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Ultimate Guide To Indirect Tax Laws



6th Edition

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CA AKSHANSH GARG

CA FINAL: INDIRECT TAX LAWS

SUMMARY BOOK

FOR MAY 2025 / NOV 2025

BY CA AKSHANSH GARG

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PREFACE

I am thankful to everyone – my colleagues in the CA industry, my students and most importantly the readers of this book who have shared their thoughts about the previous edition. Their recommendations inspired me to bring out the 6th edition with more energy and enthusiasm.

This edition contains:

- 100% coverage of ICAI's Syllabus.
- Entire GST & Customs Revision
- Tables & Charts for Easy Understanding
- Summarized Points for Quick Recap
- Updated with all Amendments upto 31st October 2024

In the last few years, I have been training students for CA Examinations and I have not come across a single summary book for Indirect Tax Laws that puts adequate emphasis on all topics. Hence, I decided to write a book that would cater to full coverage of topics and at the same time reflect the changing patterns of examination.

While curating this book, I have paid utter attention to avoid including inappropriate or non-relevant topics, Also, I have explicitly emphasized keeping the language as simple as possible.

Although I have tried to be meticulous in preparing this book, some human errors may have crept in. I would be highly grateful if any of the readers would like to contribute to enhancing the value of this book by providing their suggestions or bringing up to our notice the errors if any so that subsequent editions can be corrected. You can reach me at akgidtclasses@gmail.com

Good Luck!!

Best Regards,

CA Akshansh Garg

(Author)

ACKNOWLEDGEMENT

This book bears the engraving of many - my family, my students and my colleagues who have made an impact on my thought process and have generously extended what I strive for.

I am especially thankful to my Parents, for all your support, care, sacrifices & valuable advices and positive appreciation.

I owe thanks to my brother for his continued & unfailing support to me throughout this journey.

Writing a book is harder than I thought and more rewarding than I could have imagined, none of these would have been possible, without my team – Keyur Pithwa & Shweta Patil, they stood by me during every struggle being the backbone of this process and AKG.

I extend my heartfelt thanks to all my students – past & present, who have helped me to improve the content and the presentation of the book.

And most importantly, to the Almighty God, for giving me strength and knowledge for making this book.

I may have forgotten a few names here. I wish to express my gratitude towards all who have contributed to the development of this book.

Believe in yourself! Have faith in your abilities. Without a humble but reasonable confidence in your own powers, you cannot be successful. My best wishes are always there for you all.

Hope you have a phenomenal journey with this book. Also, you can share your positive and constructive views with me. Hoping to listen from you soon.

Thanks, Everyone!!

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GST Introduction

- Introduced on 1st July 2017 through Constitution (101st Amendment) Act, 2016
- France was the first country to implement VAT/GST in 1954.
- GST is applicable to whole of India including J&K.

CONCEPT OF GST

- GST is a value-added tax levied on supply i.e., manufacture or sale of goods and provision of services.
- Comprehensive and continuous chain of tax credits (Credit available to every supplier at every chain)
- Burden borne by the final consumer.
- No cascading effect of taxes.

DEFICIENCIES IN THE OLD SYSTEM

- Non-inclusion of several local levies in State VAT such as luxury tax, entertainment tax, etc.
- Cascading of taxes on account of
  1) Levy of Non-VAT able CST and
  2) Inclusion of CENVAT in the value for imposing a VAT.
- No CENVAT after the manufacturing stage.
- Non-integration of VAT and Service Tax.
- Double taxation of certain transactions as both goods and services.

DUAL GST MODEL

- India has adopted a Dual GST model i.e.; Centre and States simultaneously levy GST on taxable supply of goods or services.

  GST is a destination-based tax (in which state goods/service are consumed that state govt. would get the GST)

Nature of Supply	Applicability
Intra State supply	• Supply within 28 states or 3 UTs having State Legislature (Delhi, Puducherry & J&K) (CGST+SGST) • Supply within 5 UTs without State Legislature (Andaman and Nicobar Islands, Lakshadweep, Ladakh, Dadra and Nagar Haveli & Daman and Diu and Chandigarh) (CGST+UTGST)
Inter-State supply	• Supply between States/ UTs (IGST)

ORDER OF UTILISATION OF CREDIT

INWARD SUPPLY	OUTWARD SUPPLY
IGST	• First IGST • Then CGST & SGST (Any order)
CGST	• CGST & IGST (Any order)
SGST	• SGST & IGST (Any order)
UTGST	• UTGST & IGST (Any order)

Note : CGST credit can not be used for SGST/UTGST and vice-a-versa.

TAXES SUBSUMED IN GST

Central Taxes →

- Central Excise Duty & Additional Excise Duties
- Service Tax
- Excise Duty under Medicinal & Toilet Preparation Act, 1955
- CVD & Special CVD
- Central Sales Tax
- Central surcharges & cesses in so far as they relate to supply of Goods & services.

State Taxes

- State surcharges and cesses in so far as they relate to supply of goods & services
- Entertainment Tax (except those levied by local bodies)
- Tax on lottery, betting and gambling
- Entry Tax (All Forms) & Purchase Tax
- VAT / Sales tax
- Luxury Tax
- Taxes on advertisements

GST: TAX ON GOODS & SERVICES

GST is levied on all goods and services, except alcoholic liquor for human consumption & petroleum crude, diesel, petrol, ATF and natural gas.

- Alcoholic liquor for human consumption: is outside the realm of GST. The manufacture/production of alcoholic liquor continues to be subjected to State excise duty and inter-State/intra-State sale of the same is subject to CST / VAT respectively.

- Petroleum crude, diesel, petrol, ATF and natural gas: As regards petroleum crude, diesel, petrol, ATF and natural gas are concerned, they are not presently leviable to GST. GST will be levied on these products from a date to be notified on the recommendations of the GST Council.

  Till such date, central excise duty continues to be levied on manufacture/production of petroleum crude, diesel, petrol, ATF and natural gas and inter-State/intra-State sale of the same is subject to CST / VAT respectively.

- Tobacco: Tobacco is within the purview of GST, i.e., GST is leviable on tobacco. However, Union Government has also retained the power to levy excise duties on tobacco and tobacco products manufactured in India. Tobacco is subject to GST as well as central excise duty.

- Opium, Indian hemp and other narcotic drugs and narcotics: Opium, Indian hemp and other narcotic drugs and narcotics are within the purview of GST, i.e., GST is leviable on them. However, State Governments have also retained the power to levy excise duties on such products manufactured in India. Resultantly, Opium, Indian hemp and other narcotic drugs and narcotics are subject to GST as well as State excise duties.

- Real estate sector has been kept out of ambit of GST, i.e., GSTwill not be levied on sale/purchase of immovable property.

Goods	GST	Excise Duty	CST / VAT
Alcoholic liquor for human consumption	x	✓	✓
Petroleum crude, diesel, petrol, ATF, natural gas	x	✓	✓
Tobacco	✓	✓	x
Opium, Indian hemp & other narcotic drugs & narcotics	✓	✓	x

BENEFITS OF GST

- Creation of unified national market
- Boost to 'Make in India' initiative
- Enhanced investment and employment
- Ease of doing business
- Mitigation of ill effects of cascading
- Benefits to small traders and entrepreneurs

GST COMMON PORTAL

❖ GST being a **destination-based tax,** the inter-State trade of goods and services (IGST) needed a robust settlement mechanism amongst the States and the Centre. A Common Portal was needed which could act as a clearing house & verify the claims and inform the respective Governments to transfer the funds.

❖ **Resultantly, Common GST Electronic Portal** – **www.gst.gov.in** – a website managed by Goods and Services Network (GSTN) [a wholly owned Government Company] is set by the Government to establish a uniform interface for the tax payer and a common and shared IT infrastructure between the Centre & States.

❖ The GST portal is accessible over Internet (by taxpayers and their CAs/Tax Advocates etc.) & Intranet by Tax Officials etc. The portal is one single common portal for all GST related services.

❖ A common GST system provides linkage to all State/ UT Commercial Tax Departments, Central Tax authorities, Taxpayers, Banks and other stakeholders. The eco-system consists of all stakeholders starting from taxpayer to tax professional to tax officials to GST portal to Banks to accounting authorities.

Functions of GSTN:

- facilitating registration;
- forwarding the returns to Central and State authorities;
- computation and settlement of IGST;
- matching of tax payment details with banking network;
- providing various MIS reports to the Central and the State Governments based on the taxpayerreturn information;
- providing analysis of taxpayers' profile.

❖ Common GST Electronic Portal for furnishing electronic way bill is **www.ewaybillgst.gov.in** [managed by the National Informatics Centre, Ministry of Electronics & Information Technology, Government of India]. E-way bill is an electronic document generated on the GST portal evidencing movement of goods.

- Further, Invoice Registration Portal (IRP) is the website for uploading/reporting of e-invoices by the notified persons*. It is managed by the National Informatics Centre, Ministry of Electronics & Information Technology, Government of India.

  * All registered businesses with an aggregate turnover (based on PAN) in any preceding financial year from 2017-18 onwards **greater than ₹ 5 crores** are required to issue e-invoices.

GSPs/ASPs

- GSTN has selected certain Information Technology, Information Technology enabled Services and financial technology companies, to be called GST Suvidha Providers (GSPs).
- GSPs have access to GST System and have the capability to develop applications to be used by taxpayers for interacting with the GSTN.
- GSP develops applications having features like –
  - return filing,
  - reconciliation of purchase register data with auto populated data for acceptance/rejection/modification,
  - dashboards for taxpayers for quick monitoring of GST compliance activities,
  - provide role-based access to divide various GST related activities like uploading invoice, filing returns etc. among different set of users inside a company (medium or large companies will need it),
  - applications for tax professional to manage their client's GST compliance activities,
  - integration of existing accounting packages/ERP with GST system, etc.
- GSP is an additional channel being made available for facilitating the taxpayers for performing some of the functions and use of their services is optional. GSPs may take the help of Application Service Providers (ASPs) who act as a link between taxpayers and GSPs.

COMPENSATION CESS

A GST Compensation Cess at specified rate is imposed under the Goods and Services Tax (Compensation to States) Cess Act, 2017 on the specified luxury items or demerit goods, like pan masala, tobacco, aerated waters, motor cars etc., computed on value of taxable supply.

Compensation cess is leviable on intra-State supplies and inter-State supplies with a view to provide for compensation to the States for the loss of revenue arising on account of implementation of the GST. Initially, it was levied for a period of 5 years upto 30th June, 2022. However, its levy and collection has been extended till **31st March, 2026.**

Compensation is to be provided to a State for a period of 5 years from the date on which the State brings its SGST Act into force.

SUPPLY UNDER GST

RELEVANT DEFINITIONS

- **GOODS:**

  Means every kind of movable property other than money and securities but includes
  - 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.

- **SERVICES:**

  Means anything other than goods, money and securities but includes
  - activities relating to the use of money or its conversion by cash or
  - by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.

Note: Money and securities are not part of both goods and services, but the use of money is considered as a service.

For example, Mr. Keyur paid ₹ 50,500 to a bank for a Demand Draft (DD). The bank issued a DD worth ₹ 50,000.

In this example:

- ₹ 500 paid as DD making charges is considered a supply of services.
- ₹ 50,000 is considered "money" and hence is not included in goods or services.

- **CONSIDERATION:**

  In relation to the supply of goods or services or both includes:

  - Any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the CG or a SG.

  - The monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the CG or SG.

Examples

Situation	Consideration?
Pizza received for a watch	Yes
Non-compete fees paid by a CA to his qualified article, not to take its client and compete in the same field	Yes
Complimentary food offered by a restaurant to a bus driver/conductor as an inducement for getting customers at their restaurant	Yes

- Future/forward contracts are part of securities, but the brokerage on such transactions is considered a supply of services.

- Made a Fixed Deposit (FD) of ₹ 10 lakhs and received ₹ 10.8 lakhs on maturity. In this case:
  - ₹ 10 lakhs is considered "money" and is not included in goods or services.
  - ₹ 80,000 earned is from the use of money and is hence considered a service.

- Advance given for the supply of goods or services is considered as consideration, but security money (refundable) deposited is not considered as consideration.

- **BUSINESS:**

Includes-

- Any trade, commerce, manufacture, profession, vocation, adventure, wager irrespective of its volume, frequency, continuity, or regularity of such transaction;
- Provision by a club, association, society, to its members,
- Admission, for a consideration, of persons to any premises; and
- Activities of a race club including by way of totalisator or a license to book maker or activities of a licensed book maker in such club
- Any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities.

- **RECIPIENT:**

a) where a consideration is payable - for the supply of goods or services or both, the person who is liable to pay that consideration,

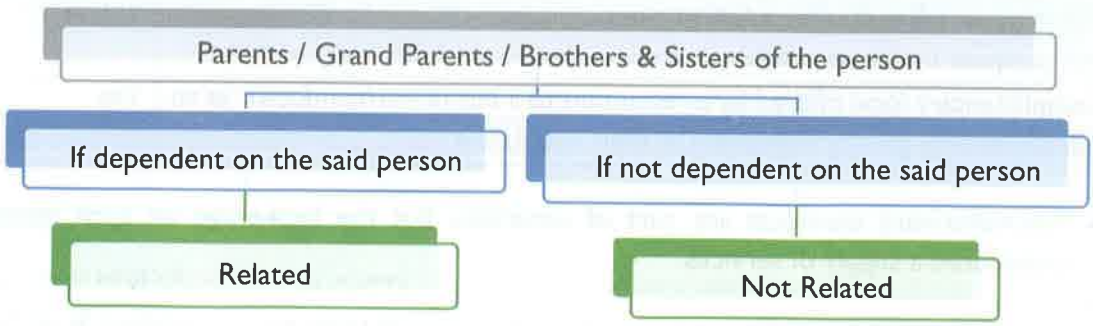
b) where no consideration is payable - for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available, and

c) where no consideration is payable for the supply of a service - the person to whom the service is rendered.

- **FAMILY:**

  Means, —

  - the spouse and children of the person - always related



  - If the question is silent, always assume dependent.
  - If the question gives hints like "well settled," "runs his own factory," etc., then assume independent.

- **ONLINE GAMING:** means offering of a game on the internet or an electronic network and includes online money gaming.

- **ONLINE MONEY GAMING:** means online gaming in which players pay or deposit money or money's worth, including virtual digital assets, in the expectation of winning money or money's worth, including virtual digital assets, in any event including game, scheme, competition or any other activity or process, whether or not its outcome or performance is based on skill, chance or both and whether the same is permissible or otherwise under any other law for the time being in force.

- **SPECIFIED ACTIONABLE CLAIM:** means the actionable claim involved in or by way of betting, casinos, gambling, horse racing, lottery, or online money gaming. Further, the applicable rate of GST on specified actionable claims is 28%.

- **VIRTUAL DIGITAL ASSET:** shall have the same meaning as assigned to it in clause (47A) of section 2 of the Income-tax Act, 1961.

- **SUPPLIER:** in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied;

  Provided that a person who organises or arranges, directly or indirectly, supply of specified actionable claims, including a person who owns, operates or manages digital or electronic platform for such supply, shall be deemed to be a supplier of such actionable claims, whether such actionable claims are supplied by him or through him & whether consideration in money or money's worth, including virtual digital assets, for supply of such actionable claims is paid or conveyed to him or through him or placed at his disposal in any manner, and all the provisions of this Act shall apply to such supplier of specified actionable claims, as if he is the supplier liable to pay the tax in relation to the supply of such actionable claims.

CONCEPT OF SUPPLY [SECTION 7 OF CGST ACT]

Section 7	Meaning and scope of supply
Schedule I	Activities to be treated as supply even if made without consideration (Deemed Supply)
Schedule II	Activities or transactions to be treated as supply of goods or as supply of services
Schedule III	Activities or transactions which shall be treated **neither as supply of goods nor as supply of services.**
Section 8	Taxability of composite and mixed supplies

SECTION 7: MEANING AND SCOPE OF SUPPLY

7(1) Supply includes-

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.**

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.

b. **Importation of services**, for a consideration **whether or not in the course or furtherance of business,** and

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

7(1A) 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 or supply of services as referred to in Schedule II.

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 Central Government, a State Government 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.**

PARAMETERS OF SUPPLY

Supply should be of goods or services. Supply of anything other than goods or services like money, securities etc. does not attract GST.

Supply should be made for a consideration.

Supply should be made in the course or furtherance of business.

SUPPLY

Includes
- Supply for consideration in course or furtherance of business [Sec 7(1)(a)]
- Activities / transactions, by a person, other than an individual, to its members or constituents for valuable consideration [Sec 7(1)(aa)]
- Importation of services for consideration whether or not in course or furtherance of business [Sec 7(1)(b)]
- Supply without consideration - Deemed Supply [Sec 7(1)(c) r.w. Schedule I]

Excludes
- Negative list [Sec 7(2) + Schedule III]

Examples:

1. Rishabh buys a car for his personal use and after a year sells it to a car dealer. Sale of car by Rishabh to car dealer is not a supply under CGST Act because said supply is not made by Rishabh in the course or furtherance of business.
2. Manikarnika sold her old gold bangles and earrings to 'Aabhushan Jewellers.' Sale of old gold jewellery by an individual to a jeweller will not constitute supply as the same cannot be said to be in the course or furtherance of business of the individual.

IMPORTANT CIRCULARS

1. Donations received by charitable institutions from individual donors without quid pro quo i.e., nothing is to be done by donee in return

   GST is not levied when below 3 conditions are satisfied: -

Gift/donation is made to charitable organization	Payment has the character of gift or donation	Purpose is philanthropic & not for advertisement

   Example: -

   Mr. X of UP (owner of publishing house) donated bench to hospital.

   - If it is written on bench "Donated by Mr. X" → No advertisement → No Supply (Because no consideration)
   - If is written on bench "Donated by Mr. X Publishing House, UP" → Advertisement → Supply

2. Art works sent by artists to galleries for exhibition is not a supply as no consideration flows from the gallery to the artists.

3. Service by way of grant of alcoholic liquor license, against consideration in the form of license fee or application fee or by whatever name it is called (valid on alcoholic licence only, not on other licences) will not be treated as Supply.

4. **'No Claim Bonus' offered by an insurance company to the insured**

No supply of service by the insured to the insurance company in lieu of 'No Claim Bonus' offered by said insurance company to him.

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

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

5. **Financial Transactions:**

- **GST implications on future contracts**: They are in the nature of derivatives and qualify as "securities", hence are not liable for GST. However, where the future contracts having a delivery option would be treated as normal supply of goods and liable to GST.
- **GST implications on forward contracts:**
  - If settlement takes place by way of actual delivery – Supply of goods – Liable for GST.
  - If settlement takes place by way of net settlement – Considered as securities – No GST.

ANALYSIS OF SEC 7(1)(a): SUPPLY FOR CONSIDERATION IN COURSE OR FURTHERANCE OF BUSINESS (BOTH GOODS & SERVICES)

- all forms of supply of goods or services or both such as **sale, transfer, barter, exchange, license, rental, lease or disposal**
- made or agreed to be made
- for consideration
- in course or furtherance of business.

ANALYSIS OF SEC 7(1)(b): IMPORT OF SERVICES FOR A CONSIDERATION WHETHER OR NOT IN THE COURSE OF FURTHERANCE OF BUSINESS

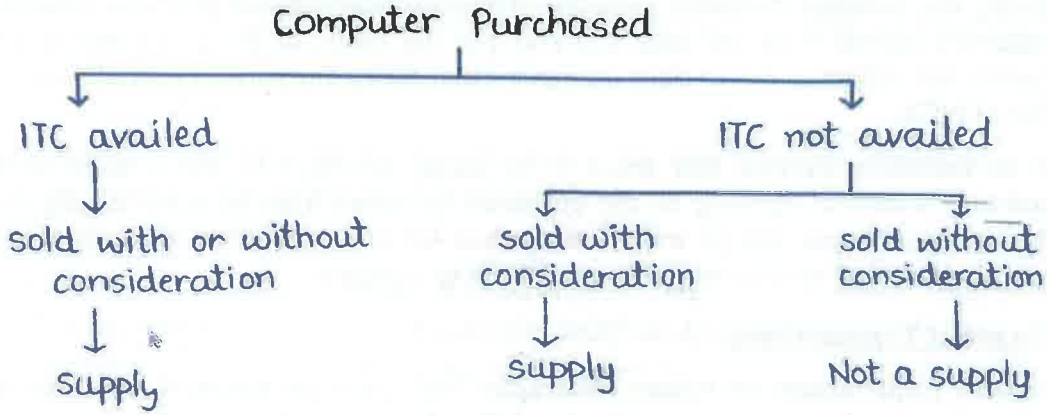
Section 7(1)(b) which brings within the ambit of 'supply', the importation of services for a consideration whether or not in the course or furtherance of business. This is the only exception to the condition of supply being made in course or furtherance of business.

Example: Ramaiyaa, a proprietor, has received the architect services for his personal residence from an architect located in New York at an agreed consideration of $ 5,000. The import of services by Ramaiyaa is supply u/s 7(1)(b) though it is not in course or furtherance of business.

ANALYSIS OF SEC 7(1)(c)
SCHEDULE 1: ACTIVITIES TO BE TREATED AS SUPPLY EVEN IF MADE WITHOUT CONSIDERATION (DEEMED SUPPLY)

Para I of Schedule I

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



Para II of Schedule I

2. Supply of goods or services or both
   - between **related persons** or between distinct persons as specified in section 25
   - made in the course or furtherance of business.

❖ Gifts not exceeding ₹ 50,000 in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both (e.g.: if value is ₹ 51,000, then tax will be liable on ₹ 51,000 not on ₹ 1,000).

RELATED PERSON

- Such persons are officers / directors of one another's business.
- Search persons are legally recognised partners in business.
- Search persons are employer and employee.
- Third person controls / owns / holds (directly/indirectly) ≥ 25% voting stock / shares of both of them.
- One of them controls (directly / indirectly) the other.
- A third person controls directly / indirectly both of them.
- Such persons together control directly / indirectly a third person.
- Such persons are members of the same family.
- One of them is the sole agent / sole distributor / sole concessionaire of the other.

DISTINCT PERSONS SPECIFIED UNDER SECTION 25

Registration in GST is PAN based, once a supplier is liable to register, he has to obtain registration in each of the States/UTs in which he operates [and makes a taxable supply] under the same PAN. Further, he is normally required to obtain single registration in a State/UT.

However, where he has multiple places of business in a State/UT, he has the option either to get a single registration for said State/UT or to get separate registrations for each place of business in such State/UT.

The establishments of a person with separate registrations whether within the same State/UT or in different States/UTs are considered as distinct person.

Where a person who 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. [Section 25(5) of the CGST Act].

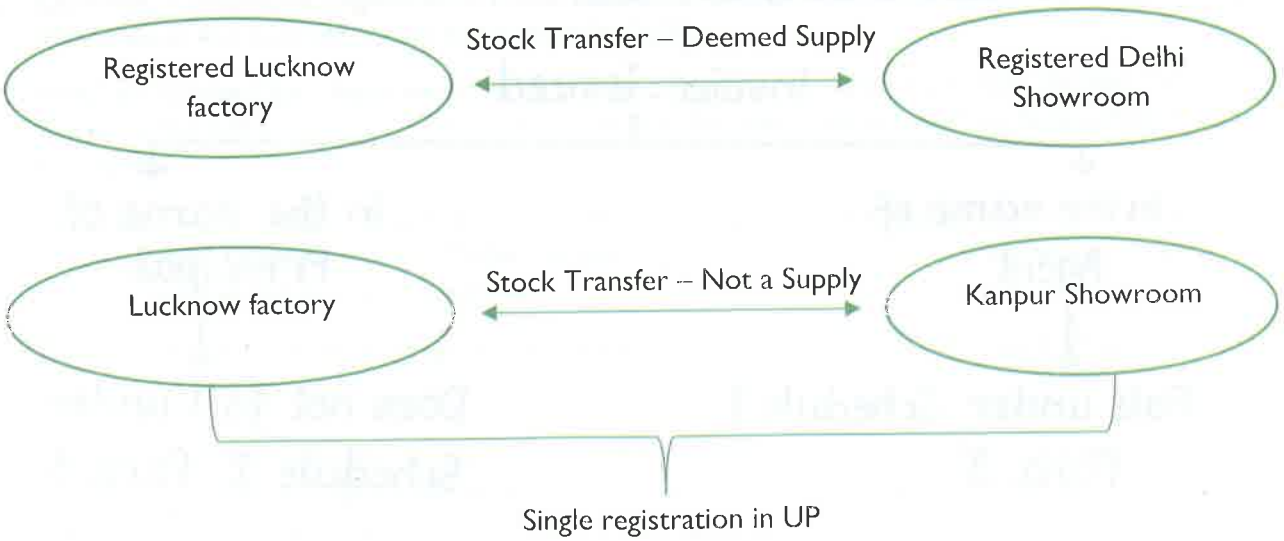
- Even if one branch is registered and another branch is not registered (or not liable to register), then also stock transfer will be considered as Supply.

Example: Rishabh Enterprises, a registered supplier, owns an air-conditioned restaurant in Virar, Maharashtra. It has opened a liquor shop in Raipur, Uttarakhand for trading of alcoholic liquor for human consumption.

Since supply of alcoholic liquor for human consumption in Uttarakhand is a non-taxable supply, Rishabh Enterprises is not required to obtain registration with respect to the same in Uttarakhand.

In this case, air-conditioned restaurant in Maharashtra and liquor shop [though unregistered] in Uttarakhand shall be treated as establishment of distinct persons. Supply by Maharashtra restaurant to Uttarakhand shop, in course or furtherance of business even without consideration will qualify as supply.

STOCK TRANSFER



PRINCIPAL- AGENT:

Para III of Schedule I

Supply of GOODS:

a. By a principal to his agent, without consideration, where the agent undertakes to supply such goods on behalf of the principal is considered as supply.

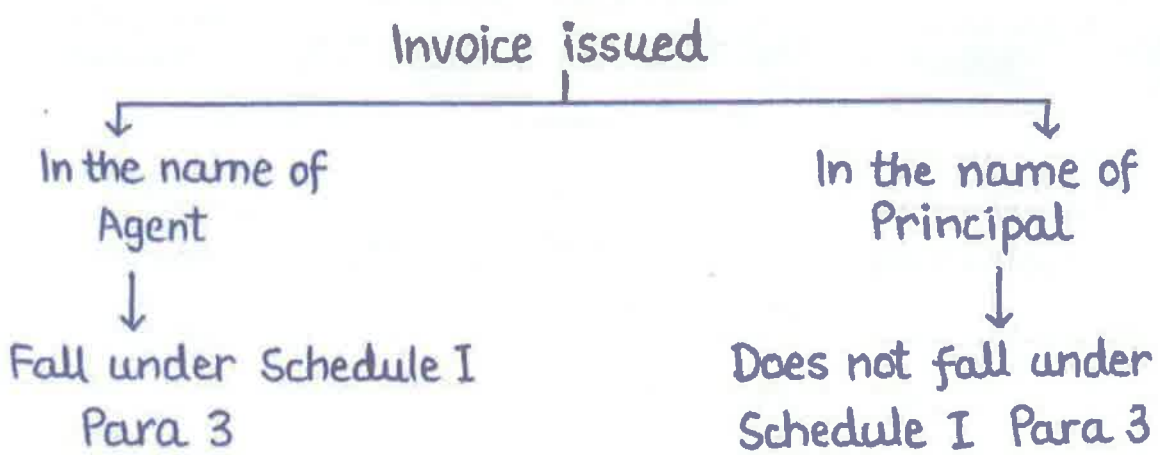
b. By an agent to his principal, without consideration, where the agent undertakes to receive such goods on behalf of the principal is considered as supply.

❖ In order to determine whether a particular principal-agent relationship falls within the ambit of Para 3 of Schedule I as discussed above or not?

The deciding factor is whether the invoice for the further supply of goods on behalf of the principal is being issued by the agent or not. 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.**

- 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 Para 3. Above
- However, 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 Para 3. Above.

- 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 Para 3. Above.

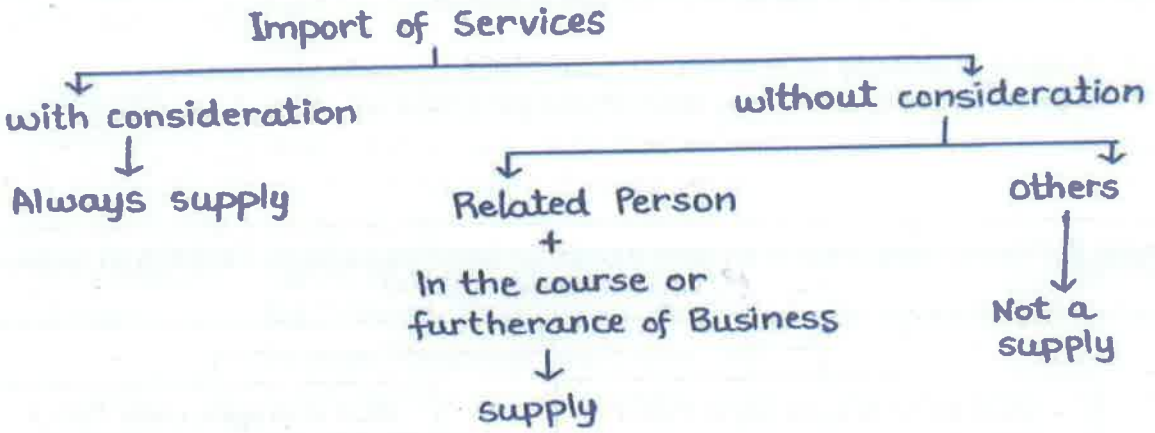


IMPORTATION OF SERVICES

Para IV of Schedule I

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 shall be treated as "supply."



*** Course or furtherance point of view**

- Normal case – from supplier's view
- Import of services – from receiver's view

Examples:

1. Jhumroo Associates received legal consultancy services from its head office is located in Malaysia. The head office has rendered such services free of cost to its branch office. Since Jhumroo Associates and the head office are related persons, services received by Jhumroo Associates will qualify as supply even though the head office has not charged anything from it.

2. Chakmak, a proprietor registered in Delhi, has sought architect services from his son located in US, with respect to his newly constructed house in Delhi.

   Although services have been received by Chakmak without consideration from his son - a related person, yet it will not qualify as supply since the same has not been received in course of furtherance of business.

   However, if in the above case, Chakmak receives architect services without consideration from his son with respect to his office in Delhi, the same shall be treated as supply because the same have been received in the course of business.

3. Mr. Ankit imported interior designing services for his house from his son Mr. John (lives in USA) for free - Not a Supply

4. Mr. Ankit imported interior designing services for his office from his son Mr. John (lives in USA) for free - Supply (although without consideration but from related person + in course / furtherance of business)

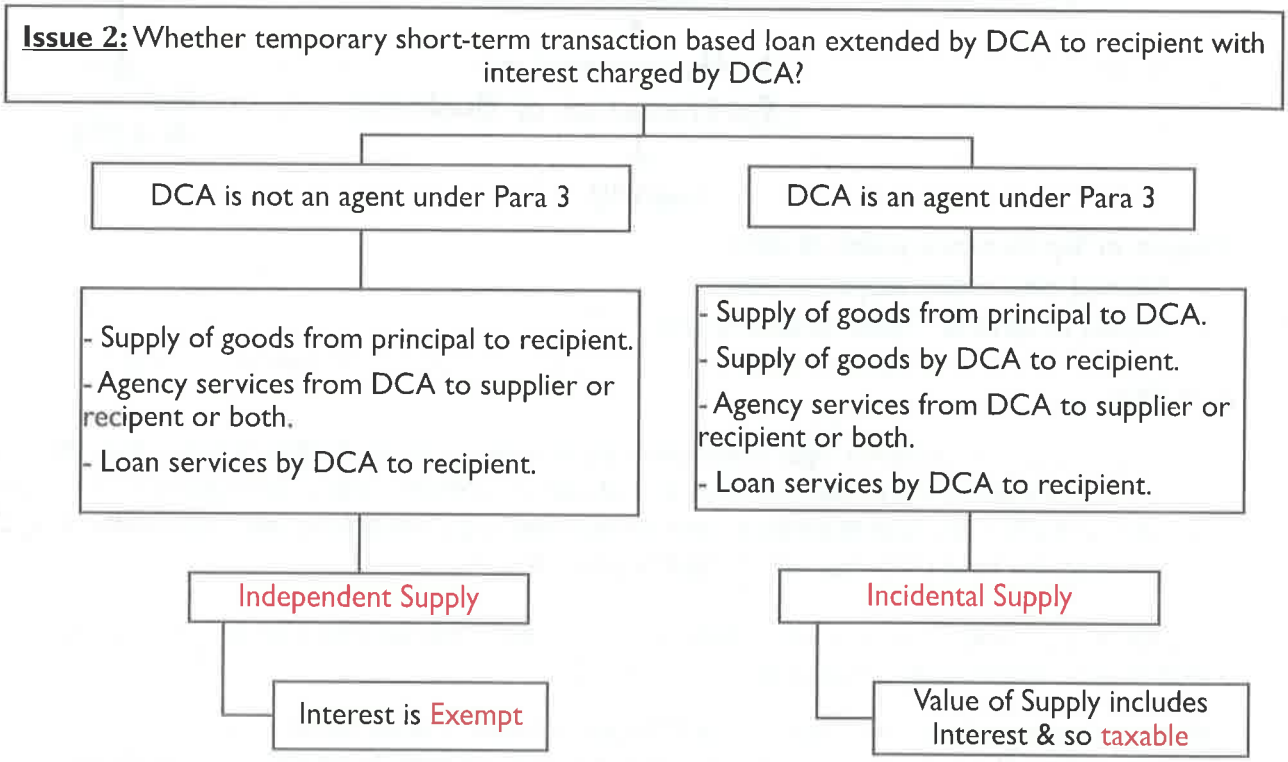
Clarification of issues pertaining to Del-credere agent (DCA)

- DCA guarantees the payment to the supplier.
- Where the buyer fails to make payment to the principal by due date, DCA makes payment to principal on behalf of the buyer.
- DCA collects the payment from the buyer along with interest.

Issue 1: Whether a DCA falls within the scope of Para 3?

- If invoice is issued by DCA in his own name – DCA covered under Para 3
- If invoice issued by DCA in the name of principal – DCA not covered under Para 3

Issue 2: Whether temporary short-term transaction based loan extended by DCA to recipient with interest charged by DCA?



SCHEDULE II: ACTIVITES OR TRANSACTIONS TO BE TREATED AS SUPPLY OF GOODS OR AS SUPPLY OF SERVICES

Section 7(1A) classifies certain activities / transactions constituting supply, either as supply of goods or supply of services. Schedule II to the CGST Act contains the list of activities or transactions which have been classified either as supply of goods or supply of service.

The matters listed out in Schedule II are as follows: -

Para No.	Activity / Transaction	Type	Nature of Supply
1.	Transfer	(i) Title in goods (ii) 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.	Goods
		Right / undivided share in goods without transfer of title in them.	Services
2.	Land and Building	Lease, tenancy, easement, licence to occupy land.	Services
		Lease / letting out of building including a commercial / industrial / residential complex for business / commerce, wholly / partly.	Services
3.	Treatment or Process	Applied to another person's goods. **E.g.,** Damani Dying House dyes the clothes given by Shubham Textiles Ltd. on job work basis.	Services
4.	Transfer of Business Assets	Goods forming part of business assets are transferred / disposed off by / under directions of person carrying on business so as no longer to form part of those assets.	Goods
		Goods held / used for business are put to private use or are made available to any person for use for any purpose other than business, by / under directions of person carrying on the business.	Services
		Goods forming part of assets of any business carried on by a person who ceases to be a taxable person, 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. **Exceptions:** ➢ Business transferred as a going concern. ➢ Business carried on by a personal representative who is deemed to be a taxable person.	Goods
5.	Renting of immovable property		Services
	Construction of complex, building, civil structure, etc.		
	Temporary transfer or permitting use or enjoyment of any intellectual property right.		
	Development, design, programming, customization, adaptation, upgradation, enhancement, implementation of IT software		
	Agreeing to obligation to refrain from an act, or to tolerate an act or situation, or to do an act.		

	Transfer of right to use any goods for any purpose (whether or not for specified period) for cash, deferred payment or other valuable consideration.	
6.	Following **composite supplies: -** ➢ Works contract ➢ Supply 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.	Services

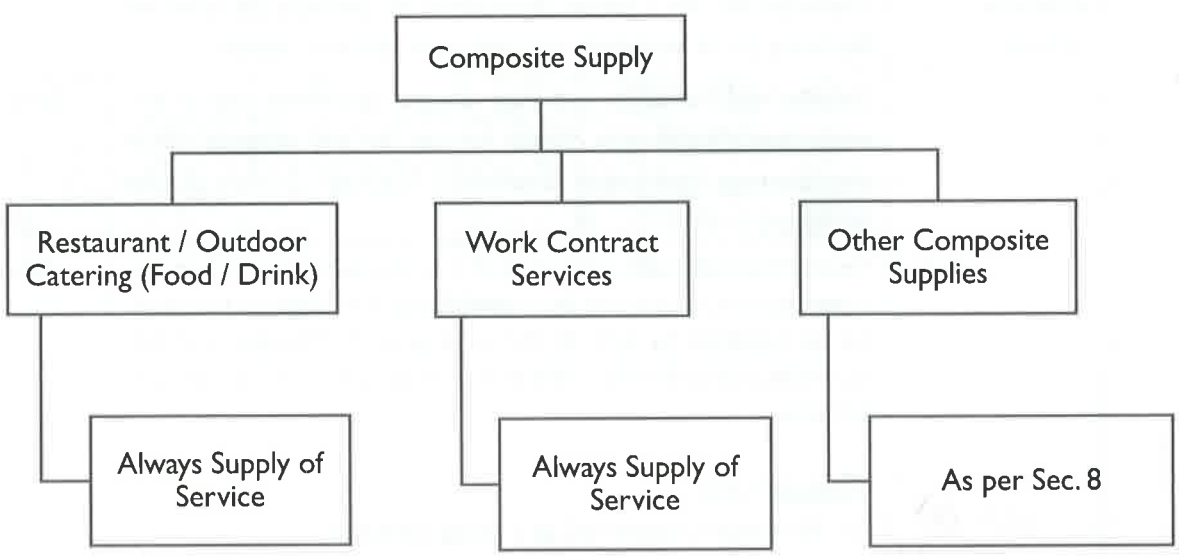
Analysis

1. **Construction of Building**

   ➢ Sale of Under Constructed units ⟶ Supply of Service

   ➢ Sale of Completed units ⟶ Negative list (Not a supply)

2. **Composite Supply**



SCHEDULE III: ACTIVITES OR TRANSACTIONS WHICH SHALL BE TREATED NEITHER AS SUPPLY OF GOODS NOR AS SUPPLY OF SERVICES

Non-supplies under GST [Section 7(2)(a) read with Schedule III]	
Para No.	**Activities or transactions which shall be treated neither as a supply of goods nor a supply of services**
1.	Services by an employee to the employer in the course of or in relation to his employment.

	E.g., Casual workers employed by a construction contractor for execution of a building contract for him are services in the course of employment. Similarly, casual workers employed by a security agency for provision of security services to a client are also services in the course of employment. **PERQUISITES PROVIDED BY EMPLOYER TO THE EMPLOYEES AS PER CONTRACTUAL AGREEMENT are not taxable.**
2.	Services by any court or Tribunal established under any law for the time being in force.
3.	a) Functions performed by Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities & 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 c) Duties performed by any person as a Chairperson or a Member or a Director in abody established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause.
4.	Services of funeral, burial, crematorium or mortuary including transportation of the deceased.
5.	Sale of land and, subject to paragraph 5(b) of Schedule II, sale of building.
6.	Actionable claims, other than specified actionable claims.
7.	Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India.
8.	a) Supply of warehoused goods to any person before clearance for home consumption. 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 portof origin located outside India but before clearance for home consumption.

SUPPLY SUMMARY CHART (SECTION 7)

		7(1)(a)	7(1)(b)	7(1)(c)
(a)	All forms of supply of goods & services	✓	✓	✓
(b)	Made or agreed to be made	✓	✓	✓
(c)	For consideration	✓	✓	x
(d)	In the course or furtherance of business	✓	x	✓

SECTION 8: TAX LIABILITY ON COMPOSITE AND MIXED SUPPLIES

STATUTORY PROVISIONS	
Clauses	**Particulars**
	The tax liability on a composite or a mixed supply shall be determined in the following manner, namely: -
(a)	**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**; and
(b)	**a mixed supply** comprising of two or more supplies shall be treated assupply of that particular supply that attracts **highest rate of tax.**

COMPOSITE SUPPLY

Consists of

- two or more taxable supplies,
- are naturally bundled
- one of which is a principal supply.

Note: In case of Composite Supply there might be **two cases:**

- ❖ Single price is charged for complete bundle (no separate price is given for Individual Products): **GST is Levied @ Principal product tax rate.**
- ❖ Different prices are shown for different products in Invoice but they are composite in nature, then also **GST is Levied @ Principal product tax rate on whole value.**

MIXED SUPPLY

Consists of

- 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,
- the individual supplies are independent of each other and are not naturally bundled.

SOME IMPORTANT & RELEVANT CLARIFICATIONS

1. **Sales Promotion Schemes:** The goods or services which are supplied free of cost (without any consideration) shall not be treated as "supply" except in case of activities mentioned in Schedule I of the CGST Act. In view of the same, few sales promotion schemes have been examined as under:

- **Free samples and gifts:** Samples which are supplied free of cost, without any consideration, do not qualify as "supply" under GST, except where the activity falls within the ambit of Schedule I of the CGST Act.
- **Buy one get one free offer:** It may appear at first glance that in case of offers like "Buy One, Get One Free", one item is being "supplied free of cost" without any consideration. In fact, it is not an individual supply of free goods, but a case of two or more individual supplies where a single price is being charged for the entire supply. It can at best be treated as supplying two goods for the price of one. Taxability of such supply will be dependent upon as to whether the supply is a composite supply or a mixed supply and the rate of tax shall be determined accordingly.

2. Taxability of 'tenancy rights' under GST:

Activity of transfer of tenancy right against consideration [i.e., tenancy premium] is squarely covered under supply of service liable to GST.

3. Clarification on taxability of printing contracts:

Printing contracts are **composite supply.**

In the case of printing of books, pamphlets, brochures, annual reports, and the like, where only content is supplied by the publisher or the person who owns the usage rights to the intangible inputs while the physical inputs including paper used for printing belong to the printer, supply of printing 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. printed with design, logo etc. supplied by the recipient of goods but made using physical inputs including paper belonging to the printer, predominant supply is that 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.

4. Clarification regarding servicing of cars involving both supply of goods (spare parts) and services (labour):

The taxability of supply would have to be determined on a case-to-case basis looking at the facts and circumstances of each case.

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

5. Clarification regarding retreading of tyres is a supply of goods or services?

Retreading of tyres, which is a **composite supply,** the pre-dominant element is the process of retreading which is a supply of service.

Supply of retreaded tyres, where the old tyres belong to the supplier of retreaded tyres, is a supply of goods.

6. Clarification regarding Cost Petroleum

When an oil exploration & production contractor gets a license/lease to explore/mine the petroleum crude and/or natural gas from the Govt. it enters into a Production Sharing Contract (PSC) with Govt. The relationship of the contractors with the Govt. is of licensor/lessor & licensee/lessee.

