) of CGST Rules.
2	Determining the value of supply for a corporate guarantee when the loan is partly or not availed, and ITC eligibility before total loan disbursement.	The value of the corporate guarantee is based on the guaranteed amount, not the disbursed loan amount. The recipient of the corporate guarantee service can avail ITC regardless of the loan disbursement timing or the disbursed amount.
3	Applicability of GST in the case of takeover of existing loans with an assigned corporate guarantee.	No GST impact unless a fresh corporate guarantee is issued or the existing corporate guarantee is renewed.
4	Amount on which GST is payable when corporate guarantee is provided by multiple entities/co-guarantors.	If the total consideration paid/payable to co-guarantors is higher than 1% of the guarantee amount, GST is payable on the actual consideration.

		If the total consideration is less than 1% of the guarantee amount, GST is payable by each co-guarantor proportionately on 1% of the amount guaranteed by them.
5	Where intra-group corporate guarantee is issued, whether GST may be paid by the recipient under reverse charge, as in the absence of actual invoice and payment, the recipient entity may not be able to claim input tax credit of tax paid by the domestic guarantor?	<p>Domestic Corporates: GST is to be paid under the forward charge mechanism. The supplier of the corporate guarantee service must issue an invoice to the related recipient as per Section 31 of the CGST Act, 2017.</p> <p>Foreign/Overseas Entities: If the guarantee is provided by a foreign entity to a related entity in India, GST is payable under the reverse charge mechanism by the recipient of the service in India.</p>
7	Whether the discharge of tax liability on corporate guarantee @ 1% of such guarantee offered is to be done one time or on yearly basis or on monthly basis and when issued for a fixed term of say, five years or ten years as per tenure of the loan?	<p>The value of the corporate guarantee service is 1% of the guaranteed amount per annum or the actual consideration, whichever is higher.</p> <p>The value of supply of the service of providing corporate guarantee for a particular number of years, shall be 1% of guaranteed amount X the number of years or the actual consideration whichever is higher. For guarantees less than a year, the value is proportionate (e.g., 6 months = 0.5% of the amount guaranteed) or the actual consideration, whichever is higher.</p>
7	Whether the benefit of second proviso to sub-rule (1), which states that value declared in invoice is deemed to be the open market value in cases where full ITC is available to the recipient of services, is not applicable in cases falling under sub-rule (2)?	In cases of corporate guarantees provided between related persons, where full ITC is available to the recipient of services, the value declared in the invoice is deemed to be the value of supply for the said service.
8	Whether the valuation in terms of Rule 28(2) of CGST Rules will apply to the export of the service of providing corporate guarantee between related persons?	The provisions of the said sub-rule will not apply in cases 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.

Rule 29: Value of supply of goods made or received through an agent

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

- a. be 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 RP, where the goods are intended for further supply by the said recipient.
- b. where the value of a supply is not determinable under clause (a),
the same shall be determined by the application of rule 30 or rule 31 in that order.

Rule 30: Value of supply of goods or services or both based on cost

Where VOS is not determinable by any of the preceding rules, the value shall be = **110%** of

- Cost of production/manufacture
- Cost of Acquisition of such goods
- Cost of provision of such service

Rule 31: Residual method for determination of value of supply of goods/services/both

Where the value of supply of g/s/b 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:

Proviso: in the case of supply of services, the supplier may opt for this rule, ignoring rule 30.

Section 15(5): Value of notified supplies: shall be as per manner prescribed

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.

Rule 31A: Valuation of lottery - notification 3/2018 CT dated 23.01.2018

(1) The value in respect of supplies specified below shall be determined as provided hereinafter.

(2) The value of supply of lottery shall be

- deemed to be **100/128 of the face value of ticket** or of the price as notified in the Official Gazette by the Organising State, whichever is higher.

(3) Supply of actionable claim (betting, gambling, horse racing in a race club)

- 100% of the face value of the bet or the amount paid into the totalisator

Rule 31B. Value of supply in case of online gaming including online money gaming.-

The VOS of online gaming, including 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:

Proviso: any amount returned/refunded by the supplier to player, including player not using the amount paid/deposited, shall not be deductible from the VOS of online money gaming.

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

The VOS 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/tickets, by whatever name called, for use in casino; or
- (ii) participating in any event, including game, scheme, competition/any other activity/process, in the casino:

Proviso: any amount returned/refunded, shall not be deductible from the VOS.

Explanation.- For rule 31B and rule 31C,

- any amount received by the player by winning any event, including game, scheme, competition
- 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.

Rule 32: Suppliers of specified supplies may opt for other optional valuation methods

Rule 32(1): The value in respect of supplies specified below shall, at the option of the supplier, be determined in the manner provided hereinafter.

Author: The valuation methods prescribed under rule 32 are optional; the supplier can use them if he so desires. He can also opt to value his supplies in accordance with other valuation rules.

Rule 32(2): Money changing services (sale or purchase of forex)

VOS of services in case of purchase/sale of foreign currency, including money changing, shall be:

Option (a)

- In case when exchanged from or to, INR & RBI reference rate for a currency is available, VOS = difference in the buying/selling rate, and RBI reference rate X total units of currency:

- In case where the RBI reference rate for a currency is not available,
VOS = 1 % of the gross amount of INR provided or received by the person changing the money:
- In case where neither of the currencies exchanged is INR,
VOS = 1% of the lesser of the 2 amounts that would have been received by converting any of two currencies into INR at RBI reference rate.
- a person supplying the services may exercise the option to ascertain the value in terms of clause (b) for a FY & such option shall not be withdrawn during the remaining part of that FY.

Option (b): VOS shall be deemed to be—

Currency exchanged is	Value
Upto Rs 1,00,000	1% of currency changed or Rs 250 whichever is higher
From Rs 1,00,001 upto 10 lakhs	1,000 + 0.5% of currency changed
From Rs 10,00,001	5,500 + 0.1% of currency changed subject to maximum of Rs 60,000

Rule 32(3): Supply of services in relation to booking of tickets - Air travel agent

The VOS of services in relation to booking of air travel tickets provided by an air travel agent shall be deemed to be

- In the case of domestic bookings: 5 % of the basic fare,
- In the case of international bookings: 10 % of the basic fare.

Basic fare means that part of fare on which commission is normally paid by airlines to travel agent

Rule 32(4): Life Insurance services

The value of supply of services in relation to life insurance business shall be, —

1. Savings Policy: Amount allocated towards investment is intimated to policy holder
Value: Gross premium less amount allocated for investment or savings
2. Single Annuity policy: Value: 10% of single premium charged from the policy holder.
3. All other cases: VOS:
 - 25% of the premium charged from policy holder in the first year and
 - 12.5% of the premium charged in subsequent years.
4. Policy with only risk cover: Entire premium charged from policy holder

Rule 32(5): Special provision relating to determination of value of second-hand goods

Where a taxable supply is provided by a person dealing in buying & selling of second-hand goods:

- as such or after such minor processing which does not change the nature of the goods and
- where no ITC has been availed on the purchase of such goods,

the VOS shall be

- the Selling price - purchase price (margin)
- If selling price - purchase price is negative - Ignore

Sale of repossessed goods by Bank/financial institution

Purchase value of goods repossessed from unregistered borrower shall be deemed to be:

- the purchase price of goods by the defaulting borrower - 5% for every quarter/part thereof,
- between the date of purchase and the date of disposal by person making such repossession.

Author's comments: The purpose of the margin scheme is to avoid double taxation as the goods, having once borne the incidence of tax, re-enter the supply chain.

Rule 32(6): Supply of a token, or a voucher, or a coupon, or a stamp (other than postage stamp)

Value of a redeemable token, or a voucher, or a coupon, or a stamp shall be:

- Money value of the goods/services redeemable against such voucher/coupon

Rule 32(7): Services provided by such class of service providers as may be notified by the Government

Notified services between distinct persons without consideration: [No notification yet]

Value = Nil, if ITC is available.

Rule 33: Deduction of expenditure incurred as Pure Agent

The expenditure/costs incurred by a supplier as a pure agent of recipient shall be excluded from the VOS, if all the following conditions are satisfied, namely,—

- (i) Supplier acts as a pure agent, when he makes payment to 3rd party on authorisation by recipient;
- (ii) the payment made has been separately indicated in the invoice issued by the pure agent; and
- (iii) the supplies procured by the pure agent from the third party are in addition to the services he supplies on his own account.

Explanation— For the purposes of this rule, the expression "pure agent" (PA) means a person who:

- (a) enters into a contractual agreement with the recipient to act as his pure agent (PA);
- (b) neither intends to nor holds any title to goods/services/both so procured/supplied as PA;
- (c) does not use for his own interest such goods/services so procured; and
- (d) receives only the actual amount incurred to procure goods/services.

Some examples of expenditure/costs incurred as pure agent are:

- 1) Port fees, port charges, custom duty, dock dues, transport charges etc. paid by customs broker on behalf of the owner of goods
- 2) Expenses incurred by C&F agent and reimbursed by principal such as freight, godown charges.

Relevance of pure agent: Expenditure/costs incurred as pure agent excluded from value of supply

Clarification on issue of GST on Airport levies [circular no. 115/34/2019-GST]

Various representations have been received seeking clarification on issues relating to GST on airport levies and to clarify that airport levies do not form part of the value of services provided by the airlines & consequently no GST should be charged by airlines on airport levies.

Clarification:

- 1) PSF - Passenger service fees is fees charged by airport authority for services at the airport.
- 2) UDF - User development fees are charged for airport development by airport authority.
- 3) Both PSF and UDF are levied by airport authority by collected through airlines
- 4) PSF and UDF charged by airport operators (airport authority): are consideration for providing services to passengers and leviable to GST
- 5) Airport authority shall pay GST on the PSF and UDF collected by them from the passengers through the airlines.
- 6) Airport authority are collecting PSF and UDF inclusive of GST hence GST to be paid by them to government.
- 7) The collection charges paid by airport operator (authority) to airlines (acting as pure collection agent) are a consideration for the services provided by the airlines to the airport operator and airlines shall be liable to pay GST on the same under forward charge. ITC of the same will be available with the airport operator.
- 8) Airline acting as pure agent of the passenger should separately indicate actual amount of PSF and UDF and GST payable on such PSF and UDF by the airport licensee, in the invoice issued by airlines to its passengers.
- 9) The airline would only recover the actual PSF and UDF and GST payable on such PSF and UDF by the airline operator. The amount so recovered will be excluded from the value of supplies made by the airline to its passengers. In other words, the airline shall not be liable to pay GST on the PSF and UDF (for airport services provided by airport licensee), provided the airline satisfies the conditions prescribed for a pure agent under Rule 33.
- 10) The registered passengers, who are the ultimate recipient of airport services, may take ITC of GST paid on PSF and UDF on the basis of pure agent's invoice issued by airline to them.

Clarification regarding the applicability of GST on supply of electricity by the real estate companies, malls, airport operators etc., to their lessees or occupants.

- Electricity supplied with renting of property/maintenance is considered a composite supply and taxed accordingly.
- Principal supply: Renting of immovable property/maintenance.
- Ancillary supply: Electricity.
- Even if billed separately, electricity is part of the composite supply, and the GST rate for the principal supply applies.
- If Real Estate Owners, RWAs, or Real Estate Developers supply electricity as pure agents (charging the same amount as charged by State Electricity Boards or DISCOMs), it is not part of their supply value and they will be deemed to be acting as pure agents.

Rule 34: Rate of exchange for determination of value of:

- Taxable goods: Rate notified by CBIC under section 14 of Customs Act, on the date of time of supply of such goods;
- Taxable services: Rate as per GAAP, on the date of time of supply of such services.

Rule 35: Value inclusive of taxes

Where VOS is inclusive of CGST, SGST/UTGST or IGST, the tax amount is calculated by making back calculations.

Tax amount = (Value inclusive of GST x GST rate in % of IGST or CGST, SGST/UTGST)/100 + sum of applicable GST rates in %)

Clarification on discounts [Circular No. 92/11/2019-GST dated 07.03.19]

A. Discounts including 'Buy more, save more' offers

(i) Some supplier offers staggered discount to his customers.

- Example - Get 10 % discount for purchases above Rs. 5,000/-, 20% discount for purchases above Rs. 10,000/- and 30% discount for purchases above Rs. 20,000/-.
- Such discounts are shown on the invoice itself & hence excluded from VOS.

(ii) Some suppliers also offer periodic / year ending discounts to their stockists, etc.

- Get additional discount of 1% if you purchase 10,000 pieces in a year, get additional discount of 2% if you purchase 15,000 pieces in a year.
- Such discounts are established in terms of an agreement entered into at or before the time of supply

- Such discounts, are passed on by the supplier through credit notes.

(iii) **Clarified:** such discounts offered by the suppliers shall be excluded to determine the VOS. Provided they satisfy the parameters laid down in section 15(3) of the CGST Act, including the reversal of ITC by the recipient of the supply.

(iv) Further clarified that: supplier shall be entitled to avail the ITC for such inputs, input services & capital goods used in relation to the supply on such discounts.

B. Secondary Discounts

These are the discounts which are not known at the time of supply or are offered after the supply is already over.

Example: M/s A supplies 10,000 packets of biscuits to M/s B at Rs. 10/- per packet. Afterwards M/s A re-values it at Rs. 9/- per packet and issues credit note to M/s B for Rs. 1/- per packet.

Issue: whether credit notes(s) under section 34(1) can be issued even if the conditions laid down in section 15(3)(b) of the CGST Act are not satisfied.

Clarification:

- Financial/commercial credit note(s) can be issued by the supplier even if the conditions mentioned section 15(3)(b) are not satisfied.
- such secondary discounts shall not be excluded from VOS as such discounts are not known at the time of supply and the conditions u/s 15(3)(b) are not satisfied.
- There is no impact on availability or otherwise of ITC in the hands of supplier in this case.

Clarifying scope & ambit of principal agent relationship in the context of a del-credere agent

About a Del-credere agent:

- A Del-credere agent (DCA) is a selling agent engaged by a principal to contact potential buyers and guarantee payment to the supplier.
- If the buyer fails to pay by the due date, the DCA makes the payment to the principal, effectively insuring against buyer default.
- Due to the payment guarantee, commission paid to a DCA is higher than that of a normal agent.
- The DCA may extend short-term transaction-based loans to the buyer or pay the supplier directly, recovering the amount from the buyer with interest later.
- The loan repayment, including interest, is agreed upon between the DCA and the buyer.
- Concerns exist regarding the valuation of supplies when payments are made through loans provided by the DCA or directly by the DCA.

Issue: Whether a DCA falls under the ambit of agent under Para 3 of Schedule I of CGST Act?

Clarification:

- If the supplier issues the invoice to the customer, either directly or through the DCA, the DCA does not fall under the ambit of agent.
- If the DCA issues the invoice in their own name, the DCA does fall under the ambit of agent.

Issue: Whether the temporary short-term transaction-based loan extended by the DCA to the recipient (buyer), for which interest is charged by the DCA, is to be included in the value of goods being supplied by the supplier (principal) where DCA is not an agent under Para 3 of Schedule I of the CGST Act?

Clarification:

- If the DCA is not an agent under Para 3 of Schedule I, the loan provided by the DCA is a separate service.
- The interest charged by the DCA on the loan does not form part of the value of the goods supplied by the supplier.

Issue: Whether DCA is an agent under Para 3 of Schedule I and makes payment to the principal on behalf of the buyer and charges interest to the buyer for delayed payment along with the value of goods, whether the interest will form part of the value of supply of goods also or not?

Clarification:

- When the DCA is an agent under Para 3 of Schedule I, the short-term loan provided by the DCA is considered part of the supply of goods, not an independent service.
- The interest charged on the loan must be included in the value of the goods supplied by the DCA to the recipient as per section 15(2)(d).

Introduction

- Invoicing is essential for tax compliance under any indirect taxation system, ensuring transparency for every taxable transaction.
- A tax invoice evidences payment for goods/services, including the tax portion, and can serve as a payment demand or document of title when fully paid.
- A registered person cannot avail Input Tax Credit (ITC) without a tax invoice or debit note.

Invoice or tax invoice: means the tax invoice referred to in section 31.

Section 31: Tax invoice

Section 31(1) Tax Invoice in case of goods

A registered person supplying taxable goods shall, before/at the time of

- Where the supply involves movement of goods: removal of goods for supply to the recipient; or
- In any other case: delivery of goods or making available to the recipient,

RP issue a tax invoice showing the **[Mnemonic - DQVTS]**

- **D** - description,
- **Q** - quantity and
- **V** - value of goods,
- **T** - tax charged thereon and
- **S** - such other particulars as may be prescribed (rule 46/46A).

Removal in relation to goods, Means—

- dispatch of the goods** for delivery by the supplier/by any other person acting on behalf or
- collection of the goods** by the recipient thereof or by any other person acting on behalf;

Rule 46: Particulars to be stated in a tax Invoice

A tax invoice referred to in section 31 shall be issued by the RP containing—

- name, address and GSTIN of the supplier;
- a consecutive serial no. not exceeding 16 characters, in one/multiple series, containing alphabets/numerals/special characters hyphen/dash & slash symbolised as "-" and "/" respectively, and any combination thereof, unique for a financial year;
- date of its issue
- name, address and GSTIN or UIN, if registered, of the recipient; (B2B supplies)

(e) If recipient is URP and value of taxable supply is \geq Rs. 50,000; name and address of the recipient and the address of delivery, along with the name of the State and its code.

(f) If such recipient is URP and value of the taxable supply is $<$ Rs. 50,000 & recipient requests: name & address of recipient & the address of delivery, along with name of the State & code.

Provided that

- in cases involving supply of online money gaming or
- where any taxable service is supplied by or through an ECO or
- taxable supply by a supplier of OIDAR services to an Unregistered recipient,
- irrespective of the value of such supply,
- **a tax invoice issued by the RP 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.**

(g) **Harmonised System of Nomenclature code (HSN)** [No of digits of HSN to be mentioned in invoice, to be notified by board). Board on recommendation has notified:

RP with ATO in PFY	No of digits of HSN code
upto 5 crores	4 digits mandatory (B2B Supplies), Optional (B2C supplies)
>5 crores	6 digits is mandatory

(h) description of goods or services

(i) quantity in case of goods and unit or Unique Quantity Code thereof;

(j) total value of supply of goods or services or both;

(k) taxable value of the supply of g/s/b taking into account discount or abatement, if any;

(l) rate of tax;

(m) amount of tax charged in respect of taxable g/s (CT, ST, IT, UT/Cess);

(n) In the case of inter-State trade or commerce: place of supply along with name of the State;

(o) address of delivery where the same is different from the place of supply;

(p) whether the tax is payable on reverse charge basis; and

(q) signature or digital signature of the supplier or his authorised representative

(r) In case of e-invoicing: QR code, having embedded Invoice Reference Number (IRN)

(s) In case of taxpayer having ATO in any PFY from 2017-18 more than 5 crores & where e-invoicing is not done since it is not required, shall provide the following declaration:

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

Proviso: In the case of the export of goods/services, the invoice shall carry an endorsement "SUPPLY MEANT FOR EXPORT OR SUPPLY TO SEZ UNIT OR SEZ DEVELOPER FOR AUTHORISED OPERATIONS ON PAYMENT OF INTEGRATED TAX" or "SUPPLY MEANT FOR EXPORT/SUPPLY TO SEZ UNIT OR SEZ DEVELOPER FOR AUTHORISED OPERATIONS UNDER BOND OR LETTER OF UNDERTAKING WITHOUT PAYMENT OF INTEGRATED TAX",

as the case may be, and shall, in lieu of the details specified in clause (e), contain the following details, namely, –

- (i) name and address of the recipient;
- (ii) address of delivery; and
- (iii) name of the country of destination:

Section 31(2): Tax Invoice in case of services

A registered person supplying taxable services shall,

- before or after the provision of service
- but within a prescribed period (Rule 47: 30days/45 days)

RP issue a tax invoice showing the **[Mnemonic - DQVTS] - Quantity not required in case of service.**

- **D** - description,
- **V** - value of goods,
- **T** - tax charged thereon and
- **S** - such other particulars as may be prescribed (rule 46/46A).

Rule 47: Time limit for issuing tax invoice

Invoice in case of taxable services, shall be issued within **30 days** from date of supply of service:

Proviso:

1. **NBFC/ a banking company/ a FI/an insurer:** the invoice/any document shall be **45 days** from the date of the supply of service. **[Mnemonic - NBFI]**
2. **NBFC/ a banking company/ a FI/an insurer/a telecom operator [Mnemonic - NBFI]** or any other notified class, making taxable supplies between distinct persons, may issue the invoice
 - before or at the time such supplier records the same in his books of account or
 - before the expiry of the **quarter** during which the supply was made.

Quarter shall mean a period comprising 3 consecutive calendar months, ending on the last day of March, June, September and December of a calendar year.

Section 31(3): Notwithstanding anything contained in sub-sections (1) and (2)–

Section 31(3)(a): Revised Tax Invoice

A registered person may,

- within **one month** from the date of issuance of certificate of registration and
- in such manner as may be prescribed (rule 53), issue a revised invoice

- against the invoice already issued during the period beginning with the effective date of registration till the date of issuance of certificate of registration to him;

Rule 53: Revised tax invoice

(1) A revised tax invoice referred to in section 31 shall contain the following particulars, namely:

- the word "**Revised Invoice**", wherever applicable, indicated prominently;
- name, address and Goods and Services Tax Identification Number of the supplier;
- a consecutive serial number not exceeding 16 characters (Author: Same as tax invoice);
- date of issue of the document;
- name, address and GSTIN or UIN, if registered, of the recipient;
- name and address of the recipient and the address of delivery, along with the name of State and its code, if such recipient is un-registered;
- serial number & date of the corresponding tax invoice or, as the case may be, BOS;
- signature or digital signature of the supplier or his authorised representative.

(2) **Manner of issuing Revised tax invoice**

Revised tax invoices may be issued in respect of taxable supplies effected during the period

- starting from the effective date of registration
- till the date of the issuance of the certificate of registration:

Proviso: RP may issue a consolidated revised tax invoice

- in respect of all taxable supplies made to a **unregistered recipient** during such period:

Proviso: In case of inter-State supplies & value of a supply does not exceed 2.5 lakhs,

- a consolidated revised invoice may be issued separately in respect of all the unregistered recipients located in a State.

Section 31(3)(b): No tax invoice

A RP may not issue a tax invoice

- **if value of supply is < Rs. 200** subject to such conditions & manner prescribed (rule 46).

Extract of rule 46

A RP, **except** supplier engaged in making supply of services by way of admission to exhibition of cinematograph films in multiplex screens,

- may not issue a tax invoice in accordance with section 31(3)(b) subject to following conditions:

- (a) the recipient is not a registered person; and
- (b) the recipient does not require such invoice, and

shall in respect of such supplies, issue a consolidated tax invoice for such supplies at the close of each day.

Author comment:

- Multiplex are required to issue tax invoice for every transaction even if value < Rs 200.
- However, single screen cinema halls may issue consolidated tax invoice.

Section 31(3)(c): Supplier of exempted supplies/composition dealer

A RP supplying exempted goods/services/both/paying tax under composition scheme,
 - shall issue instead of a tax invoice, a bill of supply containing such particulars and, in such manner, as may be prescribed. (rule 49)

Proviso: the RP may not issue a bill of supply if the value of supply is < Rs. 200 rupees subject to such conditions and in such manner as may be prescribed (Rule 49).

Rule 49: Bill of supply (BOS)

Particulars required in Bill of supply

- (a) name, address and GSTIN of the supplier;
- (b) a consecutive Sl. No. not exceeding 16 characters (Author: same as tax invoice);
- (c) date of its issue;
- (d) name, address and GSTN or UIN, if registered, of the recipient;
- (e) HSN code for goods or services;
- (f) description of goods or services or both;
- (g) value of supply of g/s/b taking into account discount or abatement, if any; and
- (h) signature or digital signature of the supplier or his authorised representative;

Proviso:

- The provisos to rule 46 shall, mutatis mutandis, apply to the bill of supply.
 - Proviso related to HSN code, No Bill of supply if VSO < 200 when supplier is URP.
- Document in case of non-taxable supply - Deemed as BOS
 - In case of petrol pumps/Alcohol shops, invoice under VAT law - deemed bill of supply

Rule-46A. Invoice-cum-bill of supply

Where a RP is supplying taxable as well as exempted g/s/b to an unregistered person,
 - a single "invoice-cum-bill of supply" may be issued for all such supplies.

Section 31(3)(d): Receipt Voucher

- A RP shall, on receipt of advance payment with respect to any supply of goods or services or both,
- issue a receipt voucher or any other document,
 - containing such particulars as prescribed (rule 50), evidencing receipt of such payment;

Rule 50. Receipt voucher.-

A refund voucher shall contain the following particulars, namely:-

- (a) name, address and GSTIN of the supplier;
- (b) a consecutive serial number not exceeding 16 characters (Author: same as tax invoice);
- (c) date of its issue;
- (d) name, address and GSTIN or UIN, if registered, of the recipient;
- (e) description of goods or services;
- (f) amount of advance taken;
- (g) rate of tax (central tax, State tax, integrated tax, Union territory tax or cess);
- (h) amount of tax charged in respect of taxable goods/services (CT, ST, IT, UTT or cess);
- (i) place of supply along with the name of State and its code, in case of a interstate supply;
- (j) whether the tax is payable on reverse charge basis; and
- (k) signature or digital signature of the supplier or his authorised representative;

Proviso: where at the time of receipt of advance, -

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

Section 31(3)(e): Issue of refund Voucher

Where, on receipt of advance payment with respect to any supply of goods/services/both

- the RP issues a receipt voucher, but subsequently no supply is made & no tax invoice is issued,
- the said RP may issue a refund voucher against such payment; (Rule 51)

Rule 51: Refund voucher.

A refund voucher shall contain the following particulars:

- (a) name, address and Goods and Services Tax Identification Number of the supplier;
- (b) a consecutive serial number not exceeding sixteen characters (Author: same as tax invoice);
- (c) date of its issue;
- (d) name, address and GSTIN or UIN, if registered, of the recipient;
- (e) number and date of receipt voucher issued in accordance with the provisions of rule 50;

- (f) description of goods or services in respect of which refund is made;
- (g) **amount of refund made;**
- (h) rate of tax (central tax, State tax, integrated tax, Union territory tax or cess);
- (i) amount of tax paid in respect of such goods/services (CT, ST, IT, UTT or cess);
- (j) whether the tax is payable on reverse charge basis; and
- (k) signature or digital signature of the supplier or his authorised representative.

Section 31(3)(f): In case of supplies received under RCM: Self Invoice

A RP who is **liable to pay tax under section 9(3)/9(4)** shall

- issue an invoice in respect of goods/ services/both received by him
- from the **unregistered supplier** on the date of receipt of goods or services or both;

Section 31(3)(g): Payment to supplier making supplies under RCM

A registered person who is liable to pay tax u/s 9(3)/9(4) shall issue a payment voucher at the time of making payment to the supplier. (Applicable rule 52).

Rule 52: Payment voucher

A payment voucher referred to in section 31(3)(g) shall contain the following particulars:

- (a) name, address and GSTIN of the supplier if registered;
- (b) a consecutive serial number not exceeding sixteen characters (**Author: same as tax invoice**);
- (c) date of its issue;
- (d) name, address and GSTIN of the recipient;
- (e) description of goods or services;
- (f) **amount paid;**
- (g) rate of tax (central tax, State tax, integrated tax, Union territory tax or cess);
- (h) amount of tax payable in respect of taxable goods or services (CT, ST, IT, UTT or cess);
- (i) POS along with the name of State and its code, in case of a interstate supply; and
- (j) signature or digital signature of the supplier or his authorised representative.

Section 31(4): Continuous supply of goods

In case of continuous supply of goods,

- where successive statements of accounts: the invoice shall be issued before/at the time each such statement is issued
- successive payments are involved: the invoice shall be issued before/at the time each such payment is received

Section 2(32): Continuous supply of goods: means a supply of goods

- which is provided/agreed to be provided,
- continuously or on recurrent basis under a contract
- whether or not by means of a wire, cable, pipeline or other conduit, and
- for which the supplier invoices the recipient on a regular or periodic basis.

Section 31(5): Continuous supply of services

In case of continuous supply of services, — Where the

- (a) **due date of payment is ascertainable** from the contract, the invoice shall be issued on/before the due date of payment;
- (b) **due date of payment is not ascertainable** from the contract, the invoice shall be issued before or at the time when the supplier of service receives the payment;
- (c) **payment is linked to the completion of an event**, the invoice shall be issued on or before the date of completion of that event.

Section 2(33): Continuous supply of services: means a supply of services

- which is provided/agreed to be provided,
- continuously or on recurrent basis under a contract
- for a period exceeding 3 months with periodic payment obligations.

Section 31(6): Supply of services ceases before the completion

Where the supply of services ceases before the completion of the supply,

- the invoice shall be issued **at the time when the supply ceases**
- to the extent of the supply made before such cessation.

Section 31(7): Goods being sent or taken on approval

Where the goods being sent/taken on approval for sale/return are removed before the supply, the invoice shall be issued

- before or at the time of supply (**approval**) or
- **six months** from the date of removal, whichever is **earlier**.

Section 32: Prohibition of unauthorized collection of tax.

- (1) **URP:** shall not collect in respect of any supply - any amount by way of tax under this Act.
- (2) **RP:** shall collect tax in accordance with the provisions of this Act/the rules made thereunder.

Section 33: Amount of tax to be indicated in tax invoice and other documents.

- Where **any supply is made for a consideration**,
- every person who is liable to pay tax for such supply shall
- **prominently indicate** in all documents relating to assessment, tax invoice & like documents,
- the amount of **tax** which shall form part of the price at which such supply is made.

Credit & Debit notes [Section 34]

Section 2(37): Credit note means a document issued by a registered person under section 34(1);

Section 2(38): Debit note means a document issued by a registered person under section 34(3);

Section 34(1): Credit note

- Where one/more tax invoices have been issued for supply of any goods or services or both and
- the taxable value or tax charged in that tax invoice is found to exceed the taxable value or tax payable in respect of such supply, or
 - where the goods supplied are returned by the recipient, or
 - where goods or services or both supplied are found to be deficient,
 - the registered supplier, may issue to the recipient one or more credit notes for supplies made in a financial year containing such particulars as may be prescribed. (rule 53)

Section 34(2): Credit note disclose in the return within time

Any RP who issues a credit note shall declare the details of such credit note in the return for the month during which such credit note has been issued but not later than

- **the 30th day of November** following the end of the FY in which such supply was made, or
- **the date of furnishing (actual date) of the relevant annual return**, whichever is earlier
- and the tax liability shall be adjusted in such manner as may be prescribed:

Proviso: no reduction in output tax liability of the supplier shall be permitted, if the incidence of tax and interest on such supply has been passed on to any other person.

Section 34(3): Debit note

- Where one or more tax invoices have been issued for supply of any goods/services/both and
- the taxable value/tax charged in that tax invoice is found to be less than the taxable value or tax payable in respect of such supply,

- The registered supplier shall issue to the recipient one or more debit notes for supplies made in a financial year containing such particulars as may be prescribed (Rule 53).

Section 34(4): Debit note disclose in return within time

Any RP who issues a debit note in relation to a supply of goods or services or both shall

- **declare the same in the return** for the month during which such debit note has been issued &
- **the tax liability shall be adjusted** in such manner as may be prescribed.

Explanation. - The expression "debit note" shall include a supplementary invoice.

Rule 53(1A): A credit/debit note shall contain the following particulars, namely:

- (a) name, address and GSTIN of the supplier;
- (b) nature of the document;
- (c) a consecutive serial number not exceeding 16 characters (Author: same as tax invoice);
- (d) date of issue of the document;
- (e) name, address and GSTIN or UIN, if registered, of the recipient;
- (f) name and address of the recipient and the address of delivery, along with the name of State and its code, if such recipient is un-registered;
- (g) serial number(s) and date(s) of the corresponding tax invoice(s) or, as the case may be, BOS;
- (h) value of taxable supply of goods or services, rate of tax and the amount of the tax credited or, as the case may be, debited to the recipient; and
- (i) signature or digital signature of the supplier or his authorised representative.

Clarification on procedure in respect of return of time expired drugs/medicines

In the pharmaceutical sector, drugs or medicines are sold from the manufacturer to the wholesaler, and then to the retailer, based on invoices or bills of supply. These goods have a defined expiration date. Once expired, they are known as time expired goods and are returned to the manufacturer through the supply chain.

Retailer/wholesaler can follow either of the below procedures for the returning:

(A) Return of time expired goods to be treated as fresh supply:

- (a) In case the person returning the time expired goods is a RP (except a composition RP),
 - Returns time expired goods, they can treat it as a fresh supply and issue an invoice.
 - The return supply value can be the same as the original supply invoice.
 - The wholesaler or manufacturer receiving the return supply can avail ITC of tax.
- (b) In case the person returning the time expired goods is a composition taxpayer,
 - he may return the said goods by issuing a bill of supply and
 - pay tax at the rate applicable to a composition taxpayer.

- there will not be any availability of ITC to the recipient of return supply.
- (c) In case the person returning the time expired goods is an unregistered person,
 - he may return the goods by issuing any commercial document without charging tax.
- (d) Where time expired goods returned are destroyed by manufacturer,
 - Reverse the ITC availed on the return supply in terms of section 17(5)(h).
 - It is pertinent to mention here that the ITC which is required to be reversed in such scenario is the ITC availed on the return supply and not the ITC that is attributable to the manufacture of such time expired goods.

(B) Return of time expired goods by issuing Credit Note:

- (a) The supplier can issue a credit note where the goods are returned back by the recipient.
 - The Supplier manufacturer/wholesaler, can issue a credit note in relation to the time expired goods returned by the wholesaler/retailer.
 - Retailer/wholesaler may return the time expired goods by issuing a delivery challan.
 - No time limit for credit note issuance, except for tax liability adjustments by 30th November following the financial year-end.
- (b) if the credit note is issued within the time limit specified in section 34(2),
 - the tax liability may be adjusted by the supplier, subject to the condition that the person returning the time expired goods has either not availed the ITC or
 - if availed has reversed the ITC so availed against the goods being returned.
- (c) If Credit Note Issued After Time Limit:
 - Supplier can issue a credit note but cannot adjust the tax liability.
 - Such credit notes do not need to be declared on the common portal.
- (d) Destruction of Time Expired Goods by manufacturer:
 - he/she is required to reverse the ITC attributable to the manufacture of such goods, in terms of the provisions of section 17(5)(h) of the CGST Act.

Circular: applicable to similar scenarios.

Proviso to Rule 46: Dynamic QR Code

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

Notification Seeks to notify class of RPs required to capture dynamic QR code

- RP + whose ATO (in any PFY from 17 - 18) **exceeds 500 crores**
- With respect to: Supplies to URP (B2C supplies)
- Invoice should have Dynamic Quick Response (QR) code

Not applicable to RP: [Mnemonic - BGPMO]

1. **B** - NBFC, **B**anking co, FI, Insurance co [NBFI]
2. **G** - **G**TA supplying services in relation to transportation of goods by road
3. **P** - Supplier supplying **P**assenger transportation service.
4. **M** - Supplier supplying services by way of admission to exhibition of cinematograph films in **M**ultiplex screens.
5. **O** - **O**IDAR u/s 14 of IGST act.

Purpose of amendment: To enable and encourage digital payments.

Rule 48: Manner of Issuing Invoice

- (1) The invoice shall be prepared in triplicate, in the case of supply of goods, namely, -
 - a. the original copy being marked as ORIGINAL FOR RECIPIENT;
 - b. the duplicate copy being marked as DUPLICATE FOR TRANSPORTER; and
 - c. the triplicate copy being marked as TRIPLICATE FOR SUPPLIER.
- (2) The invoice shall be prepared in duplicate, in the case of the supply of services, namely, -
 - a. the original copy being marked as ORIGINAL FOR RECIPIENT; and
 - b. the duplicate copy being marked as DUPLICATE FOR SUPPLIER.
- (3) The serial number of invoices issued during a tax period shall be furnished in FORM GSTR-1 and in FORM GSTR-1A, if any.
- (4) The invoice shall be prepared by notified class of RPs, by including such particulars contained in GST INV-01 after obtaining an Invoice Reference Number (IRN) by uploading information contained therein on the Common GST Electronic Portal.
Proviso: Commissioner may, by notification, exempt a person/a class of RPs from e-invoice.
- (5) Any invoice issued by a person covered under sub-rule (4) that does not comply with the specified manner will not be considered a valid invoice.
- (6) Duplicable or triplicate copies of invoice shall not be required in case of e - invoice.

Notification Seeks to notify the common portal for the purpose of e-invoice.

The Common GST Electronic Portal for preparation of the invoice in terms of rule 48(4), namely:

- www.einvoice1.gst.gov.in
- www.einvoice2.gst.gov.in
- www.einvoice3.gst.gov.in
- www.einvoice4.gst.gov.in
- www.einvoice5.gst.gov.in
- www.einvoice6.gst.gov.in
- www.einvoice7.gst.gov.in
- www.einvoice8.gst.gov.in
- www.einvoice9.gst.gov.in
- www.einvoice10.gst.gov.in

- www.einvoice3.gst.gov.in • www.einvoice7.gst.gov.in
- www.einvoice4.gst.gov.in • www.einvoice8.gst.gov.in

Notification Seeks to notify certain class of registered persons required to issue e-invoice

- RP + whose ATO in any preceeding FY from 17-18 onwards, exceeds 5 crores.
- With respect to: Supply to RP (i.e., B2B supplies) or for exports.
- E-invoicing has been made mandatory.

Following RP exempt from E-invoicing: [Mnemonic - BGPM GLS]

- **B** - NBFC, **B**anking co, FI, Insurance co [NBFI]
- **G** - **G**TA supplying services in relation to transportation of goods by road
- **P** - Supplier supplying **P**assenger transportation service.
- **M** - Supplier supplying services by way of admission to exhibition of cinematograph films in **M**ultiplex screens.
- **G** - **A** government department,
- **L** - a local authority,
- **S** - a SEZ unit

Clarification on applicability of e-invoicing w.r.t an entity

Issue: Whether exemption from mandatory e-invoicing is for the whole entity or only specific supplies.

Clarification: Exemption applies to the entire entity, not restricted by the nature of supplies.

Example: A banking company is exempt from e-invoicing for all its supplies.

Clarification on applicability of e-invoicing to Government Departments/PSUs etc. registered solely for the purpose of deduction of tax at source u/s 51

Issue: Applicability of e-invoicing for supplies made to Government entities registered solely for TDS deduction under section 51.

Clarification: Government entities are treated as registered persons under GST law. Registered persons with turnover above the e-invoicing threshold must issue e-invoices for supplies to these Government entities.

Rule 54: Tax invoice in special cases

(1) An Input Service Distributor invoice or an ISD credit note

An Input Service Distributor invoice or an ISD credit note issued by an ISD shall contain:

- (a) name, address and GSTIN no. of ISD
- (b) a consecutive serial number not exceeding 16 characters (Author: same as tax invoice);
- (c) date of its issue;
- (d) name, address and GSTIN of the recipient to whom the credit is distributed;
- (e) amount of the credit distributed; and
- (f) signature or digital signature of the ISD or his authorised representative:

Proviso: If ISD is an office of a **banking** company/**FI**, including a **NBFC [NBF]**,

- a tax invoice shall include any document in lieu thereof, by whatever name called,
- whether or not serially numbered but containing the information as mentioned above.

(2) Invoice by NBFC, Banking co, FI, Insurer[Mnemonic - NBF I]

Supplier may issue a consolidated tax invoice or any other document in lieu thereof (statement), for the supply of services made during a month at the end of the month

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

Proviso: the signature/digital signature of the supplier shall not be required in the case of consolidated tax invoice or any other document in accordance with provisions of IT Act, 2000.

(3) In case GTA supplying services in relation to transportation of goods by road

Supplier shall issue a tax invoice/any other document in lieu thereof (consignment note), containing

- the gross weight of the consignment,
- name of the consigner and the consignee,
- registration number of goods carriage in which the goods are transported,
- details of goods transported,
- details of place of origin and destination,
- GSTIN of the person liable for paying tax whether as consigner, consignee or GTA,
- and also containing other information as mentioned under rule 46.

(4) Invoice in case of supplier of taxable service is supplying passenger transportation service

a tax invoice shall include

- ticket in any form, by whatever name called,
- whether or not serially numbered, and
- whether or not containing the address of the recipient of service but containing other information as mentioned under rule 46.

(4A) Services by way of admission to exhibition of cinematograph films in multiplex screens

A RP shall be required to issue an electronic ticket and

- the said electronic ticket shall be deemed to be a tax invoice for all purposes of the Act,
- even if such ticket does not contain the details of the recipient of service
- but contains the other information as mentioned under rule 46:

Proviso: Supplier of service in a single screen may, at his option, follow the above procedure.

Rule 55: Transportation of goods without issue of invoice

(1) Delivery challan in case of transportation

For the purposes of-

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

- serially numbered not exceeding sixteen characters, in one or multiple series,
 - in lieu of invoice at the time of removal of goods for transportation,
- containing the following details, namely: —
- date and number of the delivery challan;
 - name, address and GSTIN of the consigner, if registered;
 - name, address and GSTIN or UIN of the consignee, if registered;
 - HSN code and description of goods;
 - quantity (provisional, where the exact quantity being supplied is not known);
 - taxable value;
 - tax rate and tax amount, where the transportation is for supply to the consignee;
 - place of supply, in case of inter-State movement; and
 - signature.

(2) Delivery challan shall be prepared in triplicate: 3 copies

- (a) the original copy being marked as ORIGINAL FOR CONSIGNEE;
- (b) the duplicate copy being marked as DUPLICATE FOR TRANSPORTER; and
- (c) the triplicate copy being marked as TRIPLICATE FOR CONSIGNER.

(3) Where goods are being transported on a delivery challan, same shall be declared in rule 138.

(4) If TI cannot be issued at time of removal, then issue tax invoice after delivery

Where the goods being transported are for the purpose of supply to the recipient but the tax invoice could not be issued at the time of removal of goods for the purpose of supply, the supplier shall issue a tax invoice after delivery of goods.

(5) Transportation of goods in CKD/SKD/in batches/lots

Where the goods are being transported in a semi knocked down or completely knocked down condition or in batches or lots-

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

Example: Ram has sold a windmill to Shyam worth Rs 1 crore plus GST 18%. Due to the big size, it will be transported in 4 different consignments. Advise Ram on how to transport the windmill using delivery challan.

Answer:

1. The first consignment
 - First prepare Invoice
 - Consignment will move with the Invoice i.e. transporter copy of Invoice (duplicate copy)
2. The second Consignment
 - Prepare delivery challan, giving reference of the Invoice
 - Consignment will move with corresponding DC along with a certified copy of Invoice.
3. The third Consignment
 - Prepare delivery challan, giving reference of the Invoice
 - Consignment will move with corresponding DC along with a certified copy of Invoice.
4. The last consignment
 - Prepare delivery challan, giving reference of the Invoice
 - Consignment will move with corresponding DC along with original copy of Invoice.

Clarification on issues wherein the goods are moved within the State or from the State of registration to another State for supply on approval basis

Issue:

- Suppliers of jewellery registered in one State carry goods to other States for approval.
- Suppliers issue a tax invoice only at the time of supply.
- Difficulty in registering as a CTP due to advance ascertainment of tax liability requirement.
- Goods are also carried within the same State for supply.

Clarification:

- Goods taken on approval basis can be moved within the same State or outside the State with a delivery challan and e-way bill if applicable.
- Invoice may be issued at the time of delivery of goods i.e. approval.
- Person carrying goods can carry the invoice book to issue invoices once supply is finalized.
- Supplies from one State to another will be inter-state supplies and attract IGST.
- Clarification applies to all goods supplied under similar situations.

Clarification on issues regarding treatment of supply by an artist in various States and supply of goods by artists from galleries

Issue:

- Taxation of art supplies by artists in states where they are not registered as taxable persons.
- Tax invoices are issued only at the time of supply when the artwork is selected by the buyer.
- Artists often exhibit their work in galleries for supply.
- Confusion exists regarding whether the activity is taxable when given to the gallery or at the time of actual supply by the gallery.

Clarification:

- The art work can be moved from RP(artist) POB to another place within the same State/outside the State on a delivery challan along with the e-way bill and
- The invoice may be issued at the time of actual supply (i.e. approval) of art work.
- The supplies of the art work from one State to another State will be inter-State and attract IGST.

Clarification in respect of goods sent/ taken out of India for exhibition or on consignment basis for export promotion

Issue: Procedure to be followed in respect of goods sent/taken out of India for exhibition or on consignment basis for export promotion. Such goods sent/taken out of India crystallize into exports, wholly or partly, only after a gap of certain period from the date they were physically sent/taken out of India.

Clarification: The activity of sending/ taking the goods out of India for exhibition or on consignment basis for export promotion,

- do not constitute supply as the said activity does not fall within the scope of section 7 of the CGST Act as there is no consideration at that point in time.
- Since such activity is not a supply, the same cannot be "Zero rated supply" u/s 16 of the IGST Act.

Issue: What is the documentation required for sending/taking the specified goods out of India?

Clarification:

- Sending/taking specified goods out of India is not considered a supply.
- This activity is like a "sale on approval basis," where goods are sent abroad for approval and become an actual supply only when approved.
- The activity is covered under section 31(7) of the CGST Act and rule 55.
- Goods must be accompanied by a delivery challan issued per rule 55.

Issue: When is the supply of specified goods sent /taken out of India said to take place?

Clarification:

- When buyer accepts or sale takes place - it's a Supply and tax Invoice to be raised.
- If buyer doesn't accept and goods come back in 6 months - it is not a supply so no tax invoice.
- If buyer doesn't accept and goods doesn't come back in 6 months - deemed supply on expiry of 6 months and tax invoice to be raised.

Issue: Whether invoice is required to be issued when the specified goods sent/taken out of India are not brought back, either fully or partially, within the stipulated period?

Clarification:

- If specified goods sent/taken out of India are fully/partially sold within 6 months (as per section 31(7)): The sender must issue a tax invoice for the sold quantity.
- If specified goods sent/taken out of India are neither sold nor brought back within six months: The sender must issue a tax invoice on the date of expiry of six months from the date of removal, in respect of such quantity of specified goods which have neither been sold nor brought back.

Issue: Whether the refund claims can be preferred in respect of specified goods sent/taken out of India but not brought back? (Part of: Chapter of Refunds)

Clarification:

- Sending/taking specified goods out of India is not a zero-rated supply. Therefore, no refund claim can be preferred for such activity.
- Supply is deemed to take place:
- On the expiry of six months from the date of removal if the goods are neither sold nor brought back within this period.
- On the date of sale for goods sold abroad within six months.
- Refund claim can be preferred even if goods are sent/taken out of India without a bond or LUT, if eligible under section 54(3) of the CGST Act and rule 89(4) of the CGST Rules, after issuing a tax invoice.
- Refund claim cannot be preferred under rule 96 of the CGST Rules as the supply occurs after the goods have been sent/taken out of India.

Illustration 1: M/s ABC sends 100 units of specified goods out of India.

- Not considered a supply; no tax invoice needed, just a delivery challan.
- If all goods are brought back within six months, no tax invoice is required.
- If goods are not sold/brought back within 6 months, a tax invoice is required for all 100 units.

Illustration 2: M/s ABC sends 100 units of specified goods out of India.

- Not considered a supply; no tax invoice needed, just a delivery challan.
- If 10 units are sold after 1 month & another 50 units after 2 months, tax invoices are required at the time of each sale.
- If the remaining 40 units are not brought back within six months, a tax invoice is required for these units.
- M/s ABC can claim a refund of accumulated ITC for the zero-rated supply of 60 units.

Clarification in respect Dynamic QR Code on B2C invoices and compliance

Issue: Would dynamic QR code be required on invoices issued for supplies made for Exports?

Clarification:

- Supplies made for exports are treated as B2B supplies and require e-invoices
- Dynamic QR code does not apply to export invoices.

Issue: What parameters/ details are required to be captured in the QR Code?

Clarification:

Dynamic QR Code is required, inter-alia, to contain the following information:

- Supplier GSTIN number
- Supplier UPI ID
- ~~Payee's Bank A/C number and IFSC~~
- Invoice number & invoice date,
- Total Invoice Value and
- GST amount along with breakup i.e., CGST, SGST, IGST, CESS, etc.

Further, Dynamic QR Code should be such that it can be scanned to make a digital payment.

Issue: UPI ID is linked to the bank account of the payee. Whether bank account and IFSC details also need to be provided separately in the Dynamic QR Code along with UPI ID?

Clarification: Separate bank a/c & IFSC details do not need to be provided.

Issue: If a supplier provides/ displays Dynamic QR Code, but the customer opts to make payment without using Dynamic QR Code, then will the cross reference of such payment, made without use of Dynamic QR Code, on the invoice, be considered as compliance of Dynamic QR Code on the invoice?

Clarification:

If the supplier has issued invoice having Dynamic QR Code for payment, the said invoice shall be deemed to have complied with Dynamic QR Code requirements.

When the supplier displays the Dynamic QR Code digitally and the customer pays:

- Using any mode (UPI, credit/debit card, online banking, cash, or a combination) with or without using the QR Code, the supplier must provide a cross-reference of the payment (transaction ID, date, time, amount, payment mode) on the invoice.
- In cash, without using Dynamic QR Code and the supplier provides a cross reference of the amount paid in cash, along with date of such payment on the invoice;

Issue: If electronic payment modes like UPI Collect or UPI Intent are used without displaying a Dynamic QR Code, compliance can still be met if the merchant and transaction details are displayed or captured otherwise, how can the requirement of Dynamic QR Code as per this notification be complied with?

Clarification:

The cross reference of the payment made using such electronic modes of payment is made on the invoice, the invoice shall be deemed to comply with the requirement of Dynamic QR Code. However, if payment is made after generation / issuance of invoice, the supplier shall provide Dynamic QR Code on the invoice.

Issue: Is generation/ printing of Dynamic QR Code on B2C invoices mandatory for pre-paid invoices i.e., where payment has been made before issuance of the invoice?

Clarification:

- If cross-references of payments received via electronic mode or cash (or both) are made on the invoice, the invoice complies with the Dynamic QR Code requirement.
- For payments made after invoice generation/issuance (non-pre-paid supply), the supplier must provide a Dynamic QR Code on the invoice.

Issue: Once the E-commerce operator or the online application has complied with the Dynamic QR Code requirements, will the suppliers using such e-commerce portal or application for supplies still be required to comply with the requirement of Dynamic QR Code?

Clarification:

- The notification applies to each supplier/registered person (RP) separately for issuing invoices with Dynamic QR Codes for B2C supplies.
- If the supplier uses an E-commerce portal/application and provides cross-references of the payment received on the invoice, it complies with Dynamic QR Code requirements.

Issue: Whether Dynamic QR Code is to be provided on an invoice, issued to a person, who has obtained a Unique Identity Number?

Clarification:

- A person with a Unique Identity Number (UIN) is considered as a "unregistered person".
- Therefore, any invoice issued to a UIN holder is treated as a B2C supply.
- Such invoices must comply with the requirement of a Dynamic QR Code.

Issue: In cases where the payment is collected by some person other than the supplier (ECO or any other person authorized), whether UPI ID of the supplier, the UPI ID of such person, who is authorized to collect the payment, may be provided?

Clarification: The UPI ID of the authorized person can be provided in the Dynamic QR Code instead of the supplier's UPI ID.

Issue: Dynamic QR Code requirement for invoices issued to recipients outside India, where the Place of Supply (POS) is in India, as per IGST Act 2017.

Clarification:

- No Dynamic QR Code is required on such invoices.
- Invoices to recipients outside India, for services with POS in India, can be issued without a Dynamic QR Code.
- Payment received in convertible foreign exchange or INR (as permitted by RBI) does not necessitate a Dynamic QR Code, as recipients outside India cannot use it for payments.

Issue: In over-the-counter retail sales, payment is received via Dynamic QR Code displayed digitally, but the invoice number is generated after payment receipt.

Clarification:

- Unique Order ID/ sales reference number linked to the invoice can be provided in the Dynamic QR Code instead of the invoice number.
- This is acceptable if the linkage details are available on the merchant/supplier's processing system.
- The invoice should include the cross-reference of payment along with the unique Order ID/ sales reference number.

Issue: Determining the amount to provide in the Dynamic QR Code for "invoice value" when part-payment is already received.

Clarification:

- The Dynamic QR Code should enable the customer to pay the remaining amount due to the merchant/supplier.
- If part-payment has been received (e.g., advance, voucher, discount coupon), the Dynamic QR Code should only show the remaining amount payable.
- The invoice should include the total invoice value, details/cross reference of the part payment/advance/adjustment, and the remaining amount to be paid.

Section 2(85): Place of business

Place of business includes—

- (1) a place from where the business is ordinarily carried on, and includes
- (2) a warehouse, a godown or any other place where a taxable person stores his goods,
- (3) supplies or receives goods or services or both; or
- (4) a place where a taxable person maintains his books of account; or
- (5) a place where a taxable person is engaged in business through an agent, by whatever name called;

Section 2(89): Principal place of business

Principal place of business means the place of business specified as the principal place of business in the certificate of registration

Section 35: Accounts and Other Records

Section 35(1): Every RP shall maintain accounts at PPOB

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

- **P - Production** or manufacture of goods;
- **I - Inward and outward supply** of goods or services or both;
- **S - Stock** of goods;
- **I - Input tax credit** availed;
- **O - Output tax** payable and paid; and
- **S - Such other particulars** as may be prescribed (Rule 56(1))

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

Proviso: the RP may keep and maintain such accounts & other particulars in electronic form in manner prescribed under rule 57.

Clarification on maintaining the books of accounts in case of auction of tea, coffee, rubber.

Issue: Requirements for maintaining books of accounts and eligibility for input tax credit (ITC) in the auction of tea, coffee, rubber, etc.

Clarification:

- (i) Principals and auctioneers may declare warehouses as their additional places of business (APOB) for storing auctioned goods. Buyers must also declare these warehouses if storing purchased goods there.
- (ii) They must maintain books of accounts at each place of business but can keep records for APOB at their principal place of business (PPOB) if facing difficulties.
- (iii) They must inform their jurisdictional officer in writing about maintaining books of accounts at the PPOB instead of APOB.
- (iv) Principals and auctioneers are eligible to avail ITC for auctions, subject to CGST Act provisions and rules

Rule 57: Generation and maintenance of electronic records

- **Back-Up of Records:** Maintain proper electronic back-up to ensure information can be restored after accidents or natural causes.
- **Produce E-Records on Demand:** RP must provide authenticated records/documents in hard copy or electronically readable format upon demand.
- **Provide Access to E-Records on Demand:** RP must give details of files, passwords, code explanations, and a sample print copy when accounts and records are stored electronically.

Section 35(2): Owner/operator of warehouse & transporter to maintain records

- (i) Every owner/operator of warehouse/godown/any other place used for storage of goods and
- (ii) every transporter,
- (iii) irrespective of whether he is a registered person or not,
- (iv) shall maintain records of the consigner, consignee and other relevant details of the goods in such manner as may be prescribed (Rule 58).

Rule 58: Records to be maintained by owner/operator of godown or warehouse and transporters

- **Unregistered warehouse owner or transporter -**
 - (a) **Submit** the business details electronically in FORM **GST ENR-01** and,
 - (b) Upon validation, a unique enrolment number shall be generated & communicated.
- **A transporter having multiple registration State/UT under same PAN,**
 - he may apply for a unique common enrolment number
 - Submit FORM **GST ENR-02** using any one of his **GSTINs**,
 - and upon validation, a unique common enrolment number shall be provided:

- Once a unique common enrolment number has been obtained, he shall not be eligible to use any of the GSTINs.

- **Records to be maintained by transporter & owner/operator of warehouse/godown**

Transporter shall maintain

- records of goods transported, delivered and goods stored in transit by him
- along with the GSTIN of registered consigner & consignee for each of his branches.

Every owner/operator of a warehouse or godown shall maintain

- books of account for the period for which particular goods remain in the warehouse,
- including particulars relating to dispatch, movement, receipt & disposal of such goods.
- Also he shall store the goods in such manner that they can be identified item-wise and owner-wise & shall facilitate any physical verification/inspection by the PO on demand.

Section 35(3): Notified class to maintain additional accounts (notified by commissioner)

Section 35(4): Notified class to be relaxed from maintaining accounts

Section 35(6): Unaccounted goods shall be deemed supplied

If a registered person (RP) fails to account for goods/services/both as per the provisions,

- **the PO will determine the payable tax** as if those goods/services/both were supplied.
- **Sections 73 or 74 shall mutatis mutandis apply** for determining the tax.

Rule 56: Maintenance of accounts by registered persons

(1) Additional accounts to be maintained by RP

Every RP shall keep and maintain, in addition to the particulars mentioned in section 35(1),

- (a) a true and correct account of the goods/services imported or exported or
- (b) of supplies attracting payment of tax on reverse charge along with relevant documents,
- (c) including invoices, BOS, DCs, Cr & Dr notes, receipt, payment & refund **vouchers**.

(2) RP to maintain details of stock

Every RP, other than a person paying tax under section 10 (**composition dealer**), shall maintain

- the accounts of stock in respect of goods received and supplied by him, and
- such accounts shall contain particulars of the opening balance, receipt, supply, goods lost, stolen, destroyed, written off or disposed of by way of gift/free sample and the balance of stock including raw materials, finished goods, scrap and wastage thereof.

(3) Every RP shall keep and maintain a separate account of **advances** received, paid and adjustments made thereto.

(4) RP to maintain details of IT and OT

Every RP, **other than Composition dealer**, shall keep and maintain an account, containing the details of tax payable (including tax payable under RCM), tax collected & paid, input tax, ITC claimed, together with a register of tax invoice, credit notes, debit notes, delivery challan issued or received during any tax period.

(5) RP to maintain details of suppliers, recipients and store house

Every RP shall keep the particulars of—

- names & complete addresses of suppliers from whom he has received the g/s;
- names & complete addresses of the persons to whom he has supplied g/s,
- the complete address of the premises where goods are stored by him, including goods stored during transit along with the particulars of the stock stored therein.