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 & the total value of petroleum produced & saved from the contract area in a particular period, as reduced by cost petroleum is called the profit petroleum.

The govt's share of **profit petroleum** paid by contractor to govt. for grant of lease is **exempt from GST.** The **cost petroleum is not taxable** as it is not a consideration received by the contractor for services provided to govt.

7. Clarification regarding moulds and dies

Moulds & dies owned by Original Equipment Manufacturers (OEM) are sent free of cost to component manufacturer, in course or furtherance of business, **do not constitute supply** as they are not related persons or distinct persons and there is no consideration involved.

8. Clarification on GST applicability on Liquidated Damages, Compensation and Penalty arising out of breach of contract or other provisions of law

"Agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act" has been specifically declared to be a supply of service in para 5(e) of Schedule II of CGST Act if the same constitutes a "supply" within the meaning of the Act.

The above statement has following 3 parts:

Parts	Example
Agreeing to the obligation refrain from an act	Non-Compete Agreements
Agreeing to the obligation tolerate an act or a situation	A shopkeeper allowing a hawker to operate from the common pavement in front of his shop against a monthly payment by the hawker.
Agreeing to the obligation to do an act	An Industrial unit agrees to install equipment for zero emission/discharge residential complex against a consideration paid by such RWA, even though the emission/discharge from the industrial unit was within permissible limits and there was no legal obligation upon the individual unit to do so.

Taxability of various transactions:

Transaction	Taxability
Liquidated damages	➢ Liquidated damages are compensation payable for breach of contract to the aggrieved party. ➢ Where an amount is paid only to compensate for injury, loss or damage suffered by aggrieved party, then such payments are merely flow of money and are not a consideration for any supply. Hence, such payment does not constitute consideration for a supply and are not taxable. ➢ Examples: - - Damages resulting from damage to property – Not Taxable - Penalty stipulated in a contract for delayed construction of houses – Not Taxable - Forfeiture of earnest money by Govt. or local authority in the event of a successful bidder failing to act after winning the bid, for allotment of natural resources – Not Taxable - 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 – Taxable
Cheque dishonor fine / penalty	➢ The supplier wants payment to be received on time & there is never an implied or express offer/willingness of supplier. ➢ Therefore, cheque dishonor fine is not a consideration for any service and not taxable.
Penalty imposed for violation of laws	➢ Not a consideration for any supply received and not taxable. ➢ E.g., Traffic violations, pollution norms or other laws.
Forfeiture of salary or payment of bond amount in event of employee leaving employment before minimum agreed period	➢ Not taxable since it is incorporated in employment contract to discourage non-serious employees & also employee does not get anything in return from employer against payment of such amount.
Late payment fees or surcharge	➢ The facility of accepting late payments with interest or late payment fee, fine or penalty is a facility granted by supplier naturally bundled with the main supply. Since, it is ancillary to and naturally bundled with the principal supply such as of electricity, water, telecommunication, cooking gas, insurance etc., it should be assessed at the same rate as the principal supply.
Fixed Capacity charges for Power	➢ The minimum fixed charge is payable even if '0' units of electricity is consumed so thus not taxable as electricity is exempt from GST.
Cancellation charges	➢ The amount forfeited in the case of non-refundable ticket for air travel or security deposit or earnest money forfeited in case of the customer failing to avail the travel, tour operator or hotel

	accommodation service or such other intended supplies are elements of composite supply and should be assessed at the same rate as applicable to the service contract, say air transport or tour operator service, or other such services. ➢ Examples: - - Forfeiture of earnest money is not a consideration for any supply and is not taxable. - Cancellation charges of railway tickets for a class would attract GST at the same rate as applicable to the class of travel (i.e., 5% GST on first class or AC coach ticket and nil for other classes such as second sleeper class). Same is the case for air travel.

9. Clarifications regarding applicability of GST on Sale of Land after levelling, laying down of drainage lines, etc.

(i) 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 of the CGST Act, 2017 and accordingly does not attract GST.

(ii) 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 at applicable rate for such services.

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

It is clarified that the activity of holding of shares of subsidiary company by the holding company **cannot be treated as a supply of services** by a holding company to the said subsidiary company and **cannot be taxed under GST** laws. Further, purchase or sale of shares or securities, in itself is neither a supply of goods nor a supply of services.

11. Clarification whether services supplied by director of a company in his personal capacity such as renting of immovable property to the company or body corporate are subject to Reverse Charge mechanism.

It is hereby clarified that services supplied by a director of a company or body corporate to the company or body corporate in his **private or personal capacity** such as services supplied by way of renting of immovable property to the company or body corporate are **not taxable under RCM.** Only those services supplied by director of company or body corporate, which are supplied by him as or in the **capacity of director** of that company or body corporate shall be **taxable under RCM** in the hands of the company or body corporate.

12. Clarification whether supply of food or beverages in cinema hall is taxable as restaurant service.

It is hereby clarified that 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.

It is 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.**

13. Clarification on Taxability of Personal Guarantee & Corporate Guarantee in GST.

a) Taxability of Personal Guarantee by Directors

It deals with the taxability of personal guarantees provided by directors to banks for securing credit facilities for the company, especially when provided without any consideration. According to the CGST Act, the director and the company are treated as related persons. The circular explains that even when provided without consideration, this activity is treated as a supply of service as per the CGST Act.

To determine the taxable value, Rule 28 of the CGST Rules is invoked. However, it mentions that if the RBI mandates that no consideration, including commission or fees, can be paid to directors for providing personal guarantees, the open market value is effectively zero. Therefore, no GST is payable on such supplies when no consideration can be paid.

In exceptional cases where promoters, directors, other managerial personnel or guarantors are paid remuneration, the taxable value of the supply of service shall be the remuneration / consideration provided to such a person / guarantor by the company, directly or indirectly.

b) Taxability of Corporate Guarantee

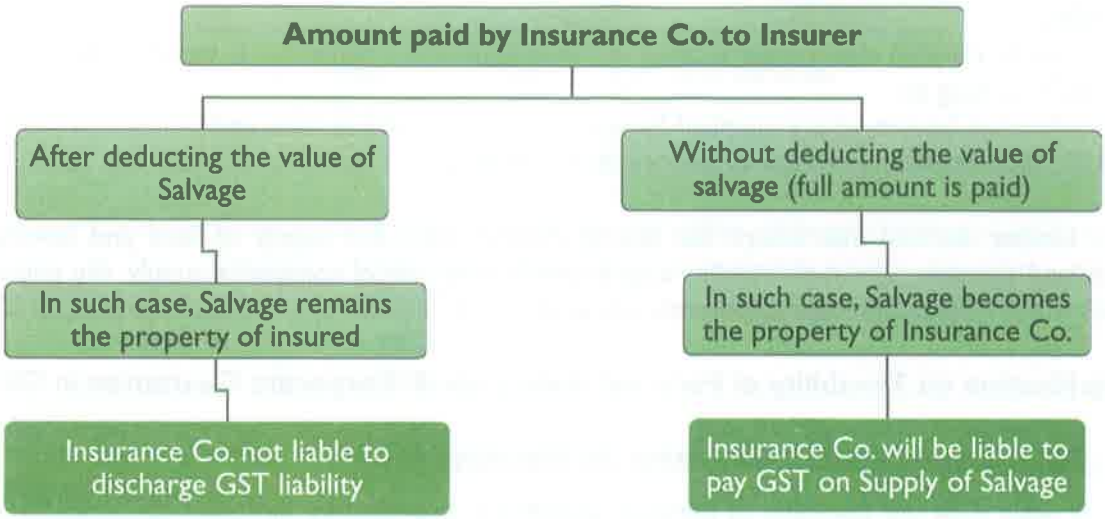
It addresses the taxability of corporate guarantees provided by one company on behalf of another related company or a holding company to secure credit facilities, even when provided without consideration. In both cases, the activities are treated as supplies of service between related parties as per Schedule I of the CGST Act.

To determine the taxable value, Rule 28 of the CGST Rules is employed. However, recognizing the variations in practices followed by field formations and taxpayers in determining the taxable value, a new sub-rule (2) has been added to Rule 28 of the CGST Rules. This sub-rule provides a standardized method for determining the taxable value of such supplies between related persons.

The circular emphasizes that the new sub-rule (2) will apply to all cases of supply of services involving the provision of corporate guarantees between related persons, ~~irrespective of whether the full ITC is available to the recipient of services or not.~~

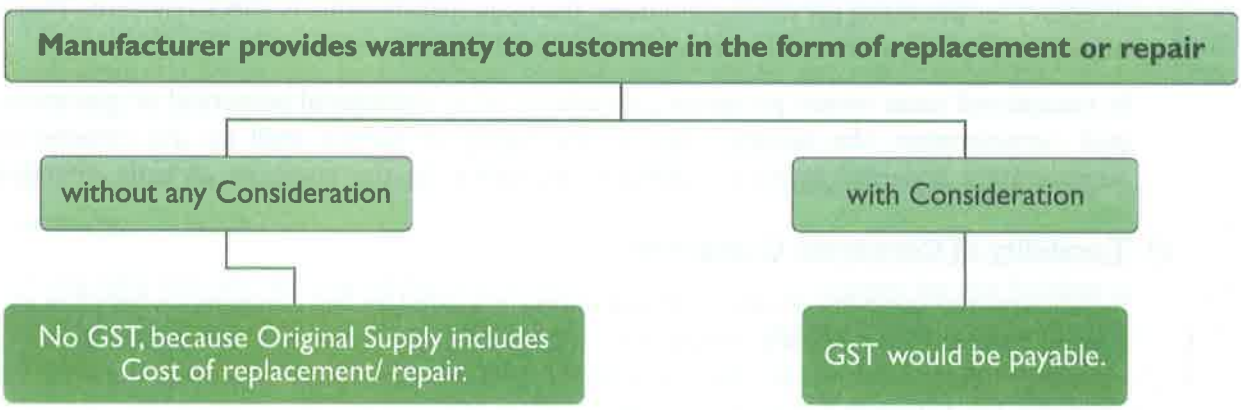
The new sub-rule (2) shall not be applicable for transactions of personal guarantee by directors.

14. Salvage/wreck value earmarked in claim assessment of damage caused to motor vehicle



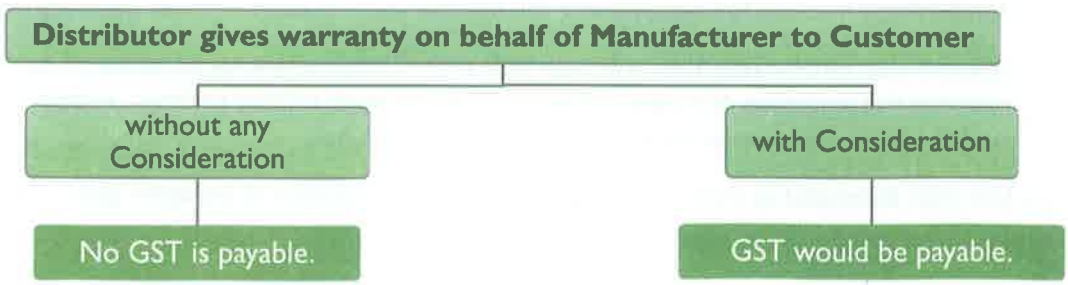
15. Applicability of GST in respect of warranty replacement of goods or its parts &/ repair services during warranty period:

Case I: When manufacturer provides warranty to Customer in the form of replacement of Goods/ Repair services:

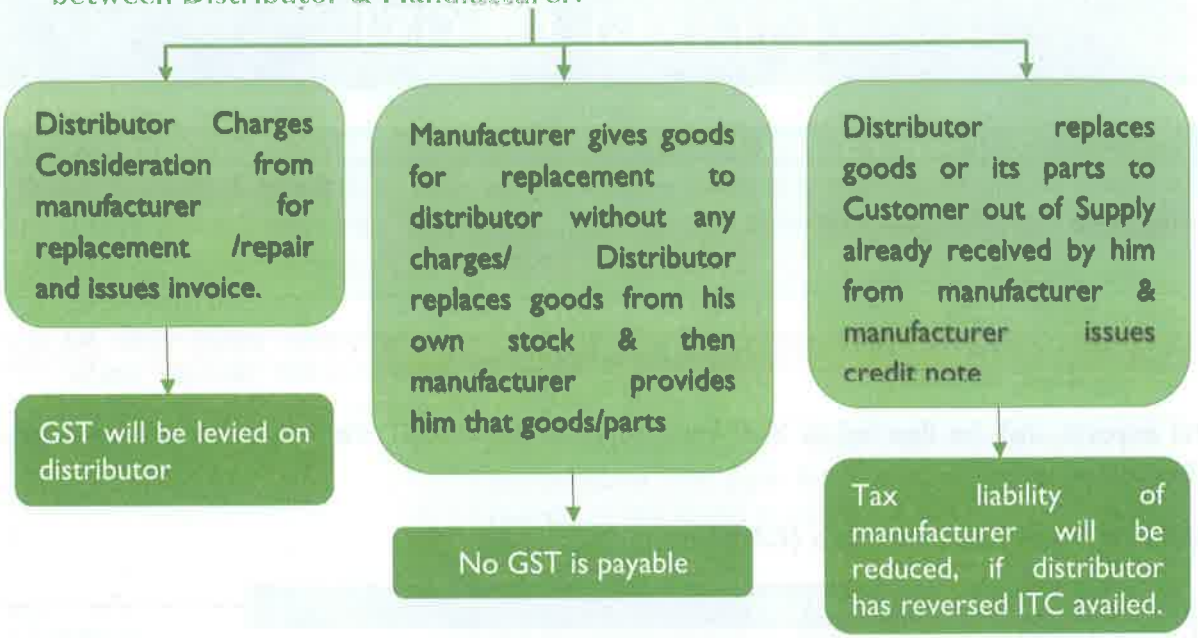


Case II:

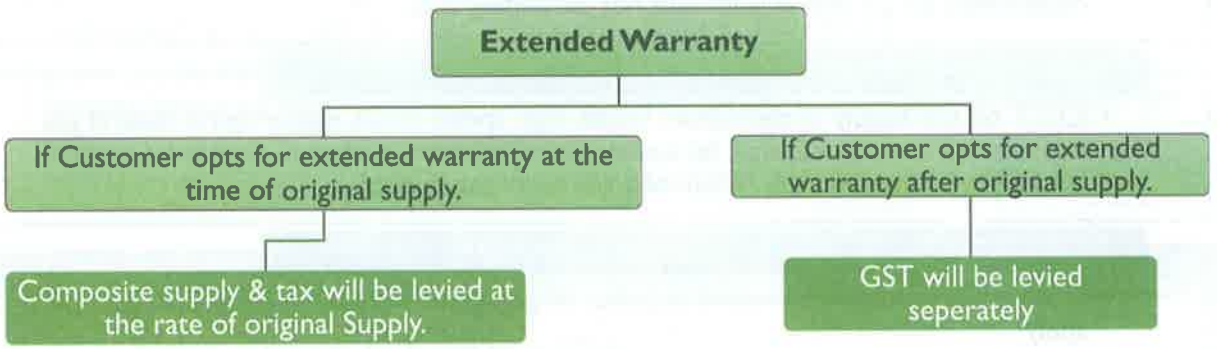
- Part-I: When distributor gives warranty on behalf of Manufacturer to Customer.



- **Part-II:** When distributor gives warranty & any activity /transaction undertakes between Distributor & Manufacturer:



Case III: GST Implication in case of Extended Warranty:



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

- PLC is part of consideration charged for supply of construction services before issuance of completion certificate.
- PLC forms part of the composite supply where supply of construction services is the main service and PLC is naturally bundled with it and eligible for same GST rate as the main supply of construction service.

17. ESOP/ESPP/Restricted Stock unit (RSU) provided by a company to its employees through its Overseas Holding Co.:

- Where securities of the Foreign Holding Co. are transferred to the employees of Domestic Subsidiary Co. as Employee Stock Purchase Plan (ESPP) / Employee stock option Plan (ESOP)/RSU, GST is not leviable on the Compensation paid in form of Securities [Sch. III].
- However, if the Foreign Holding Co. charges any additional fees from Domestic Co. for issuing ESOP/ESPP/RSU, in such cases, GST shall be payable by Domestic Holding Co. on RCM basis.

CHARGE OF GST

Intra-State Supply	Inter-State Supply
If Location of Supplier & Place of Supply are in the Same State / UT, then it is intra-state supply.	If Location of Supplier & Place of Supply are in Different UTs / a State & a UT, then is inter-state supply.

LEVY & COLLECTION [SECTION 9 OF THE CGST ACT & SECTION 5 OF THE IGST ACT

All Imports shall be deemed as Inter-state supplies hence IGST shall be levied on goods imported. [In addition to BCD]

Section 9 Levy & Collection (CGST)

Section 9(1) - Normal Levy

- CGST shall be levied 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 u/s 15 and at such rate not exceeding 20%.

Section 9(2) - GST on Notified Products

- CGST on the supply of petroleum crude, high speed diesel, motor spirit, natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the government on the recommendations of the council.

Section 9(3) - Supply of Services Taxable under RCM

- Central Govt. may notify some supplies of goods or services on which RCM shall apply.
- In such cases, tax shall be paid by the recipient of services on RCM basis.

Section 9(4) - Supply of Notified Services

- applicable in **NOTIFIED** supply from unregistered dealer to the registered dealer.

Section 9(5) - Notified Supplies through ECO

- In case of **SPECIFIED SERVICES** GST shall be payable by E-Commerce Operator.

REVERSE CHARGE MECHANISM

Direct Charge mechanism under GST:	Reverse Charge mechanism under GST:
In this mechanism, recipient pays tax to supplier and supplier pays tax to the Authority.	In this mechanism, recipient pays tax for the supplier and deposits the tax to the Authority.

SUPPLY OF GOODS TAXABLE UNDER RCM U/S 9(3) OF CGST ACT

Tax on following goods is payable under reverse charge vide Notification No. 4/2017 IT (R) dated 28.06.2017:

S. No.	Description of supply of goods	Supplier of goods	Recipient of supply
1.	Cashew nuts, not shelled or peeled	Agriculturist	Any registered person
2.	Bidi wrapper leaves (tendu)	Agriculturist	Any registered person
3.	Tobacco leaves	Agriculturist	Any registered person
3A.	Following essential oils other than those of citrus fruit namely: - a. Of peppermint; b. Of other mints: Spearmint oil, Water mint-oil, Horsemint oil, Bergament oil, Mentha arvensis	Any unregistered person	Any registered person
4.	Silk yarn	Any person who manufactures silk yarn from raw silk or silk worm cocoons for supply of silk yarn	Any registered person
4A.	Raw cotton	Agriculturist	Any registered person
5.	Supply of lottery	SG, UT, Local Authority (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 registered person
7.	Priority Sector Lending Certificate (PSLC)	Any registered person	Any registered person
8.	**Metal scrap**	**Any unregistered person**	**Any registered person**

SUPPLY OF SERVICE TAXABLE UNDER RCM U/S 9(3) OF CGST ACT

1. Transportation of Goods by Road by a GTA

Supplier: Goods Transport Agency

Recipient: Specified person liable to pay freight

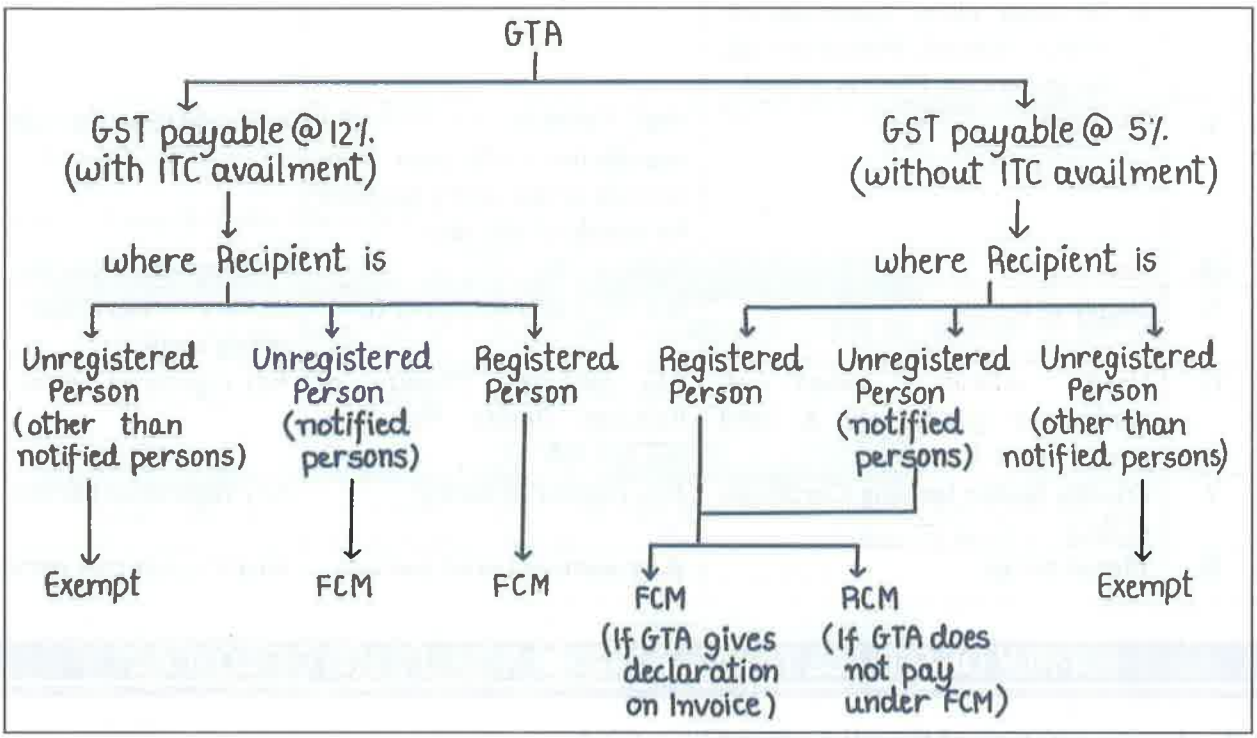
- Supply of services by a GTA to an unregistered person, unregistered CTP – Exempt from GST.
- Supply of services by a GTA to Govt. Dept. / Local Authority & Govt. Agencies which has taken registration only for the purpose of deducting TDS – Exempt from GST.
- This entry shall not be applicable when supplier has obtained registration under GST and exercised option to pay tax under FCM & issues tax invoice charging GST at applicable rates and has made prescribed declaration.
- FCM option exercised by GTA will be applicable for the next and future financial years unless the GTA files a declaration to revert under RCM on or after the 1st January of the preceding FY but not later than 31st March of the preceding FY.
- Provided also that a GTA who commences new business or crosses threshold for registration during any FY, may exercise the option to itself pay GST on the services supplied by it during that

FY by making a declaration before the expiry of 45 days from the date of applying for GST registration or 1 month from the date of obtaining registration, whichever is later.

GTA services are taxable at the following two rates:

- @ 5% (2.5% CGST + 2.5% SGST/UTGST or 5% IGST) provided GTA has not taken the Input Tax Credit (ITC) on goods or services used in supplying GTA service or
- @ 12% (6% CGST + 6% SGST/UTGST or 12% IGST) where GTA opts to pay GST at said rate on all the services of GTA supplied by it. In this case, there is no restriction on availing ITC on goods or services used in supplying GTA service by GTA.

Chart: Taxability of Person liable to pay tax under GTA services



NOTIFIED PERSONS

- Registered Factory
- Co-operative Society
- Body Corporate
- Casual Taxable Person
- Registered Society
- Registered person under GST
- Partnership firm/AOP (Registered or unregistered)

2. **Legal Services:** Services provided by Individual Advocates including Senior Advocates or Firm of Advocates by way of legal services, directly or indirectly.



Supplier: Individual Advocate including Senior Advocate or Firm of Advocates



Recipient: Any Business Entity located in taxable territory



Other than Business Entity

Exempt

Business Entity having aggregate T/O > ₹ 20/10 Lakhs in P.Y.

[Big Business Entity]

Taxable under RCM

Business Entity having Aggregate T/O upto ₹ 20/10 Lakhs in P.Y.

[Small Business Entity]

Exempt

Legal services mean any services provided in relation to advice, consultancy or assistance in any branch of law, in any manner and includes representational services before court, tribunal or authority.

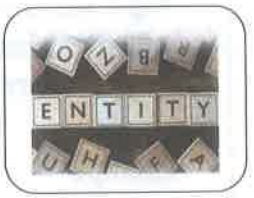
Issue: Whether Legal Services other than representational services provided by an individual advocate or a senior advocate to a business entity are liable for GST under RCM?
Clarification: Yes, in case of legal services including representational services provided by an advocate including senior advocate to a business entity, GST is required to be paid by the recipient of the services under RCM.

3. **Services supplied by an Arbitral Tribunal to Business Entity**



Supplier: An Arbitral Tribunal

Recipient: Any Business Entity located in Taxable Territory



4. **Services provided by way of Sponsorship to any Body corporate or partnership firm.**



Supplier: Any Person

Recipient: Any Body Corporate or Partnership Firm located in TT



Examples: Sponsorship services by AKG to AKG Ltd. – RCM
Sponsorship services by AKG Ltd. to AKG – FCM

5. Services supplied by the Government



Supplier: CG, SG, UT or Local Authority

Recipient: Any Business Entity located in TT



Exceptions

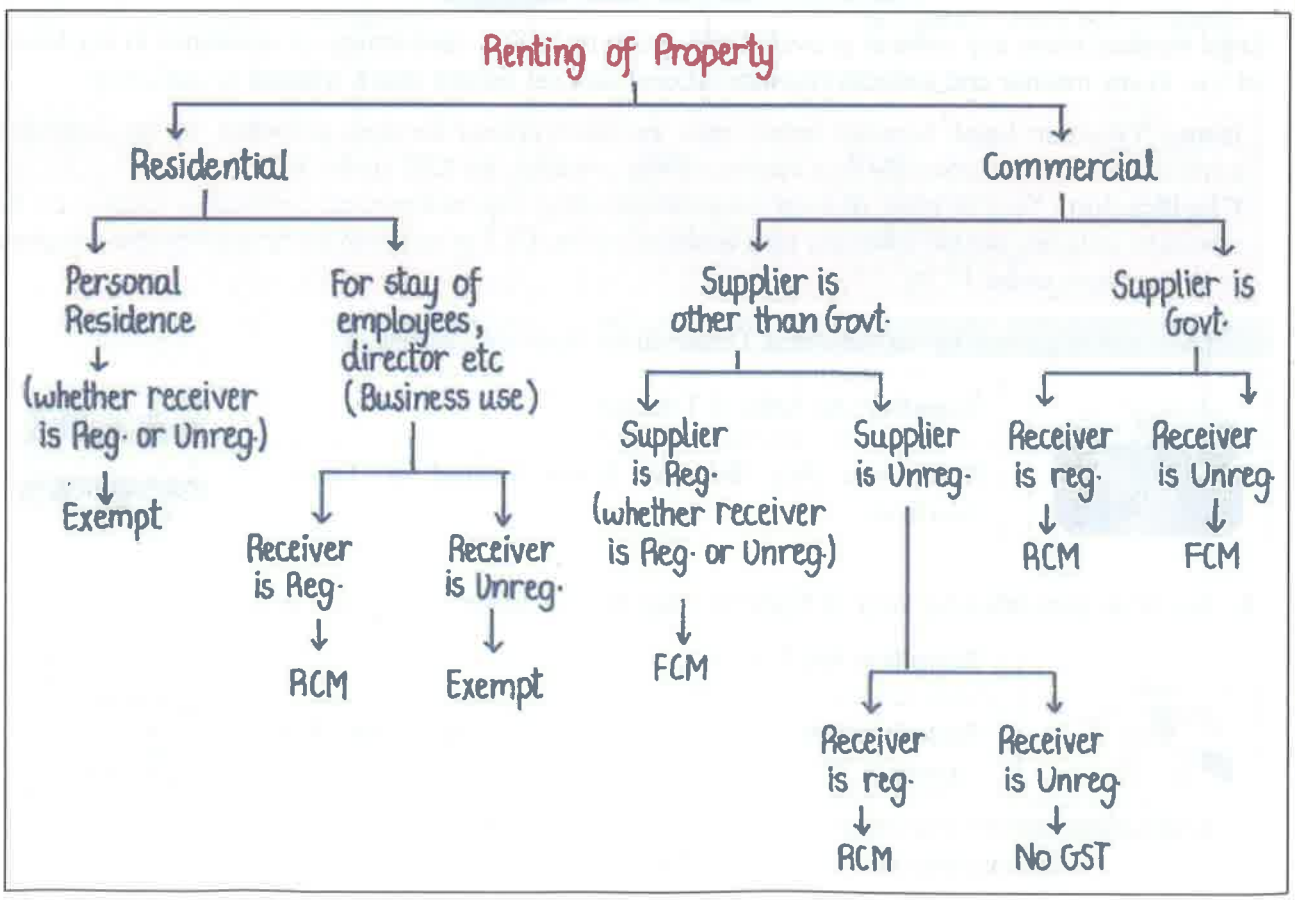
1. Renting of Immovable Property
2. Services by the Department of Posts [except post card, inland letter, book post and ordinary post (envelopes weighing less than 10 grams)] and the Ministry of Railways (Indian Railways)
3. Service in relation to aircraft or a vessel, inside or outside the precincts of a port / airport by Govt.
4. Transport of goods/passengers by Govt.

5A: Services supplied by CG excluding the Ministry of Railways (Indian Railways), SG, UT or Local Authority by way of renting of immovable property to any registered person

Supplier: CG, SG, UT, LA; **Recipient:** Any Registered Person

5AA: Service by way of renting of residential dwelling to a registered person.

Supplier: Any person; **Recipient:** Any Registered Person



5AB: Services by way of renting of any immovable property other than residential dwelling.

Supplier: Any Unregistered Person; **Recipient:** Any Registered Person

5B: Services supplied by any person by way of transfer of development rights [TDR] or Floor Space Index [FSI] (incl. add. FSI) for construction of project by a promoter

Supplier: Any person; **Recipient:** Promoter

5C: Service by way of Long-Term Lease of Land [30 years or more] by any person against consideration 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

Supplier: Any Person; **Recipient:** Promoter

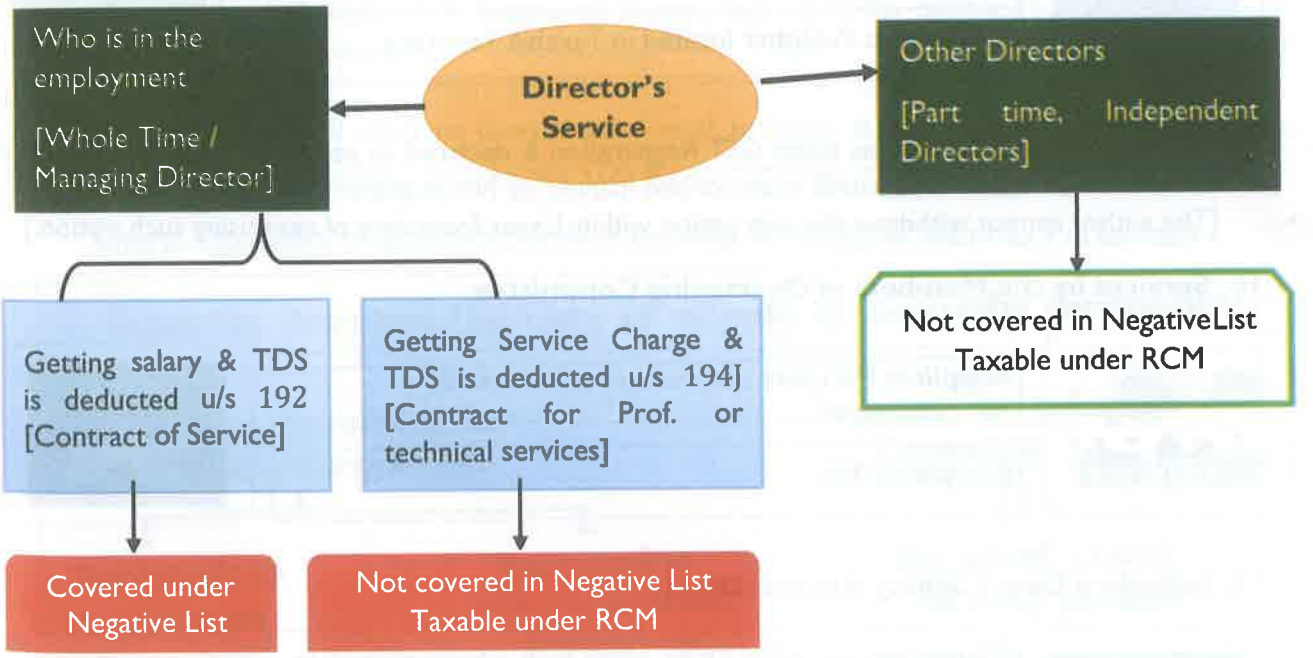
6. Director Service



Supplier: A director of company or a Body Corporate

Recipient: Company or Body Corporate located in Taxable Territory





7. Insurance Agent Service



Supplier: Insurance Agent

Recipient: Insurance Co. located in Taxable Territory



8. Recovery Agent Service



Supplier: Recovery Agent

Recipient: Banks, Financial Institution or NBFC located in Taxable Territory



9. Copyright Service relating to Original Literary, Dramatic, Musical, Artistic Work



Supplier: ~~Author,~~ Music Composer, Photographer, Artist, or the like

Recipient: ~~Publisher,~~ Music Company, Producer, or the like, located in taxable territory



9A. Copyright Service relating to Original Literary



Supplier: Author

Recipient: Publisher located in Taxable Territory



- Exception: Where author has taken GST Registration & declared to pay under FCM and he makes declaration on the invoice issued in prescribed manner by him in prescribed form to publisher. [The author cannot withdraw the said option within 1 year from date of exercising such option.]

10. Services by the Members of Overseeing Committee



Supplier: Members of Overseeing Committee

Recipient: RBI



11. Individual Direct Selling Agents (DSAs)



Supplier: Individual DSAs other than a body corporate, partnership or LLP

Recipient: Banking Company or NBFC located in Taxable Territory



Crux: Supplier should be Only Individual DSAs.

12. Services provided by Business Facilitator to a Banking Company



Supplier: Business Facilitator

Recipient: Banking Company located in TT



13. Services provided by an agent of Business Correspondent (BC) to Business Correspondent (BC)



Supplier: An Agent of Business Correspondent

Recipient: A Business Correspondent located in TT



14. Security Services (Services provided by way of supply of security personnel) provided to a registered person



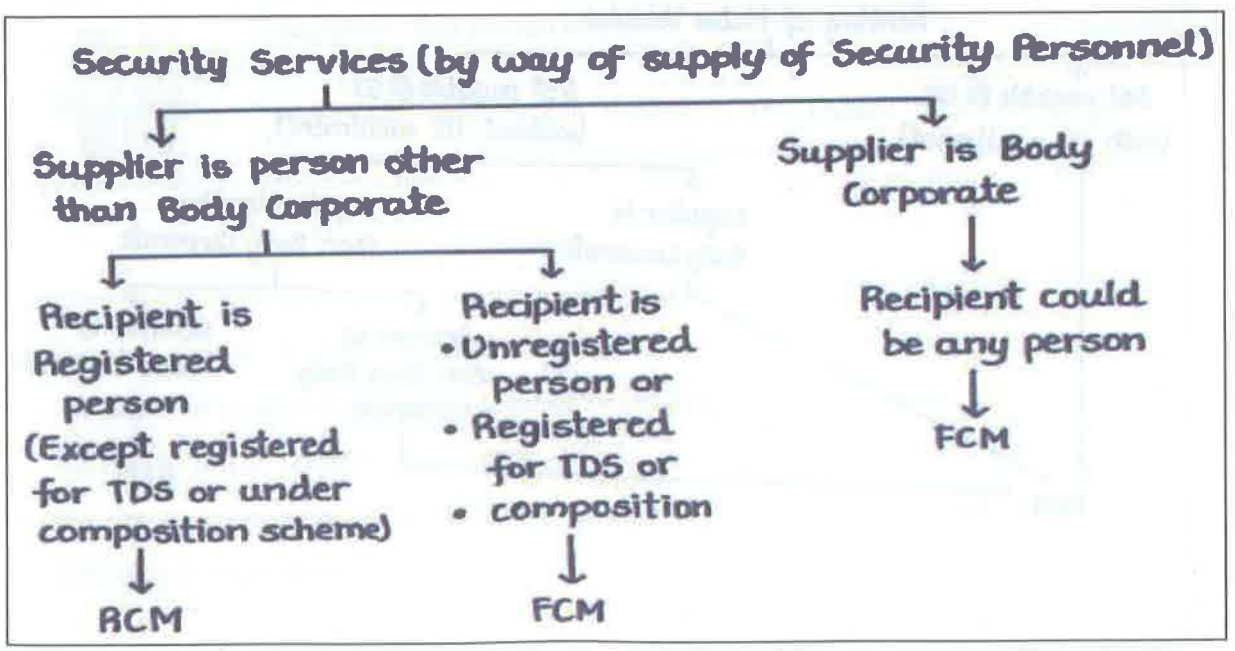
Supplier: Any person other than a body corporate

Recipient: A Registered Person, located in the taxable territory



Nothing in this entry shall apply to Govt. dept. / local authority & govt. agencies which has taken registration only for the purpose of deducting TDS & a composition taxpayer u/s 10 of the said Act.

Chart: Taxability of Security Services (by way of supply of Security Personnel)

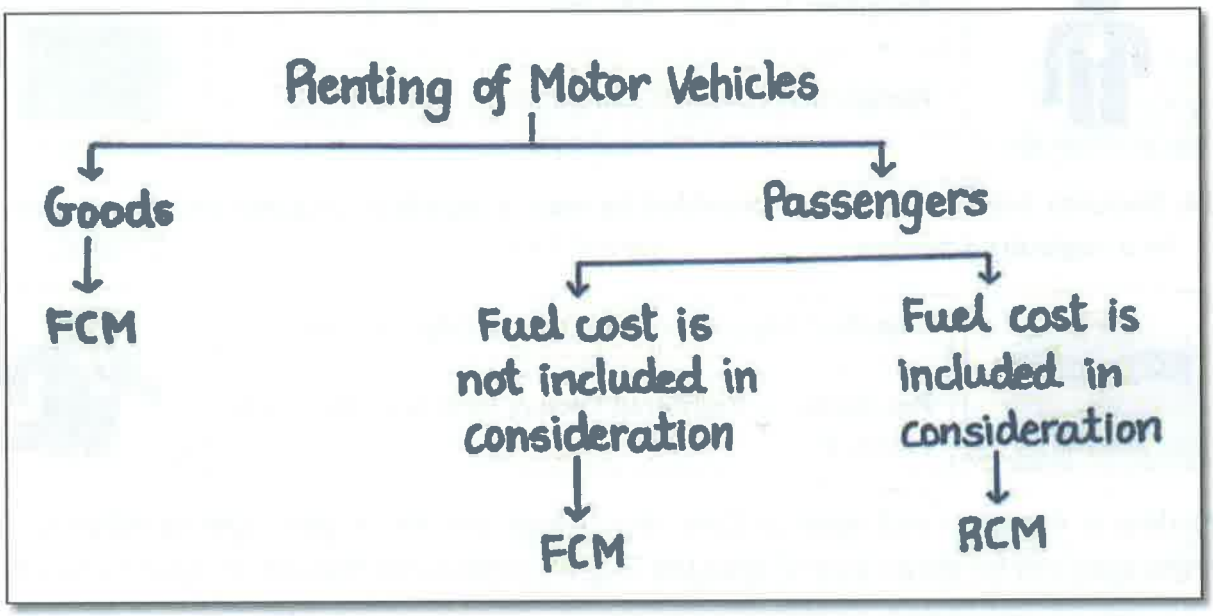


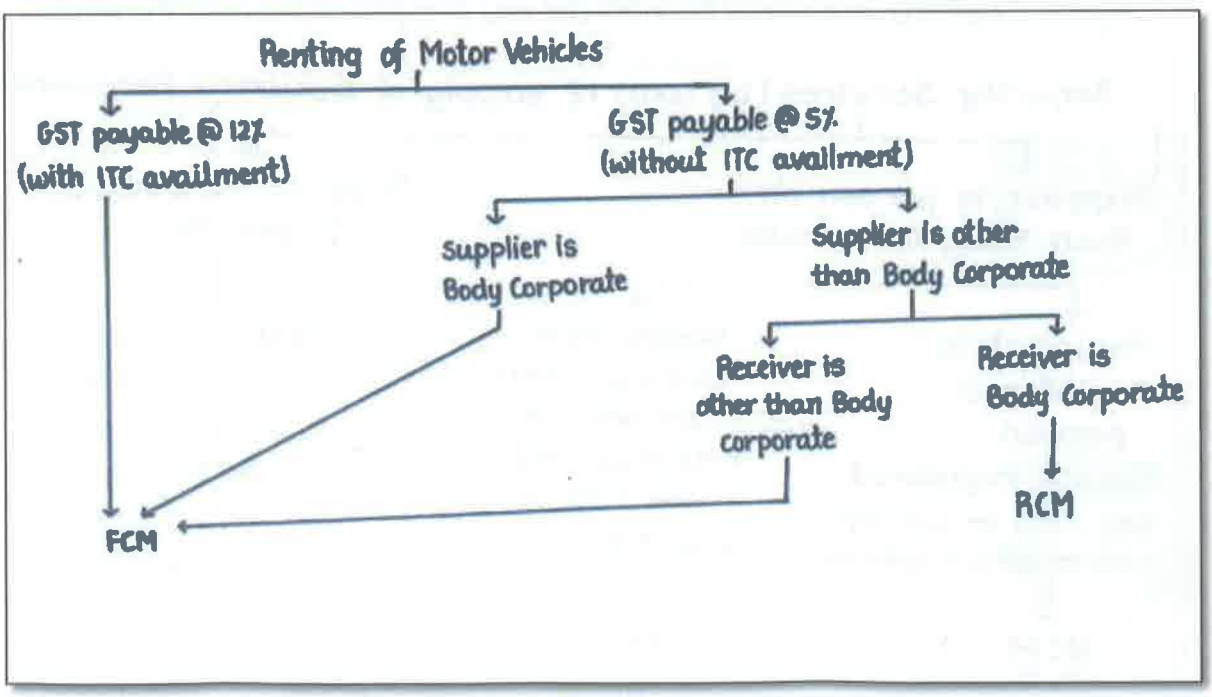
15. **Services provided by way of renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient, provided to a body corporate**

Supplier: Any person, other than a body corporate who supplies service to a body corporate and doesn't issue an invoice charging CGST @ 6% to the service recipient.

Recipient: Any body corporate located in TT

Chart: Analysis of Taxability of Renting of Motor Vehicles





RCM ON RENTING OF MOTOR VEHICLES [CIRCULAR 178/10/2022]:

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

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

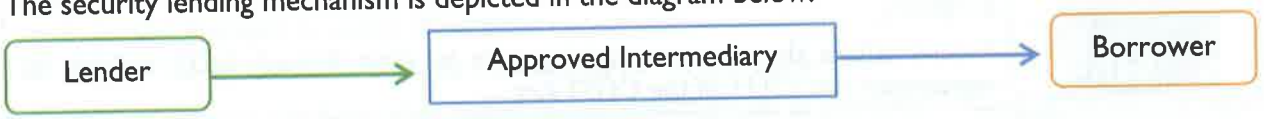
16. Services of Lending of securities under Securities Lending Scheme, 1997 of SEBI

Supplier: Lender

Recipient: Borrower

Process: The lenders earn lending fee for lending their securities to the borrowers.

The security lending mechanism is depicted in the diagram below: -



The borrower borrows securities through an approved intermediary of SEBI & shall be liable to discharge GST under RCM. The nature of GST to be paid shall be IGST under RCM.

17. Any service supplied by any person who is located in a non-taxable territory to any person other than non-taxable online recipient [RCM under IGST Act]



Supplier: Any person located in non-taxable territory

Recipient: Any person located in the taxable territory other than non-taxable online recipient



Section 9(4): The Govt. may, on recommendation 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 or services or both by following all provisions.

NOTIFIED SUPPLIES

If value of inputs and input services purchased

- From registered supplier is less than **80%,**
- **Promoter** has to pay GST on RCM, u/s 9(4) of the CGST Act, on all such inward supplies,

To the extent short of 80% of the inward supplies from registered supplier.

[For **Capital Goods & Cement - 100%**]

Section 9(5): Notified supplies through ECO [N/N 17/2017]



Services by way of Transportation of Passengers by a radio-taxi, motor cab, maxi cab and motor cycle, or any other motor vehicle except omnibus;

[Omnibus means any motor vehicle constructed or adapted to carry more than 6 passengers excluding the driver]



Services by way of transportation of passengers by an omnibus except where the person supplying such service through ECO is a company.



Services by way of providing accomodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes,

Except: where the person supplying such services through ECO is liable for registration u/s 22(1) of the CGST Act



Services by way of House-keeping, such as plumbing, carpenting etc.,

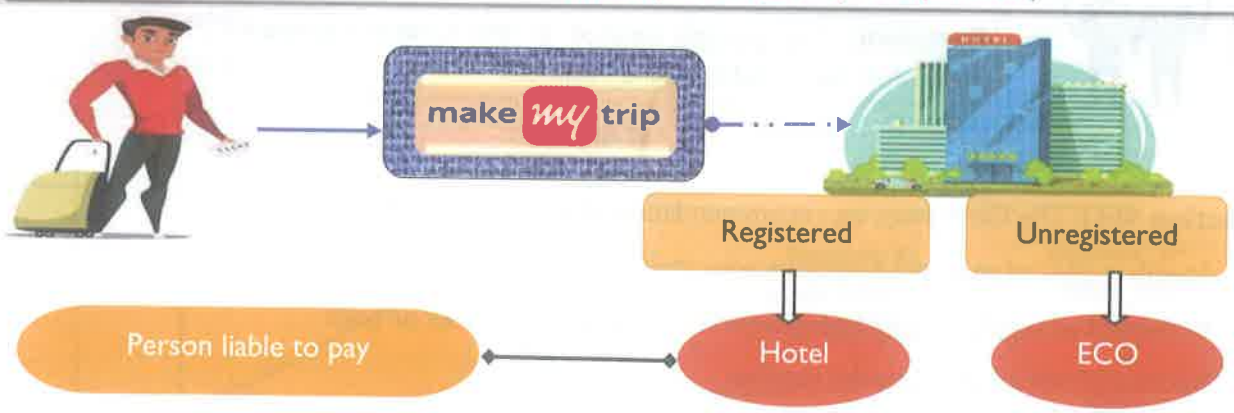
Except: where the person supplying such services through ECO is liable for registration u/s 22(1) of the CGST Act.



Supply of restaurant service supplied through ECO shall be paid by the ECO.

Except: Services by restaurant in specified premises.

(Specified premises means premises providing hotel accommodation services having declared tariff > ₹ 7,500 per unit per day or equivalent.)



All the provisions of the CGST/IGST Act shall apply to such ECO as if he is the supplier liable for paying the tax in relation to the supply of above services.

- It is important to note here that the above provision shall apply only in case of **supply of services.**

Person liable to pay GST for above specified services when supplied through ECO

Cases	Person liable to pay tax
If the ECO is located in India (taxable territory)	ECO
If the ECO does not have physical presence in the taxable territory	Person representing the ECO
If the ECO has neither the physical presence nor any representative in the taxable territory	Person appointed by the ECO for the purpose of paying the tax

SECTION 10: COMPOSITION SCHEME

Applicability: If Aggregate Turnover of a registered person does not exceed the following limits in the PY, he may opt for composition levy in the current year for the following amounts:

₹ 75 Lakhs: Manipur, Sikkim, Tripura, Uttarakhand, Mizoram, Meghalaya, Arunachal Pradesh, Nagaland [MS TUM MAN ho]

₹ 150 Lakhs: Rest states

Person not eligible for composition scheme u/s 10(1) [Section 10(2)]

- A person engaged in supply of services except restaurant & outdoor catering service.
- Supplier of services which are not leviable to tax under the act.
- Supplier making any inter-state outward supplies of goods or services.
- Person engaged in making supplies of services through ECO who is required to collect TCS u/s 52.
- Manufacturer of notified goods by the Govt. on the recommendation of GST council.
- He is a CTP or a NRTP.

Notified Goods

Person opting for composition levy should not engaged in the manufacture of following goods in preceding FY:

1) Ice Cream & Other edible ice, whether or not containing cocoa
2) Pan Masala
2A) Aerated Water
3) All Goods, i.e., Tobacco & Manufactured Tobacco substitutes
4) Fly ash bricks, Fly ash aggregates, Fly ash blocks
5) Bricks of fossil meals or similar siliceous earths
6) Building bricks

A person engaged in marginal supply of services other than restaurant service also eligible for composition levy under section 10(1).

A person who opts to pay composition tax may supply services (other than restaurant / catering), to the extent of

(a) Value not exceeding 10% of turnover in a State / Union territory in the preceding financial year or

(b) ₹ 5,00,000

whichever is higher.

SECTION 10(2A): NEW COMPOSITION SCHEME FOR MIXED SUPPLIER OR SUPPLIER OF SERVICE

Registered person not eligible to opt tax u/s 10(1) or 10(2), whose **aggregate turnover in the preceding financial year did not exceed ₹ 50 Lakhs,** may opt to pay an amount of tax not exceeding 3% of the turnover in State or turnover in UT, if he is not-

Registered person who is not eligible for composition scheme under section 10(2A)
Supplier engaged in making any supply of goods or services which are not leviable to tax.
Supplier engaged in making any Inter-State Outward supplies of Goods or Services.
Person supplying any services to an ECO who is required to collect tax at source under section 52.
Manufacturer of Notified Goods (ice cream, pan masala, tobacco, aerated water, fly ash bricks, fly ash aggregates, fly ash blocks, bricks of fossil meals or siliceous earth, building bricks and earthen or roofing tiles) or supplier of notified services.
Supplier who is either a casual taxable person or a non-resident taxable person.

Other Points:

- Composition scheme shall lapse from the date on which his aggregate turnover exceeds the specified limits. [Sec 10(3)].
- Registered composition supplier is not allowed to collect tax.
- Further he is not eligible to take any ITC.
- All registered person having same PAN must opt to pay under composition scheme.
- Provisions of RCM applicable on Inward supplies received by composition supplier.

AGGREGATE TURNOVER

While computing the threshold limit of ₹ 1.5 crore/ ₹ 75 lakh / ₹ 50 lakh, inclusions in and exclusions from 'aggregate turnover' are as follows:

Includes

Value of all outward supplies

--Taxable supplies
--Exempt supplies
--Exports*
--Inter-State supplies*

of persons having the same PAN be computed on all India basis.

These also include

Value of supplies made by registered person from 1st April of a FY up to the date when he becomes liable for registration under CGST Act

Excludes

--CGST/ SGST/ UTGST/ IGST/ Cess
--Value of inward supplies on which tax is payable under reverse charge.
--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

* **Note:** The value of exports & inter-state supplies is relevant only while determining the aggregate turnover of the preceding FY. These values are not relevant for determining the aggregate turnover of the current FY in which the composition supplier has opted for composition levy as he is not permitted to make inter-state supplies and exports in the said FY.

TURNOVER IN A STATE/UT

While computing the Turnover in a State/UT to pay tax under composition levy, inclusions and exclusions are as follows:

Includes

--All taxable supplies and exempt supplies made within the State/UT *(While computing turnover in a State/UT of a supplier, other than manufacturer and restaurant service provider, eligible for composition levy for goods [eg-trader], the exempt supplies will not be taken into consideration)*

Excludes

--CGST/ SGST/ UTGST/ IGST/ Cess

--Value of inward supplies on which tax is payable under reverse charge.

--Value of supplies from the first day of April of a FY up to the date when such person becomes liable for registration under this Act

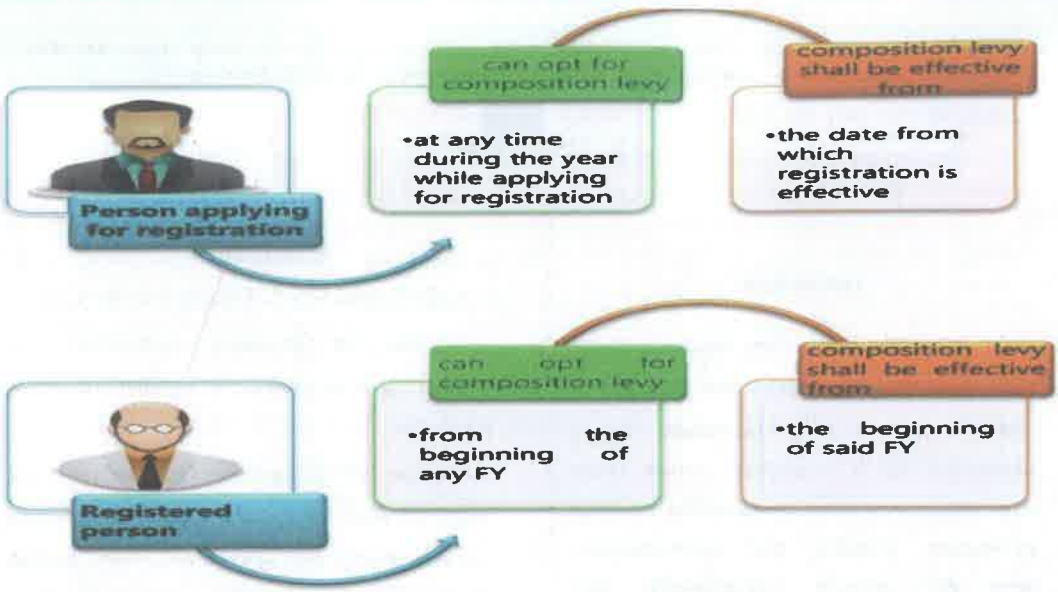
--Value of exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount

Composition Scheme – Applicable GST Rates

Composition Scheme	Category of registered persons	Rate
U/s 10(1)	Manufacturer	1% (0.5% CGST + 0.5% SGST/UTGST) of turnover in the State / UT
	Restaurant service providers	5% (2.5% CGST + 2.5% SGST/UTGST) of turnover in the State / UT
	Others	1% (0.5% CGST + 0.5% SGST/UTGST) of turnover of taxable supplies in the State / UT
U/s 10(2A)	All service providers except restaurant	6% (3% CGST + 3% SGST/UTGST) of turnover in the State / UT

A composition dealer should pay tax at the normal rates & not the composition rates while discharging liability under RCM. Also, they are ineligible to claim any ITC of tax paid.

Intimation of opting for composition levy



Provisions of RCM notification extended to the Courts and Tribunals also

Clause (h) of explanation to Notification No. 13/2017 CT (R) dated 28.06.2017 earlier provided that provisions of this notification, in so far as they apply to the Central Government and State Governments, shall also apply to the Parliament and State Legislatures. Thus, in case of notified services supplied by CG, SG, Parliament and State Legislatures, GST will be paid by the recipient.

This provision has now been extended to the Courts and Tribunals also in respect of taxable services supplied by them such as renting of premises to telecommunication companies for installation of towers, renting of chamber to lawyers, etc.

With effect from 01.03.2023, above clause has been amended to provide that "the provisions of this notification, in so far as they apply to the CG & SG, shall also apply to the Parliament, State Legislatures, **Courts and Tribunals"**.

Parallel amendment in reverse charge notification in case of inter-State supply of services has been carried out by amending Notification No. 10/2017 IT(R) dated 28.06.2017.

Amendments made vide The Finance (No. 2) Act, 2024

Since this amendment has become effective from 01.11.2024, said amendment is not applicable for May 2025 examinations. However, **said amendment is applicable for November 2025 examination**.

Section 9(1) - Normal Levy

- CGST shall be levied on all **Intra-State supplies** of goods or services or both, except on the supply of alcoholic liquor for human consumption **and un-denatured extra neutral alcohol or rectified spirit used for manufacture of alcoholic liquor, for human consumption**on the value determined u/s 15 and at such rate not exceeding 20%.

EXEMPTION FROM GST

- Granted by Govt. on recommendation of the GST Council.

POWER TO GRANT EXEMPTION

Section 11(1)	Section 11(2)
GENERAL EXEMPTION	**SPECIAL EXEMPTION**
Where the Government is satisfied that it is necessary in the public interest to do so, it may, on the recommendations of the Council, by notification, exempt generally, either absolutely or subject to such conditions.	Where the Government is satisfied that it is necessary in the public interest to do so, it may, on the recommendations of the Council, by special order in each case, under circumstances of an exceptional nature to be stated in such order.

EXEMPTION TYPE: FULLY / PARTIAL

Absolute (Unconditional): Mandatory Conditional: Optional

The absolute/ unconditional exemption is mandatory in nature. Where the supply of goods or services or both are unconditionally exempted from whole of the tax, the registered person doesn't have option to collect and pay tax on such supply of goods or services or both.

Where the supply of the goods or services or both are unconditionally exempted from part of the tax, the registered person doesn't have option to collect and pay the tax, in excess of the effective rate, on such supply of goods or services or both.

However, where the exemption is conditional, it is at the option of the registered person whether to avail the same or not.

Clarification: Explanation inserted within 1 year, for the purpose of clarifying the scope or applicability of any notification / order, to have retrospective effect. i.e.,

Within 1 year ⇨ Retrospective Effect

SERVICES EXEMPT FROM BOTH CGST/SGST/UTGST AND IGST

ENTRY 01: Services by an entity registered under section 12AA or 12AB of the Income-tax Act, 1961 by way of **charitable activities**.

The term 'charitable activities' mean activities relating to-

- **PUBLIC HEALTH** by way of –
  - A. care or counselling of
    - i. Ill persons / persons with severe physical or mental disability
    - ii. HIV or AIDS person
    - iii. Persons addicted to narcotics drugs or alcohol
  - B. public awareness of preventive health, family planning or prevention of HIV infection.
- **ADVANCEMENT OF RELIGION,** spirituality or yoga.
- **ADVANCEMENT OF EDUCATIONAL PROGRAMMES / SKILL DEVELOPMENT** relating to, -
  - a) abandoned, orphaned or homeless children
  - b) physically or mentally abused and traumatized persons;
  - c) prisoners
  - d) persons over the age of 65 years residing in a rural area;
- **PRESERVATION OF ENVIRONMENT** including watershed, forests & wildlife.

ENTRY 13: Religious Service

Services by a person by way of-

(a) conduct of any religious ceremony;
(b) renting of precincts of a religious place

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

i. renting of rooms where charges are ₹ 1,000 or more per day;
ii. renting of premises, community halls, kalyanmandapam or open area, and the like where charges are ₹ 10,000 or more per day.
iii. renting of shops or other spaces for business or commerce where charges are ₹ 10,000 or more per month.

ENTRY 60: Services by a specified organisation in respect of a religious pilgrimage (Haj Yatra, Kailash-Mansarovar etc.) facilitated by the Govt. of India, under bilateral arrangement.

ENTRY 9D: Services by an old age home run by CG, SG or an entity registered under section 12AA or 12AB of the Income-tax Act, 1961 to its residents (aged 60 years or more) against consideration upto ₹ 25,000 per month per member, provided that the consideration charged is inclusive of charges for boarding, lodging and maintenance.

Clarifications:

Residential programs or camps where the fee charged includes cost of lodging and boarding shall also be exempt as long as the primary and predominant activity, objective and purpose of such residential programs or camps is advancement of religion, spirituality or yoga.

- However, if charitable or religious trusts merely or primarily provide accommodation or serve food and drinks against consideration in any form including donation, such activities will be taxable.

Similarly, activities such as holding fitness camps or classes such as those in aerobics, dance, music etc. will be taxable.

RENTING OF IMMOVABLE PROPERTY

ENTRY 12: Services by way of renting of residential dwelling for 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 12A: Supply of accommodation services having value of supply less than or equal to ₹ 20,000 per person per month provided that the accommodation service is supplied for a minimum continuous period of 90 days.

HEALTH CARE SERVICES

ENTRY 46: Services by a Veterinary clinic in relation to health care of animals or birds.

ENTRY 74: Services by way of

a) health care services by -

- a clinical establishment (hospital, nursing home, clinic, sanatorium, etc.),
- an authorized medical practitioner (a medical practitioner registered with councils), or
- para-medics (nursing staff, physiotherapists, technicians, etc.)

However, exemption shall not be available to the services provided by a clinical establishment by way of providing room [other than Intensive Care Unit (ICU)/Critical Care Unit (CCU)/Intensive Cardiac Care Unit (ICCU)/Neo natal Intensive Care Unit (NICU)] having room charges exceeding ₹ 5,000 per day to a person receiving health care services.

b) services provided by way of transportation of a patient in an ambulance, other than those specified in (a) above.

Health care services by a clinical establishment, an authorised medical practitioner or para-medics are exempt from GST.

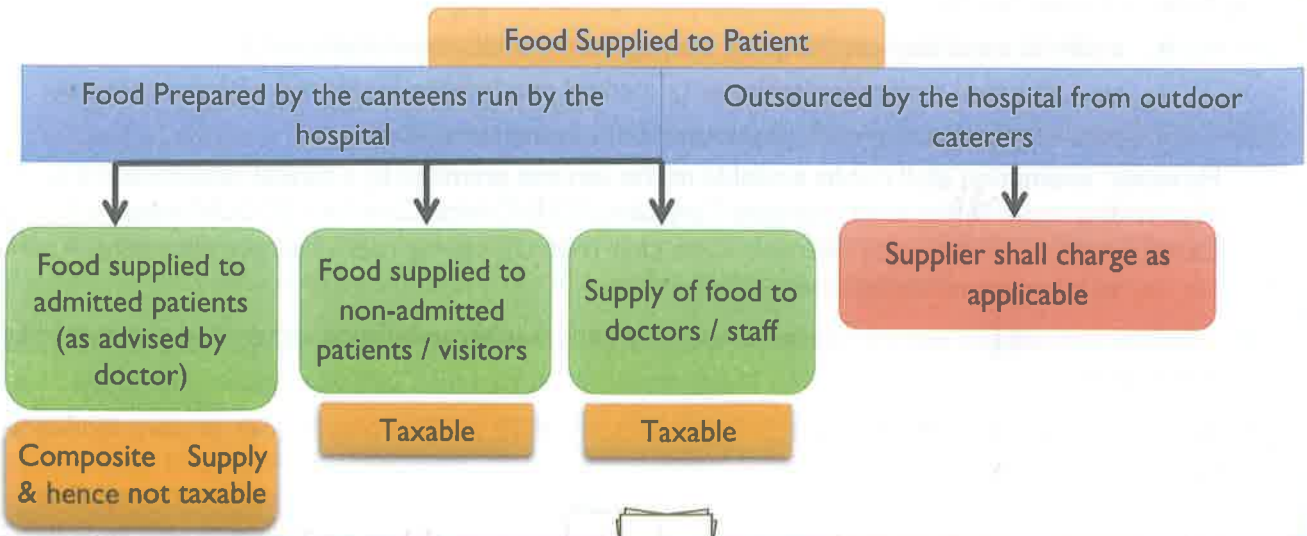
Health care services means any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India and

- includes services by way of transportation of the patient to and from a clinical establishment, but
- does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of the body affected due to congenital defects, developmental abnormalities, injury or trauma.

Recognized systems of medicines in India: Allopathy, Yoga, Naturopathy, Ayurveda, Homeopathy, Siddha, Unani. However, Reiki shall not be included in above.

CERTAIN CLARIFICATIONS

- Rent of rooms provided to in-patients: Exempt (Composite Supply)
- Services provided by such senior doctors / consultants / technicians, whether employees or not, are health care services which are exempt from GST.
- Entire amount charged by hospitals from the patients including the retention money and the fee / payments made to the doctors etc., is towards the healthcare services provided by the hospitals to the patients and is exempt. (E.g., Charged ₹ 10,000 from patient and paid ₹ 7,500 to doctor, ₹ 10,000 will be exempt)
- Health care services provided by the clinical establishments will include
  - Food supplied to the patients; but such food may be prepared by the canteens run by the hospitals or may be outsourced by the hospitals from outdoor caterers.
  - Food supplied to the in-patients as advised by the doctor / nutritionists is a part of composite supply of health care and not separately taxable.
  - Other supplies of food by a hospital to patients (not admitted) or their attendants or visitors are taxable.
- Supply of services other than health care services such as renting of shops, auditoriums in the premises of the clinical establishment, display of advertisements etc. will be subject to GST.
- Services by way of IVF (In vitro fertilization) – Exempt from GST



PASSENGER TRANSPORT SERVICES

ENTRY 15: Transport of passengers, with / without accompanied belongings, by –

a) Air, IN ECONOMY CLASS, embarking from or terminating in an airport located in the State of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, or Tripura or at Bagdogra located in West Bengal;

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

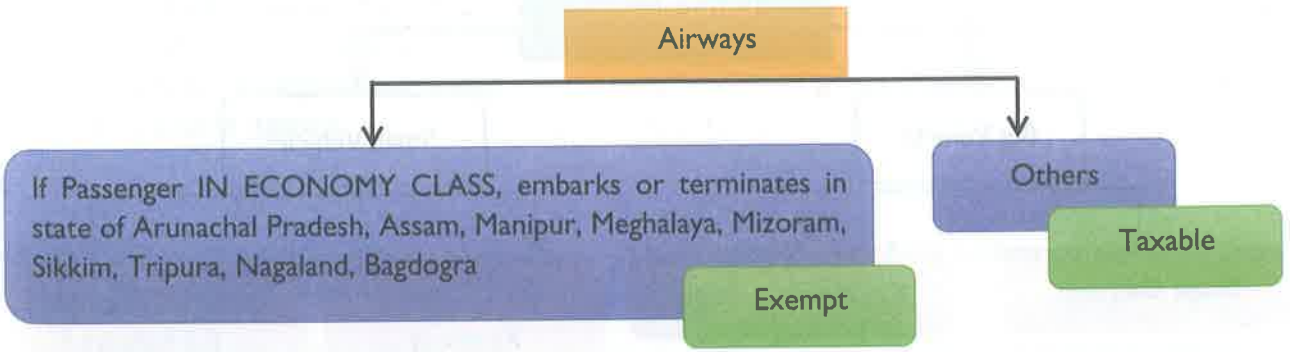
NON – AC CONTRACT CARRIAGE FOR TRANSPORTATION OF EMPLOYEES:

Nature of Transaction	Taxability
Non - AC contract carriage is hired for a period of "time", during which the such carriage shall be at the disposal of the recipient of service.	Taxable
Non - AC contract carriage taken as passenger transport service for specific journeys or voyages and does not take vehicle on rent for any particular period of time.	Exempt

c) Stage carriage other than air-conditioned stage carriage.

However, nothing contained in items (b) and (c) above shall apply to services supplied through an ECO and notified u/s 9(5) of CGST Act, 2017.

Thus, now only economy class passengers will enjoy exemption for clause (a) above.



ENTRY 16: Services provided to CG by way of transport of passengers, by air, embarking from / terminating at RCS (Regional Connectivity Scheme) Airport against consideration in form of viability gap funding.

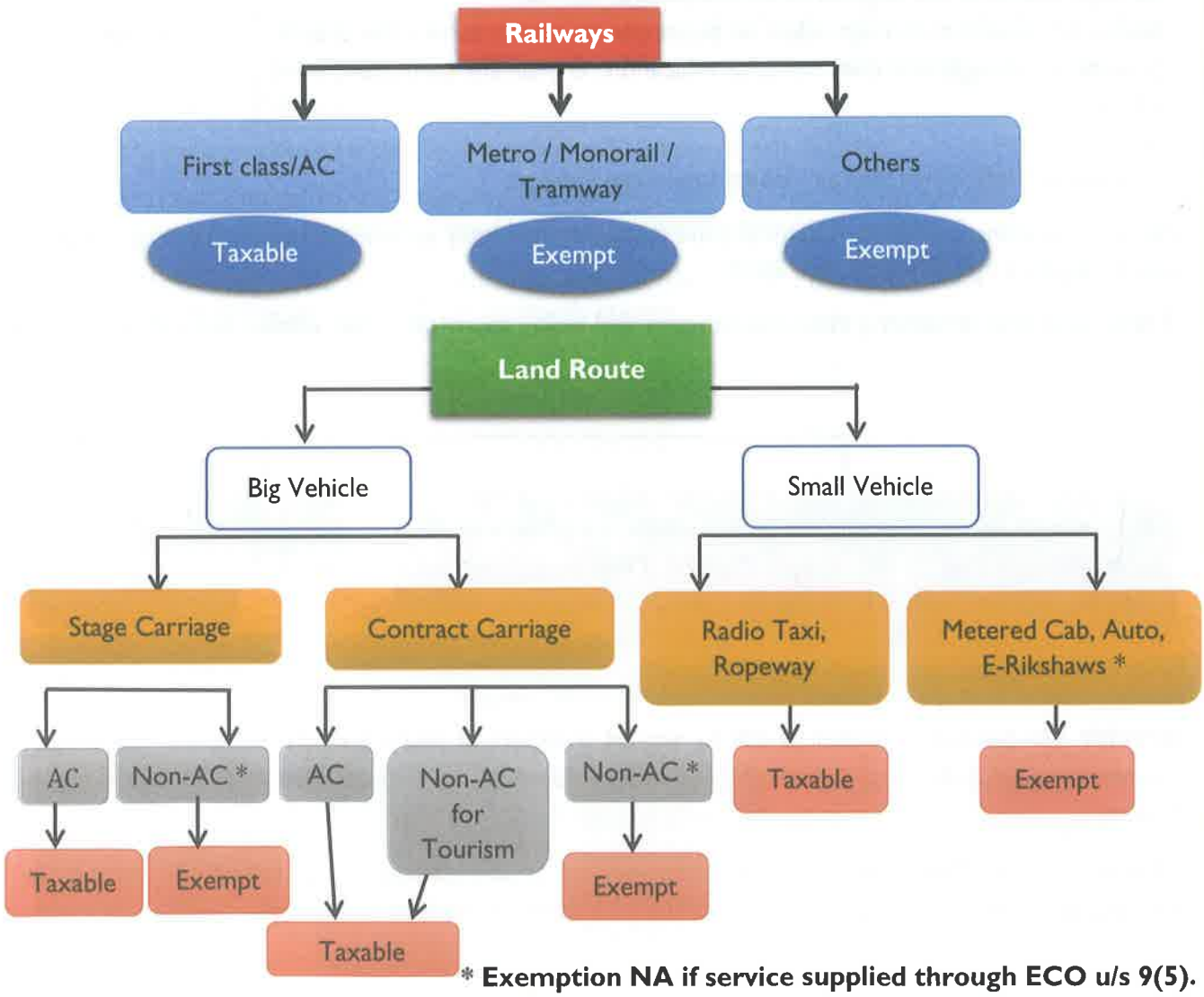
However, nothing contained in this entry shall apply on or after the expiry of a period of 3 years from the date of commencement of operations of the RCS airport as notified by the Ministry of Civil Aviation.

ENTRY 17: Service of transportation of passengers, with or without accompanied belongings, by-

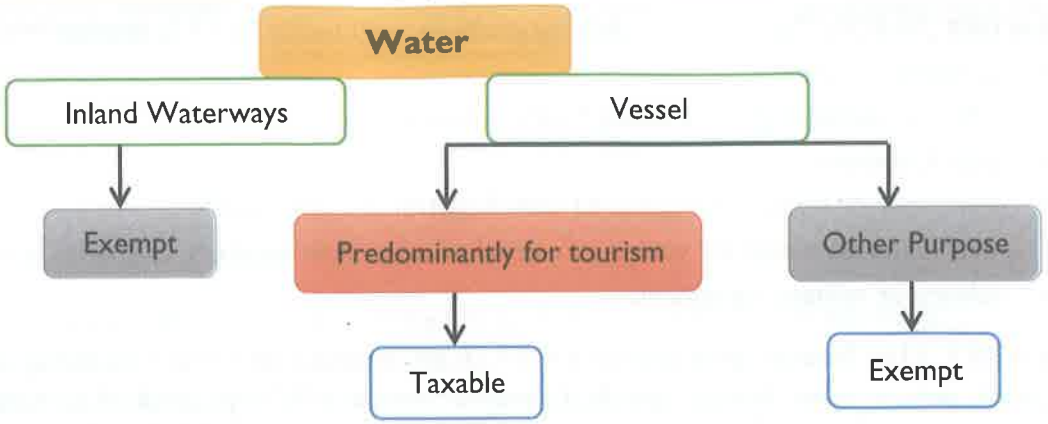
a) railways in a class other than —
   i. first class; or
   ii. an air-conditioned coach;
b) metro, monorail or tramway;
c) inland waterways;
d) public transport, other than for tourism purpose, in a vessel between places located in India; and
e) metered cabs or auto rickshaws (including e-rickshaws).

However, nothing contained in item (e) above shall apply to services supplied through an ECO and notified u/s 9(5) of CGST Act, 2017.

- GST on tickets of private ferry used for passenger transportation - The expression 'public transport' used in the exemption notification only means that the transport should be open to public. It can be privately or publicly owned, if used for public transportation (other than tourism) – Exempt.



*** Exemption NA if service supplied through ECO u/s 9(5).**



ENTRY 52A: Tour operator service, which is performed partly in India and partly outside India, supplied by a tour operator to a foreign tourist, to the extent of the value of the tour operator service which is performed outside India are exempt.

However, value of the tour operator service performed outside India shall be –

a. In proportion of the number of days the tour is performed outside India, or
b. 50% of the total consideration charged for the entire tour,
whichever is less.

For 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.

GOOD TRANSPORT SERVICE

ENTRY 18: Services by way of transportation of goods -

a. by road except the services of —
   i. a goods transportation agency;
   ii. a courier agency;

b. by inland waterways.

ENTRY 19: Services by way of transportation of goods by an aircraft from a place outside India upto the customs station of clearance in India.

ENTRY 19A: Services by way of transportation of goods by an aircraft from customs station of clearance in India to a place outside India. This exemption is available till 30.09.2022.
[W.e.f. 01.10.2022, this service is made taxable]

ENTRY 19B: Services by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India. This exemption is available till 30.09.2022.
[W.e.f. 01.10.2022, this service is made taxable]

ENTRY 19C: Satellite launch services

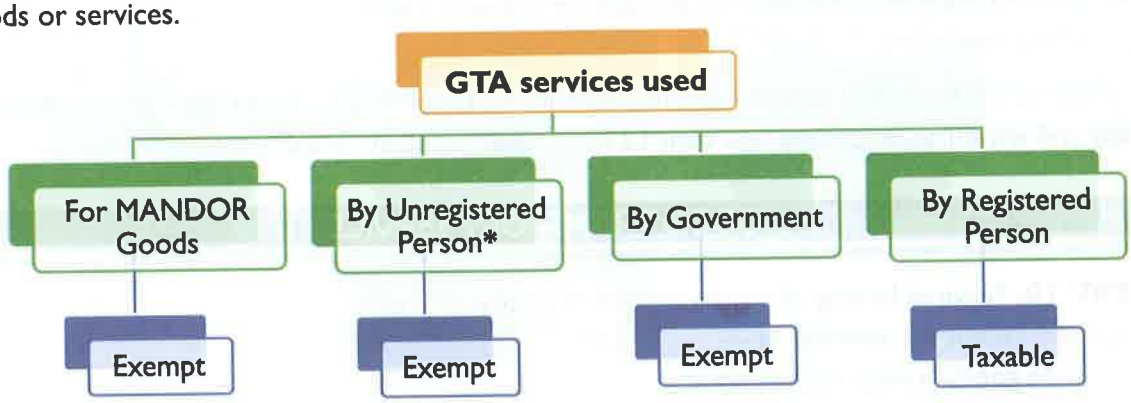
ENTRY 20 & 21: Transport of following goods by rail / vessel / GTA is exempt: "MANDOR"

- agricultural produce
- milk, salt and food grain including flours, pulses and rice
- organic manure
- newspaper or magazines registered with Registrar of Newspapers
- relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap
- defence or military equipment.

ENTRY 21A: Services provided by a GTA to an unregistered person, including unregistered casual taxable person, other than the specified persons covered in RCM (6 specified persons)

ENTRY 21B: Services provided by a GTA, by way of transport of goods in a goods carriage to-

a) A Department or Establishment of the Central Government or State Government or Union territory; or
b) Local authority; or
c) Governmental agencies, which has taken registration under the Central Goods and Services Tax Act, 2017 only for the purpose of deducting tax under section 51 and not for making a taxable supply of goods or services.



** Here, unregistered person means other than notified persons. (Refer Pg. 3.3)*

It is clarified by CBIC that **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 61A: Services by way of granting National Permit to a goods carriage to operate through-out India / contiguous States.

Clarification: Applicability of GST on transport of minerals from mining pit head to railway siding, etc. by vehicles deployed with driver for a specific duration of time – It is renting of transport vehicles with operators & not transportation services by road, hence taxable.

BANKING AND FINANCIAL SERVICE

ENTRY 27: Services by way of—

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

ENTRY 27A: Services provided by a banking company to Basic Saving Bank Deposit (BSBD) account holders under Pradhan Mantri Jan Dhan Yojana (PMJDY).

ENTRY 34: Services by an acquiring bank, to any person in relation to settlement of an **amount upto ₹ 2,000** in a single transaction transacted through credit card, debit card, charge card or other payment card service.

Granting of loan by a person to a related person or by an overseas affiliate to its Indian entity, where the consideration being paid is only by way of interest or discount

There is no consideration in the nature of processing fee/administrative charges/loan granting charges etc. involved in granting such a loan and the consideration is only by way of interest/discount, cannot be deemed to be a "Supply of Service" between the said related persons u/s 7(1)(c) read with paras 2 & 4 of Schedule I of CGST Act, 2017.

HIRING SERVICE

ENTRY 22: Services by way of giving on hire –

a. to a state transport undertaking (STU), a motor vehicle meant to carry more than 12 passengers, or to a local authority, an Electrically operated vehicle (EOV) meant to carry more than 12 passengers;

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.

EDUCATIONAL SERVICES

ENTRY 66: Services provided -

a. **By** an educational institution to its students, faculty and staff;

aa. **By** an educational institution by way of conduct of entrance examination against consideration in the form of entrance fee;

- Fee charged for admission or entrance, or for issuance of eligibility certificate or for issuance of migration certificate to the leaving or ex-students – Exempt from GST

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 Central Government, State Government or Union territory;

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.

However, nothing contained in sub-items (i), (ii) and (iii) of item (b) shall apply to an educational institution other than an institution providing services by way of pre-school education and education up to higher secondary school or equivalent.

Further, nothing contained in sub-item (v) of item (b) 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.

	Type of educational institution		
	Educational institution providing pre-school education and education up to higher secondary schoolor equivalent	***Educational institution providing education as a part of a curriculum for obtaining a recognised qualification***	***Educational institution providing education asa part of approved vocational education course***
Exempt input services	(i) transportation of students, faculty and staff; (ii) catering, including any mid-day meals scheme sponsored by the Central Government, State Government or Union territory; (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	(i) Services relating to admission to, or conduct of examination by, such institution (ii) Supply of online educational journals or periodicals	Services relating to admission to, or conduct of examination by, such institution.
Exempt output services	Services provided by an educational institution - (a) to its students, faculty and staff; (aa) by way of conduct of entrance examination against consideration in the form of entrance fee.		

ENTRY 66A: 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.

EDUCATIONAL INSTITUTIONS

means an institution providing services by way of -

- pre-school education and education up to higher secondary school or equivalent;
- education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force;
- education as a part of an approved vocational education course.

Clarification of Educational Institution: Educational Institutes also includes anganwadi & serving of food to anganwadi is also exempt.

Accreditation services of educational institution or professionals by Central or State Boards (including National Board of Examination) so as to authorise them to provide their respective services are **Taxable.**

Any authority, board or body set up by the CG/SG (including National Testing Agency) for conduct of entrance examination for admission to educational institutions shall be treated as educational institution for the limited purpose of providing services by way of conduct of entrance examination for admission to educational institutions.

VOCATIONAL EDUCATIONAL COURSES

- a course run by an Indian Training Institute / Industrial Training Centre affiliated to the National Council for Vocational **Education and** Training (NCVET) or State Council for Vocational Training (SCVT).
- a Modular Employable Skill Course approved by NCVET.

Clarification:

- Catering Services provided by edu. inst. to its students, Faculty & Staff: Exempt
- If the catering services (supply of food or drink in a mess / canteen, provided by anyone other than educational institution: Taxable
- Services by National Skill Development Council (NSDC): Exempt.

Notable Points:

In case of school, if following services are provided outside school premises, the treatment will be:

- Catering: Exempt
- Security, house-keeping: Taxable

SERVICES BY IIMs

- Long duration programs (1 year or more) – Exempt
- Short duration programs (less than 1 year) – Not Exempt (Taxable)

Let us understand with an example:-



In the above example, college has collected transportation fees from students (₹ 10 lakhs) is exempt because any service provided by Edu. Inst. to its students, faculty & staff is exempt.

However, amount paid by college to Keyur Transporters (₹ 15 lakhs) is taxable because transportation services taken by school is exempt, however, it is taxable for college.

- **Approved flying training courses conducted by FTO approved by the DGCA**

The approved flying training courses conducted by Flying Training Organizations approved by Director General of Civil Aviation (DGCA), wherein the DGCA mandates the requirement of a completion certificate are **exempt** as services provided by educational institutions (an institution providing services by way of education **as a part of a curriculum** for obtaining a qualification recognized by any law for the time being in force) to its **students, faculty and staff are exempt from levy of GST.**

- **Affiliation provided by universities to colleges**

The affiliation services are to monitor and ensure whether institutions possess necessary infrastructure (space, technical prowess, financial liquidity, faculty strength, etc.) & eligible to conduct courses/programs for degrees/titles extended by the university to enrolled students.

These services are **not related to student admissions or the conduct of examinations** by the affiliated colleges and thus **not exempt.**

- **Affiliation provided by Central & State educational boards or Councils to schools**

The affiliation services are **not related to student admissions or the conduct of examinations** by such schools. Thus, such services provided to schools by Central or State educational boards or councils, other similar bodies, by whatever name called, **are taxable.**

However, it may be noted that the 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 Central Government, State Government, Union Territory, local authority, Governmental authority or Government **entity are exempt vide Entry 66A** of Exemption Notification.

Few more examples:

- Amount received by Edu. Inst. from prospective employers for campus interview – Taxable
- Security / Housekeeping services provided to school in school premises – Exempt
- Security / Housekeeping services provided to school outside school premises – Taxable
- Security service to AKG Schools for an event held in an auditorium outside school premises – Taxable

- Catering services provided to school, whether in school premises / outside school premises – Exempt
- Paper procured by a college for printing question papers – Taxable (Paper procured is purchase of goods, and not services – hence taxable)
- AKG Schools paid ₹ 10 lakhs to CBSE to obtain affiliation (Accreditation Services) – Taxable
- Services of supply of online educational journals to AKG Schools for child development – Taxable
- Affiliation services to **other than Govt. Schools** by Central or State educational boards – Taxable
- Affiliation services to **Govt. Schools** by Central or State educational boards – Exempt

AGRICULTURE RELATED SERVICES

ENTRY 54: Services relating to 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 or agricultural produce by way of—

(Include activities like breeding of fish (pisciculture), rearing of silkworms (sericulture), cultivation of ornamental flowers (floriculture) and horticulture, forestry, etc.)

a. agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or 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 or leasing of agro machinery or 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 or Board or services provided by a commission agent for sale or purchase of agriculture produce;

ENTRY 55: Carrying out an intermediate production process as job work in relation to cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fiber, fuel, raw material or other similar products or agricultural produce.

Point to remember: Milling of paddy into rice also changes its essential characteristics. Therefore, milling of paddy into rice cannot be considered as an intermediate production process in relation to cultivation of plants for food, fiber or other similar products or agricultural produce. Hence not eligible for exemption.

ENTRY 57: Services by way of pre-conditioning, pre-cooling, ripening, waxing, retail packing, labelling of fruits and vegetables which do not change or alter the essential characteristics of the said fruits or vegetables.

ENTRY 58: Services provided by the National Centre for Cold Chain Development by way of cold chain knowledge dissemination.

ENTRY 24: Services by way of loading, unloading, packing, storage or warehousing of rice.

ENTRY 24A: Services by way of warehousing of minor forest produce.

ENTRY 24B: Services by way of storage or warehousing of cereals, pulses, fruits, and vegetables.

ENTRY 55A: Services by way of artificial insemination of livestock (other than horses).

SERVICES PROVIDED BY GOVT.

ENTRY 4: (Municipal Services)

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

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 5: (Panchayat Services)

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.

ENTRY 6: (SG, CG, UT etc)

Services by the Central Government, State Government, Union territory or local authority excluding the following services —

a. services by the Department of Posts [**except** post card, inland letter, book post and ordinary post (envelopes weighing less than 10 grams)] and the Ministry of Railways (Indian Railways)
b. services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;
c. transport of goods or passengers; or
d. any service, other than services covered under entries (a) to (c) above, provided to business entities.

Governmental authority: means 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 90%, or more participation by way of equity or control, to carry out any function entrusted to a Municipality under article 243W of the Constitution or to a Panchayat under article 243G of the Constitution.

ENTRY 7: (Services to unregistered business entity):

Services provided by the Central Government, State Government, Union territory or local authority to a business entity with an aggregate turnover of up to such amount in the preceding financial year as makes it eligible for exemption from registration under the Central Goods and Services Tax Act, 2017.

Explanation - For the purposes of this entry, it is hereby clarified that the provisions of this entry shall not be applicable to following services: -

a) services, -
   i. by the Department of Posts [**except** post card, inland letter, book post and ordinary post (envelopes weighing less than 10 grams)] and the Ministry of Railways (Indian Railways)
   ii. in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;
   iii. of transport of goods or passengers; and

b) Services by way of renting of immovable property.

ENTRY 8: (Govt to Govt)
Services provided by the Central Government, State Government, Union territory or local authority to another Central Government, State Government, Union territory or local authority **except** -

i. by the Department of Posts [**except** post card, inland letter, book post and ordinary post (envelopes weighing less than 10 grams)] and the Ministry of Railways (Indian Railways)
ii. in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;
iii. of transport of goods or passengers.

ENTRY 9: (Small services by govt., consideration upto ₹ 5,000)
Services provided by Central Government, State Government, Union territory or a local authority where the consideration for such services does not exceed ₹ 5,000 **except**:

i. by the Department of Posts [**except** post card, inland letter, book post and ordinary post (envelopes weighing less than 10 grams)] and the Ministry of Railways (Indian Railways)
ii. in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;
iii. of transport of goods or passengers.