(6) If taxable goods not stored at declared place, deemed supply & PO can issue demand

(7) **RP to keep books at PPOB & APOB as per RC (e-books may be maintained on e-device)**

(8) **Manner of correction of wrong entries**

- No erasing, effacing, or overwriting of entries in registers, accounts, and documents.
- Incorrect entries (other than clerical errors) should be scored out under attestation.
- Correct entries should be recorded afterward.
- For electronic records, maintain a log of every edited or deleted entry.

(9) Each volume of books of account maintained manually by the RP shall be serially numbered.

(10) If any documents, registers, or any books of account belonging to a RP are found at any premises other than those mentioned in the RC, they shall be presumed to be maintained by the said RP.

(11) Books to be maintained by agent

Every agent referred to in clause (5) of section 2 shall maintain accounts depicting the, —

- particulars of authorisation received from each principal to receive/supply goods or services on behalf of such principal separately;
- particulars including description, value and quantity (wherever applicable) of goods or services received on behalf of every principal;

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

(12) Manufacturer to maintain production accounts

Every RP manufacturing goods shall maintain

- monthly production accounts showing quantitative details of raw materials/services used
- quantitative details of goods so manufactured including the waste & by products thereof.

(13) Accounts to be maintained by supplier of service

Every RP supplying services shall maintain the accounts showing

- quantitative details of goods used in the provision of services,
- details of input services utilized and
- the services supplied.

(14) Books to be maintained by Works contractor

Every RP executing works contract shall keep separate accounts for works contract showing:

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

(15) Records may be maintained in electronic form & shall be authenticated by means of a digital signature.

(16) Period of retention of accounts as per section 36

Accounts maintained by the RP together with all the invoices, BOS, Dr and Cr notes, DCs, relating to stocks, deliveries, inward supply & outward supply, shall be preserved for the period as provided in section 36.

where such accounts & documents are maintained manually, be kept at every related POB mentioned in the RC &

where such accounts and documents are maintained digitally, be accessible at every related POB.

(17) Accounts to be maintained by a carrier or C & F agent

They must maintain accurate records of goods they handle on behalf of registered persons and must produce these records when requested by the proper officer.

(18) Every RP shall, on demand, produce the books of account.

Section 36: Period of retention of accounts

Every RP required keeping & maintaining books of account/other records shall retain them

- until the expiry of **72 months from the due date** of furnishing of AR for the year pertaining to such accounts and records:

A registered person involved in an appeal, revision, or other proceedings, or under investigation, must retain relevant books of account and records

- for **one year after the final disposal** of such matters, or
- for the specified period (**72 months**), whichever is **later**.

What is E-way bill?

EWB is an electronic document generated on the GST portal evidencing movement of goods.

Purpose of EWB: To stop the practice of issuing bogus invoices.

What are the benefits of e-way bill?

Following benefits are expected from e-way bill mechanism:

- (i) Hassle free movement - eliminating state boundary check-posts
- (ii) Faster movement of goods
- (iii) Reduce travel time as well as cost
- (iv) Tool to track movement of goods

Section 68: Inspection of goods in movement

Section 68(1): The Government may require the Person in charge (PIC) carrying consignment value > Rs 50,000 to carry with him **documents & devices as may be prescribed-Rule 138A**

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

(1) PIC to carry Invoice/BOS/DC + EWB in physical form or mapped to RFID

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/the e-way bill number in electronic form/mapped to a Radio Frequency Identification Device embedded on to the conveyance (applicable only in case of movement by road)

Proviso: Clause (b) shall not apply in case of movement of goods by rail or by air or vessel:

Proviso: In case of imported goods: PIC to carry a copy of bill of Entry & the no. & date of BOE to be indicated in part A of EWB 01.

(2) **In case of e-invoicing**, QR code having an embedded IRN may be produced for verification in lieu of the physical copy of such tax invoice.

(3) Where the RP does e-invoicing, the information in Part A of GST EWB-01 shall be auto-populated on the basis of the information furnished in FORM GST INV-1.

Section 68(2): The details of **documents carried by PIC shall be validated** in manner prescribed (Rule 138B).

Rule 138B: Verification of documents and conveyances.

- Commissioner/an authorized officer may allow a PO to **intercept conveyances** to verify EWB.
- **RFID readers** will be installed at verification points to check the movement of goods where e-way bills are mapped with the devices.
- Proper officers, authorized by the Commissioner, will conduct physical verification.
- In cases of suspected tax evasion, **any officer can conduct** physical verification with the necessary approval from the Commissioner.

Rule 138C: Inspection and verification of goods.

- PO shall after every inspection of goods in transit, record online
 - Summary report within **24 hours** and
 - final report **72 hours** of inspection in Form GST EWB 03
- Commissioner/authorized officer, extend the time for recording of final report by a further period not exceeding **three days**.
- The period of **24 hours/3 days shall be counted from the midnight** of the date on which the vehicle was intercepted.
- **No further verification** is required unless specific information on tax evasion is received..

Rule 138D: Facility for uploading information regarding detention of vehicle.

If a vehicle is intercepted & detained for **more than thirty minutes**,

- the transporter can upload the information in **GST EWB-04 (grievance report)** on the common portal.

Rule 138: Information to be furnished prior to commencement of movement of goods & generation of EWB.

(1) Who and When shall generate EWB?

Every RP who causes movement of goods of **consignment value > Rs 50,000** —

- in relation to a supply; or
 - for reasons other than supply; or
 - due to inward supply from an unregistered person,
- shall, before commencement of such movement,

- furnish information in **Part A of EWB-01**, along with other information
- and a unique number will be generated on the said portal:

Proviso: Transporter/ ECO/Courier agency on an authorization received, may furnish information in Part A to generate EWB.

Compulsory EWB irrespective of value in the following cases:

- In case of **interstate** movement of goods for jobwork
- **Interstate movement of handicraft goods** by a person exempted from the requirement of obtaining registration under clauses (i) and (ii) of section 24. [Exempted from registration not e-way bill]

Computation of consignment value:

- Value in accordance with the provisions of section 15, (declared in an invoice, a bill of supply or a delivery challan)
- **includes** CGST, SGST or UTGST, integrated tax and cess charged,
- **exclude** the value of exempt supply if invoice is in respect of both exempt & taxable supply.

Crux: Consignment value = value u/s 15 **includes** GST but **excludes** value of exempt supply.

Press release: One E-way Bill to be issued in case of 'Bill To Ship To' Model

- In the "Bill To Ship To" model, three persons are involved: 'A' (who orders), 'B' (who sends goods to 'C'), and 'C' (the recipient).
- Two supplies and two tax invoices are involved:
 - a. Invoice -1: Issued by 'B' to 'A'.
 - b. Invoice -2: Issued by 'A' to 'C'.
- As per CGST Rules, 2017, only one e-Way Bill is required, which can be generated by either 'A' or 'B'.

(2) Where goods are transported own conveyance/a hired one/a public conveyance, by road:
RP/recipient shall generate the e-way bill in EWB-01 electronically after furnishing information in Part B of EWB-01.

(2A) where the goods are transported by railways/air/vessel:

RP, either before/after the commencement of movement generate EWB by furnish information in Part B of EWB-01: (since docs like RR no., AWB no., etc. are generally received post hand over of goods)

Proviso: the railways shall not deliver the goods unless EWB is produced on delivery.

(3) Where the goods are handed over to a transporter for transportation by road:

RP shall furnish the information in Part A of GST EWB-01 and assign EWB to transporter, transporter shall then update Part B and generate EWB.

Proviso:

1. RP/the transporter may, at his option, generate & carry EWB even if the value of the consignment is less than Rs 50,000:
2. **URP moving goods** either in his own conveyance/a hired one/through a transporter, RP or the transporter may, at their option, generate the EWB in EWB-01:
3. **Details of conveyance in part B of EWB 01 not required:** Where the goods are transported for a distance of upto 50 Kms within the State/UT from from consignor's to transporter's place of business.

Explanation:

1. Where the goods are supplied by an **unregistered supplier to a registered recipient:** the movement shall be said to be caused by such recipient.
2. EWB invalid unless the information furnished in Part B of FORM GST EWB-01 **except** Where the goods are transported for a distance of upto 50 Kms within the State/UT
 - from consignor's place of business (POB) to transporter's place of business or
 - from the POB of the transporter finally to the POB of the consignee, the details of conveyance may not be updated.

(4) Upon generation of the e-way bill: a unique e-way bill number shall be made available.

(5) When goods are transferred from one conveyance to another

the consignor/recipient/transporter must update Part B before transfer & further movement

Proviso: Once the transporter updates details in Part B of EWB-01, the consignor/recipient who provided information in Part A cannot reassign the EWB number to another transporter.

(5A) EWB number may be assigned to transporter for updating the information in Part B

The consignor, recipient, or transporter who provided information in Part A of GST EWB-01 can assign the e-way bill number to another registered/enrolled transporter to update Part B for further movement of the consignment.

Proviso: Once the transporter updates details in Part B of EWB-01, the consignor/recipient who provided information in Part A cannot reassign the EWB number to another transporter.

(6) Consolidated E-way bill

Where multiple consignments are transported in one conveyance, Consolidated EWB in EWB 02 may be generated by transporter prior to the movement of goods, indicate the serial number of EWBs generated in respect of each such consignment.

(7) Where the consignor/consignee has not generated the EWB & aggregate value of goods carried in the conveyance > Rs 50000: Transporter (excluding rail, air or vessel) in respect of inter-State supply, generate the e-way bill.

Proviso: where the goods to be transported are supplied through an ECO/a courier agency, the information in Part A of GST EWB-01 may be furnished by such ECO/courier agency.

(8) Information furnished in Part A shall be made available to the registered supplier on the common portal who may utilize the same for furnishing the details in FORM GSTR-1:

Proviso: when the information has been furnished by an unregistered supplier/recipient EWB-01, he shall be informed electronically, if the mobile number or the e-mail is available.

(9) Cancellation of EWB:

Where goods are not transported/not transported as per EWB, EWB may be cancelled within **24 hours:**

Proviso:

1. An e-way bill cannot be cancelled if it has been verified in transit by PO:
2. The unique number generated shall be valid for 15 days for updation of Part B of EWB-01.

(10) Validity of EWB/Consolidated EWB:

SN	Cargo type	Distance within country	Validity period from relevant date
1	Other than Over Dimensional Cargo/multimodal shipment (one leg involves transport by ship)	Upto 200 km	One day
		Every 200 km/part	One additional day
2	Over Dimensional Cargo or multimodal shipment (one leg involves transport by ship)	Upto 20 km	One day
		Every 20 km/ part	One additional day

Proviso: the validity of the e-way bill may be extended **within 8 hours** from the time of its expiry.

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

Validity of E-way bill can be explained by following examples -

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

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

(11) Details of the e-way bill generated shall be made available to the—

- Registered supplier if Part A of EWB-01 is furnished by the recipient or transporter.
 - Registered recipient if Part A is furnished by the supplier or transporter.
- and the supplier/recipient, shall communicate his acceptance/rejection.

(12) Supplier/recipient shall communicate his acceptance/rejection

- within **72 hours** of the details being made available to him or
- the time of delivery of goods **whichever is earlier,**
- otherwise it shall be deemed that he has accepted the said details.

(13) The e-way bill generated in one state shall be valid in every State and Union Territory.

(14) No e-way bill is required to be generated—

- where the goods being transported are specified in Annexure;

Description of Goods
LPG for supply to household and non-domestic exempted category customers
Kerosene oil sold under PDS (Public Distribution System)
Postal baggage transported by Department of Posts
Natural/cultured pearls/precious/semi-precious stones; precious metal & metals clad with precious metals
Jewellery, goldsmiths' and silversmiths' wares and other articles. excepting Imitation Jewellery
Currency
Used personal and household effects
Coral, unworked and worked coral.

- Where the goods are being transported by a **non-motorized conveyance;**
- Transportation from Customs port/airport/air cargo complex/land customs station to an inland container depot/a container freight station for clearance by Customs;
- Movement of goods within notified areas.
- Where the goods transported are exempt goods (other than de-oiled cake)
- Where the goods being transported Non-taxable goods
- Where supply of goods being transported is treated as no supply under Schedule III;
- where the goods are being transported

- (i) under customs bond from an inland container depot/a container freight station to a custom port, airport, air cargo complex and land customs station, or from one customs station or customs port to another customs station or customs port, or
- (ii) under customs supervision or under customs seal;
- (i) Transit cargo from or to Nepal or Bhutan.
- (j) where the goods being transported are exempt under NNo. 7/2017 & 26/2017-CT(R) i.e
 - supply of goods by the CSD to the Unit Run Canteens/to authorised customer/ by the Unit Run Canteens to the authorized customers.
 - supply of heavy water and nuclear fuels by the Department of Atomic Energy to the Nuclear Power Corporation of India Ltd.
- (k) Movement of goods caused by defence formation under Ministry of defence;
- (l) Where the consignor of goods is the CG/SG/LA for transport of goods by rail;
- (m) Where empty cargo containers are being transported;
- (n) Where the goods are being transported upto a distance of 20 Kms from/ the POB of the consignor to a weighbridge for weighment, accompanied by a delivery challan issued in accordance with rule 55; and
- (o) where empty cylinders for packing of liquefied petroleum gas are being moved for reasons other than supply

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

Rule 138E: Restriction on furnishing of information in PART A of FORM GST EWB-01.

Blocking of E-way bill: No person shall be allowed to furnish information in Part A in respect of any outward movement of goods of a registered person, who, —

- (a) Being composition dealer has not furnished GST CMP 08 for two consecutive quarters.
- (b) Being a person other than (a) has not furnished returns for consecutive 2 tax periods.
- (c) Being a person other than (a) has not furnished GSTR 1 for any 2 months/quarters.
- (d) Being a person, whose registration has been suspended under rule 21A(1)/(2)/(2A).

Unblocking of E-way Bill

- Application to commissioner in GST EWB 05,
- Commissioner satisfied on sufficient cause being shown: issue order, in GST EWB-06 allow furnishing details in PART A or
- Reject the request after providing Opportunity of being heard (OBH).

Clarifications: Transportation of goods by railways, DTA to SEZ

Issue: In case of railways, can goods be delivered if the e-way bill is not produced on delivery?

Clarification: Railways shall not deliver the goods unless e-way bill is produced on delivery.

Issue: Whether e-way bill is required in the following cases-

(i) Where goods transit through another State while moving from one area in a State to another area in the same State

(ii) Where goods move from a DTA unit to a SEZ unit or vice versa located in the same State.

Clarification:

(i) E-way bill generation is not dependent on whether a supply is inter-state or not, but on whether the movement of goods is inter-State or not. Therefore, if the goods transit through a second State while moving from one place in a State to another place in the same State, an e-way bill is required to be generated (provided value is > 50,000).

(ii) Where goods move from a DTA unit to a SEZ unit or vice versa located in the same State, its an interstate movement, there is no requirement to generate an e-way bill, if the same has been exempted under rule 138(14)(d) i.e. movement of goods within notified areas.

Circular on E-way bill in case of storing of goods in godown of transporter

Issue:

- Textile traders use transporters' godowns for storage due to financial constraints.
- Transporters providing this warehousing service must register under GST and keep detailed records when taking delivery and temporarily storing goods for further transportation to the recipient taxpayer's premises.
- The transport industry is requesting to treat these godowns as transit godowns due to operational difficulties.

Clarification:

In case the consignee/ recipient taxpayer stores his goods in the godown of transporter, then

- Recipient taxpayer has to declare transporter's warehouse as APOB.
- E-way bill validity concludes when goods reach the transporter's godown (APOB); no extension needed.
- E-way bill rules apply when goods move from transporter's godown (APOB) to another POB.

Accounts and Records

- Transporters must maintain accounts and records acting as warehouse keepers.
- Recipient taxpayers must maintain accounts and records per rules 56 & 57 of the CGST Rules.
- Books of accounts for goods stored at the transporter's godown (APOB) can be maintained at the recipient taxpayer's principal place of business.
- Declaring APOB does not add any extra compliance requirements for transporters.

Introduction

Time of supply is that point of time when GST will become payable to government i.e., when the liability to pay GST arise.

Will GST become payable

- when an agreement to supply is made, or
- when the payment for the goods is made or
- the services are provided, or
- when the invoice is issued?

Time of supply provide answer to all such questions on the timing of the liability to pay GST.

The CGST Act provides separate provisions for:

Sec 12: Time of supply for goods

Sec 13: Time of supply for services

Sec 14: Provides for the method of determining the time of supply in case there is a change in the rate of tax on supply of goods or services.

Time of Supply of goods [Section 12]

Section 12(1): Liability to pay tax shall arise at TOS

Liability to pay tax on goods shall arise at the time of supply as determined under this section.

Section 12(2): TOS under FCM

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

the last date on which he is required u/s 31, to issue the invoice with respect to the supply
or

(b) The date on which the supplier receives the payment with respect to the supply:

DOP = Book entry or Credit in bank a/c (whichever earlier)

the date on which the supplier receives the payment shall be

- the date on which the payment is entered in his books of account or
- the date on which the payment is credited to his bank account, whichever is earlier.

Notification no. 66/2017 CT & 50/2023 CT: Special procedure for payment of tax in case of supply of goods

The CG, on the recommendations of the Council, hereby notifies

- the RP (except composition dealer), other than the RP supplying specified actionable claims,
- as the class of persons who shall pay the central tax on the outward supply of goods
- at the time of supply as specified in section 12(2)(a) of the said Act
- including in the situations attracting the provisions of section 14 of the said Act.

Section 12(3): TOS in case of RCM

In respect of supplies on which tax is payable under RCM, the TOS shall be the earliest of:

- (a) the date of the receipt of the goods, (DOROG) or
- (b) the date of payment (DOP) [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) the date immediately following thirty days from the date of issue (DOI) of invoice or any other document, by the supplier: [i.e. 31st day from Invoice or other doc by supplier]

Proviso: If determining TOS under clause (a)/(b)/(c) is not possible, TOS shall be the date of entry in the books of account of the recipient of supply.

Section 12(4): TOS in case of Voucher: DOI/DOR

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.

Section 12(5): Residual Case

Where it is not possible to determine TOS sub-section (2)/(3)/(4), the time of supply shall -

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

Section 12(6): Addition in VOS with respect to I.P.L

The time of supply with respect to interest, late fee or penalty for delayed payment of any consideration shall be

- the date on which the supplier receives such addition in value.

Time of Supply of Services [Section 13]

Section 13(1): Liability to pay shall be as per TOS

Liability to pay tax on services shall arise at the time of supply as determined under this section.

Section 13(2): TOS under FCM: DOIOI or DOPOS

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

(a) if the invoice is issued within the period prescribed under section 31

- the date of issue of invoice by the supplier, or
- the date of receipt of payment, whichever is earlier; or

(b) if the invoice is not issued within the period prescribed under section 31

- the date of provision of service, or
- the date of receipt of payment, whichever is earlier; or

(c) In a case where the provisions of clause (a) or clause (b) do not apply:

- the date on which the recipient shows the receipt of services in his books of account.

Proviso: In case supplier receives up to Rs 1,000 in excess of amount indicated in the tax invoice,

- the TOS of such excess shall, be the date of issue of invoice (at the option of the supplier).

Clarification on time of supply in respect of supply of services of construction of road and maintenance thereof of National Highway Projects of National Highways Authority of India (NHAI) in Hybrid Annuity Mode (HAM) model

Issue: Under the Hybrid Annuity Mode (HAM) model of National Highways Authority of India (NHAI), the concessionaire has to construct the new road and provide Operation & Maintenance of the same which is generally over a period of 15- 17 years and the payment of the same is spread over the years. What is the time of supply for the purpose of payment of tax on the said service under the HAM model?

Clarification:

- Under the Hybrid Annuity Model (HAM) of concession agreements, the highway development projects are under Design, Build, Operate and Transfer model (DBOT), wherein the concessionaire is required to undertake new construction of Highway, as well as the Operation and Maintenance (O&M) of Highways.
- In HAM contract, the payment is made spread over the contract period in instalments 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.
- However, 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.

Section 13(3): Reverse Charge:

In respect of supplies on which tax is payable under RCM, the TOS shall be the earliest of:

- (a) the date of payment (DOP) [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) the date immediately following 60 days from the date of issue of invoice/any other document, by the supplier [i.e. 61st day from Invoice or other doc by supplier]:

Proviso: If it is not possible to determine TOS under clause (a)/(b), TOS shall be

- the date of entry in the books of account of the recipient of supply:

Proviso: In case of supply by associated enterprises, Who is outside India, the TOS shall be

- the date of entry in the books of account of the recipient of supply or
- the date of payment, whichever is earlier.

Clarification on TOS of services of spectrum usage and other similar services under GST

Spectrum Allocation Model:

- Telecom operator bids to use spectrum offered by the Government (DoT).
- Government of India (DoT) is the service provider; telecom operator is the service recipient.
- GST on spectrum allocation services is discharged under RCM by the telecom operator.

Full upfront payment

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

Deferred Payment:

- It shall be considered a "continuous supply of services" as defined under section 2(33).
- Since Supply of spectrum usage is continuous for more than three months with periodic payments obligations.
- Further, in the given case, since the date of payment is clearly ascertainable from the relevant documents, the invoice shall be issued on or before such due date of payment.
- Accordingly, tax invoice will be required to be issued, 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.

Similar Treatment for Other Natural Resources:

- Applies to other cases where natural resources are allocated by the Government.
- Payment can be either upfront or in deferred installments over time.

Section 13(4), (5) & (6): Same as 12(4), (5) & (6)

Section 14: Determination of Time of supply in case of change in the rate of tax

Notwithstanding anything contained in section 12 or section 13,

The TOS, in case of a change in the rate of tax in respect of g/s/b, shall be:

a) In case the goods/services/both have been supplied before the change in rate of tax,-

(i)	where the invoice for the same has been issued and the payment is also received after the change in rate of tax,	the time of supply shall be the date of receipt of payment or the date of issue of invoice, whichever is earlier; or
(ii)	where the invoice has been issued prior to the change in rate of tax but payment is received after the change in rate of tax,	the time of supply shall be the date of issue of invoice; or
(iii)	where the payment has been received before the change in rate of tax, but the invoice for the same is issued after the change in rate of tax,	the time of supply shall be the date of receipt of payment;

b) in case the goods/services/both have been supplied after the change in rate of tax, -

(i)	where the payment is received after the change in rate of tax but the invoice has been issued prior to the change in rate of tax	the time of supply shall be the date of receipt of payment; or
(ii)	where the invoice has been issued and payment is received before the change in rate of tax,	the time of supply shall be the date of receipt of payment or date of issue of invoice, whichever is earlier; or
(iii)	where the invoice has been issued after the change in rate of tax but the payment is received before the change in rate of tax,	the time of supply shall be the date of issue of invoice:

Proviso: the date of receipt of payment shall be

- the date of credit in the bank account if such credit in the bank account is after four working days from the date of change in the rate of tax.

Explanation. - 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.

Notification 66/2017 - also applicable in situation of change in rate of tax.

- the RP (except composition dealer), other than the RP supplying specified actionable claims,
- shall not pay GST on receipt of advance.

Introduction

- ITC means the tax paid in earlier which can be utilized to set off his output tax liability.
- Thus more ITC means less output tax payable to the government.
- Hence, we as RPs always try to claim more & more ITC, whereas government on the other side makes all attempts to make sure we claim the right ITC.
- In this chapter, we will broadly understand
 - Who is eligible to take ITC and who not?
 - What conditions are to be fulfilled to take ITC?
 - Which items ITC can't be taken i.e. blocked?
 - What are the special circumstances we can claim ITC?

Some important definitions

Section 2(59): Input means any goods

- other than capital goods
- used or intended to be used by a supplier in the course or furtherance of business.

Section 2(60): Input service means any service

- used or intended to be used by a supplier in the course or furtherance of business.

Section 2(19): Capital goods means goods,

- the value of which is capitalized in the books of account of the person claiming the ITC and
- which are used or intended to be used in the course or furtherance of business

Section 2(62): Input tax in relation to a registered person, means

- the CT, ST, IT or UT tax charged on any supply of g/s/b made to him and includes—
 - (a) the integrated goods and services tax charged on import of goods;
 - (b) the tax payable u/s 9(3) and 9(4);
 - (c) the tax payable u/s 5(3) and 5(4) of the IGST Act;
 - (d) the tax payable u/s 9(3) and 9(4) of the respective SGST act; or
 - (e) the tax payable u/s 7(3) and 7(4) of the UTGST act,
- but does not include the tax paid under the composition levy.

Section 2(63): Input tax credit means the credit of input tax.

Section 16: Eligibility and conditions for taking ITC

Section 16(1): Eligibility

Every registered person shall,

- subject to such conditions and restrictions as may be prescribed (rule 36) and
- in the manner specified in section 49,
- be entitled to take credit of input tax charged on any supply of g/s/b to him
- which are used or intended to be used in the course or furtherance of his business and
- the said amount shall be credited to the electronic credit ledger of such person.

Section 16(2): Conditions for claiming ITC

No RP shall be entitled to the ITC in respect of any supply of goods/services/both to him unless, he fulfils the following conditions:

- (a) he is in possession of a tax invoice/debit note/such other tax paying documents as prescribed (Rule 36);

Rule 36: Documentary requirements and conditions for claiming input tax credit

(1) Eligible documents to claim ITC by a RP [Mnemonic - BIRDS]

- **B** - a bill of entry/similar document under Customs Act/rules for assessment of IGST on imports;
- **I** - an ISD invoice/ISD credit note/any document issued by an ISD
- **R** - RCM - an invoice issued in accordance with section 31(3)(f), subject to payment of tax;
- **D** - a debit note issued by a supplier in accordance with the provisions of section 34;
- **S** - Supplier's invoice: an invoice issued by the supplier of goods or services or both

(2) ITC shall be availed by a RP only if all the applicable particulars as specified in Chapter VI are contained in the said document: [Chapter VI of rules - Tax invoice, credit and debit notes]

Proviso: if the said document does not contain all the specified particulars but contains DVTGP

- **D** - description of goods or services,
- **V** - total value of supply of goods or services or both,
- **T** - the details of the amount of tax charged,
- **G** - GSTIN of the supplier and recipient and
- **P** - Place of supply in case of inter-State supply, ITC may be availed by such RP.

(3) No ITC in respect of any tax paid in pursuance of demand order, confirmed on account of any fraud, willful misstatement or suppression of facts [SFM] under section 74.

Rule 46(3): Any invoice/debit note issued in pursuance of any tax payable in accordance with section 74/129/130 shall prominently contain words INPUT TAX CREDIT NOT ADMISSIBLE.

- (4) No ITC shall be availed by a RP in respect of invoices/debit notes the details of which are required to be furnished under section 37(1) unless, -
- (a) the details of such invoices/debit notes have been furnished by the supplier in GSTR-1, as amended in FORM GSTR-1A if any, or using the invoice furnishing facility (IFF); and
 - (b) the details of ITC in respect of such invoices/debit notes have been communicated to the RP in GSTR-2B.

Section 16 continues...

(aa) the details of the invoice/debit note referred in clause (a) has been furnished by supplier in GSTR 1 & such details have been communicated to recipient in manner specified u/s 37.

(b) He has received the goods or services or both.

Explanation: it shall be deemed that the RP has received the goods or services—

- (i) Where in case of goods and bill to ship to model, goods are delivered to a recipient/any other person on the direction of such RP;
- (ii) where services are provided by supplier to any person on the direction of and on account of such RP.

(ba) the details of ITC in respect of the said supply communicated to such RP under section 38 has not been restricted;

(c) Subject to the provisions of section 41,

- the tax charged has been actually paid to the Government,
- either in cash/through utilisation of ITC admissible; and

(d) Recipient has furnished the return under section 39.

Condition for claiming ITC: Mnemonic - TRTR

- T - Tax paying document + Communication of details to recipient + Unrestricted credit
- R - Receipt of g/s/b
- T - Tax paid to govt by supplier
- R - Return filed by recipient

Section 41: Availment of input tax credit

(1) Every RP shall be entitled to avail ITC, as self-assessed, in his return & such amount shall be credited to his electronic credit ledger.

(2) In case of non-payment of tax by Supplier, RP shall reverse the ITC availed along with interest, in such manner as may be prescribed: (Rule 37A)

Proviso: ITC reversed may be re-availed where the supplier makes the payment of Tax

Rule 37A. Reversal of ITC in the case of non-payment of tax by the supplier and re-availment thereof.

Where ITC availed by RP w.r.t Invoice/debit note furnished by Supplier in GSTR 1, as amended in FORM GSTR-1A if any/using IFF

- but corresponding GSTR 3B not furnished by supplier till 30th Sep of next financial year,
- the ITC availed shall be reversed by the RP while filing GSTR 3B on/before 30th November following the end of such financial year:

Proviso: Non-reversal on/before 30th Nov, amount shall be payable along with interest u/s 50.

Proviso: If supplier subsequently files GSTR 3B, RP may re-avail ITC in GSTR 3B for a tax period thereafter.

Provisos to section 16(2):

First Proviso: where goods against an invoice are received in lots/instalments, the RP shall be entitled to take ITC upon receipt of the last lot or instalment:

Second Proviso: If recipient fails to pay supplier the value of supply & tax within 180 days from the date of Invoice, recipient shall reverse ITC availed along with interest under section 50.

Third Proviso: Recipient shall re-avail ITC on payment to supplier value and tax

Rule 37: Reversal of input tax credit in the case of non-payment of consideration

- RP shall make payment to supplier within 180 days from invoice & in case of non-payment,
 - shall pay/reverse an amount equal to the ITC availed & utilised in respect of such supply along with interest under section 50,
 - while furnishing the return in GSTR-3B for the tax period immediately following 180 days.
- Only proportionate reversal: in case part payment has been made within 180 days.
- ITC can be re-claimed on payment of value along with tax thereon (no time limit to reclaim).
- The condition of payment of tax within 180 days is not applicable in case of:
 - Such supplies on which tax payable on RCM basis
 - Schedule I supplies i.e., supplies without consideration

- If any obligation of supplier met by recipient. (section 15(2)(b))

Section 16(3): No ITC of GST paid, if depreciation claimed under IT act.

If RP has claimed depreciation on tax component of capital goods & plant and machinery under Income-tax Act, the ITC on the said tax component shall not be allowed.

Section 16(4): Maximum time limit to claim ITC relating to Invoice or debit note

Maximum time limit to claim ITC relating to Invoice or debit note

- 30th day of November of next financial year or
- Date of filing of annual return, whichever is earlier

Clarification in respect of certain GST related issues

Issue: Which of the following dates are relevant to determine the 'financial year' for the purpose of section 16(4): (a) date of issuance of debit note, or (b) date of issuance of underlying invoice

Clarification: In case of debit notes, the date of issuance of debit note (not the date of underlying invoice) shall determine the relevant financial year for the purpose of section 16(4).

Clarification on time limit under Section 16(4) of the CGST Act, 2017 in respect of RCM supplies received from unregistered persons

- In cases of supplies received from unregistered suppliers, where tax has to be paid by the recipient under RCM and where invoice is to be issued by the recipient of the supplies in accordance with section 31(3)(f) of the CGST Act, 2017 the relevant FY for calculation of time limit for avilment of ITC under section 16(4) will be
 - the FY 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 the CGST Act, 2017.
- 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 the CGST Act, 2017.

Section 16(6): Where registration of a RP is cancelled under section 29 and subsequently the cancellation of registration is revoked by any order, either u/s 30 or pursuant to any order made by the Appellate Authority or the Appellate Tribunal or court and where avilment of ITC 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 ITC of such invoice/debit note for supply of goods or services or both, in a return under section 39,-
 - (i) filed up to 30th day of November following the FY 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.

Section 17: Apportionment of Credit and Blocked credit

Section 17(1): Goods/Services used for business as well as non-business purposes

Where the goods or services or both are used by the RP:

- partly for the purpose of any business
- and partly for other purposes,

ITC shall be restricted to so much of the IT as is attributable to business purposes.

Section 17(2): Goods/Services for taxable as well as exempted supply

Where the goods or services or both are used by the registered person

- partly for effecting taxable supplies including zero-rated supplies under CGST/IGST Act and
- partly for effecting exempt supplies under the said Acts,

ITC shall be restricted to the IT as is attributable to the **taxable supplies including ZRS.**

Section 17(3): Value of Exempted supplies for the purpose of apportionment u/s 17(2):

Items to include	Value
Nil Rated supply	Value as per section 15
Wholly exempt supply	Value as per section 15
Non-taxable supply	Value as per section 15
Supplies on which recipient is liable to pay tax on RCM	Value as per section 15
Transactions in securities	1% of the sale value of such securities
Sale of land and sale completed building/flat	Value adopted for paying stamp duty
Supply of warehoused goods to any person before clearance for home consumption;	the value of supply of goods from Duty Free Shops at arrival terminal in international airports to the incoming passengers.

Section 17(4) read with rule 38: Banking Co. and Financial Institutions Including NBFC

A banking company or a financial institution including a NBFC, engaged in supplying services by way of accepting deposits, extending loans or advances shall have the option to

- either comply with the provisions of subsection (2) i.e. apportionment, **or**
- avail of, every month, an amount equal to 50% of the eligible ITC on inputs, CGs and input services in that month and the balance shall be reversed in FORM GSTR-3B.
- Avail 100% credit on inputs/input services from distinct person.
- Shall not avail credit input & input services used for non-business purpose & blocked credits u/s 17(5).
- the option once exercised shall not be withdrawn during the remaining part of the financial year.

Section 17(5): Blocked credits

Notwithstanding anything contained in section 16(1) & section 18(1), ITC shall not be available in respect of the following, namely: —

(a) **Motor vehicles** for transportation of persons having approved seating capacity of ≤ 13 persons (including the driver)

Except when they are used for making the following taxable supplies, namely: — **FTT**

(A) **F - further supply** of such motor vehicles; or

(B) **T - transportation** of passengers; or

(C) **T - imparting training** on driving such motor vehicles;

Motor vehicle or vehicle means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and

- **includes** a chassis to which a body has not been attached and a trailer;

- **Excludes**

- a vehicle running upon fixed rails or
- a vehicle of a special type adapted for use only in a factory/in any enclosed premises or
- a vehicle having less than four wheels fitted with engine capacity of not exceeding 25CC.

(aa) **Vessels and aircraft**

Except when they are used-

(i) for making the following taxable supplies, namely: — **FTT**

(A) **F - further supply** of such vessels or aircraft; or

(B) **T - transportation** of passengers; or

(C) **T - imparting training** on navigating such vessels; or

(D) **T - imparting training** on flying such aircraft;

(ii) for transportation of goods;

(ab) Services of **servicing, general insurance, repair and maintenance (SIR)**, relating to motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa):

Proviso: ITC of SIR shall be available—

(i) where the **MVs, vessels or aircraft (MVA)** referred to in clause (a) or clause (aa) are used for the purposes specified therein;

(ii) where 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;

(b) the following supply of goods or services or both: —

(i) **Mnemonic - HOT Food & Beverages at LIC**

- **H - health services,**
- **O - outdoor catering,**
- **T - beauty treatment,**
- **Food and beverages,**
- **L - Leasing,** renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) except when used for the purposes specified therein,
- **I - life insurance** and health insurance:
- **C - cosmetic** and plastic surgery,

Proviso: ITC of such g/s/b shall be available if such g/s/b is used by RP for

(a) making an outward taxable supply of the same category of goods/services/both or

(b) as an element of a taxable composite or mixed supply;

(ii) Membership of a club, health and fitness centre

(iii) Travel benefits extended to employees **on vacation such as leave/home travel concession:**

Proviso: the ITC in respect (i), (ii), (iii) shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.

Clarification on availability of ITC in case of leasing, except leasing of MV, vessels & aircrafts

Issue: Whether section 17(5)(b)(i) bars ITC on input services for "leasing of motor vehicles, vessels, or aircraft" or all types of leasing.

Clarification: ITC is barred only for leasing of motor vehicles, vessels, and aircraft, and not for any other type of leasing

(c) **Works contract services (WCS)** supplied for construction of an immovable property - blocked
 Works contract services in respect of **plant and machinery**: ITC available
 Works contract services as an input service for further supply of WCS: ITC available.

(d) Goods/services/both received by a taxable person for construction of an immovable property on his own account - ITC blocked.
 Goods/services/both received for construction of **plant or machinery**: ITC available.

Note:

- Construction includes re-construction, renovation, additions or alterations or repairs,
- ITC in respect of construction is blocked only to the extent of capitalisation to the said immovable property;
- Plant and machinery means
 - apparatus,
 - equipment and
 - machinery fixed to earth by foundation or structural support
 - that are used for making outward supply of g/s/b and
 - includes such foundation and structural supports
 - but excludes
 - (i) land, building or any other civil structures,
 - (ii) telecommunication towers; and
 - (iii) pipelines laid outside the factory premises

(e) Goods or services or both on which tax has been paid under section 10 (composition tax).

(f) Goods/services/both received by a NRTP **except** on goods imported by him

(fa) goods/services/both received by a taxable person,

- which are used/intended to be used for activities relating to his obligations under CSR;

(g) Goods or services or both used for personal consumption

(h) Goods that are lost, stolen, destroyed, written off or disposed of by way of gift or free samples

(i) Tax paid under sections 74, 129 and 130.

Section 74: Determination of tax not paid/short paid/erroneously refunded/ITC wrongly availed/utilised by reason of fraud or any willful- misstatement or suppression of facts.-

Section 129: Detention, seizure and release of goods and conveyances in transit

Section 130: Confiscation of goods or conveyances and levy of penalty

Clarification on availability of input tax credit in respect of demo vehicles

Issue: Availability of input tax credit (ITC) on demo vehicles (motor vehicles for passenger transport with seating capacity \leq 13 persons, including driver).

Clarification:

Section 17(5)(a) of CGST Act: ITC not available for motor vehicles with seating capacity \leq 13 persons, except for:

A. Further supply of such motor vehicles.

B. Transportation of passengers.

C. Imparting training.

- Usage of "such motor vehicles": Indicates intention to exclude from ITC blockage both the motor vehicle itself and those used for further supply of similar 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, ITC in respect of demo vehicles is not blocked under section 17(5)(a).

Issue: Where demo vehicles are used by an authorized dealer for purposes other than for making further supply of such motor vehicles, say for transportation of its staff employees/management etc.

Clarification: In such cases, the same cannot be said to be used for making 'further supply of such motor vehicles' and therefore, ITC shall be blocked.

Issue: Authorized dealer acts as an agent/service provider for the vehicle manufacturer, providing marketing services and test drive facilities.

- Sale invoice for vehicles issued directly by the manufacturer to the customer.
- Dealer purchases demo vehicles from the manufacturer and may sell them later under agreement with applicable GST.

Clarification:

- Dealer provides marketing/facilitation services, not supplying motor vehicles on their own account.
- Demo vehicles used for test drives do not qualify as "further supply" of motor vehicles.
- Therefore, input tax credit (ITC) on such demo vehicles is blocked.

Issue: Availability of input tax credit (ITC) on demo vehicles capitalized by authorized dealers.

Clarification: Capitalization of demo vehicles does not affect ITC availability, subject to other provisions of the Act.

- **Section 16(3) of CGST Act:** If depreciation is claimed on the tax component of capital goods and plant/machinery under the Income-tax Act, ITC on that tax component is not allowed.
- **Sale of Capitalized Demo Vehicle:** If sold, the dealer must pay tax as per section 18(6) of CGST Act and rule 44(6) of the CGST Rules, 2017.

Clarification on availability of input tax credit (ITC) in respect of warranty replacement of parts and repair services during warranty period.

Issue 1: Whether the manufacturer needs to reverse the ITC for replacement of goods or repair services provided under warranty without additional charges.

Clarification:

- The original supply value includes the cost of replacements and repairs during the warranty period.
- These supplies are not considered exempt.
- Therefore, manufacturers do not need to reverse the ITC for replacements or repairs provided under warranty.

Issue 2: Whether the distributor needs to reverse the ITC for replacement parts provided under warranty on behalf of the manufacturer.

Clarification: There can be 4 instances as discussed below:-

(a) Distributor Replaces Parts and Charges Manufacturer:

- Distributor uses stock or buys from third party.
- Charges manufacturer via tax invoice.
- GST payable by distributor; manufacturer avails ITC.
- No ITC reversal needed by distributor.

(b) Distributor Requests Parts from Manufacturer:

- Manufacturer provides parts for replacement.
- No GST payable on replacement by manufacturer.
- No ITC reversal needed by manufacturer.

(c) Distributor Uses Stock Already Received:

- Manufacturer issues credit note for replaced parts.
- Tax liability adjusted by manufacturer if distributor reverses ITC.

(d) Distributor Uses Stock and Requests Replenishment:

- Manufacturer provides parts via delivery challan without charging.
- No GST payable on replenishment.

Issue 3: Whether ITC is available when a distributor provides repair services to the customer under warranty and charges the manufacturer for these services.

Clarification:

- The distributor provides a service, and the manufacturer is the recipient of this service as per section 2(93)(a) of the CGST Act, 2017.
- GST is payable on the repair services provided by the distributor to the manufacturer.
- The manufacturer can avail ITC for these services, subject to other conditions of the CGST Act, 2017.

Clarification on availability of ITC on ducts & manholes used in network of optical fiber cables

Issue: Whether the ITC on the ducts and manholes used in network of optical fiber cables (OFCs) for providing telecommunication services is barred in terms of clauses (c) and (d) of section 17(5) of the CGST Act, read with Explanation to section 17 of the CGST Act, 2017?

Clarification:

- **Ducts and Manholes:** Basic components for OFC network, used for laying, upkeep, and maintenance of optical fiber cables.
- **Definition of Plant and Machinery:** Ducts and manholes are considered "plant and machinery" as per the Explanation in section 17 of the CGST Act, 2017.
- **Inclusion in ITC:** Ducts and manholes are not excluded from the definition of "plant and machinery" since they are not land, building, civil structures, telecommunication towers, or pipelines outside factory premises.
- **ITC Availability:** ITC on ducts and manholes used in OFC networks is not restricted under clauses (c) or (d) of section 17(5) of the CGST Act, 2017

Plant and Machinery VS Plant or Machinery

The term used in Section 17(5) clause (c) above is "plant AND machinery" whereas the term used in clause (d) above is "plant OR machinery".

- The expression "plant AND machinery" used in clause (c) has been defined in explanation to section 17 while expression "plant OR machinery" used in clause (d) has not been defined under the CGST Act.
- This distinction was addressed in Supreme Court in the case of Chief Commissioner of CGST v. Safari Retreats Pvt. Limited (2024) 23 Centax 62 (SC). Further, in this case, the constitutional validity of clauses (c) and (d) of section 17(5) and section 16(4) was also challenged.
- The Apex Court observed that the explanation to section 17 which defines "plant and machinery" seeks to define said expression used in Chapter V and Chapter VI. In Chapter VI, the expression "plant and machinery" appears at several places, but the expression "plant or machinery" is found only in section 17(5)(d). This implies that legislature did not intend to give the expression "plant or machinery" the same meaning as "plant and machinery" and thus, has

made this distinction consciously. Therefore, the Court held that the expression "plant and machinery" and "plant or machinery" cannot be given the same meaning.

- Consequently, in case of clause (c), if the construction is of "plant and machinery" as defined, the benefit of ITC will accrue. Similarly, under clause (d), if the construction is of a "plant or machinery", ITC will be available.
- Further, while trying to analyse the meaning of the expression "plant or machinery", the Court observed that the expression "plant or machinery" has a different connotation. It can be either a plant or machinery. Section 17(5)(d) deals with the construction of an immovable property. The very fact that the expression "immovable property other than "plant or machinery" is used shows that there could be a plant that is an immovable property. As the word 'plant' has not been defined under the CGST Act or the rules framed thereunder, its ordinary meaning in commercial terms will have to be attached to it.
- Thus, the Supreme Court held that the question as to whether a mall, warehouse or any building other than a hotel or a cinema theatre can be classified as a plant within the meaning of the expression "plant or machinery" is a factual question which has to be determined keeping in mind the business of the registered person and the role that building plays in the said business. If the construction of a building was renting or giving on lease or other transactions in respect of the building or a part thereof, which are covered by clauses (2) and (5) of Schedule II of the CGST Act, the building could be held to be a plant. Then, it is taken out of the exception carved out by clause (d) of section 17(5) to sub-section (1) of section 16.
- Further, the Court upheld the constitutional validity of clauses (c) and (d) of section 17(5) and section 16(4).

Clarification in respect of entitlement of ITC by the insurance companies on the expenses incurred for repair of motor vehicles in case of reimbursement mode of insurance claim settlement

- Insurance companies providing general insurance for motor vehicles (MV) settle claims either in cashless or reimbursement modes.
- In both modes, they account for repair liability and pay approved repair charges to garages, with invoices issued in the insurance company's name.
- In the reimbursement mode, insured individuals use non-network garages, pay for repairs, and are then reimbursed by the insurance company.
- Despite the insured initially paying, the insurance company is liable for the approved repair cost and is considered the "recipient" under section 2(93).
- According to section 17(5), ITC on motor vehicle repair services for outward insurance supply is not barred, allowing insurance companies to claim ITC for such expenses.

- Accordingly, it is clarified that ITC is available to Insurance Companies in respect of MVs repair expenses incurred by them in case of reimbursement mode of claim settlement.

Following issues have been clarified in respect of ITC availment by insurance companies in case of reimbursement mode of claim settlement.

Issue: What is the extent of ITC available to the insurer in case of issue of two separate invoices by the garage for repair service - one to the insurance company for the approved claim cost & another to the customer for any excess amount?

Clarification: ITC is available to insurance company only on the invoice issued to it subject to reimbursement of said amount by insurance company to customer.

Issue: What is the extent of ITC available to the insurer in case of issue of single invoice by the garage - covering the full amount for repair service & the insurance company reimburses only the approved claim cost.

Clarification: ITC is available to the insurance company only to the extent of the reimbursement of the approved claim cost to the insured, and not on the full invoice value.

Issue: Whether ITC is available to the insurer if invoice for vehicle repair is not in insurance company's name?

Clarification: ITC is not available to the insurance company as it does not meet the requirements of section 16(2)(a) and 16(2)(aa).

Section 17(6): The Govt may prescribe the manner in which credit referred to in 17(1) & (2) may be attributed.

Rule 42: Manner of determination of IT in respect of I/IS used for business/ non-business purpose or taxable (incl. ZRS) and Exempt supplies.

(1)	Manner of apportionment - Provisional computation - Monthly	Denoted as
(a)	Total input tax involved on Inputs/Input services (I/IS) in a tax period	T
(b)	Out of T, Input tax on I/IS used Exclusively for Non-business purpose	T1
(c)	Out of T, Input tax on I/IS used Exclusively for effecting exempt supplies	T2
(d)	Out of T, Blocked credit - 17(5)	T3
(e)	ITC credited to E-credit ledger of RP (C1) = T - (T1+T2+T3)	C1
(f)	ITC of I/IS used Exclusively for effective Non-exempt supplies incl. ZRS (TS)	T4
(g)	T1 T2 T3 T4 to be determined & declared by RP at summary level in GSTR-3B	
(h)	Common Credit = C2 = C1 - T4	C2
(i)	ITC attributable towards exempt supplies = (E÷F) × C2	D1

(1)	Manner of apportionment - Provisional computation - Monthly	Denoted as
	<p>'E' is the aggregate value of exempt supplies during the tax period, and 'F' is the total turnover in the State of RP during the tax period</p> <p>Proviso: If RP does not have any TO during the said tax period/ information is not available,</p> <ul style="list-style-type: none"> • 'E/F' shall be calculated by taking values of last tax period for which details are available • E & F shall exclude: CED, SED, CST & VAT <p>Explanation: The aggregate value of exempt supplies shall exclude:</p> <ul style="list-style-type: none"> • Interest/discount income, except in case of a banking company/FI/NBFC • the value of supply of Duty Credit Scrips 	
(j)	ITC attributable to non-business purposes = $(5\% \times C2)$ (if I/IS are used partly for business and partly for non-business purposes)	D2
(k)	The remainder of the common credit shall be the eligible ITC = $C2 - (D1+D2)$;	C3
(l)	The amount 'C3', 'D1', 'D2' shall be computed separately for ITC of CT/ST/IT/UTT and declared in FORM GSTR-3B or through FORM GST DRC-03	
(m)	the amount equal to aggregate of 'D1' & 'D2' shall be reversed by RP in FORM GSTR-3B or through FORM GST DRC-03	

Proviso: Where the IT relating to I/IS used partly for Non-business purposes and partly for effecting exempt supplies

- has been identified and segregated at the invoice level by the RP,
- the same shall be included in 'T1' and 'T2' respectively, and
- the remaining amount of credit on such inputs or input services shall be included in 'T4'.

(2) Final calculation for the FY before the DD for furnishing of the return for the month of September following the end of the FY.

- Where final 'D1' and 'D2' > Provisional 'D1' and 'D2',
 - Such excess shall be reversed by RP in GSTR-3B /through GST DRC-03
 - in the month not later than the month of September following the end of FY and
 - RP shall be liable to pay interest on the said excess amount @ 18% from the April 1st of the succeeding FY till the date of payment;
- Where final 'D1' and 'D2' < Provisional 'D1' and 'D2',
 - Such excess amount shall be claimed as ITC
 - In the return for a month not later than the month of September following the end of the financial year to which such credit relates.

(g)	<p>Common credit attributable towards exempted supplies, be denoted as, $T_e = (E \div F) \times T_m$ 'E' is the aggregate value of exempt supplies during the tax period, and 'F' is the total turnover in the State of RP during the tax period Proviso: If RP does not have any TO during the said tax period/ information is not available, <ul style="list-style-type: none"> • 'E/F' shall be calculated by taking values of last tax period for which details are available • E & F shall exclude: CED, SED, CST & VAT Explanation: The aggregate value of exempt supplies shall exclude: <ul style="list-style-type: none"> • Interest/discount income, except in case of a banking company/FI/NBFC • the value of supply of Duty Credit Scrips </p>	'Te'
(h)	<p>the amount T_e along with the applicable interest shall, during every tax period of the useful life of the concerned CGs, be added to the output tax liability.</p>	
(i)	<p>Amount of T_e shall be computed separately for ITC of CT/ST/UTT/IT & declared in GSTR-3B.</p>	

Clarification on the requirement of reversal of ITC in respect of the portion of the premium for life insurance policies which is not included in taxable value

- 'Life insurance business' includes policies or instruments that combine investment and insurance components. This covers unit-linked insurance policies and similar products, where both investment and life insurance risk coverage are provided by the insurer.
- Further, exempt supply means nil-rated supplies, wholly exempt supplies under section 11, or under section 6 of the IGST Act, & includes non-taxable supplies. Further, non-taxable supply means a supply not leviable to tax under CGST Act/IGST Act.
- The premium portion not includible in taxable value under Rule 32(4) is neither nil-rated nor wholly exempt from tax and also not a non-taxable supply; hence, same cannot be considered as pertaining to an exempt supply.
- ITC reversal is required only for supplies used:-
 - o partly for business and partly for other purpose [Section 17(1)] or
 - o partly for taxable supplies including zero rated supplies and partly for exempt supplies. [Section 17(2)]
- **Clarification:** the amount of the premium for taxable life insurance policies, not included in the taxable value under rule 32(4), cannot be considered as pertaining to non-taxable/exempt supply & therefore, no reversal of ITC is required as per provisions of Rule 42/43, read with section 17(1) & 17(2), in respect of the said amount.

Section-18: Availability of credit in special circumstances

Section 18(1):

Subject to such conditions and restrictions as may be prescribed (rule 40) -

(a) In case of New registration

A person who has applied for registration under the Act within 30 days from the date on which he becomes liable to registration and has been granted such registration shall,

- be entitled to take ITC in respect of
- inputs held in stock and inputs contained in semi-finished or finished goods held in stock
- on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of this Act.

(b) Voluntary registration

A person, who takes registration u/s 25(3) shall,

- be entitled to take ITC in respect of
- inputs held in stock and inputs contained in semi-finished/finished goods held in stock
- on the day immediately preceding the date of grant of registration.

(c) Composition TP becomes regular TP

Where any RP ceases to pay tax u/s 10, he shall be entitled to take ITC in respect of

- inputs held in stock, inputs contained in semi-finished or finished goods held in stock and
- on capital goods
- on the day immediately preceding the date from which he becomes liable to pay tax u/s 9.

Proviso: Reduced ITC available on CGs: [ITC - 5% per quarter/ Part thereof]

(d) Exempt Supply becoming Taxable Supply:

Where an exempt supply by a RP becomes a taxable supply, such person shall be entitled to take ITC in respect of

- inputs held in stock and inputs contained in semi-finished/finished goods held in stock relating to such exempt supply and
 - on capital goods exclusively used for such exempt supply
- on the day immediately preceding the date from which such supply becomes taxable:

Proviso: Reduced amount of ITC available on CGs: [ITC - 5% per quarter/ Part thereof]

Rule 40: Manner of claiming credit in special circumstances

(1) The ITC claimed u/s 18(1) on the inputs held in stock/in semi-finished/finished goods, or ITC claimed on capital goods u/s 18(c) & (d), shall be subject to the following conditions, namely-

(a) ITC on CGs u/s 18(c) & (d) shall be claimed after reducing by 5% per quarter or part thereof from the date of the invoice on which the CGs were received;

(b) RP shall within 30 days from the date of becoming eligible to avail ITC u/s 18(1), or within such further period as may be extended by Commissioner,

- shall make a declaration, electronically,
- on the common portal in GST ITC-01 to the effect that he is eligible to avail the ITC:

(c) the declaration shall clearly specify the details relating to the inputs held in stock/inputs in semi-finished/finished goods held in stock/CGs – on the day immediately preceding

- the date from which he becomes liable to pay tax, in case of a claim u/s 18(1)(a);
- the date of the grant of registration, in case of a claim u/s 18(1)(b);
- the date from which he becomes liable to pay tax u/s 9, in case of a claim u/s 18(1)(c);
- the date from which the supplies made by RP becomes taxable, in case of a claim u/s 18(1)(d);

(d) Details furnished in the FORM GST ITC-01 shall be certified by a practicing-chartered accountant/a cost accountant if the claim GST > 2 lacs;

(e) the ITC claimed u/s 18 (c) & (d) shall be verified with corresponding details furnished by the supplier in GSTR-1 and in FORM GSTR-1A, if any, or as the case may be, in FORM GSTR- 4, on the common portal.

Section 18(2): NO ITC in respect of Invoices older than 1 year

RP shall not be entitled to take ITC under 18(1), in respect of any supply of g/s/b to him

- after the expiry of one year from the date of issue of tax invoice relating to such supply.

Section 18(3): In case of change in constitution

Where there is a change in the constitution of a RP:

- on account of sale, merger, demerger, amalgamation, lease or transfer of the business
- with the specific provision for transfer of liabilities,

- the said RP shall be allowed to transfer the ITC which remains unutilized in his e-credit ledger to such sold, merged, demerged, amalgamated, leased or transferred business in manner prescribed. (rule 41).

Clarification in respect of transfer of ITC in case of death of sole proprietor

Issue: Transfer of unutilized input tax credit (ITC) in case of the death of the sole proprietor.

Clarification:

Registration Liability:

- Transferee or successor must be registered from the date of transfer or succession.
- Application in FORM GST REG-01 should mention the reason as "death of the proprietor".

Cancellation of Registration:

- Legal heirs can file for cancellation of registration in GST REG-16 on the common portal.
- Reason for cancellation should be mentioned as "death of sole proprietor".
- GSTIN of the transferee must be mentioned to link transferor and transferee.

Transfer of ITC and Liability:

- Business continuation by transferee/successor is considered as transfer of business.
- Section 18(3) allows transfer of unutilized ITC to the transferee as per rule 41 of CGST Rules.

Manner of Transfer:

- GST ITC-02 to be filed electronically for transfer of unutilized ITC.
- Successor must file GST ITC-02 before application for cancellation of registration.
- Upon acceptance, unutilized ITC is credited to the transferee's electronic credit ledger.

Rule 41: Transfer of credit on sale, merger, amalgamation, lease or transfer of a business

- (1) A RP shall, in the event of sale, merger, demerger, amalgamation, lease or transfer or change in the ownership of business for any reason,
- furnish the such details in GST ITC-02, electronically on the common portal
 - along with a request for transfer of unutilized ITC lying in his e-credit ledger to transferee.

Proviso: In the case of demerger, ITC shall be apportioned in the ratio of the value of assets of the new units as specified in the demerger scheme.

Explanation: The "value of assets" means the value of the entire assets of the business, whether or not input tax credit has been availed thereon.

- (2) The transferor must submit a certificate from a practicing chartered or cost accountant, certifying that business transfer includes a specific provision for the transfer of liabilities.
- (3) The transferee shall, accept the details furnished by the transferor and, upon acceptance, the unutilized credit specified in GST ITC-02 shall be credited to his electronic credit ledger.
- (4) Transferee shall account for Inputs & capital goods in his books of account.

Rule 41A: Transfer of credit on obtaining separate registration for multiple places of business within a State or Union territory.

- (1) A RP who has obtained separate registration for multiple places of business **and** who intends to transfer, either wholly/partly, the unutilized ITC lying in his e-credit ledger to any/all of the newly registered place of business, shall
 - furnish within a period of 30 days from obtaining such separate registrations,
 - the details in GST ITC-02A electronically on the common portal,

Proviso: the ITC shall be transferred to the newly registered entities in the ratio of the value of assets held by them at the time of registration.

Explanation - The 'value of assets' means the value of the entire assets of the business whether or not input tax credit has been availed thereon.

- (2) The newly RP (transferee) shall accept the details so furnished by the RP (transferor) &, upon acceptance, the unutilized ITC specified in ITC-02A shall be credited to his e-credit ledger.

Clarification in respect of apportionment of ITC in cases of business reorganization u/s 18 (3) of CGST Act r/w rule 41(1) of CGST Rules

Issue 1: Apportionment of ITC during demerger; whether to consider value of assets at State or all-India level.

Clarification: For the purpose of apportionment of ITC pursuant to a demerger, the value of assets of the new units is to be taken at the State level (at the level of distinct person) and not at the all-India level.

Illustration: Company XYZ: Registered in M.P. and U.P. with total assets worth Rs. 100 crores (M.P.: Rs. 60 crores, U.P.: Rs. 40 crores).

Demerger: Assets transferred to Company ABC:

In M.P.: Rs. 30 crores.