Further, in case where continuous supply of service is provided by the Central Government, State Government, Union territory or a local authority, the exemption shall apply only where the consideration charged for such service does not exceed ₹ 5,000 in a F.Y.

SUMMARY TABLE: Services provided by Govt. (Linkage with RCM)

	To Unregd.	To Regd.	To Govt.
• Dept. of Post (except post card, inland letter, book post and ordinary post weighing less than 10 grams) & Ministry of Railways (Indian Railways)	FCM	FCM	FCM
• Services in relation to an aircraft / a vessel	FCM	FCM	FCM
• Services related to transport of goods / passengers	FCM	FCM	FCM
• Renting of immovable property	FCM	RCM	Exempt
• Any other service	Exempt	RCM (if amt is more than ₹ 5,000)	Exempt

ENTRY 9E: 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 9F: 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 9G: 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 34A: Services supplied by Central Government, State Government, Union territory to their undertakings or Public Sector Undertakings (PSUs) by way of guaranteeing the loans taken by such undertakings or PSUs from the banking companies and financial institutions.

ENTRY 61: (Issuance services)
Services provided by the Central Government, State Government, Union territory or local authority by way of issuance of passport, visa, driving license, birth certificate or death certificate.

ENTRY 62: (Tolerating an act)

Services provided by the Central Government, State Government, Union territory or local authority by way of tolerating non-performance of a contract for which consideration in the form of fines or liquidated damages is payable to the Central Government, State Government, Union territory or local authority under such contract.

ENTRY 63: (Natural Resources - Individual farmer)

Services provided by the Central Government, State Government, Union territory or local authority 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, fiber, fuel, raw material or other similar products.

ENTRY 65: Services provided by the Central Government, State Government, Union territory by way of deputing officers after office hours or on holidays for inspection or container stuffing or such other duties in relation to import export cargo on payment of Merchant Overtime charges.

ENTRY 65A: (RTI):

Services by way of providing information under the RTI Act (Right to Information Act, 2005).

ENTRY 65B: Services supplied by a State Government to Excess Royalty Collection Contractor (ERCC) by way of assigning the right to collect royalty on behalf of the State Government on the mineral dispatched by the mining lease holders.

Service by SG to ERCC	GST paid by mining leaseholders on Royalty is
Shall be fully exempts	More than GST exempted on the service provided by SG to ERCC
Exemption restricted to the extent of such amount as paid by mining lease holders & ERCC will pay = GST exempted by SG to ERCC - GST paid by mining lease holders	Less than GST exempted on the Service provided by SG to ERCC.

ENTRY 41: (Long term lease by govt to Industrial Units)

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 30 years, or more of industrial plots or plots for development of infrastructure for financial business, provided by the State Government Industrial Development Corporations or Undertakings or by any other entity having 20% or more ownership of Central Government, State Government, Union territory to the industrial units or the developers in any industrial or financial business area.

Location charges or preferential location charges (PLC) paid upfront in addition to lease premium for long term lease shall have same treatment as upfront amount charged for lease i.e., exempt from GST.

ENTRY 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, 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.

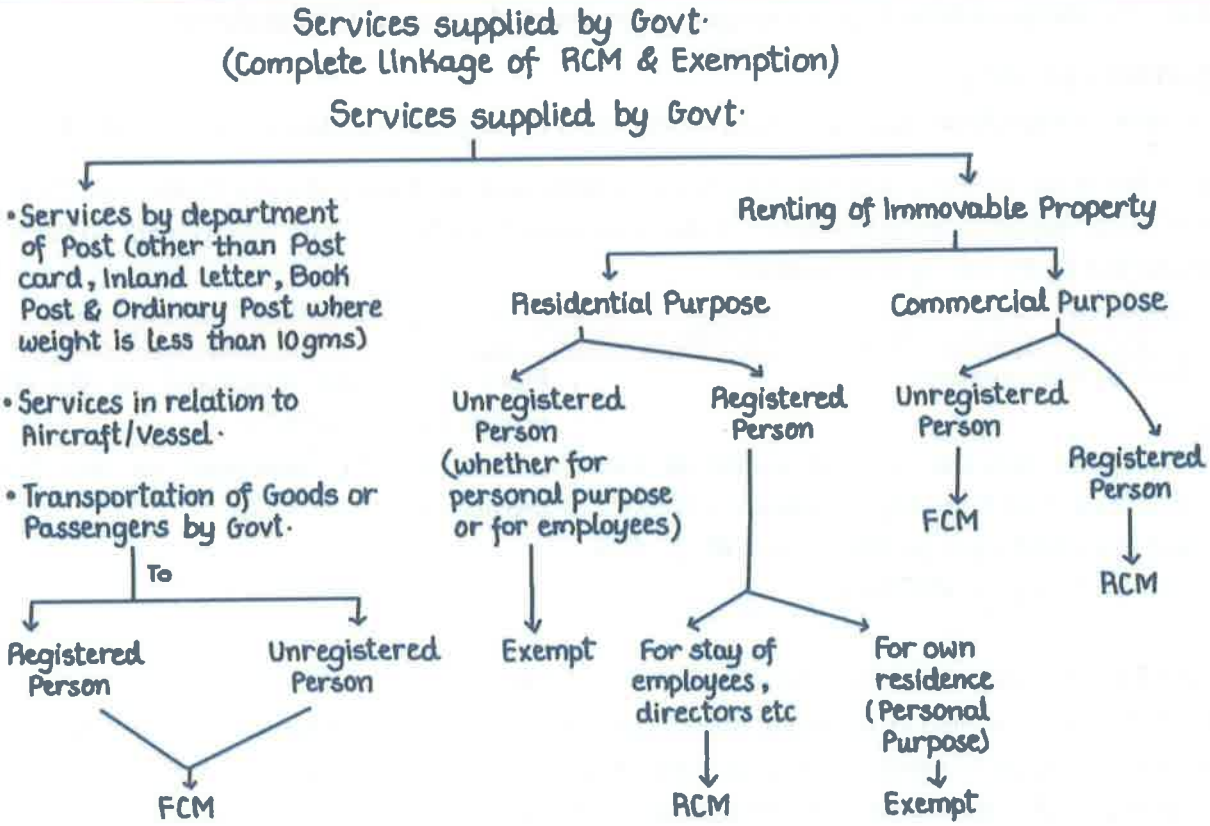
ENTRY 47:

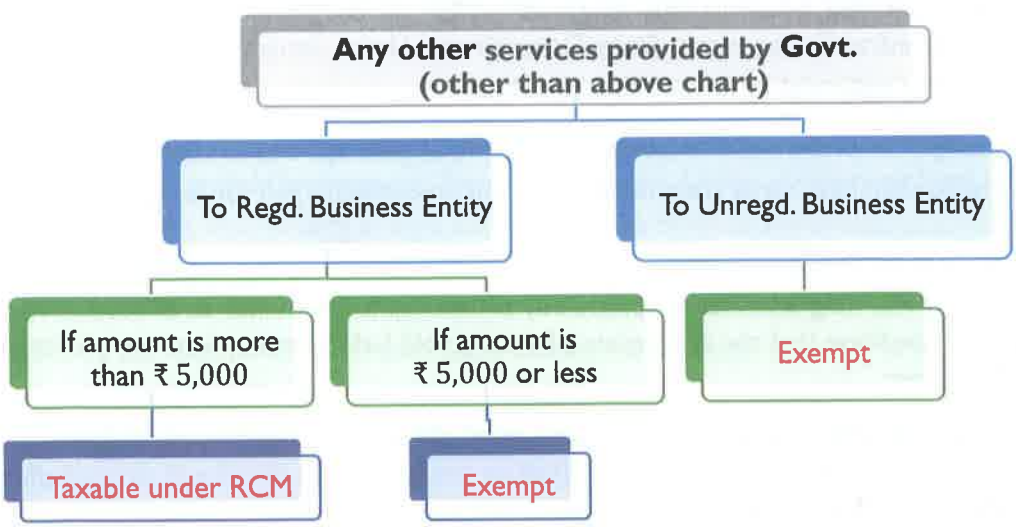
Services provided by the Central Government, State Government, Union territory or local authority by way of-

a) registration required under any law for the time being in force;

b) testing, calibration, safety check or certification relating to protection or safety of workers, consumers or public at large, including fire license, required under any law for the time being in force.

SERVICES SUPPLIED BY GOVERNMENT





SERVICE TO GOVERNMENT

ENTRY 9C: Supply of service by a Government Entity to Central Government, State Government, Union territory, local authority or any person specified by Central Government, State Government, Union territory or local authority against consideration received from Central Government, State Government, Union territory or local authority, in the form of grants.

ENTRY 3: Pure services provided to Government

Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the CG, SG or UT or local authority by way of any activity:

- in relation to any function entrusted to a Panchayat under article 243G of the Constitution.
- in relation to any function entrusted to a Municipality under article 243W of the Constitution.

ENTRY 3A: Composite supply of goods and services to Government*

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 provided to the CG, SG or UT or local authority by way of any activity:

- in relation to any function entrusted to a Panchayat under article 243G of the Constitution.
- in relation to any function entrusted to a Municipality under article 243W of the Constitution.

Note: * *If provided to Government Entity – Taxable.*

ENTRY 3B:

Services provided to Governmental Authority by way of –

(a) water supply;
(b) public health;
(c) sanitation conservancy;
(d) solid waste management; and
(e) slum improvement and upgradation.

Clarification:

a. Activities of Sanitation and conservancy services provided to Indian Army or any other Government Ministry/Department, in the same manner as a local authority does for the general public, then, the same will be eligible for exemption under Entries 3 and 3A. Otherwise, chargeable to GST.

b. Applicability of GST on milling of wheat into flour or paddy into rice for Distribution by State Govt. under Public Distribution System (PDS) - PDS is covered activities entrusted to a Panchayat under Article 243G of Constitution & so the exemption would depend on case to case basis whether goods supplied in such composite supply of milling / fortification exceed 25% of value or not.

c. It is clarified that supply of 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 Central Public Works Department (CPWD) are eligible for *exemption from GST* under Entries 3 and 3A.

d. **Clarification on District Mineral Foundations Trusts (DMFTs) set up by the SGs**

DMFTs work for the interest and benefit of persons and areas affected by mining related operations by regulating receipt and expenditure from the respective Mineral Development Funds created in the concerned district. They provide services related to drinking water supply, environment protection, health care facilities, education, welfare of women and children, supply of medical equipment etc.

These activities are similar to activities that are enlisted in 11th Schedule and 12th Schedule of the Constitution. The ultimate users of the various schemes under DMF are individuals, families, women and children, farmers/producer groups, SHGs of the mining affected areas etc. The services/supplies out of DMF fund are provided free of charge and no consideration is realized from the beneficiaries by DMF against such services.

Accordingly, it is clarified that **DMFT set up by the State Governments are Governmental Authorities** and thus **eligible for the same exemptions** from GST as available to any other Governmental Authority.

ENTRY 72: Training program for 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.

SPORTS SERVICE

ENTRY 53: Services by way of sponsorship of sporting events organised by recognized sports bodies.

ENTRY 68: 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 (not commentators, curators, selectors, technical experts, i.e. they are taxable)
b) another recognised sport body.

ENTRY 82: FIFA U-17 World Cup 2017

Services by way of right to admission to events organised under FIFA U-17 Women's World Cup 2017.

ENTRY 82A: FIFA U-17 Women World Cup 2020

Services by way of right to admission to the events organised under FIFA U-17 Women's World Cup 2020 whenever rescheduled.

ENTRY 9AA: Services provided by and to FIFA

Services provided by and to FIFA and its subsidiaries directly or indirectly related to any of the events under FIFA U-17 Women's World Cup 2020 to be hosted in India whenever rescheduled.

Provided that Director (Sports), Ministry of Youth Affairs and Sports certifies that the services are directly or indirectly related to any of the events under FIFA U-17 Women's World Cup 2020.

ENTRY 9AB: Services provided by and to Asian Football Confederation

Services provided by and to Asian Football Confederation (AFC) and its subsidiaries directly or indirectly related to any of the events under AFC Women's Asia Cup 2022 to be hosted in India.

Provided that director (Sports), Ministry of youth affairs and Sports certifies that the services are directly or indirectly related to any of the events under AFC Women's Asia Cup 2022.

SKILL DEVELOPMENT SERVICES

ENTRY 69: 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 70: Services of assessing bodies empanelled centrally by the Directorate General of Training, Ministry of Skill Development and Entrepreneurship by way of assessments under the Skill Development Initiative Scheme.

ENTRY 71: 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 **Education and** training courses certified by the National Council for Vocational Training.

ARTISTS, EVENTS, ADMISSION SERVICE

ENTRY 78: 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 ₹ 1,50,000 are exempt from GST.

❖ **Points to remember**

- Other art forms e.g., western music or dance, modern theatres, performance of actors in films or television serials would be taxable. Similarly, activities of artists in still art forms e.g., painting, sculpture making etc. are taxable.
- The exemption shall not apply to service provided by such an artist as a brand ambassador.

ENTRY 79: Services by way of admission to a museum, national park, wild life sanctuary, tiger reserve or zoo (Ticket amount is Irrelevant).

ENTRY 79A: Services by way of admission to a protected monument so declared under the Ancient Monuments and Archaeological Sites & Remains Act, 1958 or any of the State Acts, for the time being in force. (E.g.: Taj Mahal)

ENTRY 80: 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 the Income-tax Act.

ENTRY 81: 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.
c) recognised sporting event;
d) planetarium,

where the consideration for right to admission to the events or places as referred to in items (a), (b), (c) or (d) above is not more than ₹ 500 per person. (If amount is ₹ 501 or more – Fully taxable)

ANCILLARY SERVICES RELATED TO ELECTRICITY SUPPLY

ENTRY 25A: 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.

SERVICES BY ASSOCIATIONS

ENTRY 77:

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 ₹ 7,500 per month per member for sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex.

Annual T/O of RWA	Monthly charges	Exempt or not
More than ₹ 20 lakhs*	More than ₹ 7,500	No exemption (full amt. taxable)
	₹ 7,500 or less	Exempt
₹ 20 lakhs or less	More than ₹ 7,500	Exempt
	₹ 7,500 or less	Exempt

* **₹ 10 lakhs** in case of Special Category States of Manipur, Mizoram, Nagaland & Tripura

ENTRY 77A: 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 upto an amount of ₹ 1,000/- per member per year.

INCUBATOR / INCUBATEE SERVICE

ENTRY 44: Services provided by an incubatee up to a total turnover of ₹ 50 lakh in a financial year subject to the following conditions, namely: -

a. the total turnover had not exceeded ₹ 50 lakh during the preceding financial year; and

b. a period of 3 years has not elapsed from the date of entering into an agreement as an incubatee.

ENTRY 48: Taxable services, provided or to be provided, by a Technology Business Incubator (TBI) / Science & Technology Entrepreneurship Park (STEP).

RESEARCH & DEVELOPMENT SERVICES

ENTRY 44A: 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 clauses (ii) or (iii) of sub-section (1) of section 35 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.

INSURANCE SERVICES

- ✓ Services of life insurance business provided by way of annuity under the National Pension System.
- ✓ Services of life insurance business provided or agreed to be provided by the Army, Naval and Air Force Group Insurance Funds to members of the Army, Navy, and Air Force, respectively, under the Group Insurance Schemes of the Central Government.
- ✓ Services of life insurance provided or 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.
- ✓ Services of life insurance provided/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.
- ✓ Life micro-insurance product as approved by the Insurance Regulatory and Development Authority, having a maximum amount of cover of ₹ 2,00,000.

The term "re-insurance" includes "retrocession" services which means a re-insurance transaction whereby a part of assumed reinsured risk is further ceded to another Indian Insurer or a CBR (Cross Border Re-insurer).

SERVICES BY VARIOUS GOVT. SCHEMES

- ✓ Services provided to the Central Government, State Government, Union territory administration under any training programme for which 75% or more of total expenditure is borne by the Central Government, State Government, Union territory administration.
- ✓ 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 or enhancement under the Housing for All (Urban) Mission or Pradhan Mantri Awas Yojana.
- ✓ 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.

SERVICES BY SPECIFIED BODIES

SERVICES BY

- Employees State Insurance Corporation (Entry 30)
- Employees Provident Fund Organisation (Entry 31)
- Coal Mines Provident Fund Organisation (Entry 31A)
- NPS Trust (Entry 31B)

BUSINESS FACILITATOR / CORRESPONDENT

ENTRY 39: Services by the following persons in respective capacities –

a) business facilitator or 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.

LEGAL SERVICES

ENTRY 45: Services provided by-

a. an arbitral tribunal / a partnership firms of advocates or an individual as an adv. / a senior adv. to –
   i. any person other than a business entity; or
   ii. a business entity with an aggregate turnover up to such amount in the preceding FY as makes it eligible for exemption from registration under the CGST Act, 2017;
   iii. the Central Government, State Government, Union territory, local authority Governmental Authority or Government Entity.

b. an INDIVIDUAL as an adv. or Partnership firms of ADVOCATES (not senior adv) to an advocate or Partnership firm of advocates providing legal services.

MISC SERVICE

- ✓ Services by way of transfer of a going concern service, as a whole or an independent part thereof.
- ✓ Supply of services associated with transit cargo to Nepal and Bhutan (landlocked countries).
- ✓ Services by way of collecting or providing news by an independent journalist, Press Trust of India, or United News of India.
- ✓ Services by an organiser to any person in respect of a business exhibition held outside India.
- ✓ Services of public libraries by way of lending of books, publications or any other knowledge-enhancing content or material.
- ✓ Services by a foreign diplomatic mission located in India. (Services provided to FDM – Taxable)
- ✓ Services by way of public conveniences such as provision of facilities of bathroom, washrooms, lavatories, urinals, or toilets.
- ✓ Access to road / bridge on payment of toll is exempt, but not the construction of road services. Hence, GST on deferred payment or annuity paid for construction of roads is not exempt.
- ✓ Additional toll / fees collected from non-fastag vehicle at Toll Plaza is exempt.
- ✓ Services by the guest anchors in lieu of honorarium is taxable.
- ✓ GST on sale of land after levelling, laying down of drainage lines – 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 also covered under Para 5 of Schedule-III and hence, does not attract GST.

  However, any service provided for development of land, like levelling, laying of drainage lines (as may be received by developers) shall attract GST at applicable rate for such services.

SPECIAL POINTERS FROM THE CHAPTER

- Charitable trust provides services of advancement of yoga – Exempt
- AB & Co provides services of advancement of yoga – Taxable
- Services provided by Charitable trust by advancement of educational programmes to persons over the age of 65 years in urban area - Taxable

- Renting of room at religious place for ₹ 999 - Exempt
- Renting of room at religious place for ₹ 1,000 - Taxable
- Services provided by specified organization in respect of religious pilgrimage - Exempt
- Religious pilgrimage organized by Todormel Charitable trust – Taxable
- Rice Milling of paddy into rice - Taxable
- Loading, Unloading, Packaging, Storage & Warehousing of Rice – Exempt
- Services of renting of medical shop in hospital - Taxable
- Services provided by Police to PSU - Taxable
- Services provided to CG, SG under any training program for which 75% or more of total expenditure is borne by the CG, SG, UT - Exempt
- Services by way of admission to museum having ticket amount is more than ₹ 600 - Exempt (Ticket amount is irrelevant for Museum, National Park, Wild life sanctuary, Tiger reserve or Zoo)
- Services by way of Right to admission to Circus, having ticket amount is ₹ 600 - Taxable
- Services provided by government IITs To Individual Trainees - Exempt
- Catering Services taken by School outside the school Premises - Exempt
- Housekeeping Services taken by School Outside the School Premises - Taxable
- Cleaning Services Provided to College - Taxable
- Services provided to Educational Inst (any) for Renting of Building - Taxable
- Services provided to Educational Inst (any) for Renting of Building for Exam Conduct - Exempt
- Reiki Healing Treatment - Taxable
- Consideration received from School Students in the form of entrance exam Fees - Exempt
- Amount Paid for Radio Taxi - Taxable
- Amount paid for Metered Cab - Exempt
- Storage / Warehousing of Tea & Coffee - Taxable
- Services provided by Commentator to Recognized sports body - Taxable
- Campus Placement services by educational institution – Taxable
- Services provided by the cord blood banks – Taxable
- Fumigation services provided in a warehouse of agricultural produce - Taxable

SERVICE EXEMPT FROM IGST

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.

IMPORTANT NOTIFICATIONS & CIRCULARS

1. Clarification on Educational institution for conduct of examination

It is clarified that any authority, board, or body set up by the Central Government or State Government 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.

2. Clarification on applicability of GST on accommodation services supplied by Air Force Mess and other similar messes to its personnel

All services supplied by Central Government, State Government, Union Territory, or local authority to any person other than business entities (barring a few specified services such as services of postal department, transportation of goods and passengers etc.) are exempt from GST vide Entry 6.

Therefore, it is hereby clarified that accommodation services provided by Air Force Mess and other similar messes, such as, Army mess, Navy mess, Paramilitary and Police forces mess to their personnel or any person other than a business entity are exempt.

3. Clarification on whether GST is applicable on reimbursement of electricity charges received by real estate companies, malls, airport operators, etc. from their lessees/occupants

It is clarified that whenever electricity is being supplied bundled with renting of immovable property and/or maintenance of premises, as the case may be, it forms a part of composite supply and shall be taxed accordingly. The principal supply is renting of immovable property and/or maintenance of premise, as the case may be, and the supply of electricity is an ancillary supply as the case may be. Even if electricity is billed separately, the supplies will constitute a composite supply and therefore, the rate of the principal supply i.e., GST rate on renting of immovable property and/or maintenance of premise, as the case may be, would be applicable.

However, where the electricity is supplied by the Real Estate Owners, Resident Welfare Associations (RWAs), Real Estate Developers etc., as a pure agent, it will not form part of value of their supply. Further, where they charge for electricity on actual basis that is, they charge the same amount for electricity from their lessees or occupants as charged by the State Electricity Boards or DISCOMs from them, they will be deemed to be acting as pure agent for this supply.

PLACE OF SUPPLY

RELEVANT DEFINITIONS

1. **EXPORT OF SERVICES** means the supply of any service when

- The **supplier** of service is located in **India**
- The **recipient** of service is located **outside India**
- The **place of supply** of service is **outside India**
- 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
- The supplier of service and recipient of service are **not merely establishments** of a distinct person.

2. **CONTINUOUS JOURNEY** means

A journey for which a single or more than one ticket or invoice is issued at the same time, either by a single supplier of service or through an agent acting on behalf of more than one supplier of service and which involves no stopover between any of the legs of the journey for which one or more separate tickets or invoices are issued.

Explanation – For the purposes of this clause, the term "stopover" means a place where a passenger can disembark either to transfer to another conveyance or break his journey for a certain period in order to resume it at a later point of time.

3. **IMPORT OF SERVICES** means the supply of any service, where



PLACE OF SUPPLY OF GOODS OTHER THAN SUPPLY OF GOODS IMPORTED INTO, OR EXPORTED FROM INDIA [SECTION 10]

- **Sec 10(1)(a):** where the supply involves **movement of goods**, whether by the supplier or the recipient or by any other person, the place of supply of such goods shall be the **location of the goods at the time at which the movement of goods terminates for delivery to the recipient (delivery for consumption).**

- **Sec 10(1)(b):** where the goods are delivered by the supplier to a recipient or any other person on the **direction of a third person**, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to the goods or otherwise, it shall be deemed that the said third person has received the goods and the place of supply of such goods shall be **the principal place of business of such person. (Bill to ship to model)**

- **Sec 10(1)(c):** where the supply **does not involve movement** of goods, whether by the supplier or the recipient, the place of supply shall be **the location of such goods** at the time of the **delivery to the recipient.**

- **Sec 10(1)(ca):** where the supply of goods is made to a person **other than a registered person,** the place of supply shall, notwithstanding anything contrary contained in clause (a) or (c), be the location as per the **address of the said person** recorded in the invoice issued in respect of the said supply and **the location of the supplier where the address** of the said person is **not recorded in the invoice.**

  For the purposes of this clause, recording of the name of the State of the said person in the invoice shall be deemed to be the recording of the address of the said person.

  Crux: PoS of goods to an **unregistered person** shall be **location of address of recipient** as recorded in the invoice or **location of supplier where address is not recorded.**

- **Sec 10(1)(d):** where the **goods are assembled or installed at site**, the place of supply shall be the **place of such installation or assembly.**

- **Sec 10(1)(e):** where the **goods** are supplied on board a conveyance, including a vessel, an aircraft, a train or a motor vehicle, the place of supply shall be the **location at which such goods are taken on board.**

Example: Mr. X (New Delhi) boards the New Delhi-Kota train at New Delhi. He sells the goods taken on board by him (at New Delhi), in the train, at Jaipur during the journey. The place of supply of goods is the location at which the goods are taken on board, i.e., New Delhi and not Jaipur where they have been sold.

➢ PLACE OF SUPPLY OF GOODS IMPORTED INTO, OR EXPORTED FROM INDIA [SECTION 11]

Imported into INDIA	Exported from INDIA
PoS: Location of Importer	PoS: Location o/s India

➢ PLACE OF SUPPLY OF SERVICES WHERE LOCATION OF SUPPLIER OF SERVICE & THE LOCATION OF THE RECIPIENT OF SERVICE IS IN INDIA [SECTION 12]

❖ **Sec 12(1):** The provisions of this section shall apply to determine the place of supply of services **where the location of supplier of services and the location of the recipient of services is in India.**

❖ **Sec 12(2):** The place of supply of **services, except** services specified in sub-sections **(3) to (14),**

a. made to a **registered person** shall be the **location of such person**;

b. made to any person **other than a registered person** shall be,

- the **location of the recipient** where the **address on record exists**; and
- the **location of the supplier** of services in other cases.

❖ **Sec 12(3):**

Directly in relation to an immovable property, boat / vessel	Architects, interior decorators, surveyors, engineers and other related experts or estate agents	Shall be the **location** at which the **immovable property** or boat or vessel, as the case may be, is located or intended to be located.
	By way of lodging accommodation by a hotel, inn, guest house, home stay, club, or campsite, by whatever name called, and including a house boat or any other vessel; or	
	By way of accommodation in any immovable property for organising any marriage or reception or matters related there to, official, social, cultural, religious, or business function including services provided in relation to such function at such property.	
	Or any ancillary service.	
	If the location of the immovable property or boat or vessel is located or intended to be located outside India	The place of supply shall be the location of the recipient.
	If immovable property is located in more than one state / UT	Proportionate allocation amongst states.

Sec 12(3) & 13(4) : POS for services in relation to Immovable Property

Use the Majority Rule i.e.,
Event 1 : Location of Supplier
Event 2 : Location of Receiver
Event 3 : Location of Property

- If any 2 events are in India → POS : In India
  - 1st Priority is Location of Property
  - And if property is located outside India - Then, POS : Location of Receiver
- If any 2 events are outside India → POS : Location of Property

Examples :

SEC	Location of Supplier	Location of Receiver	Location of Property	Place of Supply (POS)
12	Delhi	Mumbai	Udaipur	Udaipur
13	Delhi	Dubai	Mumbai	Mumbai
12	Delhi	Mumbai	Dubai	Mumbai
13	Delhi	Dubai	Singapore	Singapore
13	Delhi	Dubai	Multiple countries (including India)	Location of Property in India

- **Sec 12(4):** The place of supply of restaurant and catering services, personal grooming, fitness, beauty treatment, health service including cosmetic and plastic surgery shall be the **location where the services are actually performed**.

- **Sec 12(5):** The place of supply of services in relation to **training and performance appraisal** to
  a. a **registered person**, shall be the **location of such person**;
  b. a person **other than a registered person**, shall be the location **where the services are actually performed.**

- **Sec 12(6):** The place of supply of services provided **by way of admission** to a cultural, artistic, sporting, scientific, educational, entertainment event or amusement park or any other place and services ancillary thereto, **shall be the place where the event is actually held or where the park or such other place is located.**

Example: Mr. A, a resident of Ghaziabad, Uttar Pradesh, buys a ticket for a circus organized at Gurugram, Haryana by a circus company based in New Delhi. The place of supply is the location where the circus is held, i.e., Gurugram.

❖ **Sec 12(7):**

Organisation of a cultural, artistic, sporting, scientific, educational or entertainment event including supply of services in relation to a conference, fair, exhibition, celebration, or similar events; or services ancillary to organisation of such type of events or assigning of sponsorship of such events	Made to a registered person (India or Outside India)	Location of such registered person
	Made to unregistered person (a) In India	(a) Location where the event is actually held
	(b) Event held o/s India	(b) Location of recipient
	(c) Held in multiple states	(c) Proportionate allocation amongst states

❖ **Sec 12(8):** The place of supply of services by way of **transportation of goods**, including by **mail or courier** to –

- a **registered person**, shall be the **location of such person**;
- a person **other than a registered person**, shall be the location **at which such goods are handed over for their transportation.**

Example: M/s JKL Pvt. Ltd. is a registered company in Chennai. It ships goods to its customers in London, United Kingdom through M/s Strong Logistics, a shipping company. The place of supply of services of transportation of goods provided by M/s Strong Logistics to M/s JKL Pvt. Ltd. is the location of the recipient, i.e. Chennai.

Mr. Y, an unregistered person, of New Delhi sends a courier to his brother in Amritsar, Punjab. The recipient being unregistered person, the place of supply is the location where goods are handed over for their transportation, i.e., New Delhi.

❖ **Sec 12(9):** The place of supply of **passenger transportation service** to, —

a) a **registered person**, shall be the **location of such person**;
b) a person **other than a registered person**, shall be the place **where the passenger embarks on the conveyance for a continuous journey.**

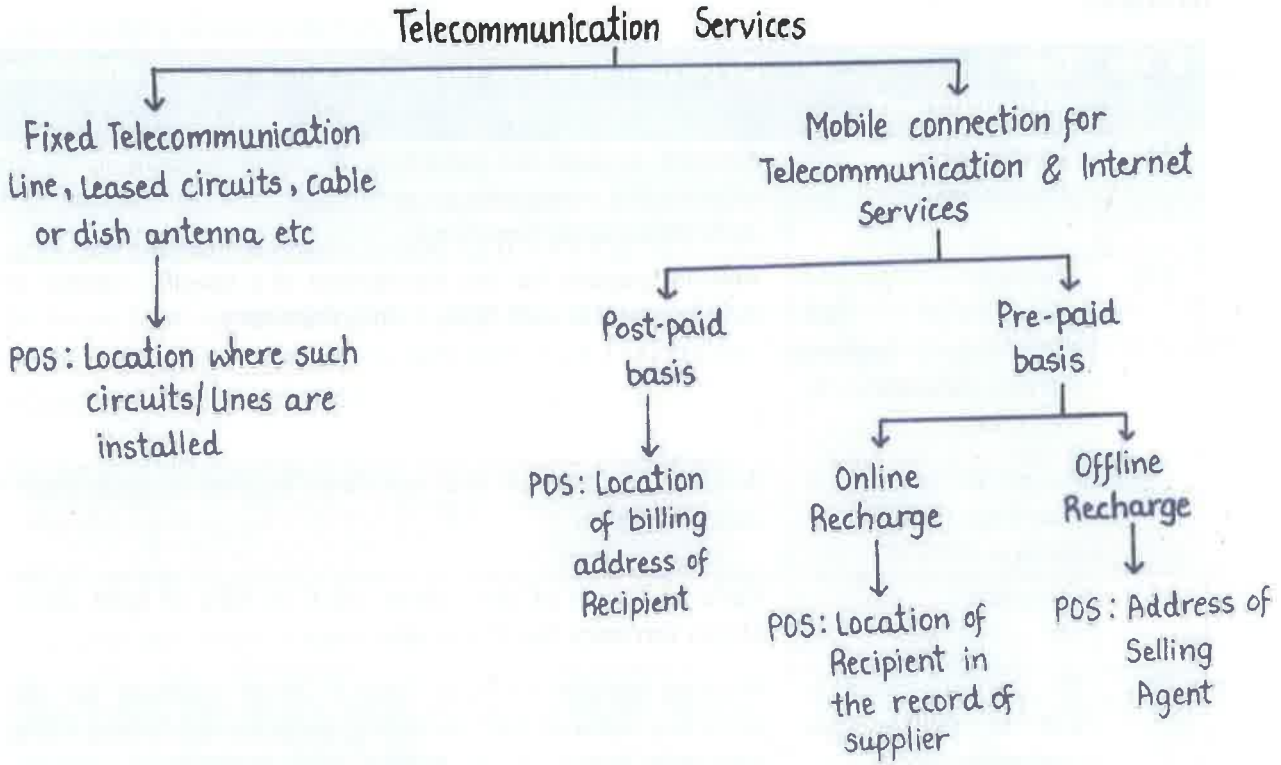
Provided that where the right to passage is given for future use and **the point of embarkation is not known** at the time of issue of right to passage, the place of supply of such service shall be determined in accordance with the provisions of sub-section (2).

Example: The card issued by New Delhi metro could be used by a person located in Noida, or New Delhi or Faridabad, without the New Delhi metro being able to distinguish the location or journeys at the time of receipt of payment.

❖ **Sec 12(10):** The place of supply of **services** on board a conveyance, including a vessel, an aircraft, a train, or a motor vehicle, shall be the **location of the first scheduled point of departure** of that conveyance for the journey. (E.g.- movies on demand).

❖ **Sec 12(11):** The place of supply of **telecommunication services** including data transfer, broadcasting, cable and direct to home television services to any person shall, —

- in case of services by way of **fixed telecommunication line**, leased circuits, internet leased circuit, cable or dish antenna, be the **location where the telecommunication line**, leased circuit or cable connection or dish antenna **is installed for receipt of services;**
- in case of **mobile connection** for telecommunication and internet services provided on **post-paid basis**, be the **location of billing address** of the recipient of services on the record of the supplier of services;
- in cases where **mobile connection** for telecommunication, internet service and direct to home television services are provided on **pre-payment** basis through a voucher or any other means, –
  a) **through a selling agent** or a reseller or a distributor of subscriber identity module card or re-charge voucher, be the **address of the selling agent** or re-seller or distributor as per the record of the supplier at the time of supply; or
  b) **by any person** to the final subscriber, be the location where such **pre-payment is received** or such vouchers are sold;
- in other cases, be the **address of the recipient as per the records** of the supplier of services and where such **address is not available**, the place of supply shall be **location of the supplier of services.**



Provided that where the address of the recipient as per the records of the supplier of services is not available, the place of supply shall be **location of the supplier** of services.

Provided further that if such **pre-paid service** is availed or the recharge is made **through internet banking** or other electronic mode of payment, the **location of the recipient of services on the record of the supplier of services** shall be the place of supply of such services.

- **Sec 12(12):** The place of supply of **banking and other financial services**, including stock broking services to any person **shall be the location of the recipient of services on the records of the supplier of services.**

  Provided that if the **location of recipient of services is not on the records of the supplier, the place of supply shall be the location of the supplier of services.**

- **Sec 12(13):** The place of supply of **insurance services** shall, –
  a) to a **registered** person, be the **location of such person**;
  b) to a person **other than a registered person**, be the **location of the recipient** of services **on the records of the supplier** of services.

- **Sec 12(14):** The place of supply of **advertisement services** to the Central Government, a State Government, a statutory body or a local authority meant for the States or Union territories identified in the contract or agreement shall be taken as being in each of such States or Union territories.

S. No.	Type of advertisement	Determining factor for proportionate value allocation.
(1)	Newspapers and publications	Amount payable for publishing an advertisement in all the editions of a newspaper or publication, which are published in each State / Union territory.
(2)	Through printed material like pamphlets, leaflets, diaries, calendars, T-shirts, etc.	Amount payable for the distribution of a specific number of such material in each State / Union territory.
(3)	Advertisements in hoardings (other than those on trains)	Amount payable for the hoardings located in each State / Union territory.
(4)	On trains	Ratio of length of the railway track in each of such State / Union territory, for that train.
(5)	On the back of utility bills of oil and gas companies, etc.	Amount payable to each State / Union territory for the advertisements on bills pertaining toconsumers having billing addresses in each of such State / Union territory.
(6)	On railway tickets	Ratio of number of Railway Stations in each of such State.
(7)	Radio stations	Amount payable to such radio stations.

(8)	Television channels	No. of viewers published by BARC of such channels in each State / UT. Figures for the last week of a quarter is used for calculating viewership for the succeeding quarter. If viewership relates to more than one state- ratio of population shall be used.
(9)	Cinema halls	Amount payable to a cinema hall or screens in a multiplex in each State / Union territory.
(10)	Over Internet	Deemed to be provided all over India thus apportioned to all states or UTs.
(11)	Through SMS	Based on the telecom subscribers in each of such State / Union territory. a) The telecom subscribers figures published by the TRAI. Figures of the last quarter will be used for calculating the subscribers for the next quarter. b) Where such figures relate to more than one State/UT, the subscriber figures for that State/UT shall be calculated in the ratio of the populations of that State/UT.

❖ **Points to remember: -**

In case of lodging accommodation:

- By Hotel, Inn, Guest house etc., proportionate to be done on the basis of no. of nights stayed in such property.
- Where property is located in multiple states / UTs, proportionate is to be done on the basis of area of immovable property lying in such State / UT.
- In house boat or vessel & its ancillary services, proportionate is to be done on the basis of time spent by the Boat or vessel in each such state / UT, to be determined on the basis of declaration made by the service provider.

➢ PLACE OF SUPPLY OF SERVICES WHERE LOCATION OF SUPPLIER OR LOCATION OF RECIPIENT IS OUTSIDE INDIA [SECTION 13]

❖ **Sec 13(1):** Applicable where the location of the supplier of services or the location of the recipient of services is outside India.

❖ **Sec 13(2):** The place of supply of services except the services specified in sub-sections (3) to (13) shall be the **location of the recipient of services**:

Provided that where the location of the recipient of services is not available in the ordinary course of business, the place of supply shall be the location of the supplier of services.

❖ Sec 13(3): Performance based services

S. No.	Nature of Supply	Place of Supply
1.	Services requiring physical presence of goods on which the services are to be performed.	Location where the service is actually performed
	Exceptions: Services supplied in respect of goods, that are temporarily imported into India for repairs or for any other treatment or process and are exported after such repairs / treatment / process, without being put to any other use in India.	• Location of the recipient • Location of the supplier, if location of recipient is not available.
	Services supplied in respect of goods, that are provided from a remote location by electronic means.	Location where goods are situated at the time of supply of services
2.	Service supplied to Individual which requires the physical presence of the recipient.	Location where the service is actually performed.
3.	Services at 1 & 2 above supplied at more than one location including a location in the taxable territory.	Location in the taxable territory
4.	Services at 1 & 2 above supplied in more than one states / UTs.	Each of State / Union territory

❖ **Point to remember** - In case of cutting and polishing activity on unpolished diamonds which are temporarily imported into India and are not put to any use in India, the place of supply would be determined as per the provisions contained in section 13(2).

Example: QR Pvt. Ltd. imports raw diamonds from a diamond merchant in Belgium for the purpose of cutting, polishing and finishing the same. After the work is completed, the finished diamonds are exported to the diamond merchant in Belgium. The place of supply of the services undertaken by QR Pvt. Ltd. is the location of the recipient, i.e., Belgium.

❖ Sec 13(4): Services in relation to immovable property

Nature of Supply	Place of Supply
Services supplied directly in relation to an immovable property like • Services of experts and estate agents • Accommodation by a hotel, inn, guest house, club, or camp site • Grant of rights to use immovable property • Construction and related services • Services of architects or interior decorators	Location of Immovable property located or intended to be located
Above services supplied at more than one location, including a location in the taxable territory.	Location in the taxable territory
Above services supplied in more than one State / Union territory	Each of State / UT

❖ **Sec 13(5):** Services by way of **admission** to and / or organization of events or celebrations etc.

Nature of Supply	Place of Supply
• Services supplied by way of admission to or organization of following: - Cultural, artistic, sporting, scientific, educational, entertainment events - Celebration, conference, fair, exhibition - Similar events • Services ancillary to such admission or organization of event	Place where the event is actually held
Above services supplied at more than one location, including a location in the taxable territory	Location in the taxable territory
Above services supplied in more than one State/Union territory	Each of State / Union territory

Section No.	Place of Supply	Remarks
Sec 13(6): Services provided at more than one location including location in taxable territory for services referred in Section 13(3), 13(4) & 13(5).	Location in the taxable territory	
Sec 13(7): Services provided at more than one State / UT for services referred in Section 13(3), 13(4) & 13(5).	Place of supply shall be as being in each of such States or Union territories	Value of such supplies specific to each State or Union territory shall be in proportion to: • Value of services separately collected or determined in terms of the contract or agreement entered into in this regard • In the absence of such contract or agreement, on such other basis as may be prescribed

❖ **Sec 13(8):** Banking and financial services, Intermediary services and hiring of means of transport

Nature of Supply	Place of Supply
➢ Services supplied by a banking company, or a financial institution, or a non-banking financial company, to account holders ➢ Intermediary Services ➢ Services consisting of hiring of means of transport, including yachts but excluding aircrafts and vessels, **up to a period of 1 month**	Location of Supplier of Services

➢ **Note:** Difference b/w Sec 12(12) & 13(8).

❖ **Sec 13(10):** The place of supply in respect of passenger transportation services shall be the **place where the passenger embarks on the conveyance for a continuous journey**.

❖ **Sec 13(11):** The place of supply of services provided on board a conveyance during passenger transportation including services intended to be wholly or substantially consumed while on board, shall be the **first scheduled point of departure of that conveyance for the journey.**

❖ **Sec 13(12): Online information and database access or retrieval services (OIDAR)**

The place of supply of OIDAR is the location of the recipient of services.

On satisfying any 2 non-contradictory conditions out of such seven conditions, the service recipient is deemed to be located in the taxable territory, i.e., India.

The seven conditions are:

1. The recipient gives an Indian address through internet;
2. The payment is settled by an Indian credit card / debit card / other card;
3. The recipient has an Indian billing address;
4. The computer / other device used by the recipient has an Indian IP address;
5. The recipient uses an Indian bank account for payment;
6. The country code of subscriber identity module card used by the recipient of services is of India;
7. The recipient receives the service through an Indian fixed land line.

❖ **Sec 13(13):** In order to prevent double taxation or non-taxation of supply of any service, section 13(13) empowers the Government to notify any service for which the place of supply shall be the place of effective use and enjoyment of service.