In U.P.: Rs. 10 crores.

Total assets transferred: Rs. 40 crores (at all-India level).

Unutilized ITC to be transferred:

In M.P.: ITC transferred based on State ratio: $30/60 = 0.5$.

In U.P.: ITC transferred based on State ratio: $10/40 = 0.25$.

Issue 2: Is the transferor required to file GST ITC - 02 in all States where it is registered?

Clarification: No. The transferor is required to file GST ITC-02 only in those States where both transferor and transferee are registered.

Issue 3: Wherever business reorganization results in partial transfer of business assets along with liabilities, whether the proviso to rule 41(1) of the CGST Rules, 2017 shall be applicable to calculate the amount of transferable ITC?

Clarification: Yes, the formula for apportionment of ITC, as prescribed under proviso to rule 41(1), shall be applicable for all forms of business re-organization that results in partial transfer of business assets along with liabilities.

Issue 4: 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 ITC viz CGST/SGST/IGST/Cess?

Clarification: No, the ratio of value of assets, as prescribed under proviso to rule 41(1), shall be applied to the total amount of unutilized ITC of the transferor i.e., sum of CGST, SGST/UTGST & IGST credit.

Illustration: The ITC balances of transferor X in the State of Maharashtra under CGST, SGST and IGST heads are 5 lakhs, 5 lakhs and 10 lakhs respectively. Pursuant to a scheme of demerger, X transfers 60% of its assets to transferee B. Accordingly, the amount of ITC to be transferred from A to B shall be 60% of 20 lakh (total sum of CGST, SGST and IGST credit) i.e., 12 lakhs.

Issue 5: How to determine the amount of ITC that is to be transferred to the transferee under each tax head (IGST/CGST/SGST) while filing of GST ITC-02 by the transferor?

Clarification: The transferor shall be at liberty to determine the amount to be transferred under each tax head (IGST, CGST, SGST/UTGST), subject to the ITC balance available with the transferor under the concerned tax head. This is shown in the illustration below:

State	Asset Ratio of Transferee	Tax Heads	ITC balance of Transferor (pre apportionment) as on the date of filing GST ITC 02)	Total amount of ITC transferred to the Transferee under GST ITC 02	ITC balance of Transferor (post apportionment) after filing of GST ITC 02) [Col (4) - Col (5)]
Delhi	70%	CGST	10,00,000	10,00,000	0
		SGST	10,00,000	10,00,000	0
		IGST	30,00,000	15,00,000	15,00,000
		Total	50,00,000	35,00,000	15,00,000
Haryana	40%	CGST	25,00,000	3,00,000	22,00,000
		SGST	25,00,000	5,00,000	20,00,000
		IGST	20,00,000	20,00,000	0
		Total	70,00,000	28,00,000	42,00,000

Issue 6: In order to calculate the amount of transferable ITC, the apportionment formula under proviso to rule 41(1) of the CGST Rules has to be applied to the unutilized ITC balance of the transferor. However, it is not clear as to which date shall be relevant to calculate the amount of unutilized ITC balance of transferor.

Clarification: The apportionment formula shall be applied on the ITC balance of the transferor as available in electronic credit ledger on the date of filing of FORM GST ITC - 02 by the transferor.

Issue 7: Which date shall be relevant to calculate the ratio of value of assets, as prescribed in the proviso to rule 41 (1) of the CGST Rules, 2017?

Clarification: For the purpose of apportionment of ITC under rule sub-rule (1) of rule 41 of the CGST Rules, the ratio of the value of assets should be taken as on the "appointed date of demerger". The said ratio is to be applied on the ITC balance of the transferor on the date of filing FORM GST ITC - 02 to calculate the amount to transferable ITC.

Section 18(4): Regular TP opting for composition/Supplies becoming wholly exempt:

Where any RP who has availed of ITC opts to pay tax under composition scheme or, where the g/s/b supplied by him become wholly exempt,

- he shall pay an amount, by way of debit in the e credit ledger or e cash ledger,
- equivalent to the credit of input tax
 - ◆ in respect of inputs held in stock and in semi-finished or finished goods held in stock and
 - ◆ on capital goods, reduced by such percentage points as may be prescribed,

- on the day immediately preceding the date of exercising such option or, as the case may be, the date of such exemption:

Capital goods: Rule 44: $ITC = [ITC \text{ availed} / 60 \text{ months}] * \text{Balance life}$

Proviso: after payment of such amount, balance of ITC, lying in his e-credit ledger shall lapse.

Rule 44: Manner of reversal of credit under special circumstances

- (1) Amount of ITC u/s 18(4)/Section 29(5) be determined in the following manner, namely, –
- (a) for inputs held in stock and in semi-finished and finished goods held in stock,
 - ITC shall be calculated proportionately on the basis of corresponding invoices on which credit had been availed by the registered taxable person on such inputs;
 - (b) for capital goods held in stock, ITC involved in remaining useful life in months shall be computed on pro rata basis, taking the useful life as 5 years.

(2) Amount as specified in (1) shall be determined separately for ITC of CT/ST/UTT/IT

- (3) If tax invoices related to the inputs held in stock are not available,
- the RP shall estimate based on the prevailing market price of goods on the effective date of the occurrence of any of the events u/s 18(4)/ 29(5).

(4) Amount determined above shall be added to output tax liability of RP & details of the amount shall be furnished in GST ITC-03 [in case of 18(4)], and in GSTR-10 [in case of section 29(5)].

(5) If market price of goods is taken, it shall be duly certified by a practicing-chartered accountant or cost accountant.

(6) Amount shall be determined separately for ITC of CT, ST, UTT, IT:

Section 18(5): ITC admissible/payable as per rules

The amount of under section 18 (1) and under 18(4) shall be calculated in such manner as may be prescribed (rule 40 and 44)

Section 18(6): Supply of plant and machinery/CGs

In case of supply of capital goods/plant and machinery, on which ITC is taken, RP shall pay

- ITC taken reduced by 5% or
- the tax on the transaction value u/s 15, whichever is higher:

Proviso: Where refractory bricks, moulds and dies, jigs and fixtures are supplied as scrap,
 - taxable person may pay tax on the transaction value under section 15.

Rule 40(2): The amount of credit in the case of supply of CGs or P & M, for section 18(6), shall be calculated by reducing the ITC at the rate of 5% for every quarter/part thereof from the date of the issue of the invoice for such goods.

Clarification on moulds and dies owned by Original Equipment Manufacturers that are sent free of cost to a component manufacturer

Issue: Taxability of moulds and dies sent free of cost (FOC) by OEMs to component manufacturers and whether ITC needs to be reversed.

Clarification:

- Moulds and dies owned by Original Equipment Manufacturers (OEM) that are sent free of cost (FOC) to a component manufacturer, do not constitute supply since they are not related persons or distinct persons and there is no consideration involved.
- Further, since moulds and dies are provided on FOC basis in the course/furtherance of his business, there is no requirement for reversal of ITC availed on such moulds & dies by OEM.
- While calculating VOS made by component manufacturer, the value of moulds and dies provided by the OEM to the component manufacturer on FOC basis shall not be added to the VOS because the cost of moulds/dies was not to be incurred by the component manufacturer.
- However, if the contract was for supply of components made by using the moulds/dies belonging to component manufacturer, but the same have been supplied by the OEM to the component manufacturer on FOC basis,
 - the amortised cost of such moulds/dies shall be added to the value of the components.
 - the OEM will be required to reverse the ITC on such moulds/dies, as the same will not be considered to be provided in the course or furtherance of the former's business.

Clarification on various doubts related to treatment of sales promotion schemes under GST

Scheme (issues)	Clarification whether ITC available or unavailable?
Free samples and gifts	ITC shall not be available to the supplier on the inputs, input services and CGs to the extent they are used in relation to the gifts/free samples distributed without any consideration. However, where the activity of distribution of gifts/free samples falls within scope of supply under Schedule I, the supplier would be eligible to avail of the ITC.

Scheme (issues)	Clarification whether ITC available or unavailable?
Buy one get one free offer:	ITC shall be available to the supplier for the inputs, input services and capital goods used in relation to supply of goods or services or both as part of such offers.
Discounts including 'Buy more, save more' offers.	ITC for such inputs, input services and capital goods used in relation to the supply of goods/services/both on such discounts.
Secondary Discounts (not known at the time of supply)	There is no impact on availability or otherwise of ITC in the hands of supplier in this case.

Introduction

Job work means

- any treatment or process undertaken by a person on goods belonging to another RP and
- the expression "job worker" shall be construed accordingly;

Section 143: Job work procedure

Section 143(1): RP send goods/CGs to Job worker under intimation

A registered person (hereafter in this section referred to as the "principal") may

- under intimation and
- subject to such conditions as may be prescribed, (rule 45)
 - send any inputs or capital goods, without payment of tax, to a job worker for job work and
 - from there subsequently send to another job worker and likewise, and shall, –

(a) **Bring back** Inputs and CGs except moulds and dies, jigs & fixtures, or tools,

- **within 1/3 years** of their being sent out,
- to any of his place of business (POB), **without payment of tax**;

(b) **Supply such** inputs or capital goods, other than moulds and dies, jigs and fixtures, or tools,

- **within 1/3 years** of their being sent out,
- from the POB of a job worker on payment of tax within India, or
- with/without payment of tax for export, as the case may be:

Proviso: the principal shall supply the goods from POB of a job worker after declaring the POB of the job worker as his additional place of business **except** in a case—

- (i) where the job worker is registered; or
- (ii) where the principal is engaged in the supply of notified goods (by Commissioner)

Proviso: period of 1/3 years may, be extended by further period not exceeding 1 & 2 years respectively.

Section 143(2): Principal to maintain accounts of inputs / CGs sent to JW

Responsibility for keeping proper accounts for the inputs/capital goods shall lie with the principal.

Section 143(3): If Inputs not received within 1 year, deemed supplied by the principal

If inputs sent for job work are not returned to the principal/supplied from the job worker's place of business within one year,

- it will be deemed that inputs were supplied by the principal to the job worker on the day they were initially sent out.

Section 143(4): If Capital goods not received within 3 years, deemed supplied

If capital goods, **excluding** moulds and dies, jigs and fixtures, or tools, sent for job work are not returned to the principal or supplied from the job worker's place of business within **three years**,

- it will be considered that the principal has supplied the capital goods to the job worker on the day they were initially sent out.

Note: If such goods are returned by the job worker after the stipulated time period, the same would be treated as a supply by the job worker to the principal and the job worker would be liable to pay GST if he is liable for registration.

Section 143(5): Waste may be supplied by the job worker from his POB on payment of tax

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.

Section 19: Taking input tax credit in respect of inputs and capital goods sent for job work

(1) The principal shall, be allowed ITC on inputs sent to a job-worker, subject to rule 45.

(2) The principal shall be entitled to take ITC on inputs even if inputs are directly sent to a job worker without being first brought to his place of business.

(3) If inputs sent are not returned to principal/supplied from the job worker's POB within 1 year,

- they will be deemed supplied by principal to the job worker on the day they were sent out.
- If inputs are sent directly to a job worker, 1 year period starts from the date job worker receives the inputs.

(4) The principal shall be allowed ITC on capital goods sent to a job-worker, subject to rule 45.

(5) The principal shall be entitled to take ITC on capital goods even if capital goods are directly sent to a job worker without being first brought to his place of business.

(6) If CGs sent to JW not received in 3 years - deemed supplied on day it was sent for JW
 Proviso: where CGs are sent directly to a job worker, period of 3 years shall be counted
 - from the date of receipt of capital goods by the job worker.

(7) Moulds and dies, jigs and fixtures, or tools sent out need not be received back in 1/3 years

Rule 45: Conditions and restrictions in respect of inputs & CGs sent to the job worker

(1) Inputs/Semi finished goods/CGs sent to job worker: principal shall prepare challan even if directly sent, Goods transferred from JW to another JW, challan by principal/JW

Proviso:

1. Challan issued by principal may be endorsed by JW, where goods sent to another JW/returned to the principal
2. Further endorsement by another JW when goods are sent by one job worker to another or are returned to the principal.

(2) Challan shall contain details as specified under rule 55

(3) Details of challans related to dispatch/receipt from JW/Sent from one JW to another shall to be disclosed in GST ITC-04 for specified period on/before 25th of the month succeeding the period;

Explanation. - Specified period shall mean.-

- (a) the period of 6 consecutive months commencing on the 1st day of April & the 1st day of October in respect of a principal whose ATO during the immediately PFY exceeds Rs. 5 crores; and
- (b) a financial year in any other case.

ATO of principal during PFY	GST ITC-04 to be filed on	Due date for filing GST ITC-04
Upto Rs. 5 crore	Annual Basis	25th April
Greater than Rs. 5 crore	Half Yearly Basis	25th October & 25th April

(4) Where the inputs/CGs are not returned within time (1/3 years respectively), deemed supply, declare in GSTR-1 and principal to pay tax with interest

Clarifications issued relating to job work

Issues: Doubts have been raised about the documents required to be issued for sending the goods

- (i) by the principal to the job worker,
- (ii) from one job worker to another job worker; and
- (iii) from the job worker back to the principal.

Clarification:

(i) Where goods are sent by principal to only one job worker:

- Prepare the challan in triplicate as per rules 45 and 55 of the CGST Rules.
- Send two copies of the challan with the goods to the job worker.
- The job worker returns one copy of the challan with the goods to the principal.
- GST ITC-04 serves as the intimation required under section 143 of the CGST Act, 2017.

(ii) Where goods are sent from one job worker to another job worker:

- The goods may be covered by a challan issued either by the principal or the job worker.
- Alternatively, the job worker can endorse the challan issued by the principal, indicating the quantity and description of goods being sent.
- This process can be repeated for subsequent movements to other job workers.

(iii) Where the goods are returned to the principal by the job worker:

- Send one copy of the challan received by him from the principal while returning the goods to the principal after carrying out the job work.

(iv) Where the goods are sent directly by the supplier to the job worker:

- Goods move from the supplier's place to the job worker's place with a copy of the invoice.
- Invoice issued by the supplier to the buyer (principal), including the job worker's name and address as consignee.
- Principal issues a challan under rule 45 and sends it to the job worker directly.

Import of Goods:

- Goods move from the customs station of import to job worker's place with a copy of the Bill of Entry.
- Principal issues a challan under rule 45 and sends it to the job worker directly.

(v) Where goods are returned in piecemeal by the job worker to another JW/to principal,

- A fresh challan is required to be issued by the job worker.

(vi) Requirement to generate E-way Bill:

- Intrastate movement: E-way bill if consignment value > Rs. 50,000
- Interstate movement: E-way bill is mandatory.

- E-way bill shall be generated by principal, wherever required, in case the job worker is unregistered.

Liability to issue invoice, determination of place of supply and payment of GST:

Issues: Doubts have been raised about the time, value and place of supply in the hands of principal or job worker as also about the issuance of invoices by the principal or job worker, as the case may be, with regard to the supply of goods from principal to the recipient from the job worker's place of business / premises and the supply of services by the job worker.

Clarification: On conjoint reading of all the provisions, the following is clarified with respect to the issuance of an invoice, time of supply and value of supply:

(i) Supply of job work services:

- Job worker liable to pay GST if registered.
- Must issue an invoice at the time of supply as per sections 13 and 31 of the CGST Act.
- Value of services determined under section 15 of the CGST Act, including service charges and value of goods/services used in providing job work services if recovered from the principal.
- Whether value of moulds and dies, jigs and fixtures or tools provided by principal to job worker and have been used by latter for providing job work services would be included in value of job work services.
- Value may not be included in job work services if their value is already factored into the price for the supply of services.
- Clause (b) of sub-section (2) of section 15 of the CGST Act states that any amount the supplier is liable to pay but incurred by the recipient forms part of the supply value unless included in the price.

(ii) Supply of goods by the principal from the place of business/ premises of job worker:

- Section 143 of the CGST Act allows the principal to supply inputs or capital goods (excluding moulds, dies, jigs, fixtures, tools) from the job worker's premises within one year (for inputs) or three years (for capital goods) of being sent out.
- Supply within India: On payment of tax.
- Export: With or without payment of tax.
- Conditions: Job worker's premises must be declared as the principal's additional place of business or the job worker must be registered.
- Time, value, and place of supply are determined by the principal, not by the location of the job worker's premises.
- Principal must issue the invoice.
- For exports from the job worker's premises, the principal must execute the LUT or bond.

(iii) Supply of waste and scrap generated during the job work:

Waste and scrap generated may be supplied by the registered job worker directly from his place of business or by the principal in case the job worker is not registered.

Violation of conditions laid down in section 143:

- Inputs/capital goods (excluding moulds, dies, jigs, fixtures, or tools) not returned/supplied within 1/3 year are deemed supplied by principal to job worker on the day they were sent out.
- Principal must issue an invoice and declare the supplies in the return for the month when one year for inputs, three years for capital goods expires.
- Date of supply is the initial date of sending, and interest is payable for the intervening period.
- If goods are returned after the stipulated time, it is treated as a supply by the job worker to the principal, and the job worker must pay GST if registered.
- No requirement to return/supply moulds, dies, jigs, fixtures, tools from job worker's premise.

Availability of input tax credit to the principal and job worker:

Issue:

- Availability of ITC to the principal in respect of inputs /CGs directly received by job worker.
- Whether job worker is eligible for ITC in respect of inputs, etc. used by him in supplying job work services.

Clarification:

- ITC would be available to principal, irrespective of the fact whether inputs or capital goods are received by the principal and then sent or directly received at job worker's premises.
- Also, job worker is also eligible to avail ITC on inputs, etc. used by him in supplying the job work services if he is registered.

Registration of Job-worker

(i) When both the principal and the job worker are located in the same State:

- JW is required registration if ATO, exceeds specified threshold limit. [Section 22(1)].

(ii) Registration requirements when job worker & principal are located in different states:

- Job worker must register if making inter-State supplies, as per Section 24(i) of the CGST Act.
- Exemption from registration if inter-State supply turnover of taxable services does not exceed Rs 20 lakh (or Rs 10 lakh for Special Category States) in a financial year.
- Job worker required to register only if ATO exceeds threshold limit, regardless of whether located in the same or different States.

Introduction

Input Service Distributor (ISD) means

- an office of the supplier of goods or services or both
- which receives tax invoices issued u/s 31 towards the receipt of input services and
- issues a prescribed document (ISD Invoice/ISD Credit note)
- for the purposes of distributing the credit of CT, ST, IT or UTT paid on the said services
- to a supplier of taxable g/s/b having the same PAN as that of the said office;

Section 20: Manner of Distribution of Credit by Input Service Distributor (ISD)

(1) ISD to distribute credit by issuing document (ISD invoice)

The ISD shall distribute the credit of

- central tax as central tax or integrated tax and
- integrated tax as integrated tax or central,
- by way of issue of a document containing, the amount of input tax credit being distributed **in such manner as may be prescribed (rule 39: manner of distribution)**

(2) The ISD may distribute the credit subject to the following conditions, namely:

- (a) The credit can be distributed to recipients of credit against a document containing such details as may be prescribed; (rule 54)
- (b) the amount of the credit distributed shall not exceed credit available for distribution;
- (c) ITC paid on input services **attributable to a recipient** shall be **distributed only to that recipient**;
- (d) Common credit attributable to more than one recipients shall be pro rata on the basis of the TO in a State/UT of such recipient

Credit of tax paid on input services **attributable to more than one recipient** of credit shall

- be distributed amongst such recipient(s) to whom the input service is attributable and
 - distribution shall be pro rata on the basis of the TO in a State/UT of such recipient,
 - during the relevant period, to the aggregate of the TO of all such recipients
 - to whom such input service is attributable and which are operational in the current year, during the said relevant period.
- (e) Common credit attributable to all recipients of credit shall be pro rata on the basis of the TO in a State/UT of such recipient
 - the credit of tax paid on input services **attributable to all recipients of credit** shall
 - be distributed amongst such recipients and distribution shall be pro rata on the basis of the turnover in a State/UT of such recipient,
 - during the relevant period, to the aggregate of the turnover of all recipients and which are operational in the current year, during the said relevant period.

Explanation - For the purposes of this section,

(a) the "relevant period" shall be-

- (i) if the recipients of credit have TO in the preceding FY, the preceding FY; or
- (ii) if some or all recipients of the credit do not have any turnover in the Preceding FY, the last quarter for which details of turnover of all the recipients are available, previous to the month during which credit is to be distributed.

(b) Recipient of credit means the suppliers of g/s/b having the same PAN as that of ISD.

(c) Turnover means the value of turnover, reduced by the amount of CED, SED, VAT & CST.

Rule 54: Tax invoice in special cases

An ISD invoice/an ISD credit note issued by an ISD shall contain the following details

- (a) name, address and GSTIN of the ISD;
- (b) a consecutive serial number not exceeding 16 digits.
- (c) date of its issue;
- (d) name, address and GSTIN of the recipient to whom the credit is distributed;
- (e) amount of the credit distributed; and
- (f) signature or digital signature of the ISD or his authorized representative:

Rule 39: Procedure for distribution of input tax credit by Input Service Distributor

Section 39(1): Condition for distribution of ITC

An ISD shall distribute ITC in the manner and subject to the following conditions, namely, —

(a) Monthly distribution of credit, ISD to furnish GSTR 6

ITC available for distribution shall be distributed in the same month & details shall be furnished in GSTR-6;

(b) Separate distribution of eligible and ineligible ITC

ISD shall, separately distribute the ineligible ITC (ineligible under 17(5)) and eligible ITC;

(c) Separate distribution of ITC on account of CGST, SGST, IGST, UTGST

(d) Pro-rata distribution of ITC among recipients

the ITC that is required to be distributed to one of the recipients 'R1',

- whether registered or not, from amongst the total of all the recipients to whom ITC is attributable,
- including the recipient(s) who are engaged in making exempt supply, or are otherwise not registered for any reason,
- shall be the amount, "C1", to be calculated by applying the following formula —

$$C1 = (t1 \div T) \times C$$

"C" is the amount of credit to be distributed,

"t1" is the turnover, as referred to in section 20, of person R1 during the relevant period, and

"T" is the aggregate of the turnover, during the relevant period, of all recipients to whom the input service is attributable in accordance with the provisions of section 20;

(e) Distribution of IGST always as IGST

ITC on account of IGST shall be distributed as ITC of integrated tax to every recipient;

(f) CGST/SGST/UTGST - Distribution to same state recipient as CGST & different state as IGST

the ITC on account of CGST/SGST/UTGST shall—

- (i) in respect of a recipient located in the same State/UT in which the ISD is located,
 - be distributed as input tax credit of central tax and State tax or UT tax respectively;
- (ii) in respect of a recipient located in a State or UT **other than** that of the ISD,
 - be distributed as IGST and
 - the amount to be so distributed shall be equal to the aggregate of ITC of CGST/SGST/UTGST that qualifies for distribution to such recipient;

(g) ISD shall issue an ISD invoice, clearly indicating in such invoice that it is issued only for distribution of ITC;

(h) If any reduction in credit post distribution, ISD to issue an ISD credit note

(i) If supplier issues Debit note, ISD shall distribute additional by issuing ISD invoice

(j) If supplier issues Credit note, ISD credit note shall be issued

Any ITC required to be reduced on account of issuance of a credit note to the ISD by the supplier shall be apportioned to each recipient in the same ratio in which the ITC contained in the original invoice was distributed, and the amount so apportioned shall be—

- (i) reduced from the amount to be distributed in the month in which the credit note is included in the return in FORM GSTR-6; or
- (ii) added to the output tax liability of the recipient where amount so apportioned is in the negative by virtue of amount of credit under distribution being less than amount to be adjusted.

Section 39(2): If the amount of ITC distributed is reduced later on

- for any other reason for any of the recipients, including that it was distributed to a wrong recipient by the ISD,

- ISD credit note shall be issued for reduction of credit.

Section 39(3): ISD shall, issue an ISD invoice to the recipient entitled to such credit and include the ISD credit note and the ISD invoice in the return in GSTR-6 for the month in which such credit note and invoice was issued.

Clarification regarding availment of ITC in respect of common input services procured from a third party but attributable to both HO and BOs or exclusively to one or more BOs

Issue: Whether the Head Office (HO) must use the ISD mechanism to distribute ITC for common input services or can issue tax invoices to Branch Offices (BOs) for the same.?

Clarification:

- It is not mandatory for the HO to distribute ITC using the ISD mechanism.
- HO has two options:
 - Distribute ITC using the ISD mechanism.
 - Issue tax invoices u/s 31 to BOs for common input services procured from a third party but attributable to the BOs, allowing BOs to avail ITC as per sections 16 and 17.

Section 21: Manner of recovery of Credit distributed in excess

Where the ISD distributes the credit in contravention of section 20

- resulting in excess distribution of credit to one or more recipients of credit,
- the excess credit so distributed shall be recovered from such recipients with interest, and
- the provisions of section 73/74, as the case may be, shall, mutatis mutandis.

Clarification on recovery of excess ITC distributed by an Input Service distributor

Issue: Manner of recovery of excess credit distributed by an ISD in contravention of the provisions contained in section 20 of the CGST Act.

Clarification:

- Excess credit distributed by ISD in violation of Section 20 shall be recovered from recipients along with interest and penalties, if any.
- Recipients of excess credit can deposit the excess amount along with interest using GST DRC-03.
- If recipients do not voluntarily deposit the excess credit, proceedings under Sections 73/74 shall be initiated and GST DRC-07 may be used by tax authorities.
- The ISD would also be liable to a general penalty under the provisions contained in section 122(1)(ix) of the CGST Act.

Section 49: Payment of Tax, Interest, Penalty and other amounts

(1) Every deposited by a person, to be credited to E-cash ledger

Every deposit made towards tax, interest, penalty, fee or any other amount by a person

- by internet banking or
- by using credit or debit cards or
- NEFT or RTGS or
- by such other mode & subject to such conditions & restrictions as may be prescribed,
- shall be credited to the electronic cash ledger of such person to be maintained
- in such manner as may be prescribed (rule 87-Electronic cash ledger).

(2) ITC as self-assessed shall be credited to E-credit ledger

The ITC as self-assessed in the return of a RP shall be credited to his E-credit ledger, to be maintained in such manner as may be prescribed (rule 86-Electronic Credit Ledger).

(3) E-Cash can be used for making any payment towards TIPLD

The amount available in the E-cash ledger may be used for making any payment towards tax, interest, penalty, fees or any other amount payable under this Act/rules made there under in such manner and subject to such conditions & within such time as may be prescribed (rule 87-Electronic cash Ledger).

(4) E-credit ledger may be used for making any payment towards tax only

The amount available in the electronic credit ledger may be used for making any payment towards output tax under this Act or under the IGST act in such manner and subject to such conditions and restrictions within such time as may be prescribed (rule 86: Electronic-credit ledger & Rule 86A).

(5) Utilisation of ITC:

The amount of ITC available in the e-credit ledger of the registered person on account of

- (a) IT shall first be utilised towards payment of IT & the amount remaining, if any, may be utilised towards the payment of CT & ST, or as the case may be, UT tax, in that order;
- (b) the CT shall first be utilised towards payment of CT & the amount remaining, if any, may be utilised towards the payment of IT;
- (c) the ST shall first be utilised towards payment of ST and the amount remaining, if any, may be utilised towards payment of IT;

Proviso: the ITC on account of ST shall be utilised towards payment of IT only where the balance of the ITC on account of CT is not available for payment of IT;

- (d) the UT tax shall first be utilised towards payment of UTT & the amount remaining, if any, may be utilised towards payment of IT;

Proviso: the ITC on account of UTT shall be utilised towards payment of IT only where the balance of the ITC on account of CT is not available for payment of IT;

- (e) the CT shall not be utilised towards payment of ST/UTT; and
- (f) the ST/UT tax shall not be utilised towards payment of CT.

(6) Balance in E-cash/credit after payment of dues may be refunded in accordance with sec 54

The balance in the e-cash ledger/e-credit ledger after payment of tax, interest, penalty, fee or any other amount payable under this Act/rules made thereunder may be refunded in accordance with the provisions of section 54.

(7) All liabilities shall be recorded and maintained in an E-liability register

All liabilities of a taxable person under this Act shall be recorded and maintained in an electronic liability register in such manner as may be prescribed (rule 85-Electronic liability ledger)

(8) Order to discharge dues

Every taxable person shall discharge his tax and other dues under this Act or the rules made thereunder in the following order, namely:-

- (a) self-assessed tax, and other dues related to returns of previous tax periods;
- (b) self-assessed tax, and other dues related to the return of the current tax period;
- (c) any other amount payable under this Act or the rules made thereunder including the demand determined under section 73 or section 74;

(9) Incidence of tax always presumed to be passed to the recipient.

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

(10) Transfer of amount available in the E-cash ledger to the E cash ledger of distinct person

A registered person may, on the common portal, transfer any amount of tax, interest, penalty, fee/any other amount available in the e-cash ledger under this Act, to e-cash ledger for,-

- (a) integrated tax, central tax, State tax, Union territory tax or cess; or
- (b) integrated tax or central tax of a distinct person, in such form and manner and subject to such conditions and restrictions as may be prescribed (Rule 87: Electronic Cash Ledger) and such transfer shall be deemed to be a refund from the electronic cash ledger under this Act:

Proviso: Transfer shall not be allowed if the RP has any unpaid liability in his e-liability register.