NOTIFIED SERVICES U/S 13(13)

S. No.	Services notified	Place of Supply
1.	Supply of research and development services related to the pharmaceutical sector by a person located in taxable territory to a person located in non-taxable territory.	Location of the recipient of services subject to fulfillment of specified conditions
2.	Supply of maintenance, repair or overhaul service in respect of aircrafts, aircraft engines and other aircraft components or parts supplied to a person for use in the course or furtherance of business.	Location of the recipient of service
3.	Supply of maintenance, repair or overhaul services in respect of ships and other vessels, their engines and other components or parts supplied to a person for use in the course or furtherance of business.	Location of the recipient of service

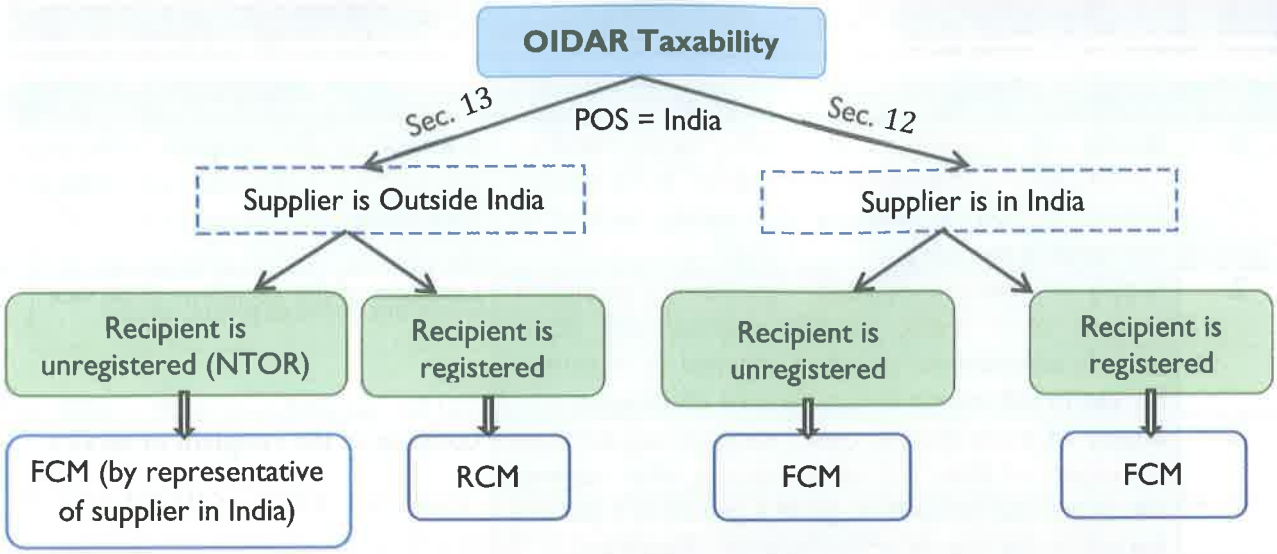
SEC 14 OF IGST ACT: SPECIAL PROVISION FOR PAYMENT OF TAX BY A SUPPLIER OF OIDAR SERVICE

Non-Taxable Online Recipient: 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) of the CGST Act, 2017 (i.e. persons registered only for the purpose of deducting TDS u/s 51 of the CGST Act, 2017).

ONLINE INFORMATION & DATABASE ACCESS OR RETRIEVAL (OIDAR) SERVICES

- Services whose delivery is mediated by information technology over the internet or an electronic network and
- The nature of which renders their supply impossible to ensure in the absence of information technology and includes electronic services such as,--
  - i. advertising on the internet;
  - ii. providing cloud services;
  - iii. provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet;
  - iv. providing data or information, retrieval or otherwise, to any person in electronic form through a computer network;
  - v. online supplies of digital content (movies, television shows, music and the like);
  - vi. digital data storage; and
  - vii. online gaming, excluding the online money gaming as defined in section 2(80B) of the CGST Act, 2017.



OIDAR IN CASE OF INTERMEDIARY

Intermediary = Deemed Supplier, except in some conditions

In the case of supply of OIDAR service by any person located in a non-taxable territory and received by a non-taxable online recipient,

- ✓ An intermediary located in the non-taxable territory, who arranges or facilitates the supply of such services,
- ✓ Shall be deemed to be the recipient of such services from the supplier services in non-taxable territory and
- ✓ Supplying such services to the non-taxable online recipient

Except when such intermediary satisfies all the following conditions, namely:

a. The invoice or customer's bill or receipt issued clearly identifies the service in question and its supplier in non-taxable territory;

b. The intermediary neither collects or processes payment in any manner nor is responsible for the payment between the non-taxable online recipient and supplier of such services;

c. The intermediary involved in the supply does not authorize delivery; and

d. The general terms and conditions of the supply are not set by the intermediary.

Cases	Person Liable to pay
If the supplier does not have physical presence in the taxable territory	Person representing the supplier
If the supplier has neither the physical presence nor any representative in the taxable territory	Person appointed by the supplier for the purpose of paying GST

SEC 14A OF IGST ACT: SPECIAL PROVISION FOR SPECIFIED ACTIONABLE CLAMS SUPPLIED BY A PERSON LOCATED OUTSIDE TAXABLE TERRITORY

1. **A supplier of online money gaming, not located in the taxable territory, shall in respect of the supply of online money gaming by him to a person in the taxable territory, be liable to pay integrated tax on such supply.**

2. **For the purposes of complying with provisions of sub-section ((1)), the supplier of online money gaming shall obtain a single registration under the Simplified Registration Scheme referred to in section 14(2) of this Act.**

   Provided that any person located in the taxable territory representing such supplier for any purpose in the taxable territory shall get registered and pay the integrated tax on behalf of the supplier.

   Provided further that if such supplier does not have a physical presence or does not have a representative for any purpose in the taxable territory, he shall appoint a person in the taxable territory for the purpose of paying integrated tax and such person shall be liable for payment of such tax.

3. **In case of failure to comply with provisions of sub-section ((1)) or sub-section ((2)) by the supplier of the online money gaming or a person appointed by such supplier or both, any information generated, transmitted, received or hosted in any computer resource used for supply of online money gaming by such supplier shall be liable to be blocked for access by the public in such manner as specified in the said Act.**

CERTAIN CLARIFICATIONS

1. Place of supply in case of software/ design services related to Electronics Semiconductor and Design Manufacturing (ESDM) industry.

The place of supply of software // design by supplier located in taxable territory to service recipient located in non-taxable territory by using sample prototype hardware // test kits in a composite supply, where such testing is an ancillary supply, is the location of the service recipient as per section 13((2)). Provisions of section 13((3))((a)) do not apply separately for determining the place of supply for ancillary supply in such cases.

2. Cargo handling services provided by ports to clients

Such services are ancillary to // related to cargo handling services and not related to immovable property. So, for Place of Supply – general rule i.e., Sec 12((2)) // 13((2)) shall apply.

3. Recipient entitled to ITC where the place of supply determined in terms of the proviso to Section 12(8) of the IGST Act, 2017 is Outside India

The proviso to the section 12((8)) provides that where the transportation of goods is to a place outside India, the place of supply of the said service shall be the place of destination of such goods.

Issue	Clarification
➢ Whether such supply of services will be treated as inter-state supply of intra-state supply?	The supply of services would be considered as Inter-State supply as per Sec. 7(5) of IGST Act as the location of supplier is in India & the place of supply is outside India. So, IGST would be chargeable.
➢ Whether the recipient of service of transportation of goods would be eligible to avail ITC in respect of said input services of transportation of goods?	Yes, the recipient of service of transportation of goods shall be eligible to avail ITC in respect of the IGST so charged by the supplier, subject to the fulfilment of other conditions laid down in section 16 & 17 of the CGST Act.

4. Clarification relating to export of services – Section 2(6)(iv) of the IGST Act 2017

Issue: Various representations have been received requesting for clarification regarding admissibility of export remittances received in Special INR Vostro account, as permitted by RBI, for the purpose of consideration of supply of services to qualify as export of services as per the provisions of section 2(6) of the IGST Act, 2017.

Clarification: It is clarified that, when Indian exporters are paid export proceeds in INR from the Special Rupee Vostro Accounts of correspondent bank(s) of the partner trading country, opened by Authorised Dealer (AD) banks, the same shall be considered to be fulfilling the condition in section 2(6)(iv) of the IGST Act, subject to the conditions/ restrictions mentioned in Foreign Trade Policy, 2023, and RBI circulars and without prejudice to permissions/ approvals, if any, required under any other law.

5. Clarification regarding determination of place of supply in various cases

A. Place of supply in case of supply of service of transportation of goods, including through mail and courier where either supplier/recipient is outside India

Issue: Section 13(9) of IGST Act, 2017 has been omitted vide section 162 of Finance Act, 2023 w.e.f. 01.10.2023. After the said amendment, doubts have been raised as to whether the place of supply in case of service of transportation of goods, including through mail and courier, in cases where location of supplier of services or location of recipient of services is outside India, will be determined as per section 13(2) of IGST Act or as per section 13(3) of IGST Act.

Clarification: It has been clarified that the PoS of services of transportation of goods, other than through mail and courier, in cases where location of supplier / recipient of services is outside India, will be determined as per the default rule u/s 13(2) of IGST Act (as below table) and not as performance-based services.

Situation	Place of Supply
• where location of recipient of services is available	location of recipient of services
• where location of recipient of services is not available in the ordinary course of business	location of supplier of services

Further, the PoS in case of service of transportation of goods by mail or courier will continue to be determined as per the default rule u/s 13(2) of IGST Act (i.e., in case where location of recipient of services is available, the PoS shall be location of recipient of services and in case where location of recipient of services is not available in the ordinary course of business, the PoS shall be location of supplier of services.

B. Place of supply in case of supply of services in respect of advertising sector

Issue: Advertising companies often involve in procuring space on hoardings/ bill boards erected & mounted on buildings/land from various vendors for providing advertisement services to its clients & there may be variety of arrangements.

- **Case I:** Wherein there is supply (sale) of space or supply (sale) of rights to use the space on the hoarding/ structure (immovable property) belonging to vendor to the client/advertising company for display of their advertisement on the said hoarding/ structure. What will be the PoS of services provided by the vendor to the advertising company in such case?

  Clarification: The hoarding / structure erected on land & embedded on earth should be considered as **immovable structure**. Therefore, the PoS shall be governed by section 12(3)(a) of the IGST Act, i.e., **location at which the immovable property is located.**

- **Case II:** Where the advertising company wants to display its advertisement on hoardings/ bill boards at a specific location availing the services of a vendor. The Responsibility of arranging the hoardings/ bill boards lies with the vendor who may himself own such structure or may be taking it on rent or rights to use basis from another person. The vendor is responsible for display of the advertisement of the advertisement company at the said location & during this entire time of display of the advertisement, the vendor is in possession of the hoarding/structure at the said location on which advertisement is displayed and the advertising company is not occupying the space or the structure. What will be the PoS of such services provided by the vendor to the advertising company?

  Clarification: In this case, the vendor is providing advertisement services by providing visibility to an advertising company's advertisement for a specific period of time on the vendor's structure at the specified location. Therefore, the service does not amount to sale of advertising space or supply by way of grant of rights to use immovable property. Therefore, the PoS shall be determined in terms of **section 12(2) of the IGST Act.**

6. Place of supply of the goods (particularly being supplied through ECO) to unregistered persons where billing address is different from address of delivery of goods

- As per the provisions of section 10(1)(ca), the place of supply of goods shall be **the address of delivery of goods recorded on the invoice** where the delivery address is located.
- Also, in such cases involving supply of goods to an unregistered person, where the billing address and delivery address are **different, the supplier may record the delivery address as the address of the recipient on the invoice** for the purpose of determination of place of supply of the said supply of goods.

7. Place of supply of Custodial Services provided by banks to Foreign Portfolio Investors (FPIs)

- **'Custodial Services'** in relation to securities means safekeeping of securities of a client and providing services like maintaining accounts of securities of a client, collecting the benefits accruing to the client in respect of securities, maintaining and reconciling records of the services, etc.
- Banks provide custodial services to FPIs, which include maintaining their securities accounts and handling transactions. These services help FPIs invest in other countries by managing regulatory requirements.
- Section 13(8) covers services supplied by banking companies to account holders. However, **custodial services are not considered as services provided to account holders but rather to non-account holders.**
- Therefore, **the place of supply for custodial services to FPIs** is not determined under Section 13(8). Instead, it falls under the **default provision of Section 13(2).**

8. Place of supply of Advertising Services provided to foreign clients



Issue 1: Whether the advertising company can be considered an "intermediary" between the foreign client and the media owners?

Clarification:

- In the given case, advertising agency raises invoice to foreign clients & payment is received in foreign currency.
- Media company also bills the advertising agency & the payment is made by advertising agency.
- Thus, **advertising company is not acting as an intermediary** but is providing the services to the client on its own account.

Issue 2: Who will be considered as the "recipient of the services" - the representative of foreign client in India or the target audience of the advertisement in India?

Clarification:

- The "recipient" of the services means the person who is liable to pay consideration.
- In the given case, the foreign client is liable to pay the consideration to the advertising company. So, **the recipient is the foreign client.**
- Even if a representative of foreign client based in India, including a subsidiary or related person is interacting with the advertising company on behalf of foreign client & the payment is made by such foreign client to advertising company, then also **recipient is the foreign client not his Indian representative.**

Issue 3: Whether the advertising services provided by the advertising companies to foreign clients can be considered as performance-based services as per section 13(3) of the IGST Act?

Clarification:

- The supply of advertising services **does not require physical presence** of the goods / recipient. Hence, it will **not be covered u/s 13(3).**
- POS shall be determined as per the default provision, i.e. **Section 13(2),** i.e. **the location of the recipient of the services** & the said service can be considered to be **export of services** as the location of the said foreign client is outside India.

9. **Place of supply in cases where the advertising company located in India merely acts as an agent of the foreign client in engaging with the media owner for providing media space to the foreign client.**
   - The media owner invoices the foreign client directly, and the foreign client pays the media owner directly for providing media space & broadcast of advertisement to foreign client.
   - Thus, **the advertising company is an "intermediary"** and accordingly, the place of supply in respect of the said services is determined as per **section 13(8),** i.e. the **location of the supplier** of such said services, i.e. **location of the advertising company.**

10. **Place of supply of data hosting services provided by service providers located in India to cloud computing service providers located outside India**
    - Data Hosting Service Providers (DHSPs) contract with foreign Cloud Computing Service Providers (CCSPs) to host cloud computing services using Indian data centers.
    - DHSPs may own/lease the premises for data centers & independently manage infrastructure.
    - DHSPs have no direct contact with the end users of the foreign CCSPs.
    - Services provided by DHSPs include data collection, storage, processing, distribution, etc.
    - CCSPs provide cloud-based applications & software services to end users for various purposes such as data storage, analytics, AI, machine learning, processing, and database analysis.
    - End users access these services seamlessly over the internet through technology hosted on data centers.

Clarification:

(a) DHSPs provide data hosting services on a principal-to-principal basis, not as brokers or agents.

(b) Data hosting services are not related to goods "made available" by CCSPs to DHSPs in India.

(c) Data hosting services are not considered as services directly related to immovable property or physical premises.

- The place of supply is determined by the **default provision** under **section 13(2),** which is the **location of the recipient of the services.**
- If the **CCSP receiving the data hosting services is located outside India,** the place of supply is considered to be **outside India.**
- Thus, **the supply of data hosting services** by a DHSP in India to **an overseas CCSP** can be **considered as an export of services.**

TIME OF SUPPLY

A. TIME OF SUPPLY IN CASE OF GOODS

1. TIME OF SUPPLY OF GOODS UNDER FORWARD CHARGE [SECTION 12]

- Date of **Issue of Invoice / Last date of Issue of Invoice** under section 31, whichever is **earlier**
  - No tax payable at the time of receipt of advance for supply of goods.
  - The relief of not paying GST on receipt of advance is available only in case of supply of goods, the tax on which is payable under forward charge [Relief not available if tax on goods is payable under reverse charge]
  - GST shall be required to be paid at the time of supply in respect of "specified actionable claims" [i.e., Date of issue of invoice (date of actual issue or last date when it should be issued u/s 31) OR Date of receipt of payment (to the extent payment is received), w.e. is earlier].
    Crux: GST will be payable on advances received in respect of supply of "specified actionable claims."

TOS = Date of issue of invoice or the last date when the invoice ought to have been issued under sec 31.

TIME LIMIT FOR ISSUANCE OF INVOICE FOR SUPPLY OF GOODS UNDER SECTION 31

- The invoice needs to be issued either **before** or **at the time** of removal of goods (where supply involves **movement of goods**) or delivery of goods / making goods available to recipient (in any other case)
- In case of continuous supply of goods, the invoice should be issued before or at the **time** of **issuance of periodical statement / receipt of periodical payment**.
- In case of **goods sent or taken on approval for sale or return**, invoice should be issued **before** or **at the time of supply** or **6 months** from the **date of removal**, whichever is **earlier**.

2. TIME OF SUPPLY OF GOODS UNDER REVERSE CHARGE [SECTION 12(3)]

The time of supply for such goods will be the **earliest** of the following dates:

- Date on which the **goods are received**, or
- Date on which **payment is recorded in the books of account of the recipient**, or the date on which the **same is debited in his bank account**, whichever is **earlier**, or
- Date **immediately following 30 days (31st day) from the date of issue of invoice by the supplier**.

[If it is not possible to determine the time of supply by using these parameters, then the time of supply will be the date of entry of goods in the books of account of the recipient of supply]

3. TIME OF SUPPLY OF VOUCHERS EXCHANGEABLE FOR GOODS [SECTION 12(4)]

The time of supply of vouchers exchangeable for goods is

- Date of **issue of the voucher**, if the **supply that it covers is identifiable at that point**, or
- Date of **redemption of the voucher** in other cases.

4. TIME OF SUPPLY OF GOODS IN RESIDUAL CASES [SECTION 12(5)]

If the situation is not covered by any of the provisions discussed above, the time of supply shall be determined in the following manner:

a. When Periodical return is required to be filed b. In any other case
   - **Due date for filing of the periodical return**, or

b. In any other case,
   - In any **other case, date on which GST is paid**.

5. TIME OF SUPPLY IN CASE OF ENHANCEMENT IN VALUE ON ACCOUNT OF INTEREST / LATE FEE ETC. FOR DELAYED PAYMENT OF CONSIDERATION [SECTION 12(6)]

Time of supply in case of addition in value on account of interest/ late fee/penalty for delayed payment of consideration for goods is the **date on which the supplier receives such addition in value.**

B. TIME OF SUPPLY IN CASE OF SERVICES

1. TIME OF SUPPLY OF SERVICES UNDER FORWARD CHARGE [SECTION 13(2) READ WITH SECTION 31 AND RULE 47 OF CGST RULES]

For supply of service on which the supplier is liable to pay tax, the time of supply will be the **earlier of the dates arrived at by methods (A) and (B), as follows:**

A. If the invoice is issued within the time prescribed under section 31;
Earlier of the following

- **Date of issue of invoice by the supplier** or
- **Date of receipt of payment** (credit in bank account or books of accounts, whichever is earlier)

B. If the invoice is not issued within the time prescribed under section 31;
Earlier of the following

- **Date of provision of service** or
- **Date of receipt of payment** (credit in bank account or books of accounts, whichever is earlier)

Note: If the above two methods [A and B] are not applicable, the time of supply will be the **date** on which the **recipient** of service **shows receipt** of the **service** in his **books of account.**

❖ **Excess payment upto ₹ 1,000: Option of taking invoice date as time of supply**

The supplier can choose to take the date of invoice issued with respect to such excess amount as the time of supply of services in relation to this excess value.

This provision facilitates the supplier to defer payment of tax on small amounts typically received by him in excess of the invoice amount.

TIME LIMIT FOR INSUANCE OF INVOICE FOR SUPPLY OF SERVICES UNDER SECTION 31

- The tax invoice needs to be issued either **before** the **provision of service or within 30 days** (**45 days** in case of insurance companies / banking companies / financial institutions including NBFCs) from the date of supply of service.

- In case of insurance companies / banking companies / financial institutions including NBFCs / telecom companies / notified supplier of services making taxable supplies between **distinct persons as specified in section 25**, invoice may be issued **before** or **at the time of recording** such **supply in the books of account** or **before the expiry of the quarter** during which the supply was made [Second proviso to rule 47].

1. In case of **continuous supply of services**, the invoice should be issued either on / before the **due date** of payment or
2. Before / at the time when the supplier of service receives the payment, if the **due date** of payment is **not known**
3. On / before the date of **completion of the milestone event** when the **payment is linked to completion of an event** [Section 31(5)].

❖ **Continuous supply of services** is provided, or agreed to be provided, continuously or on recurrent basis, under a contract, for a period **exceeding 3 months** with periodic payment obligations and includes supply of such services as the Government may notify.

- In case of **cessation of supply** of services before completion of supply, the invoice (to the extent of the supply made before such cessation) should be issued at the time when the supply ceases [Section 31(6)].

2. TIME OF SUPPLY OF SERVICES TAXABLE UNDER REVERSE CHARGE [SECTION 13(3)]

The time of supply of service on which GST is payable on reverse charge basis (except on services received from associated enterprises located outside India).

The time of supply for such service will be the earlier of the following:

- **Date of payment** *, or
- **61st day** from the date of **issue of invoice** by the supplier.

If it is not possible to determine the time of supply by using these parameters, then the time of supply will be the **date of entry of the service** in the **books of account** of the **recipient** of supply.

*** Date of payment**

- Date on which the **payment is recorded** in the **books of account** of the entity that receives the service (recipient of service), or
- The date on which the **payment is debited** from the entity's **bank account**, whichever is **earlier**.

❖ **Import of services between associated enterprises**

- Date of **payment** for the service, or
- The date of **entry** of the service in the **books of account** of the recipient, whichever is **earlier**.

3. TIME OF SUPPLY OF VOUCHERS EXCHANGEABLE FOR SERVICES [SECTION 13(4)]

- The date of **issue** of the voucher, if the supply is **identifiable** at that point, or
- The date of **redemption** of the voucher in **other** cases.

4. TIME OF SUPPLY OF SERVICES IN RESIDUAL CASES [SECTION 13(5)]

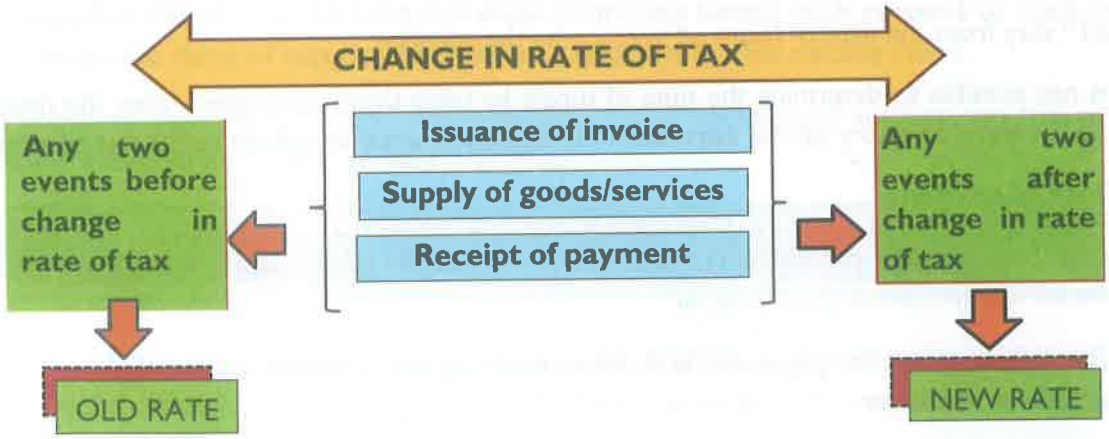
If the situation is not covered by any of the provisions discussed above, the time of supply is fixed under sub-section (5) of section 13, in the following manner:

- Date on which **periodical return** for the period is required to be filed, or
- In any other case, date on which **GST is paid**.

5. TIME OF SUPPLY IN CASE OF ENHANCEMENT OF VALUE ON ACCOUNT OF INTEREST / LATE FEE ETC. FOR DELAYED PAYMENT OF CONSIDERATION [SECTION 13(6)]

Time of supply in case of addition in value by way of interest / late fee / penalty for delayed payment of consideration for a service is the date on which the **supplier receives such addition in value**.

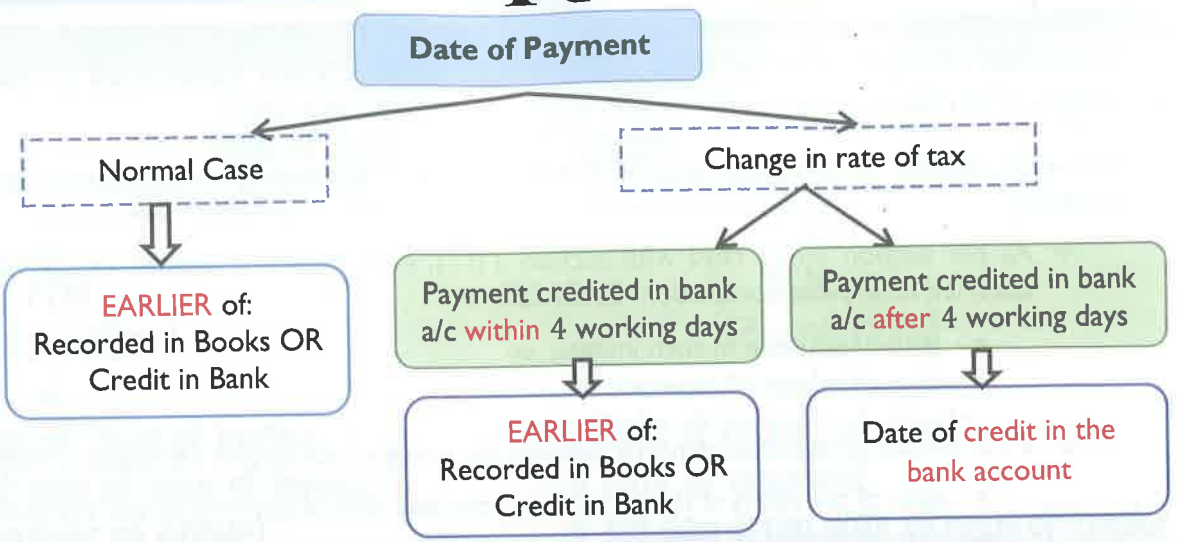
C. CHANGE IN RATE OF TAX IN RESPECT OF SUPPLY OF GOODS OR SERVICES [SECTION 14]



Date of crediting of payment in bank account to be the "DATE OF RECEIPT OF PAYMENT" if such crediting takes place AFTER 4 working days of change in rate of tax:

Where the payment is credited in the bank account after 4 working days from the date of change in the rate of tax, the date of receipt of payment will be the date of credit in the bank account.

The date of recording the payment in the books of account will not be considered as the date of receipt of payment even though if the same precedes the date of crediting of payment in the bank account.



Supply	Issue of Invoice	Receipt of Payment	Time of Supply
Before	Before	After	Date of Issue of Invoice
Before	After	Before	Date of Receipt of Payment
Before	After	After	Date of Issue of Invoice OR Date of receipt of payment whichever is earlier
After	After	Before	Date of Issue of Invoice
After	Before	After	Date of Receipt of payment
After	Before	Before	Date of Issue of invoice OR Date of receipt of payment whichever is earlier

CERTAIN CLARIFICATIONS

1. **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:

☐ HAM contracts are Design, Build, Operate, and Transfer (DBOT) models where the concessionaire undertakes both construction and O&M of highways.

☐ The contract is treated as a single entity covering both construction and O&M services, and cannot be split into separate contracts for tax purposes.

☐ Payments are made in installments over the contract period, based on specified periods or completion of events. **The services under HAM contracts are considered a "continuous supply of services"** as defined in section 2(33) of the CGST Act, 2017.

Time of supply of services under HAM contract, including construction and O&M portion:

- ❖ As per section 13(2) read with section 31(5), if an invoice is **issued on or before** the specified date/event completion: **EARLIER** of
  - date of issuance of such invoice, or
  - date of receipt of payment.
- ❖ If the invoice is **not issued on or before** the specified date/event completion: **EARLIER** of
  - date of provision of the service (i.e., the due date of payment as per the contract), or
  - date of receipt of payment.

Interest Component:

- Installments/annuities payable by NHAI include an interest component, which must **be included in the taxable value** for tax payment purposes.

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

Under the spectrum allocation model followed by Department of Telecommunications (DoT), bidder (the telecom operator) bids for securing the right to use spectrum offered by the Government.

☐ **Service Provider**: Government of India (through DoT).
☐ **Service Recipient**: Telecom operator (bidder).

GST is to be discharged on the supply of spectrum allocation services by the **recipient of services** (the telecom operator) on **reverse charge basis**.

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

In case where **deferred payment is made** by the telecom operator in specified installments, same shall be considered as **'continuous supply of services'**, since the supply of services (spectrum usage) is agreed to be provided by the supplier (DoT) to the recipient (telecom operator) continuously for a period which is exceeding three months with periodic payment obligations.

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

Similar treatment applies to the allocation of other natural resources by the Government for use over a period of time with payment options either upfront or in deferred installments, constituting continuous supply of services.

SUMMARY OF TIME OF SUPPLY

Time of Supply (TOS) of Goods

FCM (1 condition)
- Date of issue of Invoice or last date of issue of Invoice * (earlier of above)

RCM (3 conditions)
1) Date of receipt of Goods
2) Date of payment
3) 31st day from date of issue of Invoice (earlier of above)

* last date of issue of Invoice is "Before or at the time of removal of Goods".

Time of Supply of Service (For May'25 Exam)

FCM (2 conditions in both the cases)

If Invoice is issued within prescribed time (30/45 days)
- Date of issue of Invoice or
- Date of receipt of payment (earlier of above)

If Invoice is not issued within prescribed time
- Date of Provision of service or
- Date of receipt of payment (earlier of above)

RCM (2 conditions)
- Date of Payment or
- 61st day from date of issue of Invoice (earlier of above)

Note. Date of receipt of payment is earlier of credit in Bank A/c or recorded in Books of Accounts.

. Date of Payment is earlier of debit in Bank A/c or recorded in Books of Accounts.

Amendments made vide The Finance (No. 2) Act, 2024

Since this amendment has become effective from 01.11.2024, said amendment is not applicable for May 2025 examinations. However, **said amendment is applicable for November 2025 examination.**

Section 13(3): Time of supply of services under reverse charge

The time of supply of service on which GST is payable on reverse charge basis (except on services received from associated enterprises located outside India).

The time of supply for such service will be the earlier of the following:

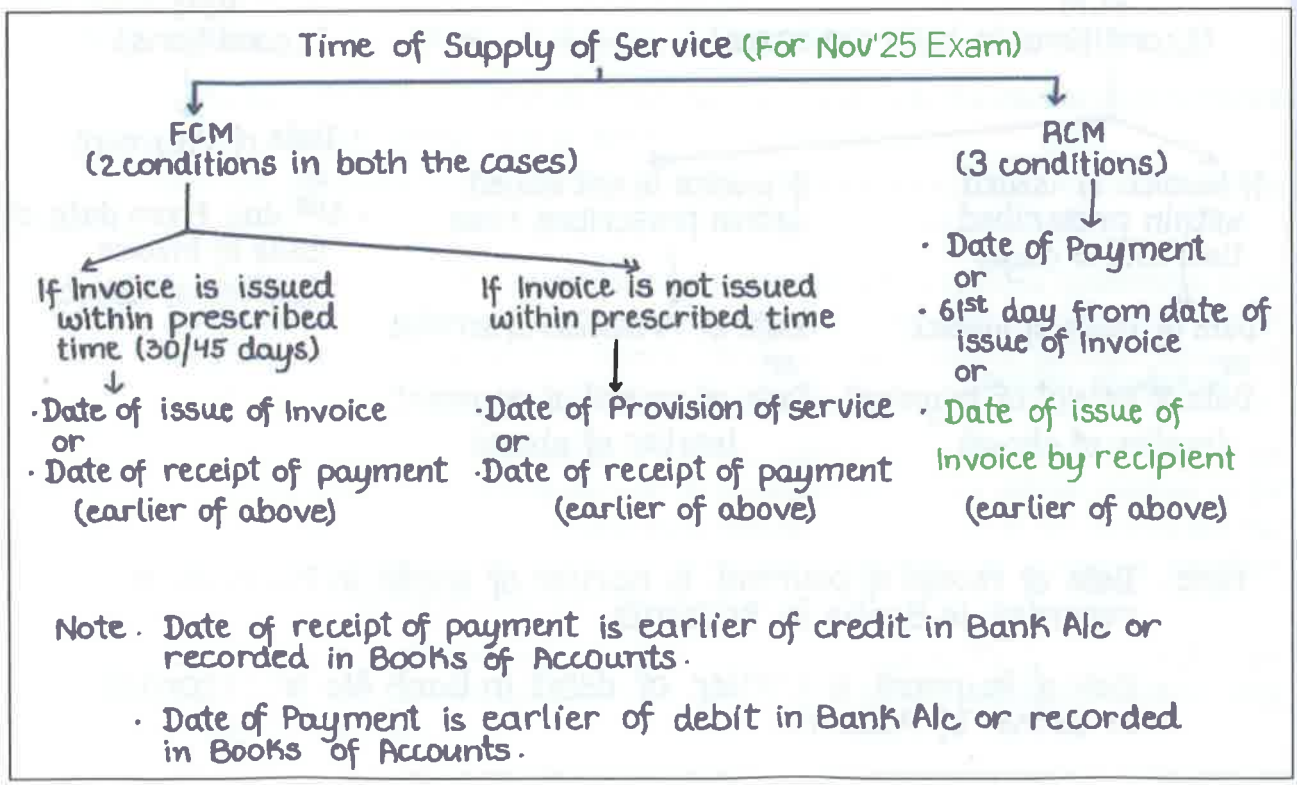
- **Date of payment** *, or
- **61st day** from the date of **issue of invoice** by the supplier.
- **Date of issue of invoice by the recipient, in case where invoice is to be issued by the recipient.**

If it is not possible to determine the time of supply by using these parameters, then the time of supply will be the **date of entry of the service** in the **books of account** of the **recipient** of supply.

*** Date of payment**

- Date on which the **payment is recorded** in the **books of account** of the entity that receives the service (recipient of service), or
- The date on which the **payment is debited** from the entity's **bank account**,

whichever is **earlier**.



VALUE OF SUPPLY

TRANSACTION VALUE = 15(1) + 15(2) - 15(3)

3 - Conditions

Price actually paid / payable	Price is the sole consideration.	Supplier & Recipient are unrelated.

If the above 3 conditions are not satisfied, then apply rules as per Sec. 15(4).

Sec 15(1): The value of a supply of goods or services or both shall be the **transaction value**, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the **price is the sole consideration** for the supply.

VALUE OF SUPPLY INCLUDES [SEC 15(2)]

a. any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the SGST Act, the UTGST Act, the GST (Compensation to States) Act.

b. any amount that the **supplier is liable to pay** in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both (Selling commission paid by recipient will be added but Buying commission paid by recipient will not be added).

c. Incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services.

d. Interest or late fee or penalty for delayed payment of any consideration for any supply.

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

Explanation – For the purposes of this subsection, the amount of subsidy shall be included in the value of supply of the supplier who receives the subsidy.

Analysis of Subsidy provided:

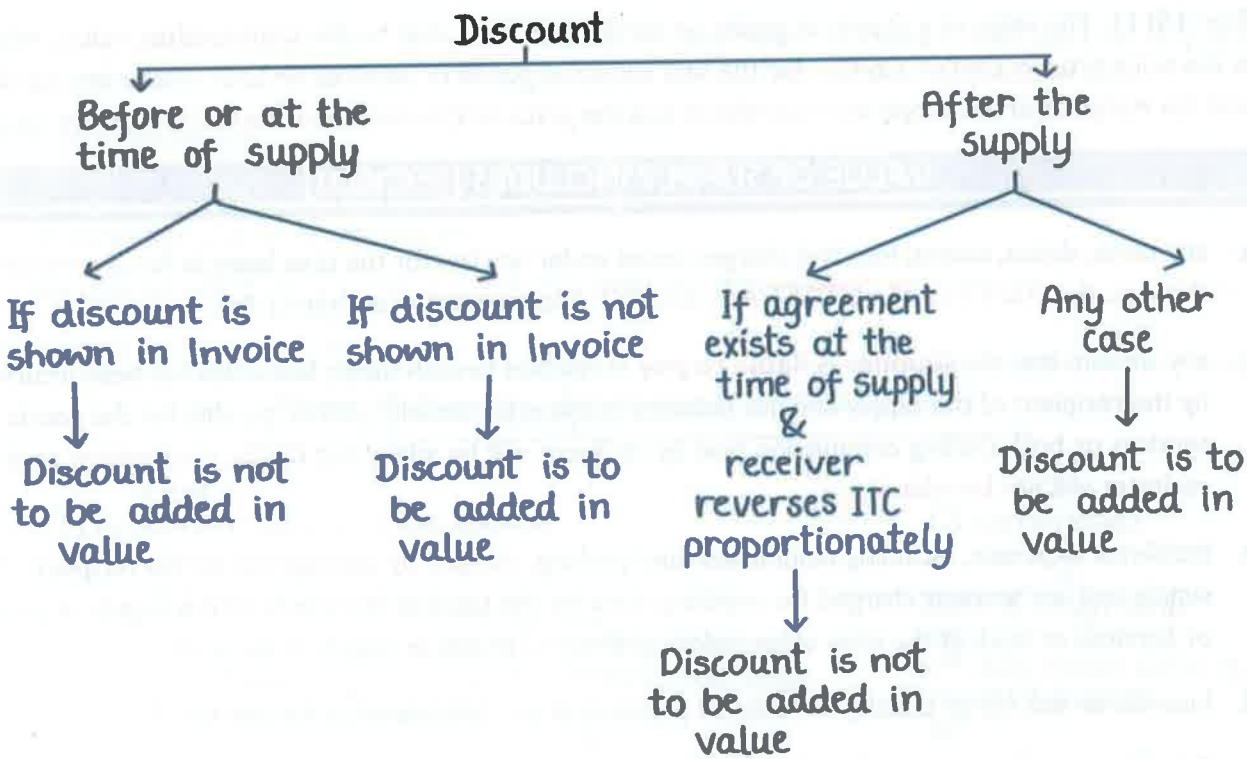
By CG/SG	Whether directly or indirectly linked to price	Not added to the value
By others	Directly linked to price	Added to the value
	Indirectly linked to price	Not added to the value

Sec 15(3): The value of the supply shall not include any discount which is given:

a. before or 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—

- such discount is established in terms of an **agreement** entered into at or before the time of such supply and specifically linked to relevant invoices; and
- **Input tax credit** as is attributable to the discount on the basis of document issued by the supplier has been **reversed** by the recipient of the supply. [The recipient is required to provide an undertaking / a certificate of ITC reversal if amount of tax (CGST+SGST+IGST and including compensation cess, if any) involved in the discount given by the supplier to the recipient through tax credit notes is upto ₹ 5,00,000 in a F.Y. or if said amount exceeds ₹ 5,00,000, then a certificate issued by CA/CMA required.]



Sec 15(4): Where the value of the supply of goods or services or both cannot be determined under sub-section (1), the same shall be determined in such manner as may be prescribed. (Rules 27 to 31)

Sec 15(5): Value of notified supplies: 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.

With effect from 01.10.2023, supply of online money gaming, supply of online gaming other than online money gaming and supply of actionable claims in casinos have been notified under section 15(5) for prescribing the manner of determination of the value of these supplies under the CGST Rules.

VALUATION RULES

What is Open Market Value?	What is Value of Like kind and quality?
Open market value means the full value of money excluding taxes under GST laws, payable by a person to obtain such supply at the time when supply being valued is made, provided such supply is between unrelated persons and price is the sole consideration for such supply.	Supply of like kind & quality means: any other supply made under similar circumstances, which is same or closely or substantially resembles in respect of characteristics, quality, quantity, functionality, reputation to the supply being valued.

Rule 27: Value of supply of goods or services where the consideration is not wholly in money. -

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

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

Rule 28:

(1) Value of supply of goods or services or both between distinct or related persons, other than through an agent-

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

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

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

(2) Notwithstanding anything contained in sub-rule (1), the value of supply of services by a supplier to a to a recipient who is a related person **located in India**, by way of providing corporate guarantee to any banking company or 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**.

Provided that 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.

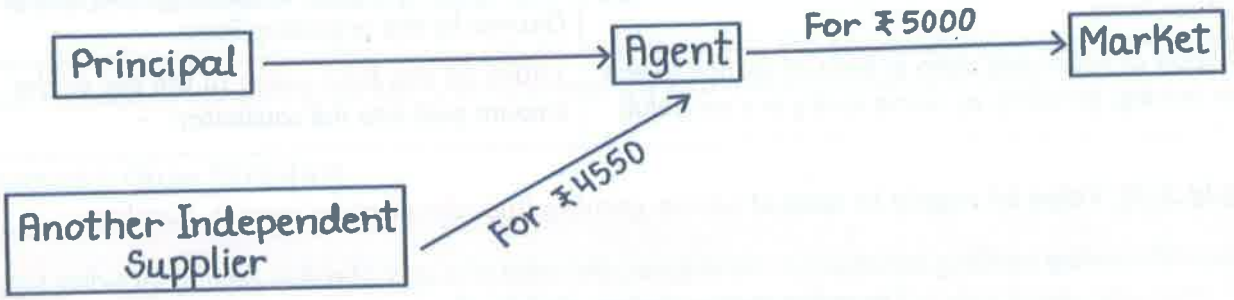
Value of supply of service of providing corporate guarantees to banks/financial institution by a supplier to a related person

Issue	Clarification
Loan only partly availed or not availed at all	The **value** of supply of corporate guarantee will be calculated **based on the amount guaranteed** and not based on the amount of loan actually disbursed. Also, **full ITC** will be available to the recipient.
Takeover of existing loans	GST is not payable, unless there is issuance of fresh corporate guarantee or there is a renewal of the existing corporate guarantee. However, **GST would be payable** if the takeover of the loan is followed by **issuance of fresh corporate guarantee.**
Intra-group corporate guarantee	• **Domestic** corporate issue intra-group guarantees – GST under **FCM** • Corporate guarantee by **foreign/overseas entity** – GST under **RCM**
Export of service	In cases of **export of the services** of providing corporate guarantee between related persons, i.e where the **recipient** of service between related persons is **located outside India, above provisions will not apply.**
Corporate guarantee for multiple years or for less than 1 year	• If provided for a particular number of years: Value of supply shall be 1% of amt of such guarantee **x** number of years for which guarantee is offered or actual consideration, whichever is **higher**. • If provided for a period of less than a year: Valuation to be done on proportionate basis for the said period. For e.g. say 6 months, (6/12 x 1%) or actual consideration, w.e. higher
Corporate guarantee by multiple related entities / co-guarantor	• We first need to determine which of the two values is higher – sum of actual consideration paid to co-guarantors or 1% of total guaranteed amount. • If total actual consideration is higher, value of supply will be said amount. If 1% of total guaranteed amount is higher, **GST shall be payable by each co-guarantor proportionately** on 1% of the amount guaranteed by them.

Rule 29: Value of supply of goods made or received through an agent

- 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 related person**, where the goods are intended for further supply by the said recipient.
- 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.

For e.g.: A principal supplies groundnuts to his agent and the agent is supplying groundnuts of like kind and quality in subsequent supplies at a price of five thousand rupees per quintal on the day of the supply. Another independent supplier is supplying groundnuts of like kind and quality to the said agent at the price of four thousand five hundred and fifty rupees per quintal. The value of the supply made by the principal shall be four thousand five hundred and fifty rupees per quintal or where he exercises the option, the value shall be 90% of ₹ 5,000 i.e., ₹ 4,500 per quintal.



Value of Supply = 90% of 5000 OR 4550] whichever is lower

⇓

i.e, 4500

Rule 30: Value of supply of goods or services or both based on cost

If the value of a supply of goods and/or services cannot be worked out by the foregoing methods, its value will be **110%** of the cost of production / manufacture / acquisition of such goods or cost of provision of such services.

Rule 31: Residual method for determination of value of supply of goods or services or both [Best Judgement Method]

The supplier of goods needs to sequentially follow rules 27 to 30 before valuing goods as per this residual rule 31. Service providers, however, have the option of valuing services as per rule 30 or rule 31 after sequentially following rules 27 to 29.

The residual method consists of determination of value by using reasonable means consistent with the principles and general provisions of section 15 and these Rules.

VALUATION RULES SUMMARY TABLE (RULE 27, 28 & 29)

RULE 27	RULE 28	RULE 29
➢ OMV	➢ OMV	➢ OMV
➢ Cash + Kind	NA	NA
➢ Like Kind & Quality	➢ Like Kind & Quality (90%)	➢ 90% of price charged from unrelated customer
➢ Rule 30 / 31	➢ Rule 30 / 31	➢ Rule 30 / 31

Rule 31A: Value of supply in case of lottery, betting, gambling, and horse racing

Supply of lottery by the Organising State: Organising State means the State Government which conducts the lottery either in its own territory or sells its tickets in the territory of any other State.	**Higher** of the two amounts to be deemed as the value: **100/128 of the face value of ticket** OR 100/128 of the price as notified inthe Official Gazette by the organising State.
Supply of actionable claim in form of chance to win in betting, gambling, or horse racing in a race club	**100% of the face value** of the bet or the amount paid into the totalisator.

Rule 31B: Value of supply in case of online gaming including online money gaming

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

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

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

Notwithstanding anything contained in this chapter, the value of supply of actionable claims in casino shall be the **total amount paid or payable** by or on behalf of the player for –

(i) purchase of the tokens, chips, coins or tickets, by whatever name called, for use in casino; or

(ii) participating in any event, including game, scheme, competition or any other activity or process, in the casino, in cases where the token, chips, coins or tickets, by whatever name called, are not required.

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

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

Rule 32: Determination of value in respect of certain supplies

1. MONEY CHANGING

Special provision relating to determination of value of service of purchase or sale of foreign currency including money changing.

Method-1 [Rule 32(2)(a)]

❖ **Case 1: Transaction where one of the currencies exchanged is Indian rupees.**

The value of supply is the difference between buying rate or selling rate of currency and RBI reference rate for that currency at the time of exchange multiplied by total units of foreign currency.

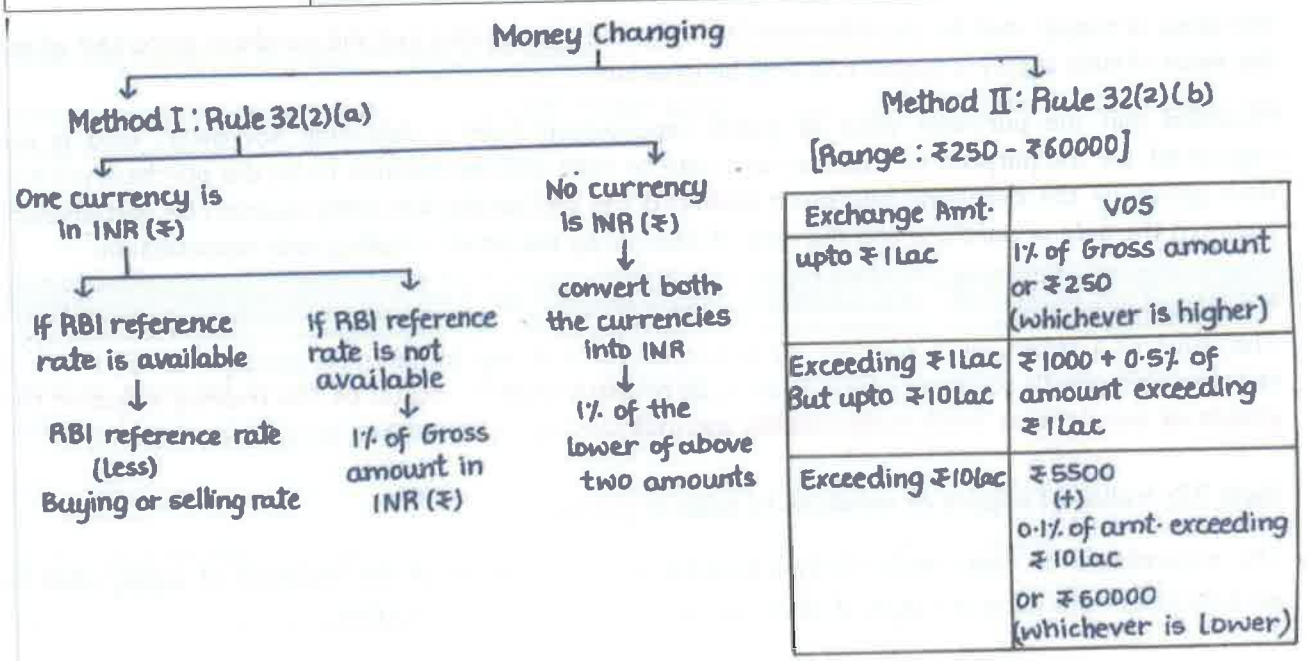
However, if RBI reference rate for a currency is not available then value of supply is 1% of the gross amount of Indian Rupees provided / received by the person changing the money.

❖ **Case 2: Transaction where neither of the currencies exchanged is Indian rupees**

The value of supply is **1% of the lesser of the two amounts** the person changing the money would have received by converting (at RBI reference rate) any of the two currencies in Indian Rupees.

Method-2 [Rule 32(2)(b)]

Currency exchanged	Value of supply
Upto ₹ 1,00,000	1% of the gross amount of currency exchanged OR ₹ 250, w.e. is higher.
Exceeding ₹ 1,00,000 & Upto ₹ 10,00,000	₹ 1,000 + 0.50% of the (gross amount of currency exchanged - ₹ 1,00,000)
Exceeding ₹ 10,00,000	₹ 5,500 + 0.1% of the (gross amount of currency exchanged - ₹ 10,00,000) OR ₹ 60,000, w.e. is lower.



2. AIR TRAVEL AGENT

Domestic bookings of passage for travel by air	5% of basic fare
International bookings of passage for travel by air	10% of basic fare

Note: Basic fare means that part of the air fare on which commission is normally paid to the air travel agent by the airlines.

3. LIFE INSURANCE BUSINESS

Policy with dual benefits of risk coverage and investment	• Taxable value = Gross premium charged less amount allocated for investments / savings if such allocation is intimated to the policy holder at the time of collection of premium.
Single premium annuity policy	• Taxable value = 10% of the single premium charged from the policy holder where allocation for investments / savings is not intimated to the policy holder
Other cases	• Taxable value = 25% of premium charged from the policy holder in the 1st year and 12.5% of premium charged for subsequent years.
Policy with ONLY risk cover	• Taxable value = Entire premium charged from the policy holder

4. MARGIN SCHEME

Where a taxable supply is provided by a person dealing in buying and selling of second hand goods i.e., used goods

- as such or after such minor processing which does not change the nature of the goods &
- where no input tax credit has been availed on the purchase of such goods,

the value of supply shall be the difference between the selling price and the purchase price and where the value of such supply is negative, it shall be ignored.

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

Vouchers

The value of a token, or a voucher, or a coupon, or a stamp (other than postage stamp) which is redeemable against a supply of goods or services or **both shall be equal to the money value of the goods or services or both redeemable against such token**, voucher, coupon, or stamp.

Rule 33: Value of supply of services in case of pure agent

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

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

Explanation-

For the purposes of this rule, the expression "pure agent" means a person who -

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

Subject to fulfilment of certain conditions, **the expenditure and costs incurred by the supplier as a pure agent of the recipient of supply of service, has to be excluded from the value of supply.**

Rule 34: Rate of Exchange to be used

For Taxable Goods	Rate notified by CBIC on Date of Time of Supply of said goods
For Taxable Services	Rate as per GAAP on Date of Time of Supply of said services

Rule 35: Value of Supply inclusive of taxes

Where the value of supply is inclusive of IGST, CGST, SGST/UTGST, the tax amount shall be determined in the following manner, namely,-

Tax amount = (Value inclusive of GST) x (Rate of GST) ÷ (100 + Rate of GST)

TAXABILITY OF AIRPORT LEVIES COLLECTED BY AIRLINES AS PURE AGENT

Services provided by an airport operator to passengers against consideration in the form of user development fee (USF) and passenger service fee (PSF) are liable to GST.

PSF – Passenger service fees charged by airport authority for services provided at airport.

UDF – User development fees charged by airport authority for airport development.

PSF and UDF are collected by the airlines as an agent and is not a consideration for any service provided by the airlines. Thus, airline is not responsible for payment of GST on UDF or PSF provided the airline satisfies the conditions prescribed for a pure agent under rule 33 of the CGST Rules. It is the licensee, that is the airport operator which is liable to pay GST on UDF and PSF.

The 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. The airline shall not take ITC of GST payable or paid on PSF and UDF. The airline would only recover the actual PSF and UDF and GST payable on such PSF and UDF by the airline operator. The amount 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 of the CGST Rules.

The registered passengers, who are the ultimate recipient of the airport services, may take ITC of GST paid on PSF and UDF on the basis of pure agent's invoice issued by the airline to them.

IMPORTANT CIRCULARS & CLARIFICATIONS

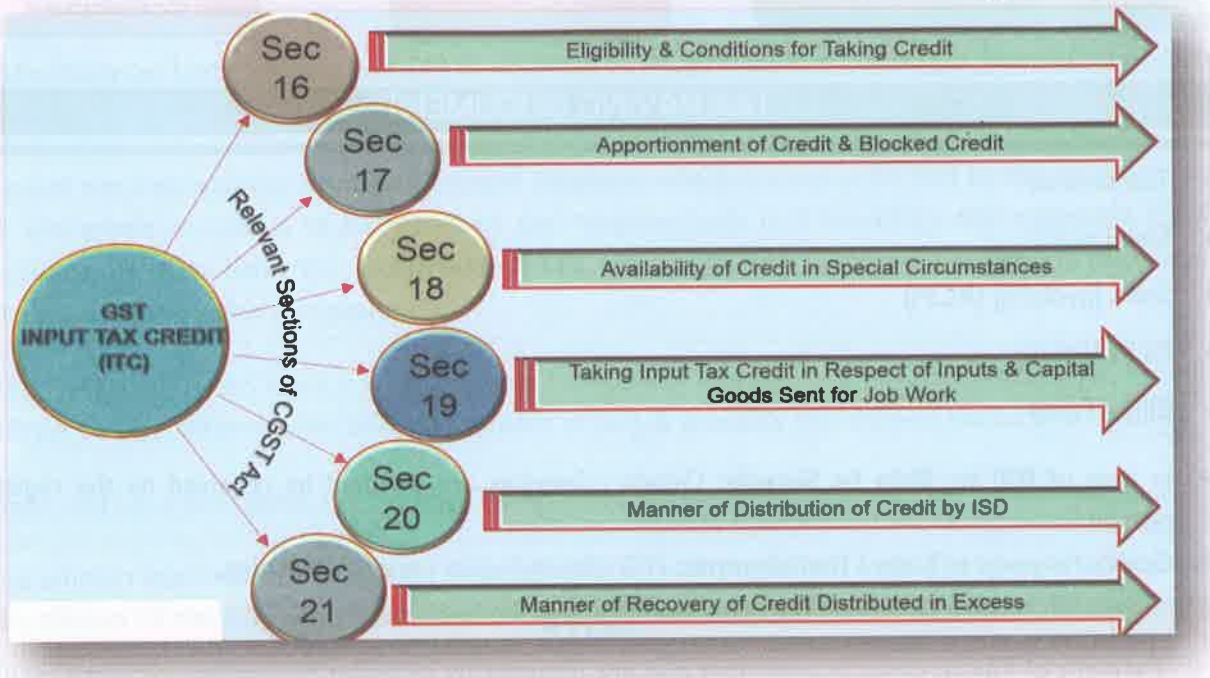
1. No Claim Bonus permissible as deduction u/s 15(3)(a) for the purpose of calculation of value of supply of the insurance services provided by insurance company to insured

As per Section 15(3)(a), value of supply shall not include any discount which is given before or at the time of supply if such discount has been duly recorded in the invoice issued in respect of such supply.

The insurance companies make the disclosure in insurance policy document. It is, therefore, clarified that **NCB is a permissible deduction.** GST shall be leviable on actual insurance premium amount, payable by the policy holders to the insurer, after deduction of NCB mentioned on the invoice.

INPUT TAX CREDIT

CGST ACT: SECTION 16 TO SECTION 21



PROVISIONS OF SECTION 16 RELATING TO ELIGIBILITY AND CONDITIONS FOR TAKING ITC

Eligibility Section 16

- Section **16(1)** ITC allowed only to:

  1. Registered Person
  2. On goods or services or both used or intended to be used for business.

- Section **16(2)** 6 conditions for availing ITC by registered person
- Section **16(3)** ITC on Capital goods
- Section **16(4)** Time limit for availing ITC

SECTION 16(2): 6 CONDITIONS FOR AVAILING ITC

(a) He is in possession of Invoice

(aa) Details of invoice / debit note furnished by supplier

(b) He has received the Goods / Services

(ba) ITC w.r.t supply can be availed only if such credit has not been restricted u/s 38

(c) Tax has been paid to Govt.

(d) Return filed by recipient (GSTR-3B)

TAX PAYING DOCUMENT

- Tax Invoice
- Debit note
- Self - Invoicing (RCM)
- ISD's Invoice
- Bill of Entry

➢ In case of **Bill to Ship to Supply:** Goods / Services are deemed be received by the registered person.

➢ Goods received in **Lots / Instalments:** ITC allowed upon receipt of last lot.

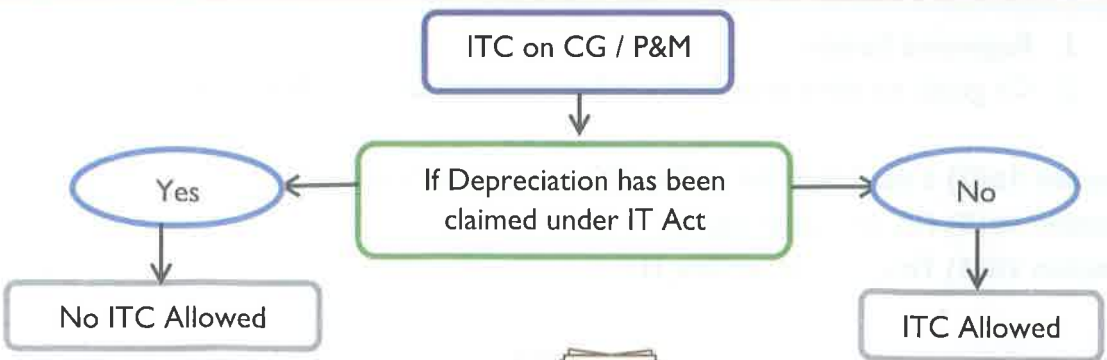
NOTE

❖ Payment of Tax to Govt. is important and not payment by recipient to supplier for initial credit.

❖ However, if payment (Value + GST) is not made within 180 days of Invoicing, ITC shall be **paid by him along with interest payable u/s 50** (if ITC utilized) except for free supplies & Supplies under RCM.

❖ If paid later on, Re-credit allowed [No Time Limit for taking ITC].

SECTION 16(3): ITC ON GST PORTION OF CAPITAL GOODS



SECTION 16(4): TIME LIMIT FOR AVAILING ITC (MAX TIME LIMIT FOR AVAILING ITC)

INCREASE IN TIME LIMIT TO AVAIL INPUT TAX CREDIT [S. 104(b) of Finance Act]

The time limit to avail input tax credit w.e.f. FY 2021-22 is,

a. **30th November** of succeeding financial year or,

b. Actual Date of filing annual return;

whichever is **earlier**.

Clarification on time limit u/s 16(4) 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 only (self-invoicing), **the relevant FY for calculation of time limit for availment of ITC u/s 16(4) will be the FY in which the invoice has been issued by the recipient.**

In case, if recipient issues invoice **after** the time of supply of said supply & pays tax accordingly, he will be **required to pay interest** (on delayed payment of tax) **& penalty** (on delayed issuance of invoice).

Section 16(6): Time limit for taking ITC in case of revoked registration cancellation

In case where registration of a taxpayer is cancelled & then it is revoked, return for the period from date of cancellation till the date of revocation of cancellation cannot be filed on the portal by the taxpayers till their cancellation of registration is revoked.

In such cases, where the recipient has not claimed the ITC because of lapse of time limit specified u/s 16(4), a **relaxation** has been given to avail ITC u/s 16(4) **till the date of filing return - if return is filed within 30 days of revocation of cancellation of registration,** subject to the condition that the time limit to avail ITC in respect of said invoice u/s 16(4) had not already expired on the date of cancellation of registration.

AMENDED RULE 37 of CGST RULES [NOTIFICATION 19/2022- CT dt. 28th Sept, 2022]

Reversal of ITC in case of Non-Payment of Consideration by Receiver

If Receiver of goods / services fails to make the payment within 180 days from date of invoice to the supplier, then credit availed by such receiver has to be reversed after 180 days proportionately to the amount not paid to the supplier along with interest @ 18% (on the basis of ITC utilization), while furnishing GSTR-3B of the tax period immediately following the period of 180 days.

However, if receiver makes the payment after 180 days, then he is entitled to re-avail the ITC but no credit of interest paid will be allowed.

Time limit of section 16(4) shall **not** apply on re-availing of credit here.

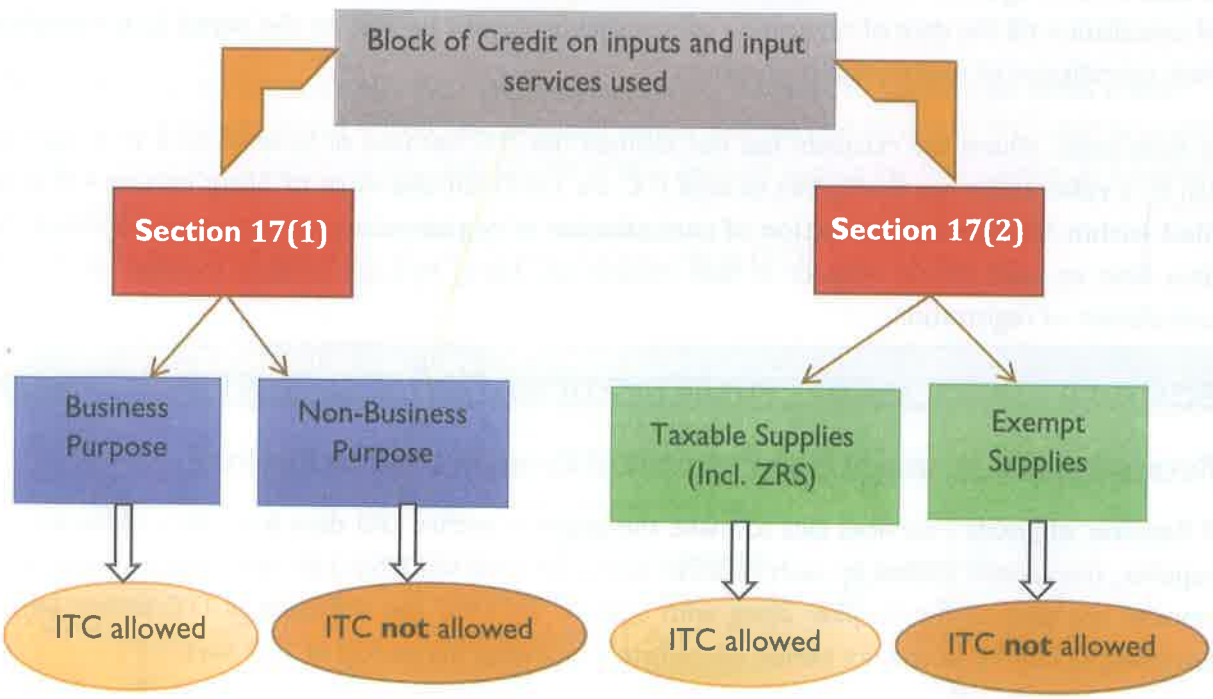
Exception of 180 days rule:

- RCM Supplies
- Deemed Supplies under Schedule I (without consideration)
- Third party payment on account of supplier's lists met by recipient

Rule 37A – Reversal of ITC in case of non-payment of tax by supplier

- If receiver avails ITC on the basis of GSTR-1, **as amended in Form GSTR-1A if any,** which have been furnished by supplier but such details are not furnished by the supplier in GSTR-3B for such tax period till 30th September following the end of such FY, then receiver needs to reverse the ITC availed on or before 30th November following the end of such FY.
- If receiver fails to do so, then such amount shall be payable along with interest @ 18% p.a.
- If the supplier subsequently furnishes the return in GSTR-3B, then such registered person may re-avail the amount of such credit.

SECTION 17: APPORTIONMENT OF CREDIT & BLOCKED CREDITS



SECTION 17(4): SPECIAL PROVISIONS FOR BANKING COMPANIES & NBFCS

Option 1: Avail proportionate ITC

Option 2: Avail 50% of eligible ITC

- Balance will be reversed in GSTR-3B.
- Restriction of 50% shall not apply to the tax paid on supplies received from another registration within the same entity
  [100% ITC allowed on Inter Branch Supplies].
- Option once exercised cannot be withdrawn during remaining part of the year.

SECTION 17(5): BLOCKED CREDITS

Blocked Credit v/s 17(5) : FOB HCL & other services

Food & Beverages
Outdoor Catering
Beauty Treatment
Health Services
Cosmetic / Plastic surgery
Life & Health Insurance
Leasing / Renting / Hiring of vehicles, vessels or aircrafts

↓

Exception : ITC is available if :

(i) used for same category of outward supply including composite or mixed supply.

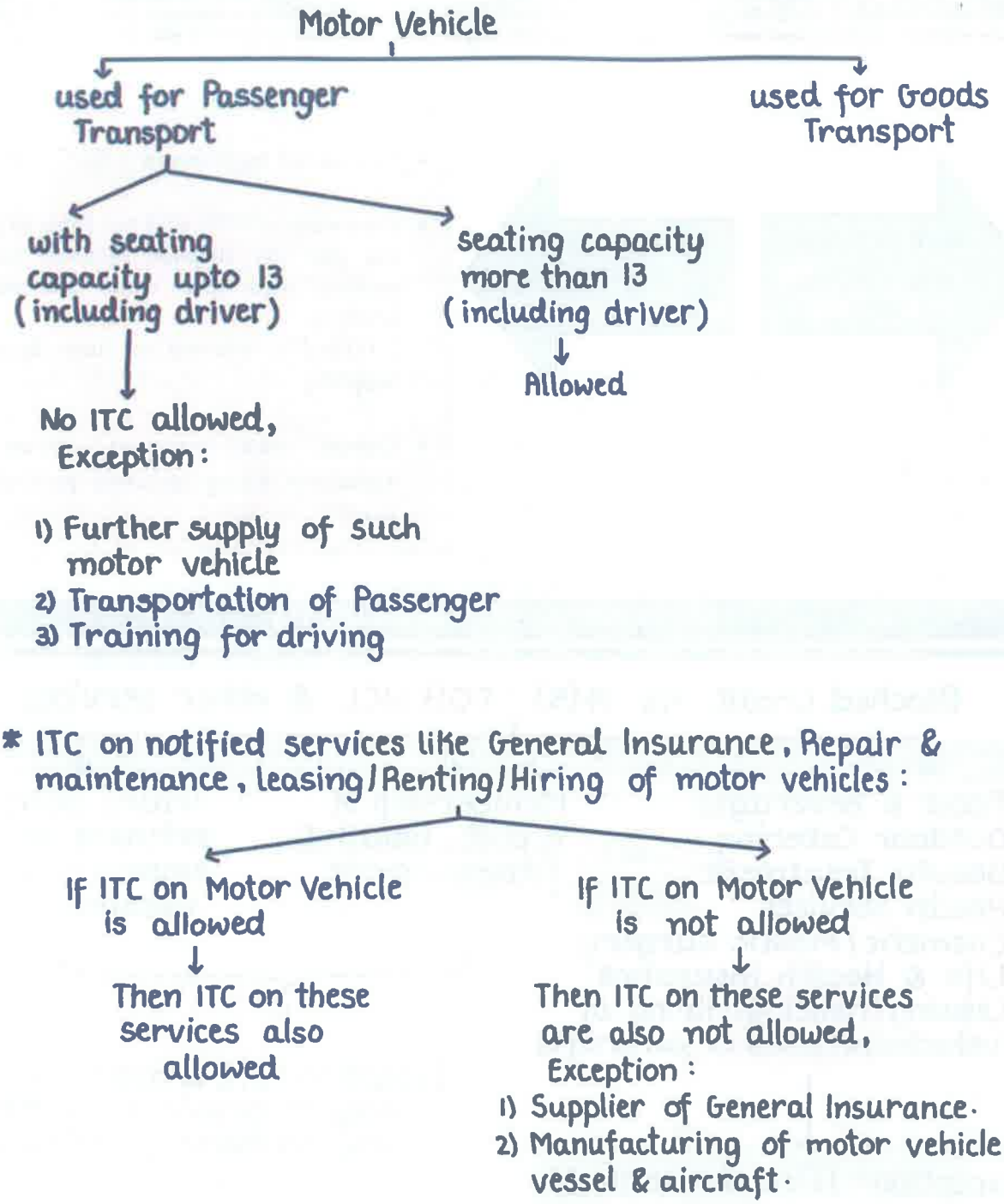
(ii) provided under any Statutory obligation by Employer.

Membership of a club, health & fitness centre

Travel Benefit extended to employee on vacation

↓

Exception : ITC is available only if provided under any statutory obligation



- **State whether ITC is available or not based on following situations?**
  1. ITC on buses purchased by a company for transportation of its employees from their residence to office and back – YES
  2. ITC on cars purchased by a car dealer for sale to its customers – YES
  3. ITC on aircraft purchased by a manufacturing company for official use of its CEO – NO
  4. ITC on general insurance availed by Mahindra XUV 700 – YES.

Works Contract Services for construction of an Immovable Property (Other than P&M)

Exception: When provided under a statutory obligation

Goods or services or both received by a taxable person for construction of an immovable property (other than P&M) on his own account including when used in the course or furtherance of business.

[WCS / Construction on own account of Building (Capitalised) = Not Allowed]
[WCS / Construction on own account (P or M) = Allowed]
[WCS / Construction on own account (repairs) = Allowed

❖ **Construction includes reconstruction, renovation, additions or alterations or repairs to the extent of capitalization to the said immovable property.**

Goods / Services on which tax paid u/s 10

- No Exceptions

Goods / Services received by a Non-Resident Taxable Person (NRTP)

- Exception: Goods imported by him

Goods or services or both received by a taxable person, which are used or intended to be used for activities relating to his obligations under corporate social responsibility referred to in section 135 of the Companies Act, 2013;

Goods / Services used for Personal Consumption

- No Exceptions

Goods Lost, stolen, destroyed, written off or disposed off or by way of gift or free samples

- No Exceptions
- Free Samples: Covered u/s 7(1)(c) - ITC shall be allowed on the same
- Other Free Samples: ITC not allowed

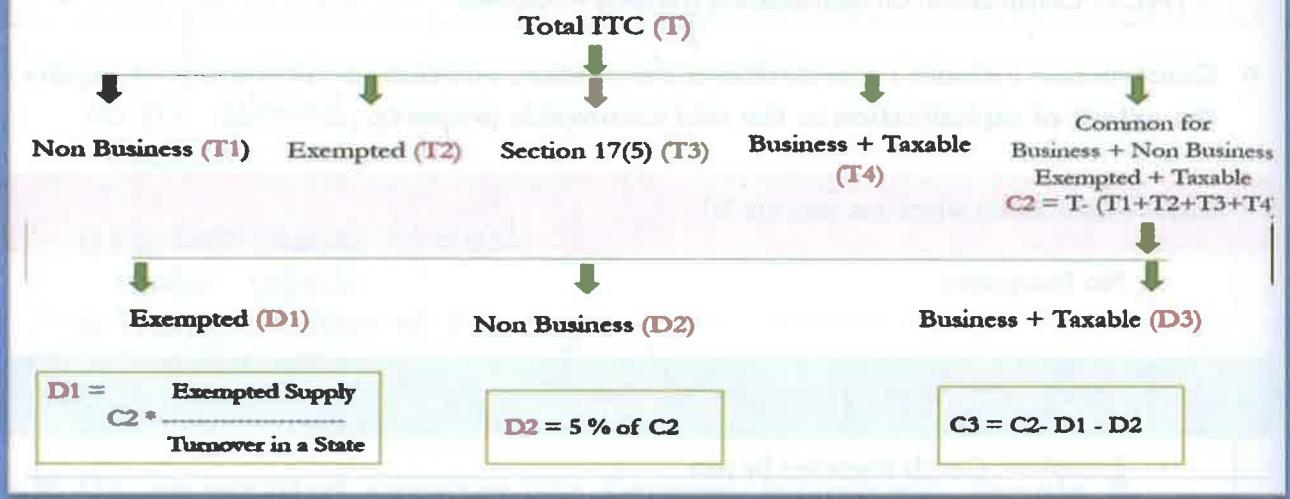
Any Tax paid in accordance with the provisions of section 74, 129 and 130

- No Exceptions

Explanation: Plant & Machinery means apparatus, equipment and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods / services or both and includes such foundation and structural support but excludes-

- Land, building or any civil structure
- Telecommunication Towers and
- Pipelines laid outside the factory premises.

APPORTIONMENT OF COMMON CREDIT IN CASE OF INPUTS AND INPUT SERVICES



ITC of Input or Input services, being partly used for the purpose of business and partly other purposes, or partly used for effecting taxable supplies including zero rated supplies and partly for effecting exempt supplies, shall be attributed in the following manner, namely-

STEP 1: Compute Common Credit

Total input tax involved on inputs & input services in a tax period	T
Less: Input tax on input & input services that are intended to be used exclusively for **Non Business** purposes	(T1)
Less: Input tax on input & input services that are intended to be used exclusively for **Exempt** supplies	(T2)
Less: Input tax on input & input services that are ineligible for credit [**Blocked** credits]	(T3)
ITC Credited to Electronic Credit Ledger	**C1**
Less: ITC on input & input services that are intended to be used exclusively for taxable supplies including zero rated supplies	(T4)
Common ITC available for apportionment	**C2**

STEP 2: Reduction for exempt & non business supply (added to output tax liability)

Less: ITC attributable to Exempt Supply D1

$$= \text{Common ITC} \times \frac{\text{Aggregate Turnover of Exempt Supplies during the tax period}}{\text{Total Turnover in the State during the tax period}}$$

Less: ITC attributable to Non Business Purposes D2

Eligible Common Credit **C3**

Exempt Turnover in ITC Chapter

Includes

- Exempt Supply (as per exemption chapter) including non-taxable & NIL rated outward supply
- RCM outward supply
- Sale of land & Building (SDV)
- Sale of securities (1% of sale consideration)
- Supply of warehoused goods before clearance for Home consumption ★

Excludes

- Interest received on loans & Advances given
- Sale of Duty Scrips

Aggregate Turnover in ITC chapter includes :

- Taxable Turnover
- Exempt Turnover (as per above charts)
- Items excluded in Exempt Turnover i.e
  - Interest received on loans & Advances given
  - Sale of Duty Scrips

★ Value of supply of warehoused goods before clearance for home consumption **includes** the value of supply of goods from Duty Free Shops at arrival terminal in international airports to the incoming passengers.

METHODOLOGY OF APPORTIONMENT OF CREDIT OF CAPITAL GOODS AND REVERSAL THEREOF [RULE 43 OF THE COST RULES]

Steps to follow:

- First take full ITC in the month of Purchase.
- Divide the ITC of each capital goods by 60 (for attributing ITC to that month)
- Reverse ITC in each month

$$\text{ITC attributable to that month} \times \frac{\text{Exempt T/O of that month}}{\text{Total T/O of that month}}$$

Crux:

- First take full ITC, then reverse ITC each month on the basis of Exempt T/O of the next 60 months.
- Life of Capital Goods is assumed as 5 years (i.e., 60 months)

CHANGE IN USAGE OF CAPITAL GOODS:

i. Capital Goods earlier used for **exempt** supply → Now for **taxable** supply

$$\text{Amount of ITC to be taken now} = \text{Tax paid at the time of purchase} - \text{5\% per quarter or part thereof}$$

ii. Capital goods earlier used for **exempt** supply → Now **both taxable and exempt** supply

(a) Take full ITC of Input Tax paid at the time of purchase (Tc)

(b) Reversal of input tax for period for which it is used exclusively for exempt supply i.e, 5% for each quarter or part thereof

(c) Start monthly reversal for remaining life. $\left(\frac{Tc}{60} \times \frac{\text{Exempted Turnover}}{\text{Total Turnover}}\right)$

iii. Capital goods earlier used for **taxable** supply → Now **Exempt**
Reverse ITC on the basis of remaining life of Capital goods in **Months**.

iv. Capital Goods earlier used for **taxable** supply → Now for both **taxable** & **exempt**

(a) In this case, ITC has already been availed at the time of purchase.

(b) ITC availed now becomes (Tc)

(c) Do monthly Reversal $\left(\frac{Tc}{60} \times \frac{\text{Exempted Turnover}}{\text{Total Turnover}}\right)$ for remaining life of Capital goods.

❖ SPECIAL CIRCUMSTANCES

A. Composition Scheme to Regular Scheme

- In such case, person can take ITC on stock of inputs & capital goods on the day preceding the date of switch over.
- ITC to be taken = Inputs tax paid at the time of purchase of capital goods after doing below adjustments.

⬇

Tax Paid at the time of purchase - 5% per quarter or part thereof.

B. Regular to Composition Scheme

- Person can switch from regular to composition scheme only at the beginning of FY.
- ITC has to be reversed.

Inputs: Full ITC taken

Capital Goods: Reverse ITC proportionately on the basis of remaining life in months.

C. ITC Treatment in case of Fresh Registration

- No ITC on input tax paid on capital goods.
- ITC can be availed on inputs on the day preceding the "Effective Date of Registration" but such inputs should not be older than 1 year on the date of Registration.

D. ITC treatment in case of Sale / Disposal of Capital Goods

- Amount of tax payable in case of sale / disposal of capital goods
  - → Tax on Sale Value
  - → Reduced ITC (5% per quarter or part thereof)

  [Higher of above]

Example

Mr. Ankit purchased machinery for ₹ 10 Lakhs @ 18% GST on 18/06/2023, Sold machine on 11/01/2024 for ₹ 7 Lakhs.

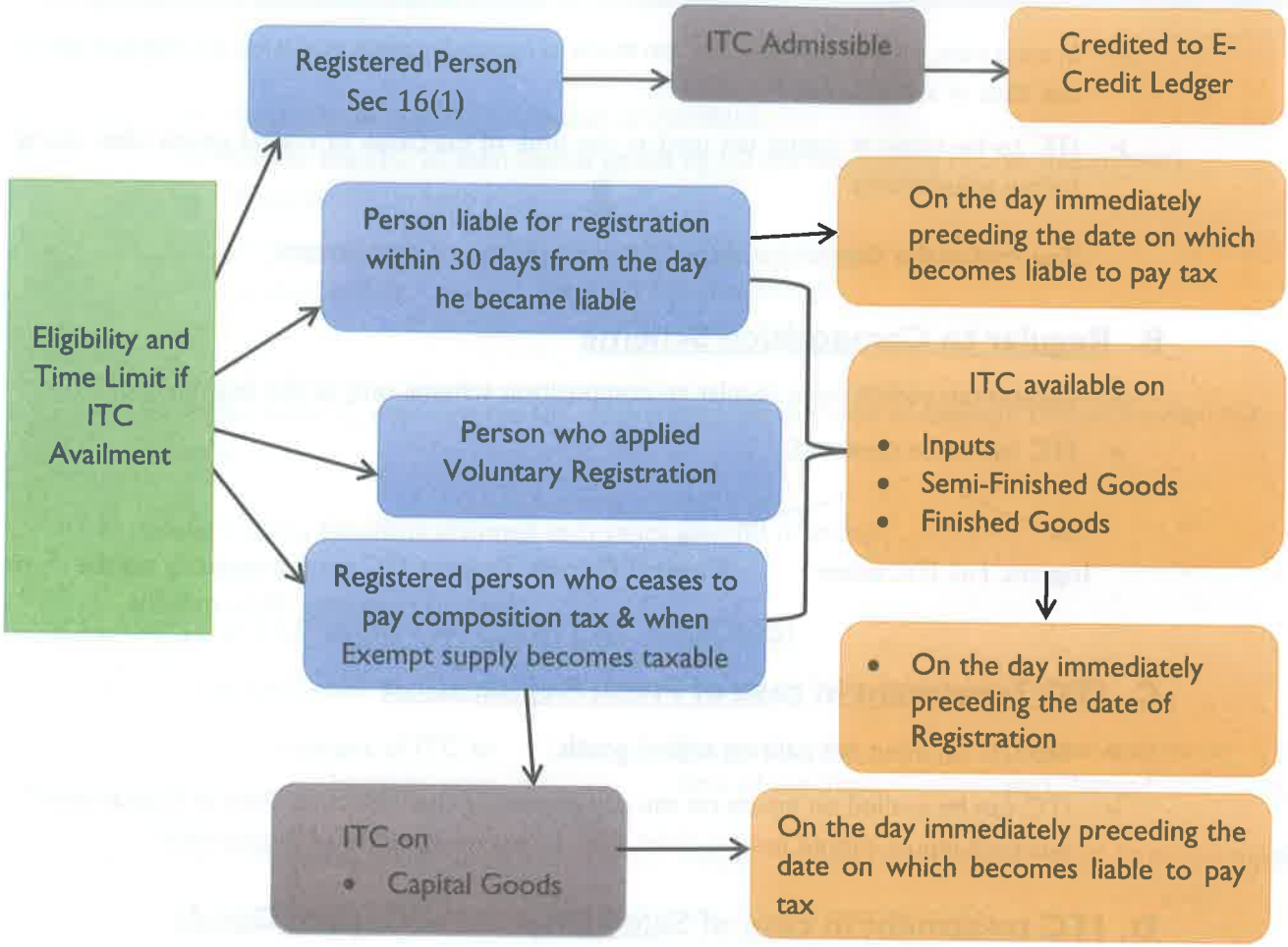
(a) Tax on Transaction value = 7,00,000 x 18% = 1,26,000

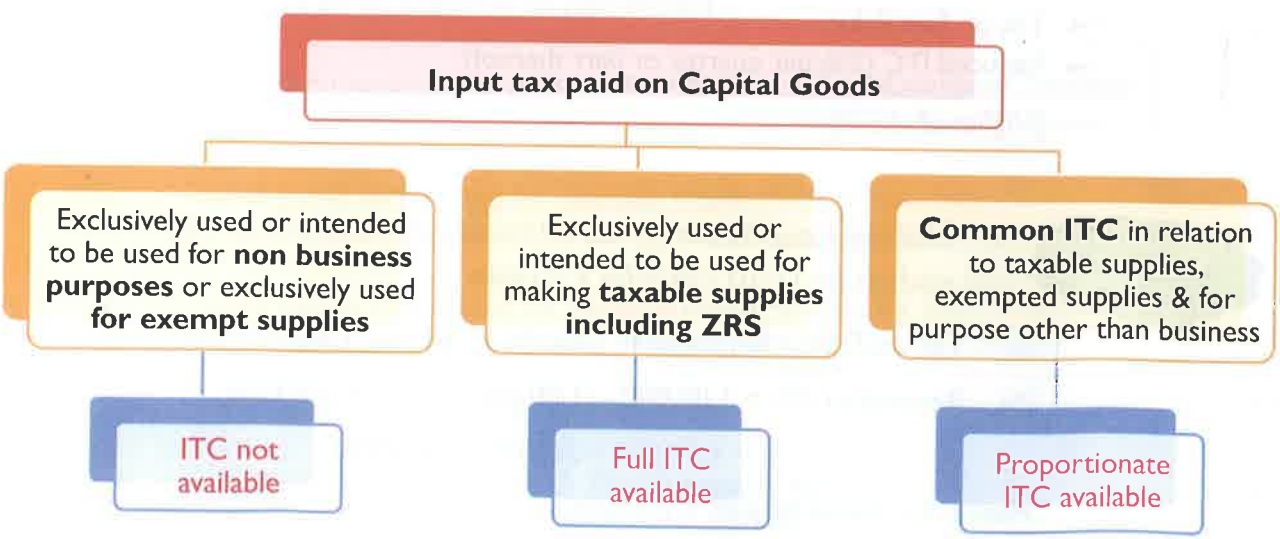
(b) Reversal of ITC = 1,80,000 - (1,80,000 x 5% x 4 quarters)

= 1,80,000 – 36,000 = 1,44,000.

Hence, Tax has to be paid ₹ 1,44,000.

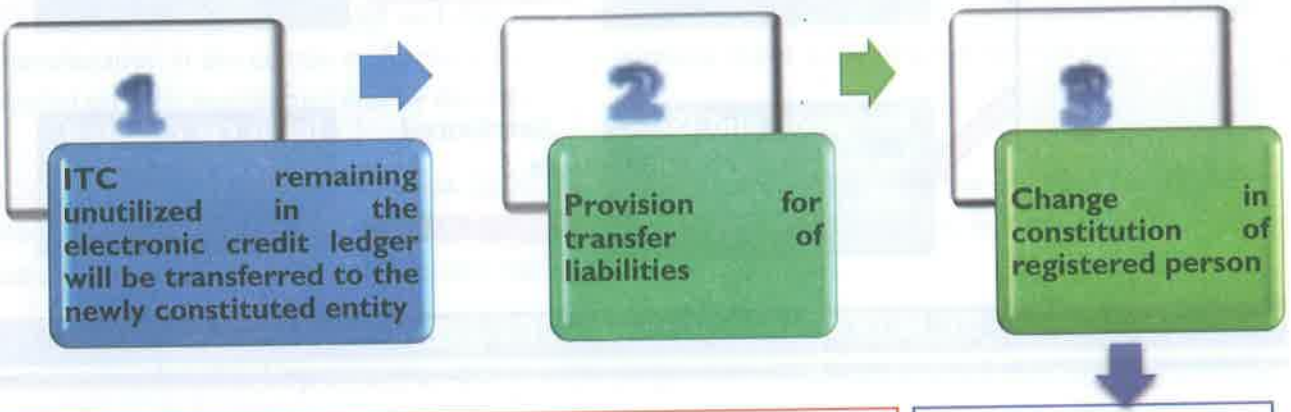
SECTION 18: AVAILABILITY OF CREDIT IN SPECIAL CIRCUMSTANCES





TRANSFER OF ITC ON ACCOUNT OF CHANGE IN CONSTITUTION OF REGISTERED PERSON [SECTION 18(3) READ WITH RULE 41 OF THE CGST RULE]

In case of sale, merger, demerger, amalgamation, transfer or change in ownership of business etc., the ITC that remains unutilized in the electronic credit ledger of the registered person can be transferred to the new entity.