(11) Where any amount has been transferred to the electronic cash ledger under this Act, the same shall be deemed to be deposited in the said ledger as provided in sub-section (1).

(12) The Government may, based on Council recommendations, set conditions and restrictions on the maximum proportion of output tax liability under the CGST or IGST Act, 2017 that can be discharged using the electronic credit ledger by registered persons or a class of registered persons, as prescribed. (Rule 86B)

Explanation- For the purposes of this section,—

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

(b) the expression,—

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

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

Rule 88A: Order of utilization of input tax credit

- ITC of IGST should first be utilized towards payment of IGST.
- Remaining amount if any, can be utilized towards the payment of CGST and SGST/UTGST in any order and in any proportion, i.e., ITC of IGST can be utilized either against CGST or SGST.
- Entire ITC of IGST is to be fully utilised first before the ITC of CGST or SGST/UTGST can be utilized.
- Available CGST Credit in the credit ledger shall first be utilized for payment of CGST.
- Remaining CGST amount if any, will be utilized for payment of IGST
- Available SGST /UTGST credit in the credit ledger shall first be utilized for payment of SGST/UTGST.
- Remaining amount if any, will be utilized for payment of IGST, only when credit of CGST is not available for payment of IGST

Note: CGST credit cannot be utilized for payment of SGST/UTGST. Similarly, SGST/UTGST credit cannot be utilized for payment of CGST.

Rule 85: Electronic Liability Register

(1) All dues to be accounted in E-liability ledger

The electronic liability register specified under section 49(7)

- shall be maintained in GST PMT-01
- for each person liable to pay tax, interest, penalty, late fee or any other amount on the common portal and all amounts payable by him shall be debited to the said register.

(2) Debits to E liability ledger

The electronic liability register of the person shall be debited by-

- the amount payable towards tax, interest, late fee or any other amount payable **as per the return furnished** by the said person; -
- the amount of tax, interest, penalty or any other amount payable **as determined by a PO in pursuance of any proceedings under the Act or as ascertained by the said person; or**
- any amount of **interest that may accrue from time to time.**

(3) Liability may be discharged either through cash or credit

Payment of every liability by a RP as per his return shall be made by debiting

- the electronic credit ledger maintained as per rule 86 or
- the electronic cash ledger maintained as per rule 87 and
- the electronic liability register shall be credited accordingly.

(4) Liabilities which are to be discharged through cash only

- TDS under section 51, or
- TCS under section 52, or
- the amount payable on RCM, or
- the amount payable under section 10 (Composition Tax),
- any amount payable towards interest, penalty, fee or any other amount
- under the Act shall be paid by debiting the e cash ledger maintained as per rule 87
- and the electronic liability register shall be credited accordingly.

(5) If demand is raised by PO and it is challenged in Appeal and any relief given in appeal, E-liability ledger will be reduced i.e. credited.

(6) The amount of penalty imposed/liable to be imposed shall stand reduced partly/fully, as the case may be, if the taxable person makes the payment of tax, interest & penalty specified in the show cause notice/demand order and the e liability register shall be credited accordingly.

(7) Communicate to PO on noticing discrepancy in form GST PMT-04

A RP shall, upon noticing any discrepancy in his electronic liability ledger, communicate the same to the officer exercising jurisdiction in the matter, through the common portal in GST PMT-04.

Rule 86: Electronic Credit Ledger**(1) Every claim of ITC shall be credited to this ledger**

The e-credit ledger shall be maintained in GST PMT-02 for each RP eligible for ITC under the act on the common portal and every claim of ITC under the Act shall be credited to the said ledger.

(2) ECL shall be debited with liability discharged

The electronic credit ledger shall be debited to the extent of discharge of any liability in accordance with the provisions of section 49 or section 49A or section 49B.

(3) ITC balance shall be reduced at the time of submission of refund claim

Where a RP has claimed refund of any unutilized amount from the electronic credit ledger in accordance with the provisions of section 54, the amount to the extent of the claim shall be debited in the said ledger.

(4) If refund claim is rejected, then ITC debited shall be re-credited to e-credit ledger

If the refund so filed is rejected, either fully or partly, the amount debited under sub-rule (3), to the extent of rejection, shall be re-credited to the electronic credit ledger by the PO by an order made in FORM GST PMT-03.

(4A) Refund of tax paid wrongly/paid excess, which was paid through e-credit ledger, if refunded, it shall be re-credited to e-credit ledger by PO by an order in GST PMT 03.

(4B) Provision for deposit of erroneously sanctioned refund

Where a registered person deposits the amount of erroneous refund sanctioned to him, -

(a) under sub-section (3) of section 54 of the Act, or

(b) under sub-rule (3) of rule 96, in contravention of sub-rule (10) of rule 96,

along with interest and penalty, wherever applicable, through GST DRC-03, by debiting the electronic cash ledger, on his own or on being pointed out, an amount equivalent to the amount of erroneous refund deposited by the registered person shall be re-credited to the electronic credit ledger by the proper officer by an order made in FORM GST PMT-03A.

(5) Only allowed entries shall be made in e-credit ledger

Save as provided in the provisions of this Chapter, no entry shall be made directly in the electronic credit ledger under any circumstance.

(6) Communicate to PO on noticing discrepancy in form GST PMT-04

Rule 86A: Conditions of use of amount available in electronic credit ledger.

(1) Commissioner/officer authorised by him, not below the rank of an Assistant Commissioner, having reasons to believe that ITC available in the e-credit ledger has been fraudulently availed or is ineligible, he may not allow debit in e-credit ledger for discharge of liability or refund of unutilised amount. Reason for blocking:

(a) ITC has been availed on the strength of tax invoices/debit notes/any other document prescribed under rule 36—

(i) issued by a RP who has been found non-existent/not to be conducting any business from any place for which registration has been obtained; or

(ii) without receipt of goods or services or both; or

(b) the ITC has been availed on the strength of tax invoices/debit notes/any other document prescribed under rule 36, the tax charged in respect of which has not been paid to the Government; or

(c) the RP availing the ITC has been found non-existent or not to be conducting any business from any place for which registration has been obtained; or

(d) the RP availing any ITC is not in possession of a tax invoice/debit note/any other document prescribed under rule 36,

(2) Commissioner may allow debit if condition for disallowing, no longer exists

(3) Restriction can be imposed for maximum 1 year

Rule 86B: Restrictions on use of amount available in electronic credit ledger

RP shall not use the amount available in e-credit ledger to

- discharge his liability towards output tax in excess of 99% of such tax liability,
- in cases where the value of taxable supply other than exempt supply and zero-rated supply, in a month exceeds fifty lakh rupees:

Restriction shall not apply where -

a. RP 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 2 FYs for which the time limit to file income tax return u/s 139(1) of the said Act has expired; or
- b. the RP has received a refund amount of more than Rs. 1 lakh in the PFY on account of unutilised ITC section 54(3)(i); or
- c. the RP has received a refund amount of more than Rs. 1 lakh in the PFY on account of unutilised ITC section 54(3)(ii); or
- d. the RP has discharged his liability towards output tax through the e-cash ledger for an amount which is in excess of 1% of the total output tax liability, applied cumulatively, upto the said month in the current financial year; or
- e. the registered person is -
 - (i) Government Department; or
 - (ii) a Public Sector Undertaking; or
 - (iii) a local authority; or
 - (iv) a statutory body:

Proviso: Commissioner/an officer authorised by him in this behalf may remove the said restriction after such verifications and such safeguards as he may deem fit.

Rule 87: Electronic Cash Ledger

(1) Amount deposited shall be credited, payments shall be debited to ECL

The e-cash ledger shall be maintained in GST PMT-05 for each person, liable to pay tax, interest, penalty, late fee or any other amount, on the common portal for

- crediting the amount deposited &
- debiting the payment therefrom towards tax, interest, penalty, fee/any other amount.

(2) Deposit in e-cash ledger should be through GST PMT-06

Any person/a person on his behalf, shall generate a challan in GST PMT-06 on the common portal & enter the details of the amount to be deposited by him towards tax, interest, penalty, fees/any other amount:

Proviso: Challan in GST PMT-06 generated shall be valid for a period of 15 days.

(3) Various modes of deposit

- (i) Internet Banking through authorised banks;
 - (ia) Unified Payment Interface (UPI) from any bank;
 - (ib) Immediate Payment Services (IMPS) from any bank;
- (ii) Credit card or Debit card through the authorised bank;

(iii) NEFT/RTGS from any bank; or

(iv) Over the Counter payment through authorised banks for deposits up to Rs. 10,000 per challan per tax period, by cash/cheque/demand draft:

Proviso: Over the counter restriction of Rs 10,000 is NA in the following cases:

(a) Government Departments/any other deposit to be made by persons as may be notified by the Commissioner;

(b) PO/any other officer authorised to recover outstanding dues from any person, whether registered or not, including recovery made through attachment or sale of movable or immovable properties;

(c) PO/any other officer authorised for the amounts collected by way of cash/cheque/DD during any investigation or enforcement activity or any ad hoc deposit:

Proviso:

A person supplying OIDAR services or online money gaming from a place outside India to a person in India, may also make the deposit in e-cash ledger through international money transfer through SWIFT payment network, from the date to be notified by the Board.

Explanation- For making payment of any amount indicated in the challan, **the commission, shall be borne by the person making such payment.**

(4) URP to make payment on the basis of a temporary identification number generated through common portal

(5) Where the payment is made by NEFT/RTGS/IMPS from any bank,

- the mandate form shall be generated along with the challan on the common portal and
- the same shall be submitted to the bank from where the payment is to be made.

(6) Challan Identification Number (CIN) will be generated by collecting bank, once money gets credited to government a/c maintained in authorised bank:

(7) On receipt of the CIN from the collecting bank, the amount shall be credited to the E cash ledger.

(8) If CIN not generated after payment, person to make representation to bank in GST PMT-07

(9) TDS/TCS claimed by RP shall be credited to E-cash ledger

(10) When a person applies for refund claim, amount shall be debited to e cash ledger

(11) If refund claim rejected, the amount earlier debited shall be re-credited by the proper officer by an order made in GST PMT-03.

(12) A RP shall, upon noticing any discrepancy in his electronic cash ledger, communicate the same to the officer in GST PMT-04.

(13) RP may use GST PMT 09 for transfer of amount in e cash ledger from one head to another

(14) Transfer to E cash Ledger of Distinct Person using GST PMT 09

A RP may, on the common portal, transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under the Act to the electronic cash ledger for central tax or integrated tax of a distinct person in FORM GST PMT-09:

Proviso: transfer shall not be allowed if the RP has any unpaid liability in his e-liability register.

Section 50: Interest on delayed payment of Tax

(1) Failure to pay tax - interest payable @ 18% p.a.

Every person who is liable to pay tax but fails to pay to the Government within due date,
 - shall for the period for which the tax or any part thereof remains unpaid,
 - pay, on his own, interest at such rate, not exceeding 18%, as may be notified.

Proviso:

- the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date,
- except where such return is furnished after commencement of any proceedings under section 73/74 in respect of the said period,
- shall be payable on that portion of tax that is paid by debiting the electronic cash ledger.

(2) Interest shall be calculated from the day succeeding the day on which such tax was due to be paid.

(3) If ITC has been wrongly availed and utilized, the RP must pay interest on the wrongly availed and utilized amount at a rate not exceeding 24%, as notified & calculated as prescribed.

Rule 88B: Manner of calculating interest on delayed payment of tax.

(1) In case, where

- the supplies made during a tax period are declared in the return for the said period and
- the said return is furnished after the due date in accordance with section 39,
- except where such return is furnished after commencement of proceedings u/s 73/74,
- interest on tax payable shall be calculated on tax which is paid by debiting e-cash ledger,
- for the period of delay in filing the said return beyond the due date,
- at such rate as may be notified under section 50(1) i.e. 18%

Proviso:

- where any amount has been credited in the E-Cash Ledger as per section 49(1) on or before the due date of filing the said return, but is debited from the said ledger for payment of tax while filing the said return after the due date,
- the said amount shall not be taken into consideration while calculating such interest if the said amount is lying in the said ledger from the due date till the date of its debit at the time of filing return.

(2) In all other cases, where interest is payable in accordance with section 50(1),

- the interest shall be calculated on the amount of tax which remains unpaid,
- for the period starting from the date on which such tax was due to be paid till the date such tax is paid @ 18%.

(3) In case, where interest is payable on the amount of ITC wrongly availed and utilised,

- the interest shall be calculated on the amount of ITC wrongly availed and utilised,
- for the period starting from the date of utilisation of such wrongly availed ITC till the date of reversal of such credit or payment of tax in respect of such amount @18%.

Explanation.-For the purposes of this sub-rule, -

(1) ITC wrongly availed shall be construed to have been utilised,

- when the balance in e-credit ledger falls below the amount of ITC wrongly availed, and
- the extent of such utilisation of ITC shall be the amount by which the balance in the e-credit ledger falls below the amount of ITC wrongly availed.

(2) the date of utilisation of such input tax credit shall be taken to be, -

- (a) Due date of return u/s 39 or actual date of filing of said return, whichever is earlier, if the balance in the e-credit ledger falls below the amount of ITC wrongly availed, on account of payment of tax through the said return; or
- (b) the date of debit in the e-credit ledger when the balance in the e-credit ledger falls below the amount of input tax credit wrongly availed, in all other cases.

Circular: Utilisation of the amounts available in the e credit ledger and e cash ledger for payment of tax and other liabilities [Circular No. 172/04/2022-GST dt. 06.07.22]

Issue: Whether the amount available in the electronic credit ledger can be used for making payment of any tax under the GST Laws?

Clarification:

- Output tax, whether self-assessed/payable as a consequence of any proceeding can be paid by utilization of E-credit ledger.
- E-credit ledger cannot be used for making payment of tax which is payable under RCM.

Issue: Whether the amount available in the electronic credit ledger can be used for making payment of any liability other than tax under the GST Laws?

Clarification:

- E-credit ledger can be used for making payment of output tax only.
- E-credit ledger cannot be used for making payment of any interest, penalty, fees or any other amount payable.
- E-credit ledger cannot be used for payment of erroneous refund sanctioned to the taxpayer, where such refund was sanctioned in cash.

Issue: Whether the amount available in the electronic cash ledger can be used for making payment of any liability under the GST Laws

Clarification: E-cash ledger may be used for making any payment towards tax, interest, penalty, fees or any other amount payable under the provisions of the GST Laws.

Circular: Clarification on charging of interest under section 50(3) of the CGST Act, 2017, in cases of wrong availment of IGST credit and reversal thereof.

Issue: In the cases of wrong availment of IGST credit by a RP and reversal thereof, for the calculation of interest under rule 88B of CGST Rules, whether the balance of ITC available in e credit ledger under the head of IGST only needs to be considered or total ITC available in e credit ledger, under the heads of IGST, CGST and SGST taken together, has to be considered.

Clarification: There will not be any interest liability during the time period starting from such availment and up to such reversal.

Issue: Whether the credit of compensation cess available in e credit ledger shall be taken into account while considering the balance of e credit ledger for the purpose of calculation of interest under rule 88B(3) in respect of wrongly availed and utilized IGST, CGST or SGST credit.

Clarification: No, it shall not be taken into account.

Introduction

- A system to collect tax by deducting a certain percentage at the time of payment to the supplier.
- Acts as a tool to prevent tax evasion.
- Section 51: Details the deductors, rates of tax deduction, and remittance procedure.

Section 51 - Tax deduction at source

Section 51(1): The Govt may mandate, –

(a) a department or establishment of the CG or SG; or

(b) local authority; or

(c) Governmental agencies; or

(d) such persons or category of persons as may be notified by the Government on the recommendation of the council, (hereafter in this section referred to as "the deductor"),

- to deduct tax at the rate of 1%

- from the payment made/credited to the supplier ("the deductee") of taxable goods or services or both,

- where the total value of such supply, under a contract, exceeds 2,50,000 rupees:

Notification 50/2018 & 57/2018 - CT dated 13.09.2018

The persons specified below under clause (d) of section 51(1) of the said Act, namely:

(a) an authority or a board or any other body, -

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

(ii) established by any Government,

with 51 per cent. or more participation by way of equity or control, to carry out any function;

Circular: TDS provisions are applicable only to such authority/a board/any other body set up by an Act of parliament/a State legislature/established by any Govt in which 51%. or more participation by way of equity or control is with the Government.

(b) Society established by the CG/SG/a LA under the Societies Registration Act, 1860;

(c) Public sector undertakings (PSU).

(d) any registered person receiving supplies of metal scrap falling under Chapters 72 to 81 in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), from other registered person

Important notes:

- Ministry of defence excluded from the categories of persons required to deduct TDS
- No TDS on supply from a PSU to another PSU, whether or not a distinct person.

- NO TDS when supply of takes place between one person to another person specified under clause (a),(b),(c),(d) of section 51(1) of the said Act, **except the person referred to in clause (d) of notification 50/2018.**
- No deduction shall be made if the location of the supplier and the place of supply is in a State/UT which is different from the State/UT of registration of the recipient.
- Explanation: For the purpose of deduction of tax, the VOS shall be taken as the amount excluding the CT, ST, UTT, IT and cess indicated in the invoice.

Author's comment:

- Sale of metal scrap by one RP to another now brought under TDS.
- Recipient shall be liable to deduct TDS @ 2%.
- Incase of supply of metal scrap by one TDS deductor to another TDS shall be applicable.

Section 51(2): Amount deducted shall be paid to Govt within 10 days after the end of the month of deduction.

Section 51(3): A certificate of tax deduction at source shall be issued in GSTR 7A (Rule 66)
Rule 66: Form & manner of submission of return by a person required to deduct tax at source

- RP required to deduct tax u/s 51 must file a GSTR-7 return electronically on the common portal.
- Details furnished by the deductor will be available electronically to deductees on the common portal after filing GSTR-7 for claiming the deducted tax in their electronic cash ledger.
- The certificate under section 51(3) will be available electronically to deductees in GSTR-7A based on the filed return.

Section 51(5): The deductee shall claim credit in his electronic cash ledger, of the tax deducted.

Section 51(6): If any deductor fails to pay to Govt the amount deducted, he shall pay interest @18%, in addition to the amount of tax deducted.

Section 51(7): Demand u/s 73/74of TDS payable: in case of defaulted

Section 51(8): Refund to deductor or deductee to be dealt as per section 54.

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

CBIC clarification

Conditions for & amount of deduction:

Tax deduction is required if all the following conditions are satisfied -

- a. Total value of taxable supply > Rs.2.5 Lakh under a single contract. This value shall exclude taxes & cess leviable under GST.
- b. If the contract is made for both taxable supply and exempted supply, deduction will be made if the total value of taxable supply in the contract > Rs.2.5 Lakh.
- c. Where the location of the supplier and the place of supply are in the same State/UT, it is an intra-State supply and TDS @ 1% each under CGST Act and SGST/UTGST Act is to be deducted if the deductor is registered in that State or Union territory without legislature.
- d. Where the location of the supplier is in State A and the place of supply is in State or Union territory without legislature - B, it is an inter-State supply and TDS @ 2% under IGST Act is to be deducted if the deductor is registered in State or Union territory without legislature - B.
- e. Where the location of the supplier is in State A and the place of supply is in State or Union territory without legislature B, it is an inter-State supply and TDS @ 2% under IGST Act is to be deducted if the deductor is registered in State A.

When tax deduction is not required to be made under GST:

Tax deduction is not required in following situations:

- a. Total value of taxable supply \leq Rs. 2.5 Lakh under a contract.
- b. Contract value > Rs. 2.5 Lakh for both taxable supply and exempted supply, but the value of taxable supply under the said contract \leq Rs. 2.5 Lakh.
- c. Receipt of services which are exempted exemption notification.
- d. Receipt of goods which are exempted under exemption notification.
- e. Goods on which GST is not leviable. HPMAN and alcohol for human consumption.
- f. Where the location of the supplier & place of supply is in a State(s)/UT(s) which is different from the State / UT where the deductor is registered.
- g. All activities or transactions specified in Schedule III, irrespective of the value.
- h. Where the tax is to be paid on reverse charge by the recipient i.e., the deductee.
- i. Where the payment is made to an unregistered supplier.
- j. Where the payment relates to "Cess" component.

Taxability of E-commerce transactions under GST

Electronic commerce means

- the supply of goods/services/both, including digital products over digital/electronic network.
- "Digital products" imply that supplies of downloadable or electronically delivered products, such as e-books, software, digital music, online courses and digital videos, etc.
- "Electronic network" encompasses various digital platforms, such as websites, mobile applications & any other electronic means used for buying or selling of goods and/or services.

Electronic commerce operator means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce.

ECO is wide enough to cover various types of e-commerce platforms, such as online marketplaces, online travel agencies, food delivery platforms, ride-hailing apps, and other digital platforms that facilitate transactions between sellers and buyers.

E-commerce Business Models:

Online Marketplace Model:

- Connects manufacturers/retailers with potential customers.
- Platform does not own/stock products or provide services.
- Facilitates transactions and may offer additional services (e.g., payment processing, customer support, logistics).
- Actual supply of goods is done by the respective suppliers.
- Revenue from supplier fees or commissions, typically a percentage of each sale.
- Goods: Amazon, Flipkart, Alibaba, Myntra.
- Services: Uber, Ola (cab services), food delivery services.

Direct Sales Model:

- Businesses sell products/services directly to consumers via their own online stores/websites.
- Customers browse the website, select products/services, and complete the purchase directly with the supplier.
- Examples: Ramesh Soni Classes, Biba.

Inventory Model:

- E-commerce operator owns the inventory of goods/services.
- Platform handles warehousing, inventory management, and order fulfillment.
- Common among traditional retailers with an online presence.
- Examples: Amazon, Flipkart, Snapdeal.

- The described models are not exhaustive.
- Many e-commerce businesses adopt a combination of models to suit their specific needs and industry dynamics.
- The e-commerce industry is continuously evolving, and new models may emerge over time.

Taxability of e-commerce transactions

E-commerce transactions are leviable to GST similar to other supply transactions unless otherwise specifically exempted from GST.

However, the taxability mechanism for E-commerce transactions and compliances for the suppliers and ECOs have been separately carved out in the law.

Following provisions merit consideration in this regard:

TCS to be collected by ECO:

- E-commerce operators (e.g., Amazon, Flipkart, Myntra) list products/services supplied by others.
- Suppliers supply goods/services through ECO portals; ECO handles collection, logistics, etc.
- ECO deducts commission and pays the net consideration to the supplier.
- ECOs must collect **0.5% TCS (i.e. 0.25% CGST + 0.25% SGST)** from suppliers on net value of goods/services supplied through their portals.
- Payment to supplier = Price of product/services - **0.5% TCS** (calculated after considering returns).

Exceptions:

- (1) Where a supplier supplies through an ECO those SERVICES, notified u/s 9(5), the tax is to be paid by the ECO as if he is the supplier.
- (2) Where a supplier supplies the goods or services or both on his own account through a web site hosted by him, there is no requirement to collect tax at source.

The provisions of section 9(5) of the CGST Act have been discussed in detail below:

Section 9(5) of the CGST Act: Levy and collection (CGST)

The Government may, on the recommendations of the Council, by notification,

- specify categories of services the tax on intra- State supplies of which shall be paid by ECO
- if such services are supplied through it, and
- all the provisions of this Act shall apply to such ECO as if he is the supplier liable for paying the tax in relation to the supply of such services:

Proviso: where an ECO does not have a physical presence in the taxable territory, any person representing such ECO for any purpose in the taxable territory shall be liable to pay tax:

Proviso: where an ECO does not have a physical presence in the taxable territory and also he does not have a representative in the said territory, such ECO shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax.

Author: Services notified under 9(5), for interstate have been notified u/s 5(5) of IGST act.

NNo. 17/2017-CT(R): Notified categories of services supplied through ECO

(i) Services by way of transportation of passengers by a

- radio taxi (which is in two-way communication with central office through GPS/GPRS)
- motor cab (MV to carry ≤ 6 passengers excl. driver on hire/reward)
- maxi cab (MV to carry $> 6 \leq 12$ passengers excl. driver on hire/reward)
- motor cycle, or any other motor vehicle except omnibus;

Example: OLA, Uber, Rapido, etc.

- **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).
- **Maxi cab:** means any motor vehicle constructed or adapted to carry more than 6 passengers, but not more than 12 passengers, excluding the driver, for hire or reward.
- **Motor cab:** means any motor vehicle constructed or adapted to carry not more than 6 passengers excluding the driver for hire or reward.
- **Motor car:** means any motor vehicle other than a transport vehicle, omnibus, road-roller, tractor, motor cycle or invalid carriage.
- **Omnibus:** means any motor vehicle constructed or adapted to carry more than 6 persons excluding the driver.

(ia) Services by way of transportation of passengers by an omnibus except where the person supplying such service through electronic commerce operator is a company.

(ii) Services by way of providing accommodation

- In hotels, inns, guest houses, clubs, campsites/other commercial places
- meant for residential or lodging purposes,

Except where person supplying such service through ECO is liable for registration u/s 22(1).

Example: Goibibo, OYO rooms, etc

(iii) Services by way of house-keeping

- Such as plumbing, carpentering etc.,

Except where person supplying such service through ECO is liable for registration u/s 22(1).

Example: Urbanclap.com, housejoy.com, etc.

(iv) Supply of restaurant service other than the services supplied by restaurant, eating joints etc. located at specified premises.

Explanation: Specified premises means premises providing hotel accommodation service having declared tariff of any unit of accommodation above Rs. 7,500 per unit per day or equivalent.

Circular: GST on service supplied by restaurants through e-commerce operators

Issue: Would ECOs have to still collect TCS in compliance with section 52 of the CGST Act, 2017?

Clarification: Since ECO liable to pay tax u/s 9(5), it not required to collect TCS.

Issue: Would ECOs have to mandatorily take a separate registration w.r.t supply of restaurant service even though they are registered to pay GST on services on their own account?.

Clarification: ECO is not required to take separate registration for payment of tax on restaurant service u/s 9(5).

Issue: Would the ECOs be liable to pay tax on supply of restaurant service made by unregistered business entities?

Clarification: ECOs will be liable to pay GST on supplies made by unregistered restaurant.

Issue: What would be aggregate turnover of person supplying 'restaurant service' through ECOs?

Clarification: ATO of Restaurant shall be as defined in section 2(6) of the CGST Act, 2017 and shall include the aggregate value of supplies made by the restaurant through ECOs.

Issue: Can the supplies of restaurant service made through ECOs be recorded as inward supply of ECOs (liable to reverse charge) in GSTR 3B?

Clarification: Supplies of restaurant service made through ECOs are not to be recorded as inward supply of ECO, no RCM.

Issue: Would ECOs be liable to reverse proportional ITC on his input goods and services for the reason that ITC is not admissible on 'restaurant service'?

Clarification: ECO shall not be required to reverse ITC on account of restaurant services on which it pays GST in terms of section 9(5). Also ECO shall pay the entire GST liability in cash, ITC cannot be utilised for payment of GST on restaurant service supplied through ECO.

Issue: Would supply of goods/services other than 'restaurant service' through ECOs be taxed at 5% without ITC?

Clarification: On other supplies (other than restaurant services) GST will continue to be billed, collected & deposited in the same manner as is being done at present. ECO will deposit TCS on such supplies.

Issue: Would 'restaurant service' and goods/services other than restaurant service sold by a restaurant to a customer under the same order be billed differently? Who shall be liable for raising invoices in such cases?

Clarification: Where 'restaurant service' and goods/services other than restaurant service sold by a restaurant to a customer under the same order, it is advisable that ECO raises separate bill.

Issue: Who will issue invoice in respect of restaurant service supplied through ECO - whether by the restaurant or by the ECO?

Clarification: The invoice in respect of restaurant service supplied through ECO under section 9(5) will be issued by ECO.

Section 52: Collection of tax at source

Section 52(1): Supplier is supply through ECO: ECO liable to deduct TCS

Section 52(1): Every electronic commerce operator (referred to as the "operator"), not being an agent,

- shall collect an amount calculated at such rate **not exceeding 1%, as may be notified** by the Government on the recommendations of the Council,
- of the net value of taxable supplies made through it by other suppliers
- where the consideration with respect to such supplies is to be collected by the operator.

Explanation— "net value of taxable supplies" shall mean

- the aggregate value of taxable supplies of goods or services or both,
- other than services notified u/s 9(5), made during any month by all RPs through the operator reduced by the aggregate value of taxable supplies returned to the suppliers during the said month.

Notified rate for TCS - amended

Every ECO, not being an agent, shall collect an amount calculated at a rate of 0.25 % of the net value of intra-State taxable supplies made through it by other suppliers where the consideration with respect to such supplies is to be collected by the said operator.

Note: 0.25% under CGSt and 0.25% SGST.

Section 52(2): The power to collect the amount specified in sub-section (1) shall be without prejudice to any other mode of recovery from the operator.

Section 52(3): The amount collected shall be paid to the Govt by the operator within **10 days** after the end of the month in which such collection is made, in such manner as may be prescribed.