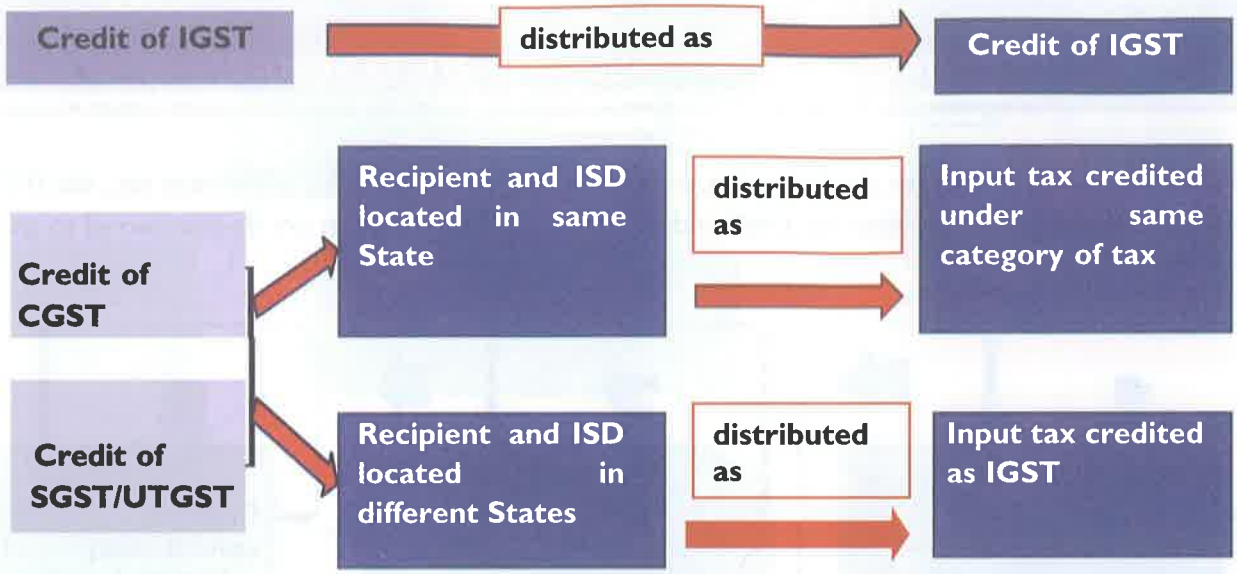


- Circular No. 96/15/2019 GST dated 28.03.2019 has clarified that transfer or change in the ownership of business includes transfer or change in the ownership due to death of the sole proprietor.

- Sale
- Merger
- Demerger
- Amalgamation
- Lease
- Transfer of business

DISTRIBUTION OF CREDIT BY INPUT SERVICE DISTRIBUTOR [SECTION 20 & 21]

- ISD shall distribute ITC against an ISD's Invoice
- Max ITC that can be distributed = the amount of tax paid (ITC available)
- Credit attributable to a recipient shall be distributed only to that recipient
- Credit attributable to more than 1 recipient shall be distributed amongst such recipient on pro rata basis of the turnover.
- Credit attributable to all recipients shall be distributed among all recipients on pro rata basis of the turnover. [Basis of Pro rata distribution: Previous Year Turnover, if it is not available then previous quarter turnover].
- Recipients shall be distributed among all recipients on pro rata basis of the turnover. [Basis of Pro rata distribution: Previous Year Turnover, if it is not available then previous quarter turnover].



ITC REDUCED ON THE BASIS OF CREDIT NOTE

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 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 GST 6; or

ii. Added to the output tax liability to the recipient where the amount so apportioned is in the negative by virtue of the amount of credit under distribution being less than the amount to be adjusted.

SECTION 21: RECOVERY OF EXCESS CREDIT DISTRIBUTED TO A RECIPIENT



Excess credit distributed can be recovered along with interest only from the recipient and not from ISD.

- If the ISD has distributed excess credit to any recipient, the excess will be recovered from the recipient with interest as if it was tax not paid by initiating action under section 73 or 74.
- ISD would also be liable to a general penalty under section 122(1)(ix).

Clarification:

Moulds and dies provided by the original equipment manufacturer (OEM) to component manufacturer on FOC basis – when not considered as being in the course or furtherance of business?

Case: Moulds and dies owned by the original equipment manufacturer (OEM) which are provided to a component manufacturer (the two not being related persons or distinct persons) on free on cost (FOC) basis does not constitute a supply as there is no consideration involved.

Treatment: Since the moulds and dies are provided on FOC basis by the OEM to the component manufacturer in the course or furtherance of his business, there is no requirement for reversal of ITC availed on such moulds and dies by the OEM.

Case: Where the contract between OEM and component manufacturer is for supply of components made by using the moulds / dies belonging to the component manufacturer, but the same have been supplied by the OEM to the component manufacturer on FOC basis.

Treatment: OEM will be required to reverse the credit availed on such moulds / dies, as the same will not be considered to be provided by OEM to the component manufacturer in the course or furtherance of the former's business.

RESTRICTION ON UTILIZATION OF ITC [RULE 86A]

The commissioner / an officer (not below the rank of an Assistant Commissioner) authorized by him is empowered to impose restrictions on utilization of ITC available in the electronic credit ledger if he has the reason to believe that such ITC has been fraudulently availed or is ineligible.

The restriction can be imposed in the following circumstances:

i. ITC has been availed on the basis of tax invoices / valid documents-
   - Issued by a non - existing supplier or by a person not conducting any business from the registered place of business; or
   - Without receipt of goods or services or both; or

ii. The tax in relation to which has not been paid to the government.

iii. The registered person availing ITC has been found non - existing or not to be conducting any business from the registered place of business; or

iv. The registered person availing ITC is not in possession of tax invoice / valid document.

If the ITC is so availed, the restriction can be imposed by not allowing such ITC to be used for discharging any liability under section 49 or not allowing refund of any unutilized amount of such ITC.

Such restrictions can be imposed for a period upto **1 year** from the date of imposing such restrictions.

However, the commissioner / officer authorized by him, can withdraw such restriction if he is satisfied that conditions for imposing the restrictions no longer exist.

RESTRICTIONS ON THE USE OF AMOUNT AVAILABLE IN ELECTRONIC CREDIT LEDGER [RULE 86B]

Rule 86B limits the use of input tax credit available in the electronic credit ledger for discharging output tax liability. The aforesaid rule starts with non-obstante clause and has an over-riding impact on any other provision of the rules.

- **Applicability of Rule 86B:** Rule 86B is applicable to the registered person having value of taxable supply (other than exempt supply and zero-rated supply) in a month exceeding ₹ 50 Lakh.

- **Nature of Restriction Imposed:** The registered person to whom the said rule is applicable cannot utilize ITC in excess of 99% of the output tax liability. In other words, input tax liability shall be utilized only to the extent of 99% of the output tax liability while discharging output tax liability. Balance 1% of the output tax liability needs to be discharged from electronic cash ledger.

The above restriction can be explained with the help of numerical example.

The total value of inter-state supply of Raman & Sons for the month of February is ₹ 100 Lakh. Said supply is taxable @ 18% IGST. Thus, total output tax liability of Raman & Sons is ₹ 18 Lakh. Amount available in electronic credit ledger is ₹ 20 Lakh (IGST).

In terms of restriction imposed by Rule 86B, Raman & Sons can discharge 99% of its output tax liability, i.e., ₹ 17,82,000 (99% of ₹ 18,00,000) from the amount available in electronic credit ledger. However, it has to mandatorily discharge the balance 1% of the output tax liability i.e., ₹ 18,000 (1% of ₹ 18,00,000) through electronic cash ledger only.

- **Exceptions to the Rule 86B:**

  - **Payment of income tax more than ₹ 1 Lakh**

    Rule 86B may not apply in cases whereby person mentioned below have deposited sum of more than ₹ 1 Lakh as income tax under the Income Tax Act, 1961) in each of the last 2 FY for which the time to file return of income under section 139(1) of the said Act has expired

    - The registered person or
    - The karta / proprietor / the managing director of the registered person;

    Any of the two partners, whole time directors, members of Managing Committee of Associations or Board of Trustee of the registered person, as the case may be.

- **Receipt of refund of input tax credit of more than ₹ 1 lakh**

  Rule 86B may not apply whereby registered person has received a refund amount of more than ₹ 1 Lakh on account of unutilized ITC under the following:

  - ❖ Zero rated supplies made without payment of tax
  - ❖ Inverted duty structure

  It is pertinent to note that refund should have been received in the preceding FY.

- **Payment of total output tax liability through electronic cash ledger in excess of 1% of total output tax liability**

  If the registered person has paid more than 1% of total output tax liability using electronic cash ledger upto the said month in the current FY, the restrictions as specified in Rule 86B shall not apply.

  Assuming a scenario wherein the FY 2023-24 upto August 2023, the total output tax liability payable is ₹ 30 Lakh and such registered person has deposited ₹ 1 Lakh through electronic cash ledger and balance though electronic credit ledger, rule 86B would not be applicable in September 2023 [if the turnover during this month exceeds ₹ 50 Lakh], since payment made in cash is more than 1% of total output tax liability. (1% of ₹ 30 Lakhs is ₹ 30,000).

Interestingly, the aforesaid exception needs to be evaluated in 'current financial year', and hence, for the month of April of any FY, the said exception will not be applicable. Accordingly, registered person would be required to pay minimum 1% of output liability through electronic cash ledger unless the registered person is covered under any of the other exceptions or if the taxable turnover in a month is less than ₹ 50 Lakh.

It is pertinent to note that GST liability paid under reverse charge mechanism should not be considered while calculating the total output tax liability paid through electronic cash ledger.

- **Specified Registered Person:**

  Rule 86B would not be applicable in case of below-mentioned registered person:

  - ❖ Government Department; or
  - ❖ A public sector undertaking; or
  - ❖ A local authority; or
  - ❖ A statutory body.

However, commissioner or an officer authorized by him in this behalf may remove the said restriction after such safeguards as he may deem fit.

A. Clarification regarding taxability of services provided by an office of an organisation in one State to the office of that organisation in another State, both being distinct persons

Various representations have been received seeking clarification on the taxability of activities performed by an office of an organisation in one State to the office of that organisation in another State, which are regarded as distinct persons under section 25 of CGST Act, 2017.

Let us consider a business entity which has Head Office (HO) located in State-1 and a branch offices (BOs) located in other States. The HO procures some input services e.g., security service for the entire organisation from a security agency (third party). HO also provides some other services on their own to branch offices (internally generated services).

The issues that may arise with regard to taxability of supply of services between distinct persons in terms of sub-section (4) of section 25 of the CGST Act are being clarified in the Table below: -

S.No.	Issue	Clarification
1.	Common input services procured from a third party by Head Office (HO) - Taxpayer will have option to follow either ISD or cross charge mechanism	1. It has been clarified that HO has an option to either distribute ITC in respect of such common input services by following ISD mechanism or can also issue tax invoices u/s 31 of CGST Act to the concerned Branch Office (BO) in respect of common input services procured from a third party. 2. Such ITC can be transferred only if the services are actually attributable to such BO in both the above cases.
2.	Services procured internally from HO (when full ITC is available to the concerned BOs) Also, applicable in case of import of services by a registered person in India from a related person located outside India, the tax is required to be paid by the registered person in India under reverse charge mechanism. In such cases, the registered person in India is required to issue self-invoice under section 31(3)(f) and pay tax on RCM basis.	1. In respect of supply of services by HO to BOs, the value of the said supply of services declared in the invoice by HO shall be deemed to be OMV of such services, if the recipient BO is eligible for full ITC. 2. Accordingly, in cases where full ITC is available to a BO, the value declared on the invoice by HO to 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 the value of the services in the invoice. 3. It has also been clarified that if HO has not issued a tax invoice to the BO in respect of any particular services being rendered by HO to the said BO, the value of such services may be deemed to be declared as Nil by HO to BO, and may be deemed as OMV.
3.	Services procured internally from HO (when full ITC is not available to the concerned BO)	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 input tax credit is not available to the concerned BO.

B. 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, where both investment and life insurance risk coverage are provided by the insurer.
- The **premium portion not includible in taxable value** 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:-
  (i) partly for business and partly for other purpose or
  (ii) partly for taxable supplies including zero rated supplies and partly for exempt supplies.
- It is clarified that the amount of the premium for taxable life insurance policies, not included in the taxable value, **cannot be considered as non-taxable/exempt supply** & therefore, **no reversal of ITC** is required as per provisions of Rule 42/43.

C. Clarification on ITC availability in respect of demo vehicles which are motor vehicles for transportation of passengers having approved seating capacity of not more than 13 persons (including the driver)

- 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'. Hence, **ITC** in respect of demo vehicles is **not blocked** under clause (a) of section 17(5).

Issue	Clarification
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.	In such cases, the same cannot be said to be used for making 'further supply of such motor vehicles' and therefore, **ITC is not available.**
Where the authorized dealer merely acts as an agent or service provider to the vehicle manufacturer for providing marketing service & the sale invoice for the vehicle is directly issued by the vehicle manufacturer to the customer.	Authorized dealer acting as marketing agent so **ITC is not available.**

D. Clarification on ITC availability on demo vehicles in cases where such vehicles are capitalized in the books of account by the authorized dealers

- Demo vehicles are **used** by the authorized dealers **to promote further sale** of motor vehicles of the similar type & therefore used in the course or furtherance of business of the dealers.
- Where such vehicles are **capitalized** in the books of accounts by the authorized dealer, the said vehicle falls in the definition of "capital goods" & accordingly, **availability of ITC is not affected** by way of capitalization.
- Where the registered person **has claimed depreciation** on the tax component of the cost of capital goods and plant and machinery - **ITC shall not be allowed.**
- If demo vehicle, which is capitalized, is **subsequently sold** by the authorized dealer, then the **authorized dealer to pay an amount** or tax.

E. Clarification on availability of ITC on ducts and manholes used in network of optical fiber cables (OFCs) in terms of section 17(5)

- Ducts and manholes are used as part of the OFC network generally laid with the use of PVC ducts for making outward supply of transmission of telecommunication signals from one point to another.
- Ducts and manholes used in network of OFCs **have not been specifically excluded** from the definition of "plant and machinery" as they are neither in nature of land, building or civil structures nor are in nature of telecommunication towers or pipelines laid outside the factory premises.
- Hence, it is clarified that **ITC is not restricted & allowed** on ducts & manholes used in OFCs.

F. 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

- Under **reimbursement** mode, the insured visits non-network garages & **payment is first made** by the insured and **then reimbursed** by the insurance company to the insured to the extent of **approved claim cost**, then the insurance company will be **eligible to avail ITC upto approved reimbursement, if invoices are issued in the name of insurance company**.
- Under **cashless** mode, the insured visits a network garage & repair is carried out, it means the insurance company will **directly pay to the garage** and no amount will be paid by the insured. In such cases, entire invoice will be issued in the name of insurance company & the insurance company will be **eligible to claim ITC.**

Issue	Clarification
Extent of ITC available 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 excess amount?	ITC is available to insurance company **only on the invoice issued to it** subject to reimbursement of said amount by insurance company to customer.
Extent of ITC available 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?	ITC is available to the insurance company **only to extent of the reimbursement of the approved claim cost** to the insured, and not on the full invoice value.
ITC is available to the insurer if **invoice** for vehicle repair **is not in insurance company's name**?	ITC is not available to the insurance company as it **violates section 16.**

Let us understand with the help of an example:

Total repair charges paid by the insured is ₹ 1,20,000 & the insurance company has approved claim cost of ₹ 1,00,000 and the invoice is issued by the garage in the name of as below –

Insurance Co. - ₹ 1,00,000 Insured - ₹ 20,000	Insurance Co. - ₹ 1,20,000	Invoice is not issued in name of insurance company
↓	↓	↓
ITC is available to insurance company for ₹ 1,00,000.	ITC is available to insurance company for ₹ 1,00,000 only.	No ITC available due to violation of Sec. 16.

G. Clarification on availability of ITC in respect of warranty replacement of goods or its parts and/ repair services during warranty period

Case I: When original equipment manufacturer offering replacement of goods or its parts / repair services under warranty to the customer:

Manufacturer provides warranty to customer in the form of replacement or repair

→ without any Consideration

→ Not an exempt supply because Original Supply includes Cost of replacement/ repair. Thus, No REVERSAL of ITC.

Case II:

- **Part-I:** When distributor gives warranty on behalf of Manufacturer to Customer.

Distributor gives warranty on behalf of Manufacturer to Customer

- without any Consideration → No GST is payable.
- with Consideration → GST would be payable by distributor & manufacturer would be entitled to avail ITC.

- **Part-II:** When distributor gives warranty & any activity /transaction undertakes between Distributor & Manufacturer:

- Distributor Charges Consideration from manufacturer for replacement / repair and issues invoice. → GST will be levied on distributor & manufacturer entitled to avail ITC & no reversal of ITC by the distributor is required.
- Manufacturer gives goods for replacement to distributor without any charges/ Distributor replaces goods from his own stock & then manufacturer provides him that goods/parts → No GST is payable. So. no reversal of ITC.
- Distributor replaces goods or its parts to Customer out of Supply already received by him from manufacturer & manufacturer issues credit note → Tax liability of manufacturer will be reduced, if distributor has reversed ITC availed.

REGISTRATION

INTRODUCTION

- Registration legally recognizes a person as supplier of goods or services or both and legally authorizes him to collect taxes from his customers and pass on the credit of the taxes paid on the goods or services supplied to the purchases / recipients.
- Under GST law, a supplier is required to obtain State-wise registration.
- Where a person has multiple places of business in a State / UT, he has option to either get single registration for the said State/UT or to get separate registrations for each place of business in such State / UT.
- Registration under GST is not tax specific, which means that there is single registration for all the taxes i.e., CGST, SGST / UTGST, IGST and GST Compensation cess.

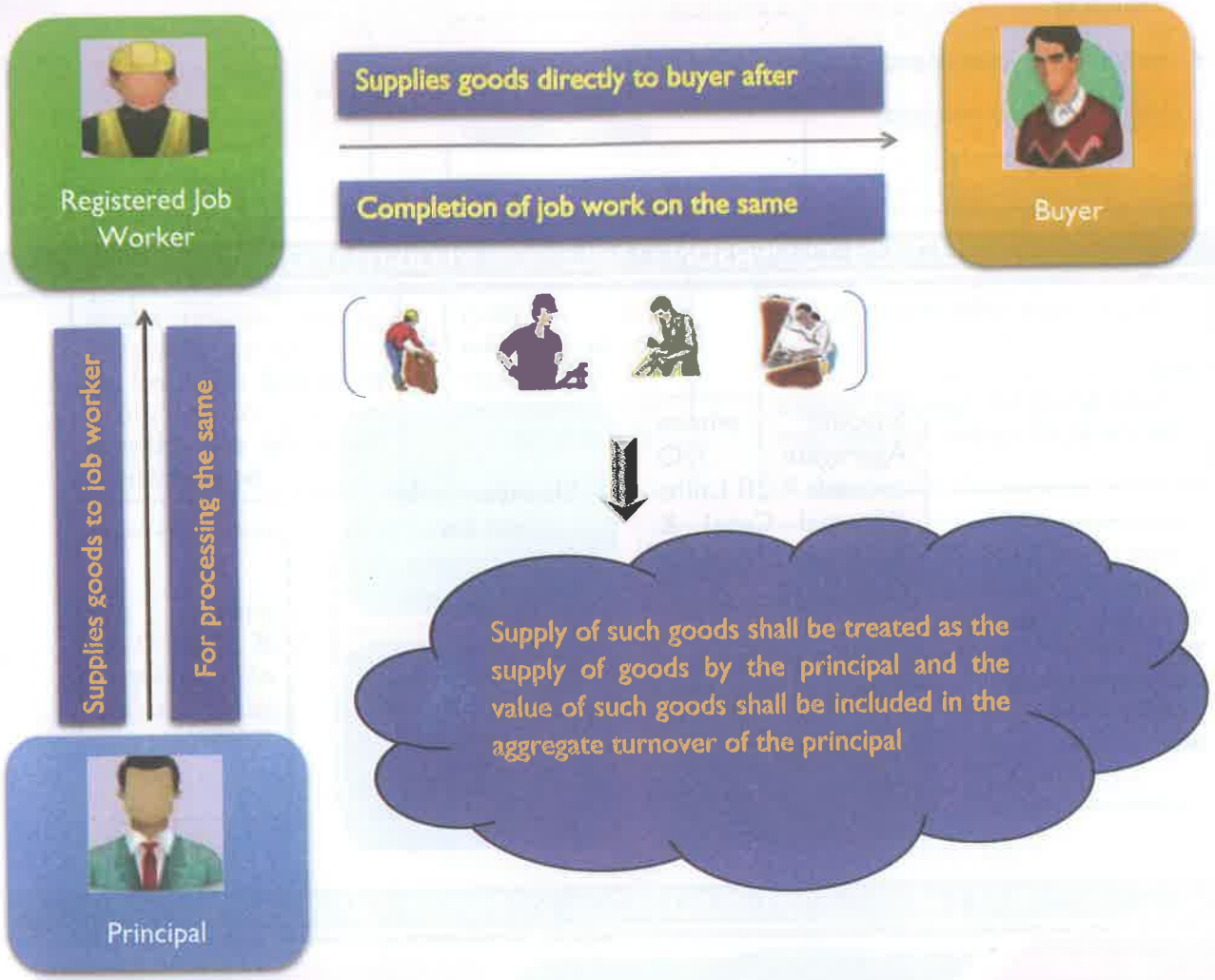
  Separate registration makes separate person.

Aggregate turnover

Value of all outward supplies --Taxable supplies --Exempt supplies --Exports --Inter-State supplies of persons having same PAN be computed on all India basis	--CGST --SGST --UTGST --IGST --Compensation cess --Value of inward supplies on which tax is payable under reverse charge

- Value of Goods, after completion of job work, supplied directly from the premises of the registered job worker not to be included in job worker's aggregate turnover.

- Outward Supplies taxable under reverse charge would continue to be part of the 'Aggregate Turnover' of the supplier of such supplies.

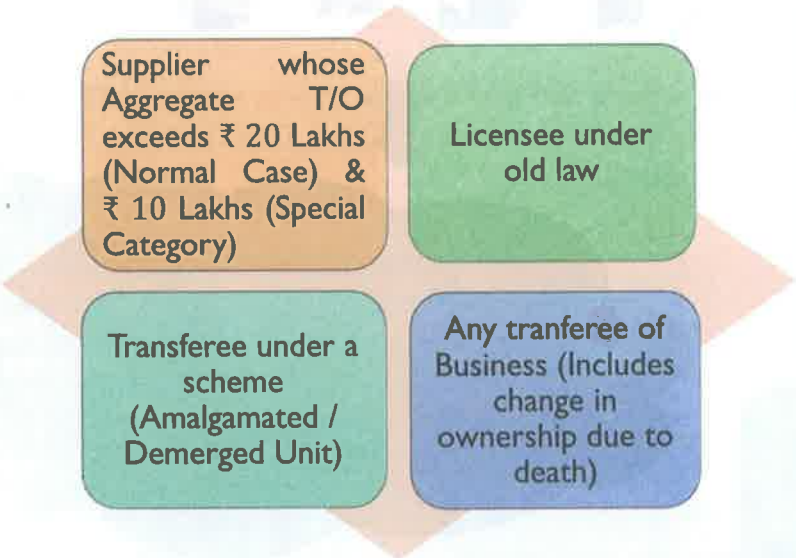


JOB WORK MEANING: Job Work implies undertaking any treatment or process by a person on goods belonging to another registered taxable person.

- The person who is treating or processing the goods belonging to other person is called **'Job Worker'** and the person to whom the goods belong is called **'Principal'.**
- Principal can directly supply the goods from the premises of job worker without bringing it back to his own premises.

- In case the job worker is unregistered, principal should declare job worker's premises as his additional place of business and remove goods from the same.
- If the job worker is a registered person / principal supplies notified goods, goods can be supplied directly from the premises of the job worker.
- Supply of goods, after completion of job work, directly from a registered job worker's premises is treated as supply of goods by the principal.
- Further, the value of such goods supplied will be included in the aggregate turnover of the principal and not the job workers.

SECTION 22: PERSON LIABLE FOR REGISTRATION





SECTION 24: COMPULSORY REGISTRATION UNDER CERTAIN CASES

(i) Person making any inter-State taxable supply

(ii) Casual Taxable Persons (CTP) making taxable supply

(iii) Persons who are required to pay tax under RCM on inward supplies received *(except suppliers of metal scrap)*

(iv) person who are required to pay tax u/s 9(5)

(v) NRTP making taxable supply

(vi) persons who are required to deduct tax u/s 51, whether or not seperately registered under this Act

(vii) persons who make taxable supply of goods or services or both on behalf of other taxable persons whether as an agent or otherwise

(viii) ISD, whether or not seperately registered under this Act

(ix) persons who supply goods or services or both, other than notified u/s 9(5) who supply through an ECO who is required to collect TCS u/s 52

(x) Every ECO who is required to collect tax at source u/s 52

(xi) every person supplying OIDAR services from a place outside india to a person in India, other than a registered person

(xia) every person supplying online money gaming from a place outside India to a person in India

(xii) Such other person / class of persons as may be notified by Government on recommendations of the Council

DIFFERENCE BETWEEN AGGREGATE T/O & T/O IN STATE

Aggregate T/O

- For detemining the Threshold Limit for Registration
- Eligibility for Composition

T/O in State

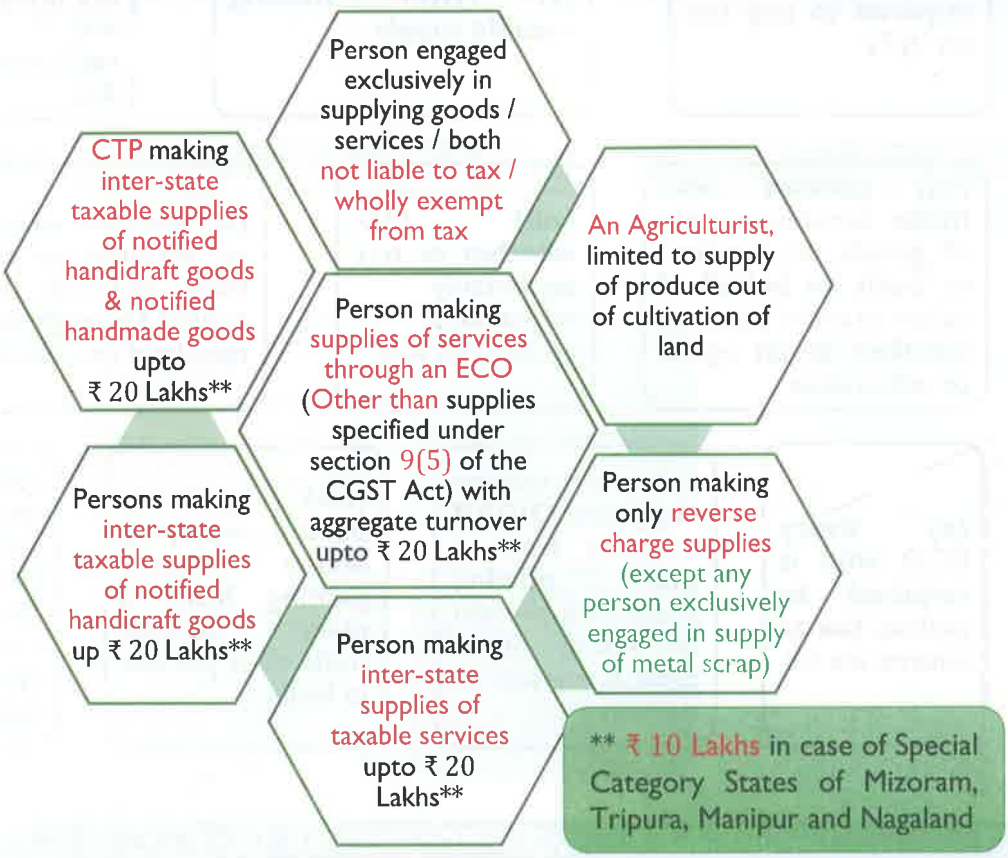
- For calculating composition levy

VOLUNTARY REGISTRATION

Supplier whose aggregate t/o does not exceed ₹ 10/20 lakhs but still obtains registration.

- If a person with places of business in different states across India has one branch in a Special Category State, the threshold limit for GST registration will be reduced to ₹ 10 Lakhs.

SECTION 23: PERSON NOT LIABLE FOR REGISTRATION



Persons making supplies of goods through an ECO who is required to collect tax at source u/s 52 of the said Act and having an aggregate turnover, to be computed on all India basis, not exceeding the threshold limit in the preceding FY and in the current FY, are exempted from obtaining registration under GST subject to the following conditions, namely: -

(i) such persons shall not make any inter-State supply of goods;
(ii) such persons shall not make supply of goods through ECO in more than one State or UT;
(iii) such persons shall be required to have a PAN issued under the Income Tax Act, 1961;
(iv) such persons shall, before making any supply of goods through ECO, declare on the common portal their PAN, address of their place of business and the State or UT in which such persons seek to make such supply, which shall be subjected to validation on the common portal;

(v) such persons have been granted an enrolment number on the common portal on successful validation of the PAN declared as per clause (iv);

(vi) such persons shall not be granted more than one enrolment number in a State or UT;

(vii) no supply of goods shall be made by such persons through ECO unless such persons have been granted an enrolment number on the common portal; and

(viii) where such persons are subsequently granted registration u/s 25 of the said Act, the enrolment number shall cease to be valid from the effective date of registration.

Person exclusively engaged in supply of goods up to an aggregate turnover of ₹ 40 Lakhs is not required to take registration.

Exceptions to this exemption are as follows: (i.e. exempt from obtaining registration)

- Person required to take compulsory registration u/s 24 of the CGST Act.
- Person engaged in making supplies of ice cream and other edible ice, whether or not containing cocoa, Pan Masala and all goods of chapter 24, i.e., Tobacco and manufactured tobacco substitutes, Fly ash bricks; Fly ash aggregates; Fly ash blocks, Bricks of fossil meals or similar siliceous earths, Building bricks, Earthen or roofing tiles.
- Persons engaged in making intra-state supplies in the states of Arunachal Pradesh, Uttarakhand, Meghalaya, Sikkim, Telangana, Puducherry and special category states as per section 22 [Manipur, Mizoram, Nagaland, Tripura]. {**MMNT + SAMPUT**}
- Person who has opted for voluntary registration or such registered person who intend to continue with their registration under the CGST Act.

APPLICABLE THRESHOLD LIMITS

States/UTs with threshold limit of ₹ 10 Lakhs for both goods & services	Manipur, Mizoram, Nagaland and Tripura [MMNT]
States/UTs with threshold limit of ₹ 20 Lakhs for both goods & services	Sikkim, Arunachal Pradesh, Meghalaya, Puducherry, Uttarakhand, Telangana [SAMPUT]
States/UTs with threshold limit of ₹ 20 Lakhs for services and ₹ 40 Lakhs for goods (Exclusive)	Himachal Pradesh, Assam, Jammu & Kashmir & All other states [HAJ]

Threshold Limit for Registration

(₹ in Lakhs)

States	Goods (Intra-state)	Service	Goods & Services
• MMNT (Manipur, Mizoram, Nagaland & Tripura)	10	10	10
• SAMPUT (Sikkim, Arunachal Pradesh, Meghalaya, Puducherry, Uttra-khand & Telangana)	20	20	20
• All other states	40*	20	20

* For notified goods (Pan masala, Ice cream etc), Limit is 20 Lakhs only.

SERVICES PROVIDED BY THE COMMISSION AGENT FOR SALE OR PURCHASE OF AGRICULTURE PRODUCE – REGISTRATION REQUIREMENTS

An agent is compulsory required to take registration if he satisfies the following conditions [As per Section 24]

- He is engaged in making a taxable supply
- He is acting as agent on behalf of another taxable person [Para 3 of Schedule 1]

Points to Remember:

- **Composition levy in case of separate registration for multiple places of business within a State / UT**
  - If a person is paying tax for one of his places of business under normal scheme, he shall not pay tax under composition levy for any other place of business.
  - If one of the places of business [separately registered] of a registered person becomes ineligible to pay tax under composition levy, all other registered places of business of said person would also become ineligible to pay tax under composition levy.
- **A Permanent Account Number is mandatory to be eligible for grant of registration.**
  - A Non-Resident Taxable Person (NRTP) may be granted registration on the basis of other documents.
- A person having **unit in SEZ / an SEZ developer** will have to make a **separate application** as **distinct** from his place of business **located outside SEZ in the same State/UT**. Thus, there may be a case where two units of a tax payer are located in same State/UT – One in SEZ and another outside SEZ. In that case, **separate registrations** have **to be obtained** for **each of the two units** as separate places of business.

- For instance, if a person is supplying from **multiple states**, then he needs to **obtain multiple registrations.** But, if he is supplying only exempted goods or services from any of the states, then registration is not required for that particular state.

- If a person is supplying from multiple states & one of these states is covered under special category state, then the threshold of the special category state shall be considered for registration.

Example : Mr. AKG does intra state supply of goods having four branches,

- Turnover of Jaipur Branch (Taxable Supply) – ₹ 7 Lacs
- Turnover of Delhi Branch (Taxable Supply) – ₹ 5 Lacs
- Turnover of Mumbai Branch (Exempt Supply) – ₹ 2 Lacs
- Turnover of Manipur Branch (Taxable Supply) – ₹ 1 Lac
- In this case, registration is required in all states, except Mumbai & threshold limit will be ₹ 10 lacs.

Q. What if he does exempt supply from Manipur branch?

A. The applicable threshold limit will be ₹ 40 Lacs and registration is not required in any state.

- If a person is engaged in intra state supplies only, but he has received any amount as interest or discount, then the threshold limit will be considered as ₹ 40 Lacs, except special category states.

WHERE & BY WHEN TO APPLY FOR REGISTRATION [SECTION 25(1)]

Particulars	Where	When
Person who is liable to be registered under section 22 or section 24	In every such State / UT in which he is so liable	**Within 30 days** from the date on which he become liable to registration
CTP taxable person or a non – resident taxable person		**At least 5 days** prior to the commencement of business
Every person who makes a supply from the territorial waters of India	In the coastal State/UT where the nearest point of the appropriate base line is located.	**Within 30 days** from the date on which he becomes liable to registration

SECTION 25: PROCEDURE FOR REGISTRATION

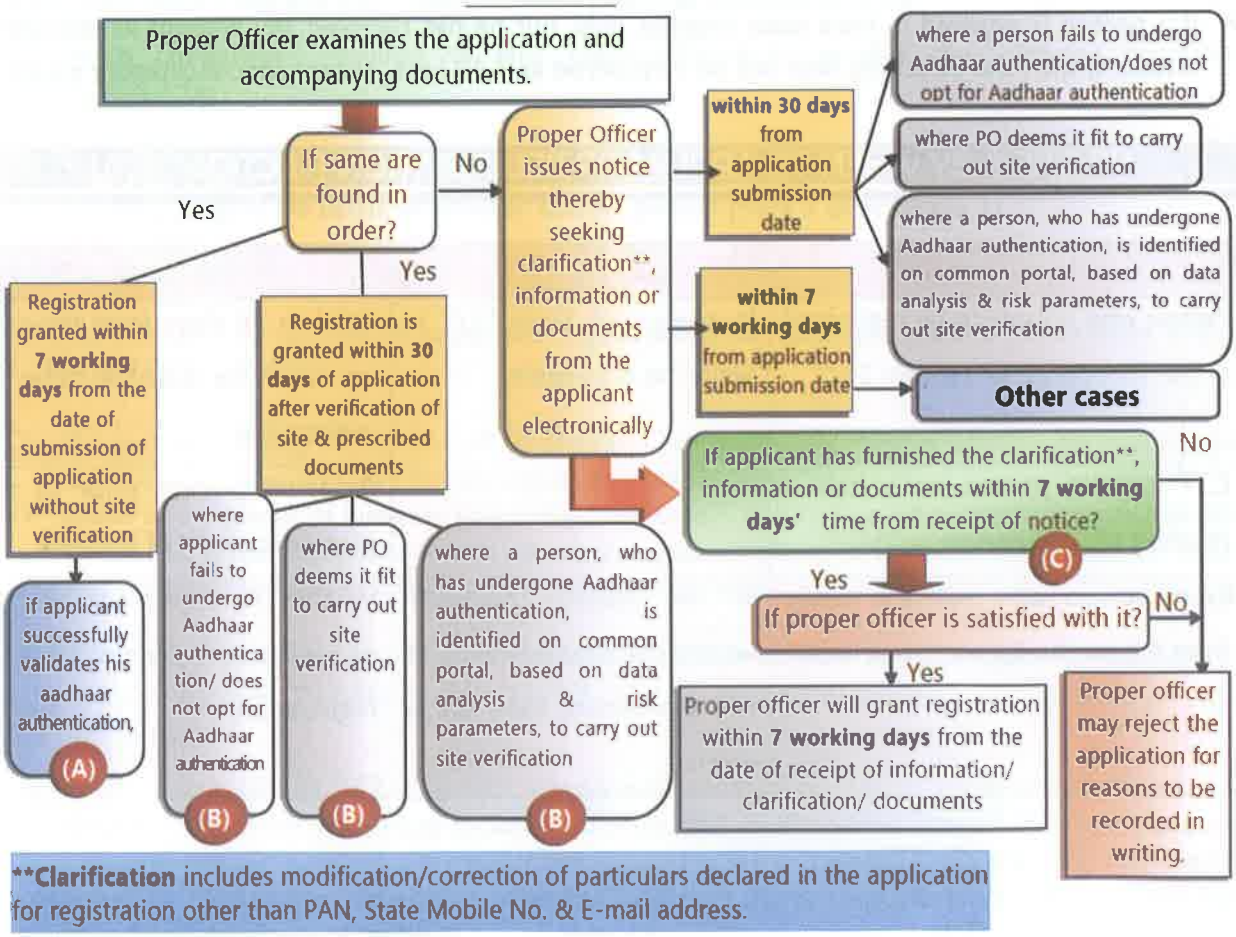
PART A

- Declare PAN & State / UT in Part A of Form GST REG-01.
- PAN is validated from CBDT database & also verified through separate OTPs sent to the PAN linked mobile number and e-mail address.
- TRN is generated and communicated on validated mobile number and e-mail address.
- Using this TRN number, fill Part B of the application form.

  Part B contains details such as date of commencement of business, address, nature of business, option of composition levy, Bank account details, etc.
- In case of CTP, TRN is generated only once he deposits tax in advance.
- Now, application will be forwarded to proper officer.

The procedure after receipt of application by PO is given in below chart.

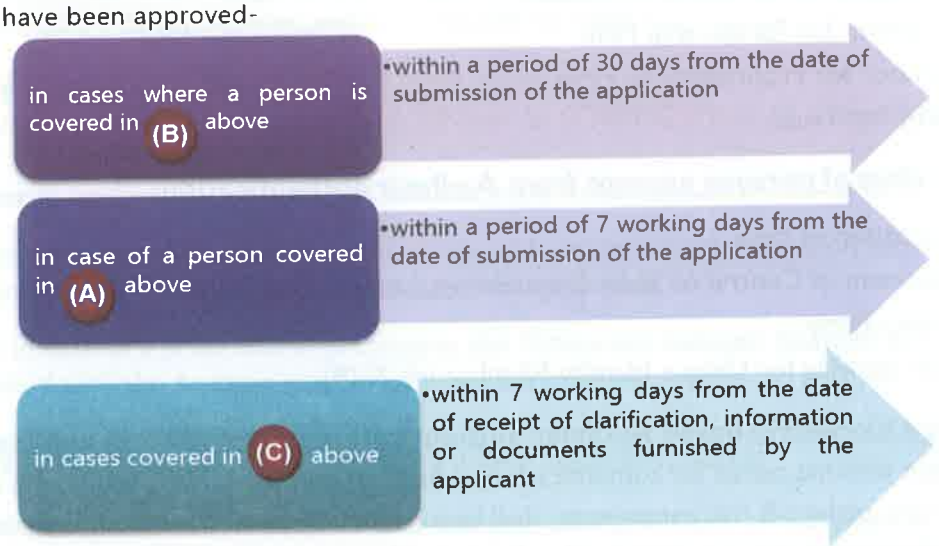
PART B



**Clarification includes modification/correction of particulars declared in the application for registration other than PAN, State Mobile No. & E-mail address.

✯ Deemed Approval of Application

If the proper officer fails to take any action in the following cases within the stipulated time, the application for grant of registration shall be deemed to have been approved-



The above procedure so laid down will not apply to:

- NRTP
- A person required to deduct TDS u/s 51
- A person required to collect TCS u/s 52
- A person supplying OIDAR services from a place outside India to a non-taxable online recipient referred to in section 14 of IGST Act
- A person supplying online money gaming from a place outside India to a person in India referred to in section 14A of IGST Act.

The procedure for obtaining registration as prescribed under rules 8, 9 and 10 is also applicable to a person paying tax under composition levy, every person seeking voluntary registration as well as a casual taxable person. Such persons shall apply for registration in Form GST REG 01. The application for registration in GST Form REG 01 is divided into two parts – Part A and Part B.

PERSONS REQUIRED TO UNDERGO AADHAAR AUTHENTICATION

➢ Every (i) individual applicant or (ii) an applicant, other than an individual, shall undergo authentication/furnish proof of possession of Aadhaar number.

(i) <u>Where an applicant opts for authentication of Aadhaar number:</u>

He shall, while submitting an application for registration, undergo authentication of Aadhaar number. Said authentication is required to be eligible for grant of registration.

Date of submission of application: EARLIER of
(a) The date of authentication of Aadhaar number, or
(b) 15 days from submission of application in Part B of Form GST REG-01.

- In case of failure – registration is deemed to be invalid.
- In case applicant is 'other than individual', then Aadhaar authentication will be done on the basis of Aadhaar number of : (Notified individuals)
  - Any partner for Partnership Firm
  - Proprietor for Proprietorship Firm
  - Trustee for Trust
  - Karta for HUF
  - MD / WTD for Company
- **Person / class of persons exempt from Aadhaar authentication:**
  - Not a citizen of India
  - Department of Central or State Government, Local Authority, PSU.
  - Statutory Body
  - Person applying for Unique Identity Number u/s 25(9).
- **Risk-based biometric-based Aadhaar authentication of registration applicants**

  An applicant who has opted for authentication of Aadhaar number is identified on the common portal, based on data analysis & risk parameters, shall be followed by biometric based Aadhaar authentication & taking photograph: ~~(currently in Andhra Pradesh, Gujarat & Puducherry on pilot basis)~~ **(i.e. now, extended to the whole of India)**
  - of the applicant where the applicant is an individual, or
  - of notified individuals in relation to the applicant where the applicant is not an individual,

  along with verification of original copy of the documents uploaded with the application form.

  (ii) Where an applicant does not opt for authentication of Aadhaar number:

  The application of a person who has not opted for authentication of Aadhaar number, shall be followed by taking photograph:
  - of the applicant where the applicant is an individual, or
  - of notified individuals in relation to the applicant where the applicant is not an individual,

  along with verification of original copy of the documents uploaded with the application form.
- If Aadhaar number is not assigned, Rule 10B is applicable.

Rule 10B: Aadhaar authentication for registered person

If Aadhaar number has not been assigned to the person required to undergo authentication of the Aadhaar number, such person shall furnish the following identification documents, namely: –

(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

Provided further that such person shall undergo the authentication of Aadhaar number within a period of 30 days of the allotment of the Aadhaar number.

Rule 10A: Furnishing of Bank Account Details

After a certificate of registration in **FORM GST REG-06** has been made available on the common portal and a GSTIN has been assigned, the registered person, except those who have been granted registration for TDS / TCS purpose or, voluntary registered, shall -

- within 30 days from the date of grant of registration, or
- before furnishing the details of outward supplies in FORM GSTR-1 or using invoice furnishing facility,

whichever is earlier,

furnish information with respect to details of bank account, or any other information, as may be required on the common portal in order to comply with any other provision.