Section 52(4): Every operator who collects the amount shall furnish a statement, electronically, containing

- details of outward supplies effected through it, including the supplies returned through it,
- and the amount collected during a month, in such form and manner as may be prescribed, within 10 days after the end of such month. (GSTR 8 & Rule 67)

Proviso: Commissioner may extend the time limit for furnishing the statement for such class of RPs as may be specified therein:

Rule 67: Form and manner of submission of statement of supplies through an ECO

(1) Every ECO required to collect tax at source u/s 52 shall

- furnish a statement in GSTR-8 electronically,
- containing details of supplies effected through such operator and amount of tax collected.

(2) The details of tax collected at source section 52(1) furnished by the operator

- shall be made available electronically to each of the registered suppliers on the common portal after filing of GSTR-8
- for claiming the amount of tax collected in his electronic cash ledger after validation.

Section 52(5): Every operator who collects the amount specified in sub-section (1) shall furnish an annual statement, electronically, containing

- the details of outward supplies of goods or services or both effected through it,
- including the supplies of goods or services or both returned through it, and
- the amount collected during the FY, in such form and manner as may be prescribed,
- **before the thirty first day of December following the end of such financial year.**

Section 52(6): If any operator after furnishing a statement discovers any omission or incorrect particulars therein,

- **except** as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities,
- he shall rectify it, in the statement to be furnished for the month during which such omission or incorrect particulars are noticed,
- subject to payment of interest under section 50:

Proviso: Maximum time limit for rectification of error/omission discovered later in GSTR-8:

- the thirtieth day of November following the end of the financial year or
- the actual date of furnishing of the relevant annual statement, whichever is earlier.

Section 52(7): Supplier who has supplied through the ECO shall claim credit, in his e-cash ledger.

Section 52(8): Details of supplies furnished by every operator in GSTR-8 shall be matched GSTR 1 of supplier registered in such manner and within such time as may be prescribed.

Rule 78: Matching of details furnished by the ECO with the details furnished by the supplier

The following details relating to the supplies made through an e-Commerce operator, as declared in GSTR-8, shall be matched with the corresponding details declared by the supplier in GSTR-1, as amended in FORM GSTR-1A, if any,

- (a) State of place of supply; and
- (b) net taxable value:

Section 52(9): Discrepancy between GSTR 8 & GSTR1 if any shall be communicated to both supplier and ECO.

Section 52(10): Non-rectification of mistakes by either of the parties in month of communication,

- addition to be made to OTL of supplier, if the value of outward supplies furnished by the operator is more than the value of outward supplies furnished by the supplier,
- in his return for the month succeeding the month in which the discrepancy is communicated.

Section 52(11): The concerned supplier, in whose output tax liability any amount has been added under sub-section (10), shall

- pay the tax payable in respect of such supply along with interest @ 18%
- on the amount so added from the date such tax was due till the date of its payment.

Section 52(12): GST officers have power to ask ECO details of supplies effected through it
Any authority not below the rank of Deputy Commissioner may serve a notice, requiring the operator to furnish such details relating to—

- (a) supplies of goods or services or both effected through such operator during any period; or
- (b) stock of goods held by the suppliers making supplies through such operator in the godowns or warehouses, by whatever name called, managed by such operator and declared as additional places of business by such suppliers, as may be specified in the notice.

Section 52(13): Every operator on whom a notice has been served shall furnish required information within **15 working days** of the date of service of such notice.

Section 52(14): **Non-response to notice, action u/s 122 & penalty up to Rs 25,000.**

Section 52(15): Belated GSTR-8 cannot be filed after the expiry of a period of three years from the due date of furnishing the said statement.

Notes:

- A composition taxpayer cannot make supplies of services through an ECO [Section 10(2)(d)]. However, a composition taxpayer can make supplies of goods through an ECO. As a corollary, TCS can be collected only in respect of supplies of goods made by the composition taxpayer through an ECO.
- Since TCS is to be collected on "net value of Taxable supplies" made through it.
- TCS is not required to be collected on Exempt supplies.
- TCS is not required to be collected on supplies on which tax is payable under RCM.
- TCS is not liable to be collected on import of goods or services since these are the supplies on which the recipient is required to pay tax under RCM. As far as import of goods is concerned, since same would fall under Customs Act, it would be outside the purview of TCS.

Registration requirements of ECO

Section 24: Compulsory registration in certain cases

Following categories of persons shall be required to be registered under this Act,-

- Person who are required to pay tax under sub-section (5) of section 9
- Persons who supply goods or services or both, other than supplies specified under section 9(5), through such ECO who is required to collect tax at source u/s 52.
- Every electronic commerce operator who is required to collect tax at source u/s 52.

Rule 12: Grant of registration to TDS deductor/TCS collector

(1) Submit an **application, in Form GST REG-07,**

(1A) A person applying for registration to deduct/collect tax, in a State/UT where he does not have a physical presence, shall

- mention the name of the State/U in PART A of the application in GST REG-07 and
- mention the name of the State/UT in PART B thereof in which the principal place of business is located which may be different from the State/UT mentioned in PART A.

(2) After due verification - PO may grant within 3 working days from the date of submission.

(3) Cancellation of registration

Where, on a request made in writing by a person to whom a registration has been granted or

- upon an enquiry or pursuant to any other proceeding under the Act,
- the PO is satisfied that a person is no longer liable to deduct or collect,
- the PO may cancel the registration & communicated to the said person electronically.

Special procedure to be followed by ECOs in respect of supplies of goods through them by composition taxpayers.

ECO who is required to collect TCS shall follow special procedure in respect of supply of goods made through it by the persons paying tax u/s 10 (i.e. a composition dealer), namely: –

- (i) the ECO shall not allow any inter-State supply of goods through it by the said person;
- (ii) the ECO shall collect tax at source u/s 52 and pay to the Government; and
- (iii) the ECO shall furnish the details of supplies of goods made through it in GSTR-8.

Special procedure to be followed by the ECOs in respect of supplies of goods through them by unregistered persons.

ECO who is required to collect TCS shall follow special procedure in respect of supply of goods made through it by persons exempted from obtaining registration in accordance with the notification issued u/s 23, namely: –

- (i) the ECO shall allow the supply only if enrolment number has been allotted to the said person;
- (ii) the ECO shall not allow any inter-State supply of goods through it by the said person;
- (iii) the ECO shall not collect TCS in respect of supply of goods made through it; and
- (iv) the ECO shall furnish the details of supplies of goods in GSTR-8 electronically.

Where multiple ECOs are involved in a single supply of goods through ECO platform,

- "the ECO" shall mean the ECO who finally releases the payment to the said person for the said supply made by the said person through him.

Circular: Clarification on TCS liability under Sec 52 of the CGST Act, 2017 in case of multiple E-commerce Operators in one transaction.

Issue 1: In a situation where multiple ECOs are involved in a single transaction of supply of goods/ services/both through ECO platform and where the supplier-side ECO himself is not the supplier in the said supply, who is liable for compliances under section 52 including collection of TCS?

Clarification: Where multiple ECOs are involved in a single transaction of supply and where the supplier-side ECO himself is not the supplier, the compliances u/s 52, including collection of TCS, is to be done by the supplier-side ECO who finally releases the payment to the supplier.

Issue 2: In a situation where multiple ECOs are involved in a single transaction of supply of goods or services or both through ECO platform and the Supplier-side ECO is himself the supplier of the said supply, who is liable for compliances under section 52 including collection of TCS?

Clarification: In such a situation, TCS is to be collected by the Buyer-side ECO while making payment to the supplier for the particular supply being made through it.

Introduction

Return means

- any return prescribed or otherwise required to be furnished by or under this Act or the rules made thereunder;

Valid return means

- a return furnished u/s 39(1) on which self-assessed tax has been paid in full;

The term "return" ordinarily means

- statement of information (facts)
- furnished by the taxpayer,
- to tax administrators,
- at regular intervals.

Section 37: Furnishing details of outward supplies

(1) Details of outward supplies to be furnished by the 10th of NM in FORM GSTR-1

Every registered person, **except**

- an ISD, a NRTP, and a person paying tax under Section 10 or 51 or 52,
 - shall furnish, electronically subject to such conditions and restrictions and
 - in such form (GSTR-1) and manner (rule 59) as may be prescribed,
- the details of outward supplies of goods or services or both
- effected during a tax period
 - on or before the 10th day of the month succeeding the said tax period,
 - and such details shall, subject to such conditions and restrictions, within such time and in such manner as may be prescribed, be communicated to the recipient of the said supplies.

Proviso: Commissioner may, by notification, extend the time limit for furnishing such details for such class of taxable persons as may be specified therein:

Notification No. 83/2020 - Central Tax dated 10.11.20

The Commissioner, hereby extends the time limit for furnishing details of outward supplies in GSTR-1, for each of the tax periods, till **11th day of the month succeeding such tax period:**

Proviso: the time limit for furnishing the details of outward supplies in GSTR-1 for the class of RPs required to furnish return for every quarter, shall be extended till **13th of the month succeeding such tax period.**

(2) Tax and Interest to be paid in case there is a short payment on account of error or omission

- Any RP, who has furnished the details under sub- section (1) for any tax period (in GSTR-1),
- shall, upon discovery of any error or omission therein,
 - rectify such error/omission in such manner as may be prescribed &
 - shall pay the tax & interest, if any, in case there is a short payment of tax on account of such error or omission,
 - in the return to be furnished for such tax period.

Proviso: Maximum time limit for rectification of error or omission shall be

- 30th of November following the end of the financial year to which such details pertain,
 - or furnishing of the relevant annual return,
- whichever is earlier.

(3) RP shall not be allowed to furnish GSTR 1 for current tax period unless previous GSTR 1 is furnished.

Explanation: "Details of outward supplies" shall include details of invoices, debit notes, credit notes and revised invoices issued in relation to outward supplies made during any tax period.

(4) Belated GSTR-1 cannot be filed after the expiry of a period of three years from the due date of furnishing said details.

Rule 59: Form and manner of furnishing details of outward supplies

(1) Every RP except OIDAR, to furnish details of outward supplies in GSTR 1

Every RP, **Except** a person referred to in section 14 of the IGST Act, 2017,

- required to furnish the details of outward supplies of goods or services or both u/s 37,
- shall furnish such details in FORM GSTR-1 for the month or the quarter, electronically through the common portal.

Proviso: the said person may, after furnishing the details of outward supplies of goods or service or both in GSTR-1 for a tax period but before filing of return in 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 GSTR-1A for the said tax period electronically through the common portal, either directly or through a Facilitation Centre as may be notified by the Commissioner.

(2) RP furnishing GSTR 1 quarterly may use IFF

Registered Persons (RPs) who need to file quarterly returns can furnish details of outward supplies for the first and second months of a quarter using the Invoice Furnishing Facility

(IFF) on the common portal. This can be done for up to 50 lakh rupees each month, from the 1st to the 13th day of the following month.

(3) The details of outward supplies furnished using the IFF, for the first and second months of a quarter, shall not be furnished in FORM GSTR-1 for the said quarter.

(4) Details to be furnished in GSTR 1

The details of outward supplies of goods or services or both furnished in FORM GSTR-1 shall include the—

(a) invoice wise details of all—

(i) inter-State and intra-State supplies made to the registered persons; and

(ii) inter-State supplies with invoice value more than one lakh rupees made to the unregistered persons;

(b) consolidated details of all—

(i) intra-State supplies made to unregistered persons for each rate of tax; and

(ii) State-wise inter-State supplies with invoice value upto one lakh rupees made to unregistered persons for each rate of tax;

(c) debit and credit notes, if any, issued during the month for invoices issued previously.

(4A) The additional details or the amendments of the details of outward supplies of goods or services or both furnished in GSTR-1A may, as per the requirement of RP, include the -

(a) invoice wise details of -

(i) inter-State and intra-State supplies made to the registered persons; and

(ii) inter-State supplies with invoice value more than Rs 1 lakh made to the unregistered persons;

(b) consolidated details of -

(i) intra-State supplies made to unregistered persons for each rate of tax; and

(ii) State wise inter-State supplies with invoice value upto Rs. 1 lakh made to unregistered persons for each rate of tax;

(c) debit and credit notes, if any, issued during the month for invoices issued previously.

(5) The details of outward supplies of goods/services/both furnished using the IFF shall include the:

(a) invoice wise details of inter-State and intra-State supplies made to the RP;

(b) debit and credit notes, if any, issued during the month for such invoices issued previously.

(6) Cases when a RP shall be debarred from furnishing GSTR1/using IFF:

- (a) a RP shall not be allowed to furnish the details of outward supplies of goods/services/ both u/s 37 in GSTR-1, if he has not furnished the return in GSTR-3B for the preceding month;
- (b) a RP, required to furnish return for every quarter, shall not be allowed to furnish the details of outward supplies of u/s 37 in GSTR-1 or using the invoice furnishing facility, if he has not furnished the return in GSTR-3B for preceding tax period;
- (c) a RP, to whom an intimation has been issued on the common portal under rule 88C in respect of a tax period, shall not be allowed to furnish GSTR-1 or using the invoice furnishing facility for a subsequent tax period, unless he has either deposited the amount specified in the said intimation or has furnished a reply explaining the reasons for any amount remaining unpaid.
- (d) a RP, to whom an intimation has been issued under rule 88D in respect of a tax period or periods, shall not be allowed to furnish the details of outward supplies in GSTR-1 or using the invoice furnishing facility for a subsequent tax period, unless he has either paid the amount equal to the excess ITC as specified in the said intimation or has furnished a reply explaining the reasons in respect of the amount of excess ITC that still remains to be paid;
- (e) a RP shall not be allowed to furnish the details of outward supplies in FORM GSTR-1 or using the invoice furnishing facility, if he has not furnished the details of the bank account as per the provisions of rule 10A.

Key features of Form GSTR-1A are as follows:

- Form GSTR-1A is an optional facility.
- It can be filed only once for a return period.
- It allows to amend the records filed in the Form GSTR-1 of current tax period only.
- The corresponding effect of the changes made through Form GSTR-1A on the liability of the taxpayer shall be reflected in Form GSTR-3B for the same tax period.
- 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.
- It can be amended only electronically through the common portal, either directly or through a Facilitation Centre as may be notified by the Commissioner.
- There is no due date for filing of GSTR-1A. For the taxpayers filing Form GSTR-1 on monthly basis:
 - Form GSTR-1A will be available on the portal every month from the due date of filing of Form GSTR-1 or the actual date of filing of Form GSTR-1, whichever is later, and will be available till the actual filing of corresponding Form GSTR-3B of the same tax period.

- From the liability perspective, the net impact of particulars declared or amended through Form GSTR-1A, along with the particulars declared in Form GSTR-1, shall be auto-populated in Form GSTR-3B for the same tax period as that of Form GSTR-1.
- For the QRMP taxpayers, who files Form GSTR-1 on Quarterly basis:
 - Form GSTR-1A shall be available quarterly after actual filing of Form GSTR-1 (Quarterly) or the due date of filing of Form GSTR -1 (Quarterly), whichever is later, and will be available till the actual filing of Form GSTR-3B of the same tax period.
 - The supplies reported in Form GSTR-1 of the current tax period (including those declared in IFF, for the first month, M1 and second month, M2 of a quarter, if any) can be amended through corresponding quarterly GSTR-1A.
 - From the liability perspective, the net impact of the particulars declared in GSTR 1A (Quarterly), along with particulars furnished in Form GSTR-1 (Quarterly) (or through IFF of Month M1 and M2, if filed), shall be auto-populated in Form GSTR-3B (Quarterly) of the same tax period.
 - There will be no separate amendment facility available for records furnished through IFF for the months M1 and M2, during the months M1 and M2.
- In case where change is required to be made in GSTIN of a recipient for a supply reported in Form GSTR-1 of a tax period, the same can be rectified through Form GSTR-1 for the subsequent tax period only.

Rule 88C. Manner of dealing with difference in liability reported in statement of outward supplies and that reported in return.

- (1) Where the tax payable by a RP, as per GSTR-1, as amended in FORM GSTR-1A if any, or using the IFF in respect of a tax period, **exceeds** the amount of tax payable in GSTR-3B, by such amount and such percentage, as may be recommended by the Council,
 - the RP shall be intimated of such difference in Part A of GST DRC-01B, electronically,
 - and a copy of such intimation shall also be sent to his e-mail address provided at the time of registration or as amended from time to time, highlighting the said difference and directing him to—
 - pay the differential tax liability, along with interest u/s 50, through GST DRC-03; or
 - explain the aforesaid difference in tax payable on the common portal, within 7 days.
- (2) The RP shall, upon receipt of the intimation, either,-
 - (a) **pay the amount of the differential tax liability**, fully or partially, along with interest under u/s 50, through GST DRC-03 & furnish the details thereof in Part B of GST DRC-01B electronically on the common portal; or

(b) furnish a reply electronically on the common portal, incorporating reasons in respect of that part of the differential tax liability that has remained unpaid, if any, in Part B of GST DRC-01B, within 7 days.

(3) Where any amount remains unpaid within 7 days & where no explanation/reason is furnished by the RP in default or where the explanation or reason furnished by such person is not found to be acceptable, the said amount shall be recoverable in accordance with section 79.

Rule 88D. Manner of dealing with difference in input tax credit available in auto-generated statement containing the details of input tax credit and that availed in return.-

(1) Where the ITC availed by a RP in the return for a tax period or periods furnished by him in FORM GSTR-3B exceeds the ITC available in accordance with the auto-generated statement containing the details of ITC in GSTR-2B in respect of the said tax period or periods, as the case may be, by such amount and such percentage, as may be recommended by the Council,

- the said RP shall be intimated of such difference in Part A of GST DRC-01C, electronically
- and a copy of such intimation shall also be sent to his e-mail address provided at the time of registration, highlighting the said difference and directing him to—

(a) pay an amount equal to the excess ITC availed in GSTR-3B, with interest payable under section 50, through GST DRC-03, or

(b) explain the reasons for the aforesaid difference in ITC on the common portal, within a period of seven days.

(2) The RP shall, upon receipt of the intimation referred to in the said sub-rule, either,

(a) pay an amount equal to the excess ITC, as specified in Part A of GST DRC-01C, fully or partially, along with interest payable u/s 50, through GST DRC-03 and furnish the details thereof in Part B of GST DRC-01C, electronically on the common portal, or

(b) furnish a reply, electronically on the common portal, incorporating reasons in respect of the amount of excess input tax credit that has still remained to be paid, if any, in Part B of FORM GST DRC-01C, within 7 days.

(3) Where any amount specified in the intimation remains to be paid within the period specified in the said sub-rule and where no explanation or reason is furnished by the RP in default or where the explanation or reason furnished by such person is not found to be acceptable by the proper officer, the said amount shall be liable to be demanded in accordance with the provisions of section 73 or section 74, as the case may be.

Rule 67A: Manner of furnishing of return or details of outward supplies by short messaging service facility.

GSTR 3B/GSTR 1/CMP 08 can be furnished through SMS using the registered mobile no.

A RP

- who is required to furnish a Nil return u/s 39 in FORM GSTR-3B or
- a Nil details of outward supplies u/s 37 in FORM GSTR-1 or
- a Nil statement in FORM GST CMP-08 for a tax period,
- can furnish the same through a short messaging service using the registered mobile no. and
- the said return or the details of outward supplies or statement shall be verified by a registered mobile number based One Time Password facility.

Nil return means a return with no entry in all the tables of GSTR 3B/1/CMP 08

Crux: Nil - GSTR 3B/GSTR 1/CMP 08 can be furnished through SMS using the registered mobile no. & said return shall be verified by a registered mobile number based One Time Password facility.

Section 38: Communication of details of inward supplies and input tax credit. (GSTR 2B)

(1) The details of outward supplies furnished by the RPS under 37(1) and of such other supplies as may be prescribed, and an auto-generated statement containing the details of ITC shall be made available electronically to the recipients of such supplies in such form and manner, within such time, and subject to such conditions and restrictions as may be prescribed.

(2) The auto-generated statement under sub-section (1) shall consist of--

- details of inward supplies in respect of which ITC may be available to the recipient; and
- details of supplies in respect of which ITC cannot be availed, whether wholly/partly, by the recipient, on account of the details of the said supplies being furnished u/s 37(1),-
 - by any RP, within such period of taking registration as may be prescribed; or
 - by any RP, who has defaulted in payment of tax & default has continued for prescribed period; or
 - by any RP, the output tax payable by whom in GSTR 1 during such period, exceeds the output tax paid by him during the said period by such limit as may be prescribed; or
 - by any RP, who, during such period as may be prescribed, has availed ITC of an amount that exceeds the credit that can be availed by him in accordance with clause (a), by such limit as may be prescribed; or
 - by any RP, who has defaulted in discharging his tax liability in accordance with section 49(12) subject to such conditions and restrictions as may be prescribed; or
 - by such other class of persons as may be prescribed.

Rule 60: Form and manner of ascertaining details of inward supplies.-

- (1) Details of outward supplies furnished in GSTR 1/1A/IFF shall be made available to supplier in Part A of GSTR 2A/4A/6A
- (2) Details of invoices furnished by NRTP in GSTR 5 shall be made available to recipient in Part A of GSTR 2A
- (3) Details of invoices furnished by ISD in GSTR 6 shall be made available to recipient in Part B of GSTR 2A
- (4) Details of TDS furnished by deductor in GSTR 7 shall be made available to deductee in Part C of GSTR 2A
- (5) Details of TCS furnished by ECO in GSTR 8 shall be made available to concerned person in Part C of GSTR 2A
- (6) Details of IGST paid on the import of goods/goods brought in DTA from SEZ unit/ developer on a BOE shall be made available in Part D of FORM GSTR-2A
- (7) An auto drafted statement containing the details of ITC shall be made available to RP in GSTR 2B for every month, electronically through the common portal, and shall consist of:
 - (i) the details of outward supplies furnished by his supplier, other than a supplier required to furnish return for every quarter under proviso to sub-section (1) of section 39, in FORM GSTR-1, between the day immediately after the due date of furnishing of FORM GSTR-1 for the previous month to the due date of furnishing of GSTR-1 for the month;
 - (ii) the details of invoices furnished by a NRTP in GSTR5 and details of invoices furnished by an ISD in his return in GSTR-6 and details of outward supplies furnished by his supplier, required to furnish return for every quarter under proviso to sub-section (1) of section 39, in FORM GSTR-1 or using the IFF, as the case may be, -
 - (a) for the first month of the quarter, between the day immediately after the due date of furnishing of FORM GSTR-1 for the preceding quarter to the due date of furnishing details using the IFF for the first month of the quarter;
 - (b) for the second month of the quarter, between the day immediately after the due date of furnishing details using the IFF for the first month of the quarter to the due date of furnishing details using the IFF for the second month of the quarter;
 - (c) for the third month of the quarter, between the day immediately after the due date of furnishing of details using the IFF for the second month of the quarter to the due date of furnishing of FORM GSTR-1 for the quarter;
- (iia) the additional details/amendments in details of outward supplies furnished by his supplier in GSTR-1A filed between the day immediately after the due date of furnishing of GSTR-1 for the previous tax period to the due date of furnishing of GSTR-1 for the current tax period;

(iii) the details of the integrated tax paid on the import of goods or goods brought in the domestic Tariff Area from SEZ unit or a SEZ developer on a bill of entry in the month.

- (8) The Statement in FORM GSTR-2B for every month shall be made available to the RP, -
- (i) for the first and second month of a quarter, a day after the due date of furnishing of details of outward supplies for the said month, in the IFF by a RP required to furnish return for every quarter under proviso to sub-section (1) of section 39, or in FORM GSTR-1 by a RP, other than those required to furnish return for every quarter under proviso to sub-section (1) of section 39, whichever is later;
 - (ii) in the third month of the quarter, a day after the due date of furnishing of details of outward supplies for the said month, in FORM GSTR-1 by a registered person required to furnish return for every quarter under proviso to sub-section (1) of section 39.

Section 39: Furnishing of returns

Section 39(1): Every RP to file return monthly by 20th of the month succeeding such calendar month or part thereof.

Every registered person, other than

- an ISD or a NRTP or a person paying tax under the provisions of section 10 or 51 or 52 shall for every calendar month or part thereof, furnish, a return, electronically, of inward and outward supplies of goods or services or both, ITC availed, tax payable, tax paid and such other particulars in such form and manner, and within such time, as may be prescribed.

Proviso: the Govt may notify certain classes of RPs who shall furnish return for every quarter or part thereof, subject to such conditions and safeguards as may be specified therein.

NNo. 84/2020 - Central Tax dated 10.11.2020, Notifying person under Proviso to 39(1)

The RPs except OIDAR under section 14 of the IGST act,

- having an ATO of up to Rs. 5 cr in the PFY, and
- who have opted to furnish a return for every quarter, notified as the class of persons
- who shall,
 - furnish a return for every quarter from January, 2021 onwards,
 - and pay the tax due every month

subject to the following conditions and restrictions, namely: —

- (i) the return for the preceding month, as due on the date of exercising such option, has been furnished:

(ii) where such option has been exercised once, they shall continue to furnish the return as per the selected option for future tax periods, unless they revise the same.

A RP whose ATO crosses five crore rupees during a quarter in a FY shall not be eligible for furnishing of return on quarterly basis from the first month of the succeeding quarter.

Rule 61: Form and manner of submission of monthly return

(1) Every RP (except OIDAR u/s 14 of the IGST act, or an ISD or a NRTP or composition dealer or TDS deductor or TCS collector) shall furnish a return in FORM GSTR-3B electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner, as specified under

(i) Section 39(1), for each month, or part thereof, on or before the 20th day of the month succeeding such month:

(ii) Person under quarterly return, for each quarter, or part thereof, as mentioned in Table below, namely: -

Class of registered persons	Due Date
RPs whose principal place of business is in the States of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, the UTS of Daman and Diu & Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands or Lakshadweep.	22 nd of the month succeeding such quarter.
RPs whose principal place of business is in the States of Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha, the UTs of Jammu and Kashmir, Ladakh, Chandigarh or Delhi.	24 th of the month succeeding such quarter.

(2) Every RP required to furnish return, shall

- discharge his liability towards tax, interest, penalty, fees or any other amount payable
- by debiting the e cash ledger or e credit ledger and
- include the details in the return in FORM GSTR-3B.

(3) Every RP required to furnish return, every quarter, shall

- pay the tax due for each of the first two months of the quarter, by depositing the said amount in GST PMT-06, by the 25th of the month succeeding such month:

Proviso: while making a deposit in FORM GST PMT-06, such a registered person may—

- (a) for the first month of the quarter, take into account the balance in the electronic cash ledger.

(b) for the second month of the quarter, take into account the balance in the electronic cash ledger excluding the tax due for the first month.

(4) The amount deposited under sub-rule (3) above, shall be debited while filing the return for the said quarter in GSTR-3B, and any claim of refund of such amount lying in balance in the e cash ledger, if any, out of the amount so deposited shall be permitted only after the return in GSTR-3B for the said quarter has been filed.

Rule 61A: Manner of opting for furnishing quarterly return

(1) Every RP intending to furnish return on a quarterly basis, shall, indicate his preference for furnishing of return on a quarterly basis, electronically, on the common portal,
 - from the 1st day of the second month of the preceding quarter till the last day of the first month of the quarter for which the option is being exercised:

Proviso: where such option has been exercised once, the RP shall continue to furnish the return on a quarterly basis for future tax periods, unless the said RP, -

- (a) becomes ineligible for furnishing the return on a quarterly basis; or
- (b) opts for furnishing of return on a monthly basis, electronically, on the common portal:

Proviso: a RP shall not be eligible to opt for furnishing quarterly return in case the last return due on the date of exercising such option has not been furnished.

(2) A RP, whose aggregate turnover exceeds 5 crore rupees during the current financial year, shall opt for furnishing of return on a monthly basis, electronically, on the common portal, from the first month of the quarter, succeeding the quarter during which his aggregate turnover exceeds 5 crore rupees.

Section 39(2) r/w rule 62: Composition dealer

Section 39(2): A RP paying tax under the provisions of section 10 shall, for each FY/part thereof, furnish, a return, electronically, of turnover in the State/UT, inward supplies of goods/services/both, tax payable and tax paid and such other particulars in such form and manner, and within such time, as may be prescribed. (Rule 62)

Rule 62: Form and manner of submission of statement and return

(1) Composition RP, furnish quarterly payment statement in CMP-08 till 18th
 Every RP paying tax under section 10 shall -

- (i) furnish a statement, every quarter or, as the case may be, part thereof, containing the details of payment of self-assessed tax in GST CMP-08, till the 18th day of the month succeeding such quarter; and
- (ii) furnish a return for every FY or, as the case may be, part thereof in FORM GSTR-4, till the 30th of June following the end of such financial year, electronically through the common portal, either directly or through a Facilitation Centre notified by the Commissioner:

(2) Composition dealer shall discharge his liability towards tax/interest through e cash ledger.

(3) Details to be furnished by composition dealer

The return furnished under sub-rule (1) shall include the—

- (a) invoice-wise inter-State & intra-State inward supplies received from RP & URPs; and
- (b) consolidated details of outward supplies made.

(4) Composition dealer, from the beginning of a FY shall, where required, furnish the details of outward and inward supplies and return under rules 59, 60 and 61 relating to the period during which the person was liable to furnish such details and returns till the due date of furnishing the return for the month of September of the succeeding financial year or furnishing of annual return of the preceding financial year, whichever is earlier.

Explanation. — Composition person shall not be eligible to avail ITC on receipt of invoices or debit notes from the supplier for the period prior to his opting for the composition scheme.

(5) On withdrawal from composition

A RP opting to withdraw from the composition scheme at his own motion/where option is withdrawn at the instance of the PO shall, where required, furnish a statement in FORM GST CMP-08 for the period for which he has paid tax under the composition scheme till the 18th day of the month succeeding the quarter in which the date of withdrawal falls and furnish a return in FORM GSTR-4 for the said period till the thirtieth day of April following the end of the financial year during which such withdrawal falls.

Section 39(3) read with rule 66: Return for tax deducted at source

Section 39(3): Every RP required to deduct tax at source shall furnish, GSTR 7 electronically, for the month in which such deductions have been made within 10 days after the end of such month.

Rule 66: Form & manner of submission of return by a person required to deduct tax at source

- (1) Every RP required to deduct tax at source under section 51 shall furnish a return in **GSTR-7** electronically through the common portal.
- (2) **The details furnished by the deductor shall be made available electronically to each of the deductees** on the common portal after filing of FORM GSTR-7 for claiming the amount of tax deducted in his electronic cash ledger after validation.
- (3) The **certificate** shall be made available electronically to the deductee on the common portal in **GSTR-7A** on the basis of the return.

Section 39(4) r/w rule 65: Return for Input Service Distributor

Section 39(4): Every taxable person registered as an ISD shall, for every calendar month or part thereof, furnish, in GSTR 6 electronically, within 13 days after the end of such month.

Rule 65: Form and manner of submission of return by an Input Service Distributor (ISD)

Every ISD shall, on the basis of details contained in FORM GSTR-6A, and where required, after adding, correcting or deleting the details,

- furnish electronically the return in FORM GSTR-6,
- containing the details of tax invoices on which credit has been received and those issued.

Note: An ISD is required to distribute both eligible as well as ineligible credit as per rule 39 of the CGST Rules, 2017.

Section 39(5) read with rule 63: Return for Non-Resident Taxable Persons

Section 39(5): Every registered non-resident taxable person shall, for every calendar month or part thereof, furnish GSTR-5, electronically, within 13 days after the end of a calendar month or within seven days after the last day of the period of registration, whichever is earlier.

Rule 63: Form and manner of submission of return by non-resident taxable person

Every registered NRTP shall furnish a return in FORM GSTR-5, including therein the details of outward supplies and inward supplies and shall pay the tax, interest, penalty, fees or any other amount payable under the Act or the provisions of this Chapter within

- twenty days after the end of a tax period or
- within seven days after the last day of the validity period of registration, whichever is earlier.

Author's comment: Although rule 63 specifies the date for filing as 20 days after the end of a tax period but as per the Section 39(5) it is 13 days after the end of a calendar month, students are advised to follow the one as per the section 39(5) of the CGST act i.e. due date for furnishing GSTR 5 shall be within

- 13 days after the end of a tax period or
- within seven days after the last day of the validity period of registration, whichever is earlier.

Section 39 Continued...

(6) Commissioner may, by notification, extend the time limit for furnishing the returns:

(7) Tax shall be paid on/before the last date of filing return

Every RP, who is required to furnish a return under sub-section (1), **except** the person referred to in the proviso thereto, or sub-section (3) or sub-section (5),

- shall pay tax due on the last date on which he is required to furnish such return:

Proviso: every RP furnishing quarterly return shall pay to the Government, in such form and manner, and within such time, as may be prescribed,--

(c) an amount equal to the tax due taking into account inward and outward supplies of goods or services or both, ITC availed, tax payable and such other particulars during a month; or

(d) in lieu of the amount referred to in clause (a), an amount determined in such manner and subject to such conditions and restrictions as may be prescribed.

Proviso: every RP furnishing return under sub-section (2) shall pay to the Government, the tax due taking into account turnover in the State or Union territory, inward supplies of goods or services or both, tax payable, and such other particulars during a quarter, in such form and manner, and within such time, as may be prescribed.

Notification No. 85/2020 - Central Tax dated 10.11.20 (For person under QRMP)

The CG, on the recommendations of the Council, hereby notifies

- the RPs, who have opted to furnish a return for every quarter or part thereof,
- as the class of persons who may, in first month/second month or both months of the quarter,
- follow the special procedure and RP may pay the tax due, by way of making a deposit of an amount in the electronic cash ledger equivalent to,
 - (i) 35% of the tax liability paid by debiting the electronic cash ledger in the return for the preceding quarter where the return is furnished quarterly; or
 - (ii) the tax liability paid by debiting the electronic cash ledger in the return for the last month of the immediately preceding quarter where the return is furnished monthly:

Proviso: no such amount may be required to be deposited

- (a) for the first month of the quarter, where the balance in the e cash ledger or e credit ledger is adequate for the tax liability for the said month or where there is nil tax liability;
- (b) for the second month of the quarter, where the balance in the electronic cash ledger or electronic credit ledger is adequate for the cumulative tax liability for the first and the second month of the quarter or where there is nil tax liability:

Proviso: RP shall not be eligible for the said special procedure unless he has furnished the return for a complete tax period preceding such month.

(8) Every RP shall furnish a return whether or not any supplies have been made during such tax period. (Nil return)

(9) Rectification of omission or incorrect particulars

Where any registered person discovers any omission or incorrect particulars therein,

- Except as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities,
- he shall rectify such omission or incorrect particulars in the return to be furnished for the month or quarter during which such omission or incorrect particulars are noticed, subject to payment of interest under this Act:

Proviso: Maximum time limit to rectify:

- 30th of November following the end of the FY to which such details pertain, or
- the actual date of furnishing of relevant annual return, whichever is earlier.

(10) A person shall not be allowed to furnish his GSTR 3B unless GSTR 3B of previous tax period or GSTR 1 for the current tax period has been furnished.

(11) Belated GSTR-3B cannot be filed after the expiry of a period of three years from the due date of furnishing said return

GSTR - 11 - Details of inward supplies of persons having UIN

(a) UIN holders shall furnish details of inward supplies in GSTR-11

Such person shall furnish the details of those inward supplies of taxable goods and/or services on which refund of taxes has been claimed in GSTR-11, along with application for such refund claim.

(b) UIN issued for purposes other than refund of taxes paid

Such person shall furnish the details of inward supplies of taxable goods and/or services as may be required by the proper officer in Form GSTR-11.

Rule 64. Form and manner of submission of return by persons providing OIDAR services & by persons supplying online money gaming from a place outside India to a person in India.

Every RP either providing

- online money gaming from a place outside India to a person in India, or
- providing OIDAR services from a place outside India to a NTOR referred to in section 14 of the IGST Act or to a RP other than a NTOR,
- shall file return in FORM **GSTR-5A**
- **on or before the twentieth day** of the month succeeding the calendar month or part thereof.

Section 40: First Return

Every registered person who has made outward supplies in the period between

- the date on which he became liable to registration
- till the date on which registration has been granted

shall declare the same in the first return furnished by him after grant of registration.

Author's comment: When a person becomes liable to registration after his turnover crossing the threshold limit of Rs 40/20/10 lakh in case of SCS, 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 & grant of RC. During the intervening period, such person might have made the outward supplies, i.e., after becoming liable to registration but before grant of the certificate of registration.

Now, in order to enable such registered person to declare the taxable supplies made by him for the period between

- the date on which he became liable to registration
- till the date on which registration has been granted

so that ITC can be availed by the recipient on such supplies, firstly, the RP may issue Revised Tax Invoices against the invoices already issued during said period within 1 month from the date of issuance of certificate of registration.

Further, section 40 provides that registered person shall declare his outward supplies made during said period in the first return furnished by him after grant of registration. The format for this return is the same as that for regular return.

Section 44: Annual Return

(1) Every RP required to file Section 39 return shall file Annual Return (except CTP)

Every RP, other than -

- an ISD, a person paying tax under Section 51 or Section 52, a CTP, and a NRTP,
- shall furnish an annual return which may include a self-certified reconciliation statement, reconciling the value of supplies declared in the return furnished for the financial year,
- with the audited annual financial statement for every financial year electronically, within such time and in such form and in such manner as may be prescribed:

Proviso: Commissioner may, exempt any class of RPs from filing annual return:

Notification

The Commissioner, on the recommendations of the Council, hereby exempts the RP whose ATO in the FY 2020-21, 21-22, 22-23, 23-24 is upto 2 crore rupees, from filing annual return for the said financial year.

Proviso: Section shall apply to any department of CG/SG/or a local authority,

- whose books of account are subject to audit by Comptroller & Auditor-General of India or
- an auditor appointed for auditing the accounts of local authorities under any law for the time being in force.

(2) Belated Annual Return and self-certified reconciliation statement cannot be filed after the expiry of a period of three years from the due date of furnishing the said annual return.

Rule 80: Annual return

(1) RP except ISD, TDS deductor, TCS collector, CTP & NRTP shall furnish AR in GSTR-9

- on/before the 31st day of December following the end of such financial year:

Proviso: a person paying tax u/s 10 shall furnish the annual return in FORM GSTR-9A.

(2) Every ECO shall furnish Annual statement in GSTR 9B

(3) RP except ISD, TDS deductor, TCS collector, CTP & NRTP

- whose ATO > 5 crores shall furnish self-certified reconciliation statement in GSTR 9C
- along with annual return on or before the thirty-first day of December following the end of such financial year.

Notification: Person supplying OIDAR services from a place outside India to a person in India, other than a RP shall not be required to furnish -

- (i) the annual return and
- (ii) the reconciliation statement.

Section 45: Final return (GSTR-10)

Final return to be furnished within 3 months of cancellation of registration:

Every registered person

- who is required to furnish a return under section 39(1) and
- whose registration has been cancelled

shall furnish a final return, in such form and manner as may be prescribed within 3 months of—

- the date of cancellation, or
- date of order of cancellation,

Whichever is later.

Section 46: Notice to return defaulters

Where a RP fails to furnish a return under section 39 or section 44 or section 45,

- a notice shall be issued requiring him to furnish such return
- within fifteen days
- in such form (GSTR 3A) and manner as may be prescribed (Rule 68).

Rule 68: Notice to non-filers of returns: A notice in FORM GSTR-3A shall be issued, to a RP who fails to furnish return u/s 39/44/45/52.

Section 47: Levy of late fee

(1) Any RP who fails to furnish GSTR 1/or returns required u/s 39/Section 45/Section 52

- by the due date shall pay a late fee of Rs. 100 for every day
- during which such failure continues
- subject to a maximum amount of Rs. 5,000

(2) Any RP who fails to furnish the return required under section 44

- by the due date shall be liable to pay a late fee of Rs. 100 for every day
- subject to a maximum of an amount calculated at a quarter % of his turnover in the State/UT.

However the late fees has been reduced by the government, Summary has been given below

Late fees per day and Maximum late fees reduced (Vide various notification) - Summary

Sl No.	Registered Person	Return	Late fee per day (CGST)	Maximum late fees (CGST)
1	Normal RP (Nil Return)	GSTR 1/3B	Rs. 10 Per day	250
	Normal RP (Other than Nil) (ATO upto 1.5 cr in PFY)	GSTR 1/3B	Rs. 25 Per day	1,000
	Normal RP (Other than Nil) (ATO > 1.5 ≤ 5 cr in PFY)	GSTR 1/3B	Rs. 25 Per day	2,500
	Normal RP (Other than Nil) (ATO > 5 cr in PFY)	GSTR 1/3B	Rs. 25 Per day	5,000
2	Composition RP (Nil Return)	GSTR 4	Rs. 10 Per day	250
	Composition RP (other than Nil)	GSTR 4	Rs. 25 Per day	1,000
3	NRTP (Nil Return)	GSTR 5	Rs. 10 Per day	5,000
	NRTP (Other than Nil)	GSTR 5	Rs. 25 Per day	5,000
4	Input Service Distributor (ISD) (Nil/other return)	GSTR 6	Rs. 25 Per day	5,000
5	TDS Deductor	GSTR 7	Rs. 25 Per day	1,000
6	TCS Collector	GSTR 8	Rs. 100 Per day	5,000

Rationalisation of late fee for GSTR - 9 [NNo. 07/2023 CT- dt 31.03.2023]

Sl No	Class of registered persons	Amount
1	RP having an ATO up to Rs. 5 crores in the relevant FY	Rs. 25 per day, subject to a maximum of 0.02% of the Turnover in state/UT
2	RP having an ATO of more than Rs. 5 crores up to 20 crores in the relevant FY	Rs. 50 per day, subject to a maximum of 0.02% of the Turnover in state/UT
3	RP having an ATO of more than 20 crores in the relevant FY	Rs 100 per day subject to maximum of 0.25% of turnover in the State/UT.

Section 150: Obligation to furnish information return.

Information return is based on the idea of verifying the compliance levels of registered persons through information procured from independent third-party sources.

(1) Who shall furnish the information return? [Section 150(1)]

Any person, being—

- a taxable person; or
- a local authority or other public body or association; or

- (c) any authority of the SG responsible for the collection of VAT/ST/SED or an authority of the CG responsible for the collection of ED or customs duty; or
- (d) An income-tax authority
- (e) a banking companies
- (f) A State Electricity Board/an electricity distribution or transmission licensee, or any other entity entrusted with such functions by the CG/SG or
- (g) Registrar or Sub-Registrar
- (h) Registrar within the meaning of the Companies Act, 2013; or
- (i) Registering authority empowered to register motor vehicles under the MV Act, 1988; or
- (j) Collector referred to in clause (g) of section 3 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013; or
- (k) Recognized stock exchange
- (l) Depository
- (m) Officer of the RBI
- (n) GSTN; or
- (o) UIN Holder; or
- (p) any other person as may be specified.

who is responsible for maintaining record of registration or statement of accounts or any periodic return or document containing details of payment of tax and other details of transaction of goods or services or both or transactions related to a bank account or consumption of electricity or transaction of purchase, sale or exchange of goods or property or right or interest in a property under any law for the time being in force, shall furnish an information return of the same in respect of such periods, within such time, in such form and manner and to such authority or agency as may be prescribed.

(2) Defective Information Return

Where the Commissioner, or an officer authorized by him in this behalf, considers that the information furnished in the information return is defective, he may intimate the defect to the person who has furnished such information return and give him an opportunity of rectifying the defect within a period of thirty days from the date of such intimation or within such further period which, on an application made in this behalf, the said authority may allow and if the defect is not rectified within the said period of thirty days or, the further period so allowed, then, notwithstanding anything contained in any other provisions of this Act, such information return shall be treated as not furnished and the provisions of this Act shall apply.

(3) Issuance of notice for failure to furnish the information return within stipulated time

Where a person who is required to furnish information, return has not furnished the same within the time specified in sub-section (1) or sub-section (2), the said authority may serve upon him a notice requiring furnishing of such information return within a period not exceeding

ninety days from the date of service of the notice and such person shall furnish the information return.

Section 123: Penalty for failure to furnish information return.

If a person who is required to furnish an information return u/s 150 fails to do so within the period specified in the notice issued under sub-section (3) thereof, the PO may direct that such person shall be liable to pay a penalty of Rs. 100 for each day of the period during which the failure to furnish such return continues:

Provided that the penalty imposed under this section shall not exceed five thousand rupees.

Author's comment: Penalty of Rs 100 per day up to Rs. 5,000 max (CGST).

Clarification on Quarterly Return Monthly Payment Scheme. Circular No. 143/13/2020-GST dt. 10.11.20 (QRMP Scheme)

Eligibility for the Scheme:

- A RP who is required to furnish a return in FORM GSTR-3B, and who has an ATO of up to 5 cr in the PFY, is eligible for the QRMP Scheme.
- ATO for the PFY shall be calculated in the common portal taking into account the details furnished in the returns by the taxpayer for the tax periods in the PFY.
- Further, in case the ATO exceeds Rs. 5 cr during any quarter in the CFY, the RP shall not be eligible for the Scheme from the next quarter.

Exercising option for QRMP Scheme:

- Facility to avail the Scheme on the common portal would be available throughout the year.
- In terms of rule 61A a RP can opt in for any quarter from first day of second month of preceding quarter to the last day of the first month of the quarter.
- In order to exercise this option, the RP must have furnished the last return, as due on the date of exercising such option.

Continuance of Option: Option once exercised shall continue till revised

Option to avail the QRMP Scheme is GSTIN wise and therefore, distinct persons (different GSTINs on same PAN) have the option to avail the QRMP Scheme for one or more GSTINs. In other words, some GSTINs for that PAN can opt for the QRMP Scheme and remaining GSTINs may not opt for the Scheme.

Furnishing of details of outward supplies under section 37 of the CGST Act.

The RPs opting for QRMP Scheme would be required to furnish the details of outward supply in GSTR-1 quarterly as per the rule 59 of the CGST Rule.

Understanding IFF Facility

- RPs can use the Invoice Furnishing Facility (IFF) to provide details of outward supplies for the first and second months of a quarter from the 1st to the 13th day of the following month.
- The value of outward supplies furnished using IFF should not exceed Rs. 50 lakhs per month.
- IFF facility for a month is unavailable after the 13th of the following month.
- Continuous upload of invoices is available from the 1st to the 13th day of the succeeding month.
- Details provided in IFF will reflect in GSTR-2A and GSTR-2B of the recipient.
- It is re-iterated that said facility is not mandatory and is only an optional facility made available to the registered persons under the QRMP Scheme.

Details of Invoices furnished in IFF need not be furnished again in GSTR 1

- Invoices furnished using the Invoice Furnishing Facility (IFF) in the first two months do not need to be furnished again in FORM GSTR-1.
- The quarterly details of outward supplies will include invoices furnished using IFF for the first two months and those furnished in FORM GSTR-1 for the quarter.
- RPs have the option to furnish all details of outward supplies in GSTR-1 for the quarter without using the IFF.

Monthly Payment of Tax: FSM or SAM

- Registered Persons (RPs) under the QRMP Scheme must pay tax due for the first two months of the quarter using GST PMT-06 by the 25th day of the following month.
- Select "Monthly payment for quarterly taxpayer" when generating the challan.

Following two options provided below for monthly payment of tax during the first two months -

- (a) **Fixed Sum Method (FSM):** Pre-filled challan in FORM GST PMT-06 for an amount equal to 35% of the tax paid in cash in the preceding quarter (quarterly return) or the last month of the preceding quarter (monthly return).
- (b) **Self-Assessment Method:** The said persons, can pay the tax due by considering the tax liability on inward and outward supplies and the ITC available, in GST PMT-06. In order to facilitate ascertainment of the ITC available for the month, an auto-drafted ITC statement has been made available in FORM GSTR 2B, for every month.

Deposit not required to be made in case of adequate balance in e cash/credit ledger

- If the balance in the electronic cash or credit ledger is enough for the tax due for the first month of the quarter, or if there is no tax liability, the Registered Person (RP) doesn't need to deposit any amount for that month.

- Similarly, for the second month of the quarter, if the balance in the electronic cash or credit ledger covers the cumulative tax due for the first and second months, or if there is no tax liability, the RP doesn't need to deposit any amount.

Refund of deposit made in the first 2 Quarters only after 3B of the quarter is filed & deposit cannot be used for any other purpose till the filing of return for the quarter

Quarterly filing of FORM GSTR-3B

- Registered Persons (RPs) must file GSTR-3B for each quarter by the 22nd or 24th of the month following the quarter.
- GSTR-3B should include details of supplies made, ITC availed, and other necessary information for the quarter.
- Amounts deposited in the first two months are used to offset the liability in that quarter's GSTR-3B.
- Any remaining amount after filing GSTR-3B can be claimed as a refund or used in subsequent quarters.
- If registration is cancelled during the first two months of the quarter, the RP must still file GSTR-3B for the relevant tax period.

Applicability of Interest

For registered person making payment of tax by opting Fixed Sum Method

No Interest Payable:

- If tax due for the first two months is paid by depositing the auto-calculated fixed sum by the due date, no interest is charged.
- If the tax liability in FORM GSTR-3B is higher than the amount paid in challan, no interest is charged if the system-calculated amount is deposited for each of the first two months and the entire liability for the quarter is discharged by the due date.

Interest Payable:

- In case such payment of tax by depositing the system calculated amount in GST PMT-06 is not done by due date, interest would be payable at the applicable rate, from the due date of furnishing FORM GST PMT-06 till the date of making such payment.
- Further, in case FORM GSTR-3B for the quarter is furnished beyond the due date, interest would be payable as per the provisions of Section 50 of the CGST Act for the tax liability net of ITC.

For registered person making payment of tax by opting Self-Assessment Method

Interest amount would be payable as per the provision of Section 50 of the CGST Act for tax or any part thereof (net of ITC) which remains unpaid / paid beyond the due date for the first two months of the quarter. Interest payable, if any, shall be paid through FORM GSTR-3B

Applicability of Late Fee

- Late fee applies for delays in furnishing returns/details of outward supplies as per Section 47 of the CGST Act.
- Late fees are applicable for delays in filing the quarterly return/details of outward supply.
- No late fee is applicable for delays in tax payment in the first two months of the quarter.

Goods and services tax practitioners (GSTP)

An application in GST PCT-01 may be made through the common portal for enrolment as goods and services tax practitioner by any person who,

- (i) is a citizen of India;
 - (ii) is a person of sound mind; s
 - (iii) is not adjudicated as insolvent;
 - (iv) has not been convicted by a competent court;
- and satisfies any of the following conditions, namely: –
- (a) that he is a retired officer of the Commercial Tax Department of any SG/ CBIC, Department of Revenue, GOI, who, during his service under the Government, had worked in a post not lower than the rank of a Group-B gazetted officer for a period of not less than two years; or
 - (b) that he has enrolled as a sales tax practitioner or tax return preparer under the existing law for a period of not less than five years;
 - (c) he has passed,
 - (i) a graduate/postgraduate degree/its equivalent examination having a degree in Commerce, Law, Banking including Higher Auditing/Business Administration/Business Management from any Indian University established by any law for the time being in force; or
 - (ii) a degree examination of any Foreign University recognized by any Indian University as equivalent to the degree examination mentioned in sub-clause (i); or
 - (iii) any other examination notified by Government, on recommendation of the Council; or
 - (iv) has passed any of the following examinations, namely: –
 - (a) final examination of the Institute of Chartered Accountants of India; or
 - (b) final examination of the Institute of Cost Accountants of India; or
 - (c) final examination of the Institute of Company Secretaries of India.

Functions of GSTP [Mnemonic - REJECTS]

A GSTP can undertake any/all of the following activities on behalf of a RP, if so, authorized-

- (a) **R** - file an application for amendment or cancellation of **registration**;
- (b) **R** - furnish monthly, quarterly, annual or final **return**;
- (c) **R** - file a claim for **refund**;
- (d) **E** - furnish information for generation of **e-way bill**;

- (e) **J** - furnish details of challan in FORM GST ITC-04; (**Job work**)
- (f) **E** - file an application for amendment or cancellation of **enrolment** under rule 58; and
- (g) **C** - file an intimation to pay tax under the **composition scheme** or withdraw from the said scheme.
- (h) **T** - make deposit for credit into the electronic cash ledger; (**tax deposit**)
- (i) **S** - furnish the details of outward supplies (GSTR -1); [**Statement of outward supplies**]

Introduction

Advance ruling means

- a decision provided by the Authority or the Appellate Authority to an applicant
- on matters or on questions specified in section 97(2) or section 100(1),
- in relation to the supply of goods/services/both being undertaken or
- proposed to be undertaken by the applicant;

Applicant means

- any person registered or
- desirous of obtaining registration under this Act;

Objectives for setting up a mechanism of Advance Ruling are:

- (a) Provides certainty in tax liability in advance
- (b) Reduce litigation
- (c) Transparent and inexpensive process
- (d) Speedy decisions

Section 96: Authority for advance ruling

The Authority for AR constituted under the provisions of a SGST/UTGST Act shall be deemed to be the Authority for AR in respect of that State or Union territory.

Section 97: Application for advance ruling

(1) An applicant desirous of obtaining an advance ruling may make **an application in GST ARA-01** online accompanied by fee of **Rs 5000, stating the question** on which advance ruling is sought.

(2) The questions on which advance ruling can be sought [Mnemonic: CAR - LIST]

- **C** - classification of any goods or services or both;
- **A** - applicability of a notification issued under the provisions of this Act;
- **R** - whether applicant is required to be **registered**;
- **L** - determination of the **liability** to pay tax on any goods or services or both;
- **I** - admissibility of **input tax credit** of tax paid or deemed to have been paid;
- **S** - Whether an action taken by the applicant regarding any goods, services, or both constitutes a **supply**.
- **T** - determination of **time and value** of supply of goods or services or both;

Section 98: Procedure on receipt of application

(1) Action of authority on receipt of application

- the Authority shall forward a copy to the concerned officer and,
- if necessary, call upon him to furnish the relevant records:
- **Proviso:** Records received shall, as soon as possible, be returned to the concerned officer.

(2) Admission/rejection order

The Authority, after reviewing the application and records, and hearing from both the applicant (or their representative) and the concerned officer (or their representative), will decide to **either admit or reject the application through an order.**

Proviso:

1. the Authority shall not admit the application where
 - the question raised in the application is already pending or
 - decided in any proceedings in the case of an applicant under any provisions of this act
2. Application shall not be rejected without giving an opportunity of being heard to applicant
3. In case application is rejected, the reasons for rejection shall be specified in the order.

(3) A Copy of admission/Rejection order to be sent to applicant & concerned officer(4) AAR shall examine material and provide OBH before pronouncing AR

Once an application is admitted, the Authority will examine additional materials provided by the applicant or obtained by the Authority. After giving a hearing opportunity to both the applicant (or their representative) and the concerned officer (or their representative), the Authority will pronounce its advance ruling on the specified question.

(5) If the members of the Authority differ on any question regarding the advance ruling, they will note the points of difference & refer the matter to the Appellate Authority for hearing.

(6) The Authority shall pronounce its advance ruling in writing **within ninety days** from the date of receipt of application.

(7) After the Authority pronounces the advance ruling, a signed and certified copy will be sent to the applicant, the concerned officer, and the jurisdictional officer.

Rule 105: Certification of copies of advance rulings pronounced by the Authority

A copy of the AR shall be certified to be a true copy of its original by any member of the AAR.

Section 99: Appellate Authority for Advance Ruling (AAAR)

The AAAR constituted under the provisions of a SGST/UTGST Act shall be deemed to be the Appellate Authority in respect of that State/UT.

Section 100: Appeal to Appellate Authority

- (1) The concerned officer, the jurisdictional officer or an applicant **aggrieved** by any advance ruling pronounced, may appeal to the Appellate Authority.
- (2) Appeal shall be filed within 30 days from date of communication of AR
Proviso: the AAAR may allow further period not exceeding thirty days.
- (3) Every appeal shall be in **GST ARA - 02/03**, accompanied by **fee of Rs. 10,000**.

Rule 106: Form and manner of appeal to the Appellate Authority for Advance Ruling

- (1) Appeal to AAAR shall be made by an **applicant GST ARA-02** and shall be accompanied by a **fee of Rs. 10,000** to be deposited.
- (2) Appeal to AAAR by **Concerned/jurisdictional officer in GST ARA-03** and **no fee** shall be payable by the said officer.
- (3) The **appeal**, the verification contained therein & all the relevant documents accompanying such appeal shall be **signed**, –
 - (a) in the case of the concerned officer or jurisdictional officer, by an officer authorised in writing by such officer; and
 - (b) in the case of an applicant.

Section 101: Orders of Appellate Authority

- (1) The Appellate Authority may, after giving the parties to the appeal/reference an opportunity of being heard, pass such order as it thinks fit, confirming/modifying the ruling.
- (2) AAAR shall pass order within 90 days from the date of filing of the appeal/ reference.
- (3) In case of difference of opinion between members of AAAR, it shall be deemed that no advance ruling can be issued in respect of the question under the appeal or reference.

(4) AAAR order shall be signed, certified and sent to applicant, concerned, jurisdictional officer & AAR.

Section 102: Rectification of advance ruling

- The AAR or AAAR can amend orders to correct apparent errors, either noticed by itself or brought to its attention by relevant parties within **six months of the order**.
- However, no rectification that increases tax liability or reduces input tax credit shall be made without giving the applicant or appellant an opportunity to be heard (OBH).

Section 103: Applicability of advance ruling

Binding Nature: The advance ruling is binding only on:

- **The applicant who sought it** regarding any matter under section 97(2).

Conditions for Binding: The advance ruling remains binding unless there are **changes in the law, facts, or circumstances** that supported the original ruling.

Section 104: Advance ruling to be void in certain circumstances

(1) AAR/AAAR can declare an advance ruling void **if it was obtained through fraud, suppression of facts, or misrepresentation**. All related provisions will then apply as if the ruling was never made.

Proviso: An order will only be passed after giving the applicant an opportunity to be heard.

Explanation: The period from the date of the advance ruling to the date of the voiding order is excluded when calculating the time limits under sections 73 and 74.

(2) A copy of the voiding order shall be sent to the applicant, concerned officer, and jurisdictional officer.

Section 105: Powers of Authority and Appellate Authority

The AAR/AAAR shall, for the purpose of exercising its powers regarding—

- (a) discovery and inspection;
 - (b) enforcing the attendance of any person and examining him on oath;
 - (c) issuing commissions and compelling production of books of account and other records,
- have all the powers of a civil court under the Code of Civil Procedure, 1908.