"Provided that in case of a proprietorship concern, the Permanent Account Number of the proprietor shall also be linked with the Aadhaar number of the proprietor".

Rule 25: Physical verification of business premises in certain cases:

(1) Where the proper officer is satisfied that the physical verification of the place of business of a person is required **AFTER** the grant of registration: he may get such verification of the place of business done and the verification report along with the other documents, including photographs, shall be uploaded on the common portal within a period of **15 working days** following the date of such verification.

(2) Where the physical verification of the place of business of a person is required **BEFORE** the grant of registration in the circumstances specified in the proviso to sub-rule (1) of rule 9: the proper officer shall get such verification of the place of business done and the verification report along with the other documents, including photographs, shall be uploaded on the common portal at least 5 working days prior to the completion of the time period specified in the said proviso.

EFFECTIVE DATE OF REGISTRATION [RULE 10]

Where an applicant submits application for registration	Effective Date of Registration
Within 30 Days from the date the person becomes liable to registration	Date on which person becomes liable to registration
After 30 Days from the date the person becomes liable for registration	Date of grant of registration

STATE-WISE REGISTRATION [Sec. 25(2) read with rule 11]

(a) One Registration per State:

- Registration needs to be taken State-wise, i.e., there is no centralized registration under GST. A business entity having its branches in multiple States will have to take separate State-wise registration for its branches in different States.

- Further, within a State, an entity with different branches shall normally be granted a single registration wherein it can declare one place as principal place of business (PPoB) and other branches as additional places of business (APoB).

(b) Separate Registration for different places of business within a State/UT may be granted:

- Although a taxpayer having multiple PoB in one State is not mandatorily required to obtain a separate registration for each such place of business in the State, he has an option to obtain independent registrations with respect to each such separate PoB.
- In case a separate registration for each PoB has been obtained, such separately registered PoB of such person shall have to pay tax on supply of goods/services/both made to another registered PoB, of such person and issue a tax invoice/bill of supply, for such supply.

DISTINCT PERSONS OR ITS ESTABLISHMENTS [SECTION 25(4) & (5)]

(a) A person who has obtained/ is required to obtain more than one registration, whether in one State/UT or more than one State/Union territory shall, in respect of each such registration, be treated as **distinct persons.**

(b) Further, where a person who has obtained or is required to obtain registration in a State/UT in respect of an establishment, has an establishment in another State/UT then such establishments shall be treated as **establishments of distinct persons.**

SPECIAL REGISTRATION PROVISION CTP & NRTP

GST law prescribes special procedure for registration, as also for extension of the operation period of such casual or non-resident taxable persons. They have to apply for registration at **least 5 days in advance** before making any supply. Also, registration is granted to them or period of operation is extended, only after they make advance deposit of the estimated tax liability.

The **special registration procedure** pertaining to CTP and NRTP are as follows:

- Both CTP and NRTP have to compulsorily get registered under GST irrespective of the threshold limit, **at least 5 days prior to commencement** of business.
- As per section 25(6), every person must have a PAN to be eligible for registration. Since NRTP will generally not have a PAN of India, he may be granted registration on the basis of other prescribed documents.

PERIOD OF VALIDITY OF REGISTRATION CERTIFICATE GRANTED TO CTP / NRTP

Registration Certificate granted to CTP / NRTP will be valid for:

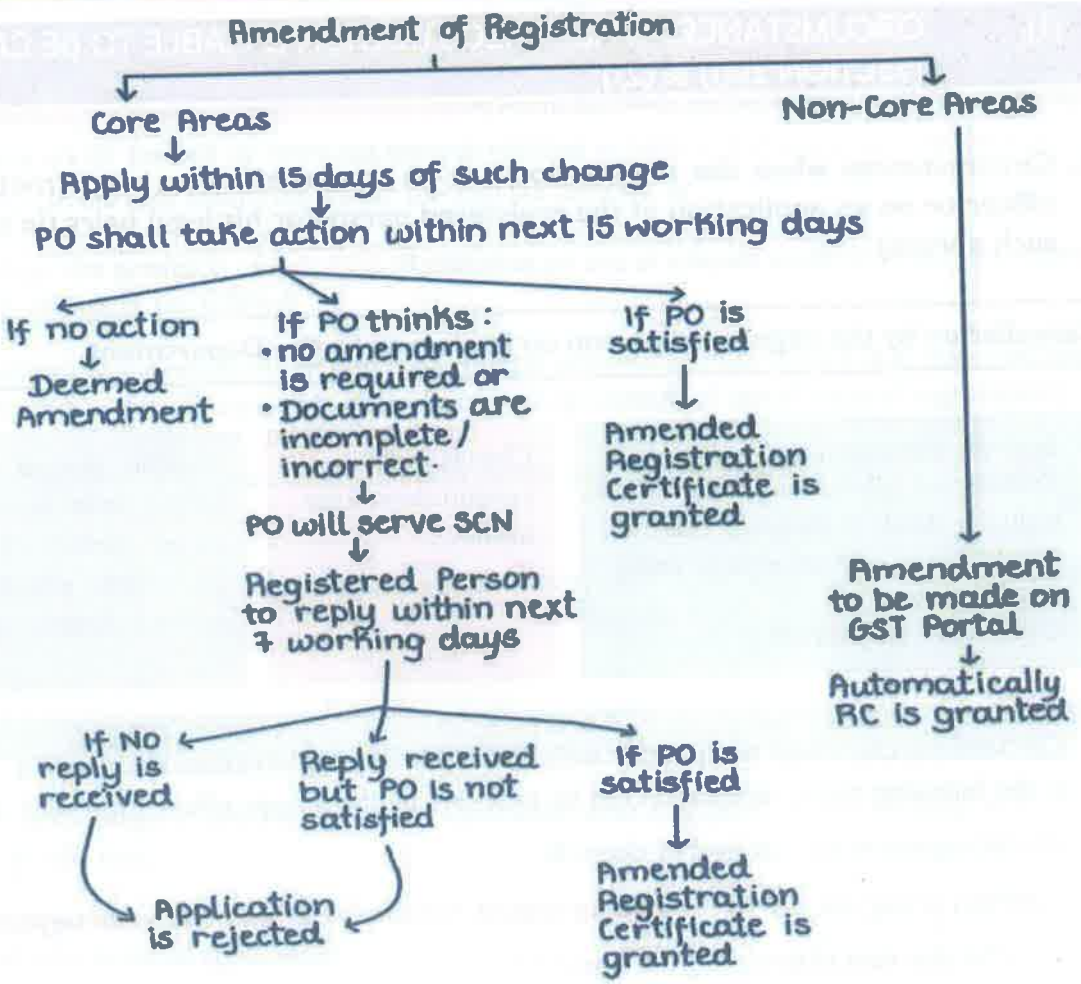
- Period specified in the registration application, or
- 90 days from effective date of registration [can be extended further by period not exceeding 90 days by making an application before the end of the validity of registration granted to him]
  Whichever is earlier.

ADVANCE DEPOSIT OF TAX

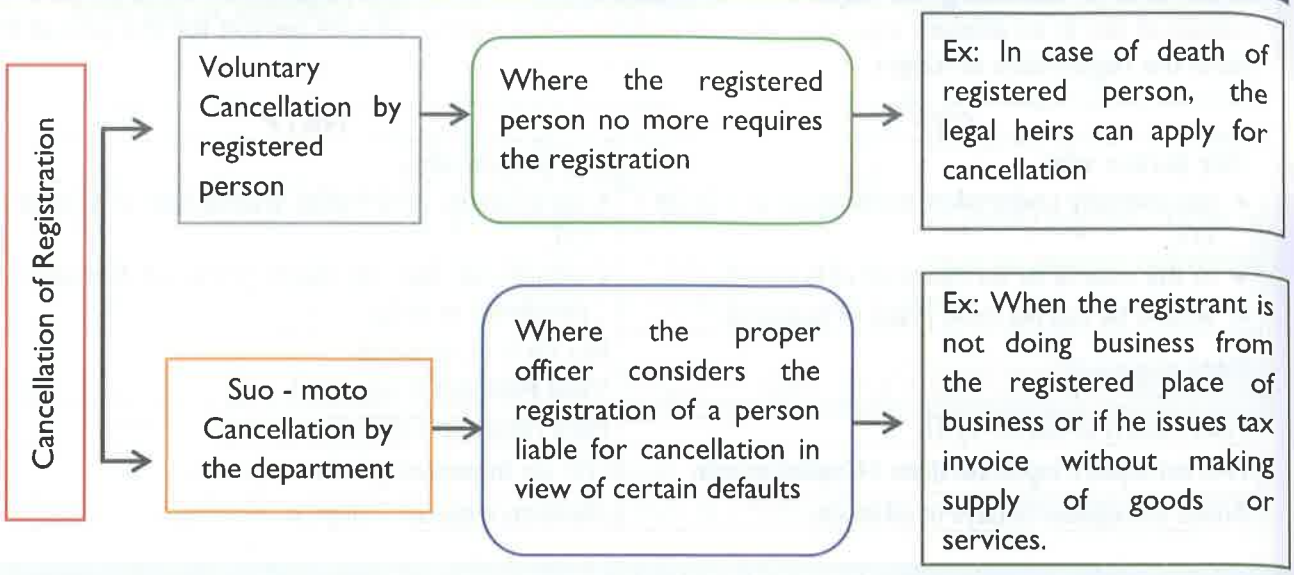
At the time of submitting the registration application, CTP / NRTP are required to make an advance deposit of tax in an amount equivalent to the estimated tax liability of such person for the period for which the registration is sought.

CTP	NRTP
Any person who • occasionally undertakes transaction in a State / UT, • in the course or furtherance of business, • where he has no fixed place of business.	Any person who • occasionally undertakes transaction in a State / UT, • where he has no fixed place of business / residence in India.
PAN required.	No PAN is required. Valid Passport is required.
Files return in GSTR-1/3B.	Files return in GSTR-5.
ITC on Input / Input services / Capital goods.	ITC on Imported goods only.
Need to register 5 days in advance.	Need to register 5 days in advance.

AMENDMENT OF REGISTRATION



CANCELLATION OR SUSPENSION OF REGISTRATION & REVOCATION OF CANCELLATION OF REGISTRATION



(1) CIRCUMSTANCES WHERE REGISTRATION IS LIABLE TO BE CANCELLED [SECTION 29(1) & (2)]

A. Circumstances when the registration can be cancelled either suo - moto by proper officer or on an application of the registered person or his legal heirs (in case death of such person)

Cancellation by the registered person on its own or by the Department

- Business discontinued
- Transferred fully for any reason including death of the proprietor
- Amalgamated with other legal entity
- Demerger or
- Otherwise disposed off

Change in the constitution of the business

Taxable person who is no longer liable to be registered under section 22 or section 24 or who intends to optout of the voluntary registration

B. Circumstances when the proper officer can cancel registration on his own

In the following cases, registration can be cancelled by the proper officer from such date, including any retrospective date, as he may deem fit.

- A person paying tax u/s 10 has **not furnished return for a financial year beyond 3 months** from the due date of furnishing the said return.

- Any registered person, other than a person specified above, **has not furnished returns for a continuous tax period** as may be prescribed.
- **Prescribed contravention which makes a registered person liable to cancellation of registration [Rule 21]:**

The registered person –

a) Does not conduct any business from the declared place of business, or

b) Issues invoice / bill without supply of goods / services in violation of the provision of this Act, or the rules made thereunder.

c) Violates the provisions of section 171. Section 171 contains provisions relating to anti-profiteering measure.

d) Violates the provision of Rule 10A (Bank account details).

e) Avails ITC in violation of the provisions of section 16 of the CGST 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** u/s 37 for one or more tax periods which is in excess of the outward supplies declared by him in his valid return u/s 39 for the said tax periods; or

g) Violates the provision of Rule 86B (Restriction on use of amount available in ECrL in excess of 99% of output tax liability)

ga) violates the provisions of third or fourth proviso to rule 23(1); (i.e. does not furnish all returns due within 30 days from date of order of revocation of cancellation of registration)

h) required to file return u/s 39(1) for each month or part thereof (i.e., monthly return filer), has not furnished returns for a continuous period of 6 months;

i) required to file return under proviso to section 39(1) for each quarter or part thereof (Quarterly return under QRMP scheme), has not furnished returns for a continuous period of 2 tax periods.

SUSPENSION OF REGISTRATION

Suspension is prior stage of cancellation. Any registration does not get cancelled directly. It has to go through suspension first.

(i) When registered person has applied:

Date of submission of application

or

Date from which cancellation is sought, whichever is later.

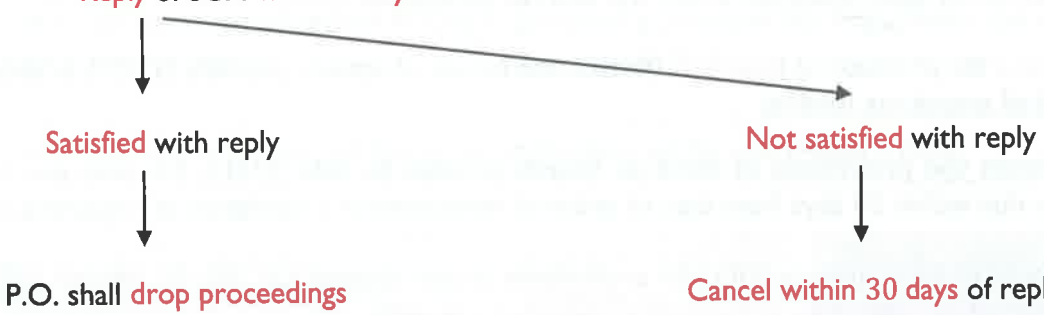
(ii) When cancellation is initiated by department on its own motion :
With effect from a date to be determined by P.O.

- During suspension period, registered person **shall not make any taxable supply and shall not furnish any return.**
- Suspension is **deemed to be revoked** upon **completion of cancellation** proceedings by PO.

PROCEDURE FOR CANCELLATION OF REGISTRATION

1. **By registered person:**
   - Apply electronically within 30 days from date of occurrence of event causing cancellation.
   - Proper officer will issue order of cancellation within 30 days.
   - Details of inputs held in stock (RM / FG / SFG) and capital goods on the date from which cancellation is sought to be submitted.

2. **By Department (Suo Moto):**
   - Department (P.O.) will give notice.
   - Reply of SCN within 7 days



   - If Department initiated cancellation proceedings due to non-filing of return by registered person and such registered person files return, then department will drop the proceedings.

ITC TREATMENT IN CASE OF CANCELLATION

Amount to be reversed for Inputs :

- ITC taken on such inputs, or
- Output tax payable on such goods (prevailing Market price)

} higher

Amount to be reversed for Capital Goods :

- Reduced ITC based on remaining life (calculated in months), or
- Tax on transaction value

} higher

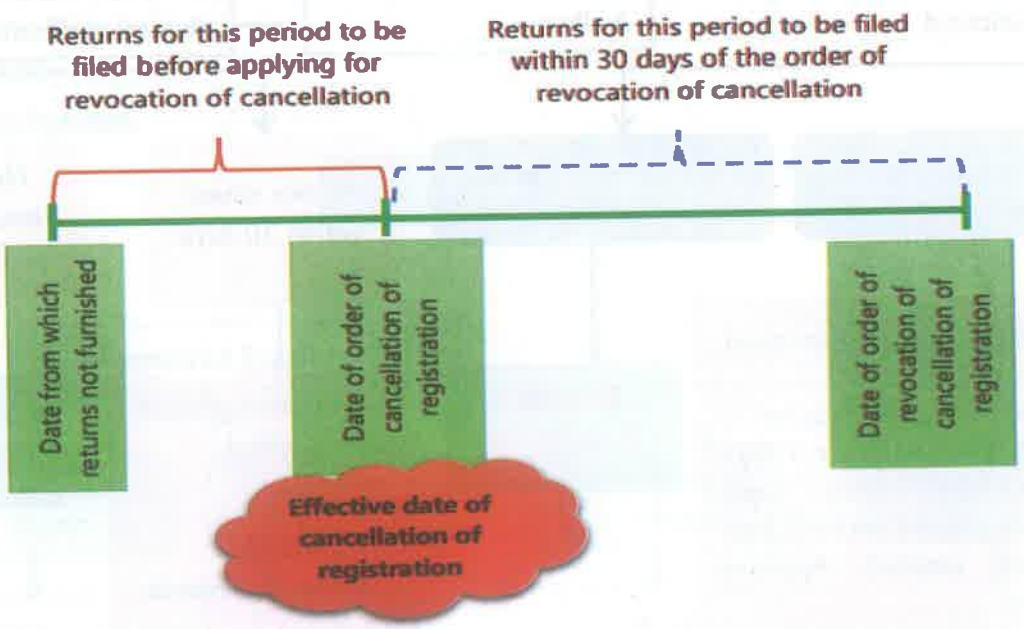
Points to Remember:

- Because of cancellation, liability of such registration person prior to the date of cancellation will not be changed.
- No returns can be filed after cancellation of registration. However, returns pertaining to period prior to cancellation can be filed.

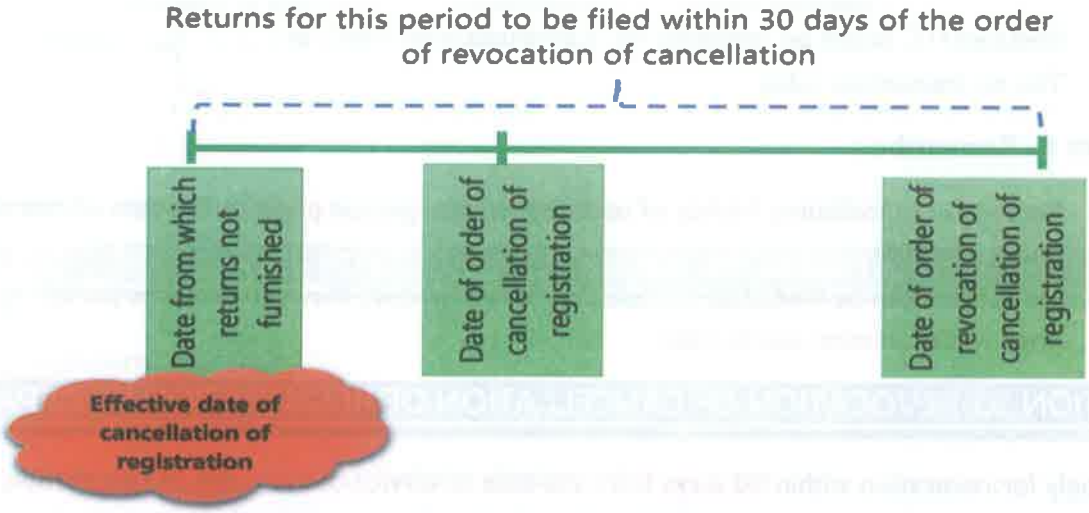
SECTION 30: REVOCATION OF CANCELLATION OF REGISTRATION BY DEPARTMENT

- Apply for revocation within **90 days** from the date of service of the order of cancellation. However, such period may, on sufficient cause being shown, and for the reasons to be recorded in writing, be extended by the Commissioner or an officer authorised by him in this behalf, not below the rank of Additional Commissioner or Joint Commissioner, as the case may be, for a further period **not exceeding 180 days** (i.e., 90 days + 180 days).
- If P.O. is satisfied, he can revoke cancellation within 30 days from receipt of application.
- If P.O. is not satisfied, then P.O. will issue SCN seeking reply within 7 working days from the date of issue of SCN. The P.O. shall dispose the application (accept / reject) within 30 days of receipt of reply.

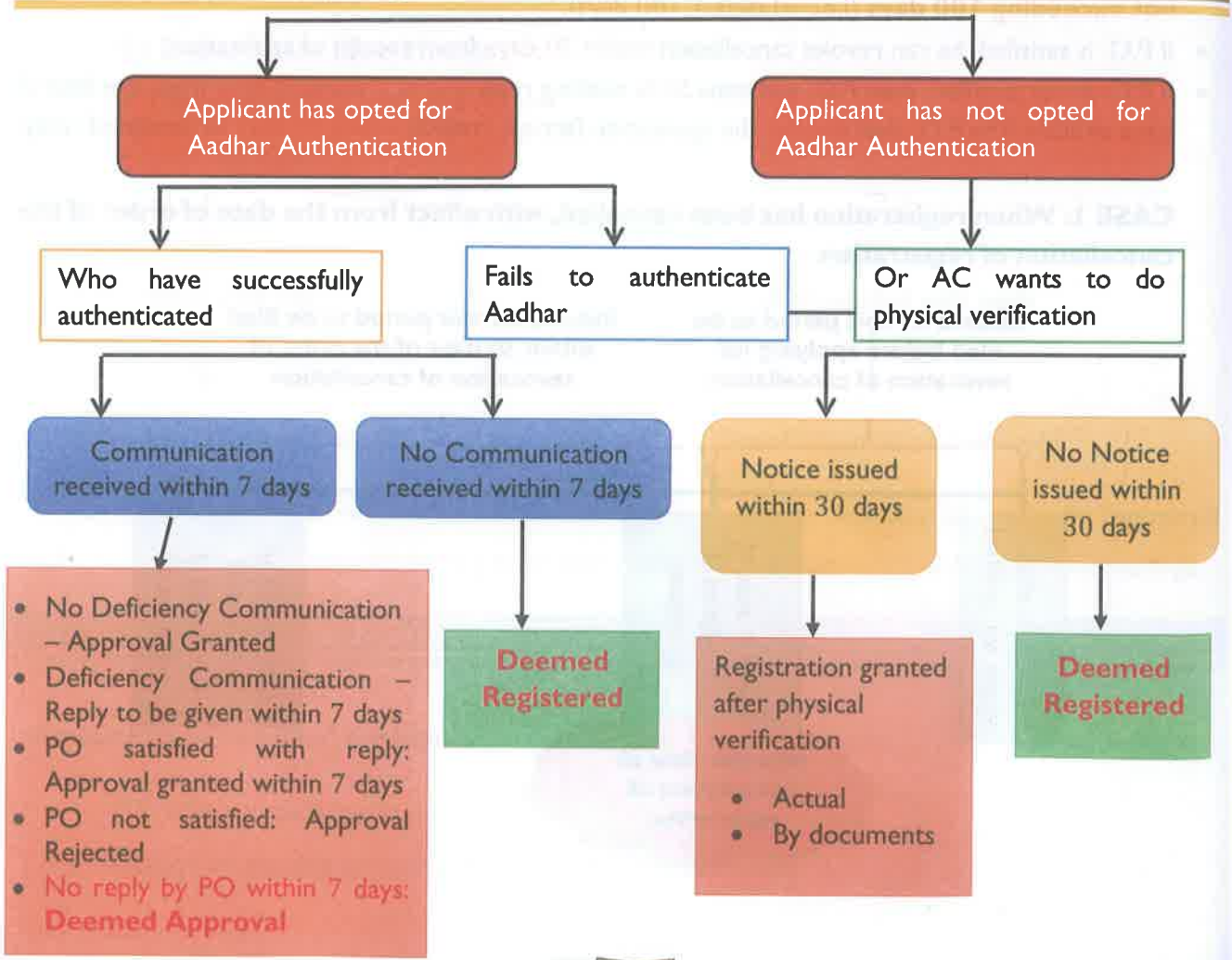
CASE 1: When registration has been cancelled, with effect from the date of order of the cancellation of registration



CASE 2 : Where the registration has been cancelled with retrospective effect



NEW REGISTRATION PROCEDURE & AADHAR AUTHENTICATION [SEC 25 READ WITH RULE 8 & 9]



Rule 21A: Suspension of registration – sub rule 2(A) amended & third proviso to sub rule (4) inserted

(2A) Where,-

(a) (i) 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 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, **as amended in GSTR-1A if any, of the previous tax period, if any,** or

(ii) 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 CGST Act or the rules made thereunder, leading to cancellation of registration of the said person, or

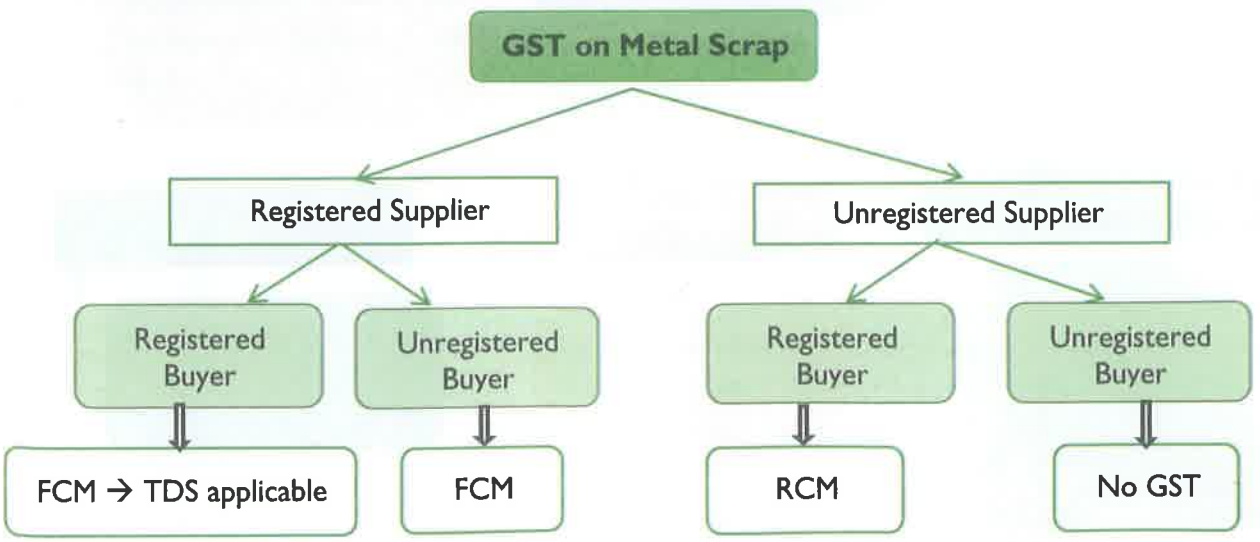
(b) there is a contravention of the provisions of rule 10A by the registered person,

the registration shall be suspended and the said person shall be intimated in prescribed form 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.

Further, third proviso has been inserted to rule 21A(4) to provide that where the registration has been suspended as above 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.

Metal Scrap

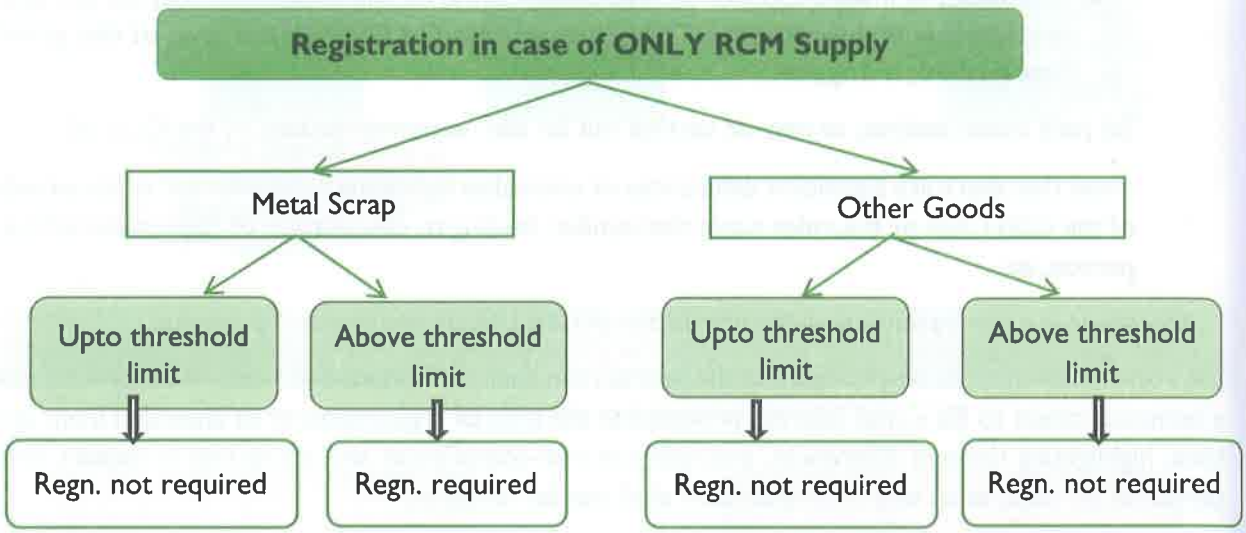
➢ **RCM Implication:**



Registration:

As per Section 23, a person who exclusively makes reverse charge supplies is not required to obtain registration, regardless of their turnover.

However, in the case of metal scrap, if an unregistered person is supplying metal scrap, they must obtain registration once their turnover exceeds the prescribed threshold limit.



TAX INVOICE, DEBIT NOTE & CREDIT NOTE

SECTION 31: TAX INVOICE

Tax Invoice
- For taxable supply of Goods or Services or both

Bill of Supply
- For Exempt Supply & paying Composition Tax

Revised Tax Invoice: To be issued within 1 month of grant of registration
- For Invoice already issued during the beginning with the effective date of registration till the date of issuance of certificate of registration to him

No Invoice: 3 Conditions
1. Value is less than ₹ 200
2. Recipient is unregistered
3. Recipient does not require such invoice

(Consolidated invoice can be issued at the end of the day)

Receipt Voucher
- For Advance received for supply.
- Rate: 18% (If not determinable)
- Supply: Inter-state (If not determinable)

Refund Voucher
- For refund of advance received

Self-Invoice
- By Recipient in case of RCM where supplier is unregistered

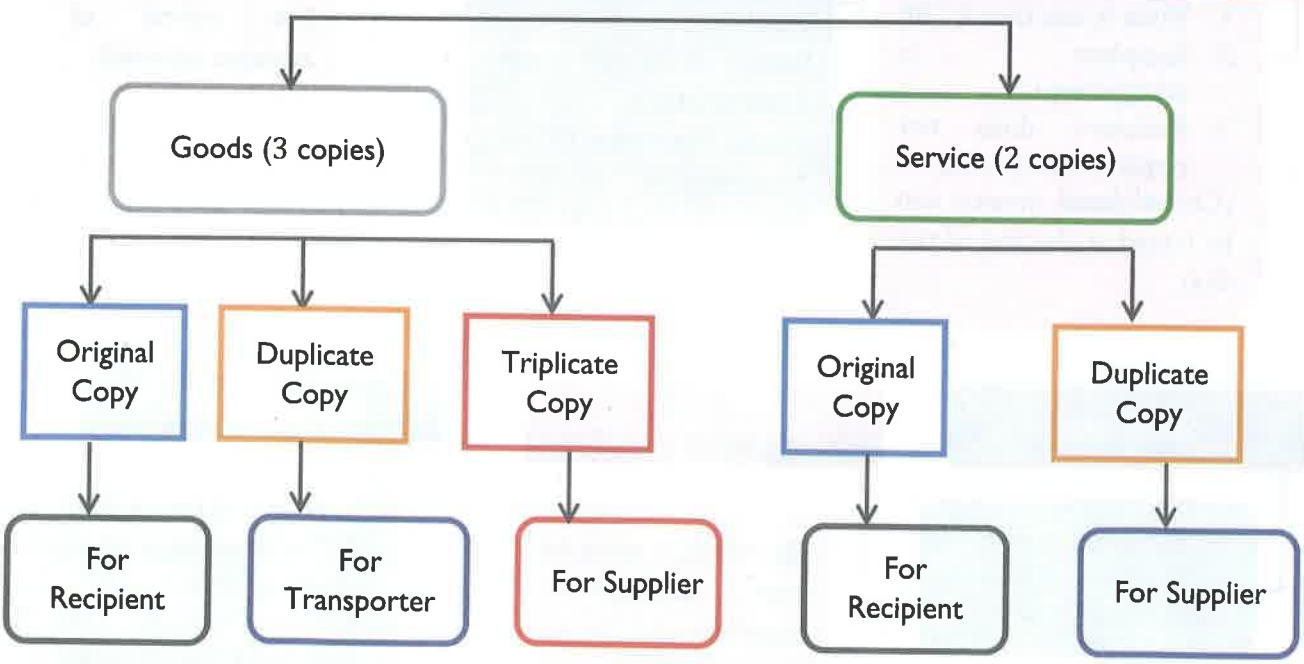
Payment Voucher
- By recipient when he makes payment to supplier

Delivery Challan
1. Supply of Liquid Gas.
2. Transportation of goods for job work
3. Transportation other than by way of supply
4. Notified supplies.

TIME LIMIT FOR ISSUE OF INVOICE

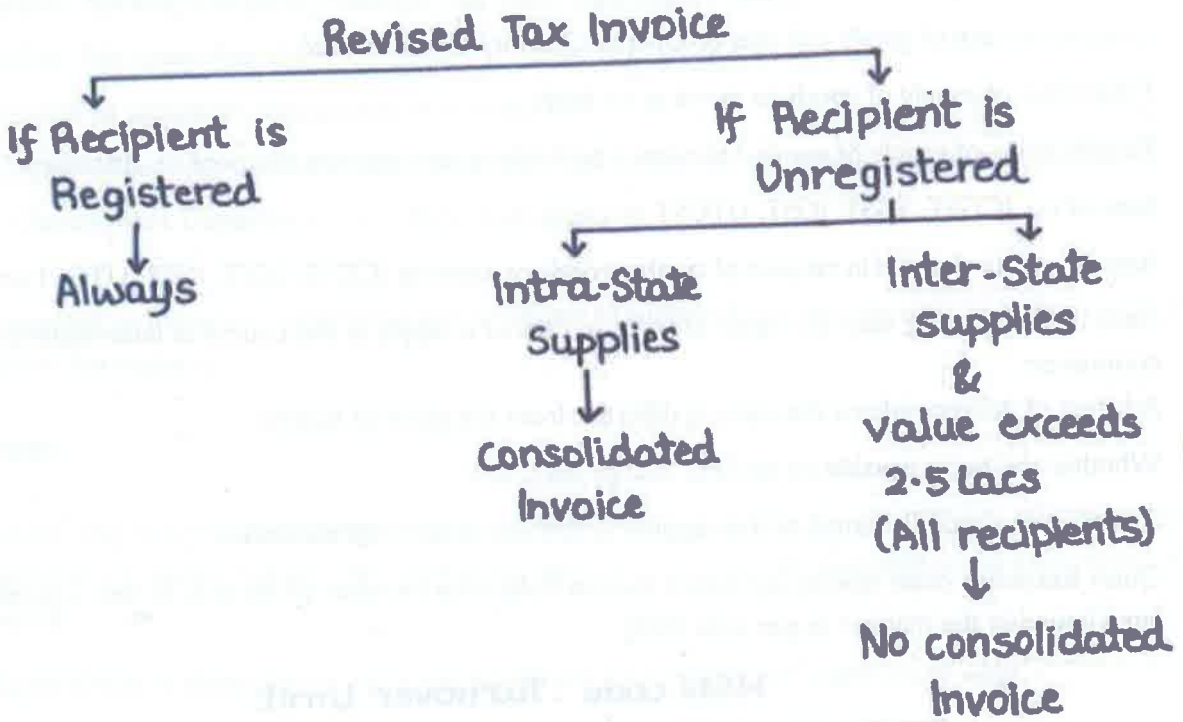
Particulars	Goods	Services
Normal Supply	• Movement of Goods involved: At the time of removal of goods • Does not involve movement: At the time of delivery	• Normally: Within **30 days** from the date of supply of service • For Banks/ NBFC/ Insurance Co./ FI: **45 days** from date of supply of services
Continuous Supply	Before or at the time of issue of each successive statements or each successive payment is received	a) Due date is ascertainable: On or before due date of payment b) Due date is not ascertainable: before or at the time when supplier receives the payment c) Payment is linked to event: On or before date of completion of event
Sale on return / approval basis	Earlier of: Before/at time of supply (Approval date) Or 6 months from the date of removal	-

MANNER OF ISSUING THE INVOICE



REVISED TAX INVOICE

- Person shall issue a revised invoice during the period beginning with the effective date of registration till the date of issuance of certificate of registration to him.
- It shall be issued within 1 month from the date of issuance of certificate of registration and in such a manner as prescribed.

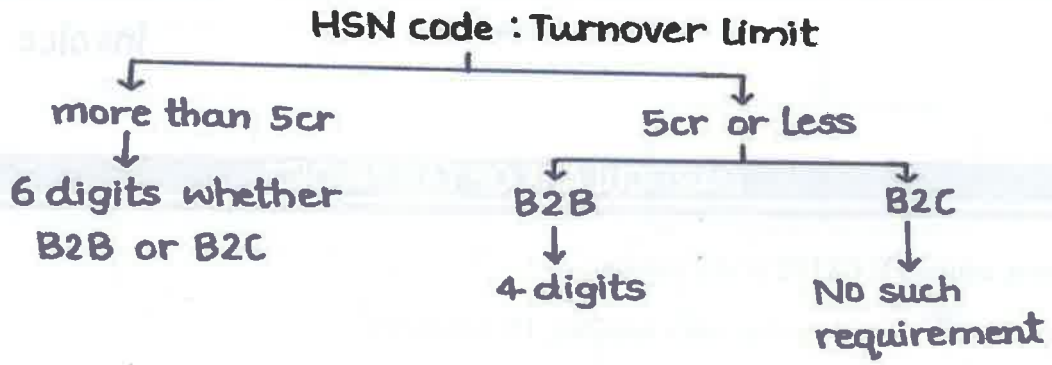


PARTICULARS OF TAX INVOICE

- Name, address & GSTIN of the supplier;
- A consecutive serial number not exceeding 16 characters;
- Date of its issue;
- If recipient is registered: Name, address, GSTIN or UIN of recipient.
- If recipient is unregistered and value of supply is:
  - ₹ 50,000 or more: Name & address of the recipient and the address of delivery, along with the name of State and its code.
  - Less than ₹ 50,000: Unregistered recipient may still request the aforesaid details to be recorded in the tax invoice.

In cases involving supply of online money gaming or in cases where any taxable service is supplied by or through an ECO or by a supplier of OIDAR services to a recipient who is unregistered, irrespective of the value of such supply, a tax invoice issued by the registered person shall contain the name of the State of the recipient and the same shall be deemed to be the address on record of the recipient.

- HSN code for goods or services;
- Description of goods or services;
- Quantity in case of goods and unit or Unique Quantity Code thereof;
- Total value of supply of goods or services or both;
- Taxable value of supply of goods / services / both taking into account discount or abatement, if any;
- Rate of tax (CGST, SGST, IGST, UTGST or cess);
- Amount of tax charged in respect of taxable goods or services (CGST, SGST, IGST, UTGST or cess);
- Place of supply along with the name of state, in case of a supply in the course of inter-state trade or commerce;
- Address of delivery where the same is different from the place of supply;
- Whether the tax is payable on reverse charge basis; and
- Signature or digital signature of the supplier or his authorized representative
- Quick Response code, having embedded Invoice Reference Number (IRN) in it, in case e-invoice has been issued in the manner as per rule 48(4).



* Aggregate Turnover in preceding F.Y.

E-INVOICING

Rule 48(4) applies to registered person having aggregate turnover **exceeding ₹ 5 crores*** making supplies to registered person.

* = T/O exceeding ₹ 5 crores in any preceding F.Y. from 2017-18 onwards.

The person who are exempted from provisions of e – invoicing inspite of their aggregate turnover being more than ₹ 5 crores, shall put the declaration as below:

"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".

However, this provision is not applicable to-

- ✓ A Special Economic Zone Unit (not SEZ Developer);
- ✓ Insurer, Banking Company, Financial Institution including a NBFC;
- ✓ Goods Transport Agency;
- ✓ Supplier of passenger transportation service;
- ✓ Supplier of services by way of admission to exhibition of cinematograph films in multiplex screens;
- ✓ A Government Department or a Local Authority.

IRN required on Invoice/ other documents in respect of supply of goods or services or both to registered person or for exports.

Analysis:

- ❖ E-Invoicing is digital invoice for goods / services provided by supplier (for B2B transaction & having turnover exceeding **₹ 5 crores** in any preceding F.Y.), e-invoice is generated at the government GST portal.
- ❖ Government is doing this to avoid tax evasion by fake invoice and many other ways.
- ❖ Earlier, e-invoicing was mandatory on business entities having turnover exceeding ₹ 500 crore, then it reduced to ₹ 100 crore, after that it reduced to ₹ 50 crore, then it reduced to ₹ 20 crore. Now, it is **₹ 5 crores.**

Obtaining IRN: A GST e-invoice will be valid only with a valid IRN. These invoices will then be reported to 'Invoice Registration Portal (IRP)'. On such reporting, IRP will generate a unique **'Invoice Reference Number (IRN)',** will digitally sign it & add a QR Code and then IRP will return the e-invoice to the supplier. IRN is a unique 64-character hash.

Documents covered by E-Invoice: Invoices, Debit notes and Credit notes issued by notified persons (to registered persons (B2B) or for the purpose of exports) are covered under e-invoice.

Exemptions from E-Invoicing: Following entities are exempt from the mandatory requirement of e-invoicing:

- Special Economic Zone units; **

- Insurer or banking company or financial institution including a NBFC;
- GTA supplying services in relation to transportation of goods by road in a goods carriage;
- Supplier of passenger transportation service;
- Person supplying services by way admission to exhibition of cinematograph films in multiples screens;
- A Government Department or a Local Authority.

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

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

D. Situations in which e-invoicing is applicable

Supply of goods and/or services to a registered person by notified person [B2B supplies]	•Applicable
Exports by notified persons	•Applicable
B2C supplies by notified persons	•Not applicable
Invoices issued by Input Service Distributor	•Not applicable
Supplies made by notified person, tax on which is payable under reverse charge under section 9(3)	•Applicable
Where specified category of supplies are received by notified persons from unregistered persons [attracting reverse charge under section 9(4)] or through import of services	•Not applicable
Import of goods (Bills of Entry)	•Not applicable

DYNAMIC QR CODE

- All B2C invoices issued by a registered person whose aggregate turnover in any preceding financial year from 2017 – 18 onwards exceeds ₹ 500 crores will have a QR code.
- The purpose of this provision is to enable and encourage digital payments where buyer can scan the dynamic QR code and make payment from mobile wallet directly.

Non applicability of requirement of Dynamic QR Code: Dynamic QR code is not applicable to an invoice issued to an unregistered person by following suppliers:

1. Insurer or banking company or financial institution including NBFC.
2. Goods transport agency supplying services in relation to transportation of goods by road in a goods carriage.
3. Supplier of passenger transportation service.
4. Person supplying services by way admission to exhibition of cinematograph films in multiplex screens.
5. Supplier of online information and database access or retrieval (OIDAR) services.

No Dynamic QR code in case of exports: As regards the supplies made for exports, though such supplies are made by a registered person to an unregistered person, however, since e-invoices are required to be issued in respect of supplies for exports treating them as B2B supplies, Dynamic QR code requirement will not be applicable to them.

Debit Note & Credit Note

❖ Credit Note [Sec 34(1)]

- One or more tax invoices have been issued & 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.

Time Limit [Sec 34(2)]

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

- 30th November following the end of FY in which such supply was made, or
- The date of filing of the relevant annual return, whichever is **earlier.**

Clarification in respect of applicability of Dynamic Quick Response (QR)code

All **B2C invoices** issued by a registered person whose **aggregate turnover** in any preceding financial year from 2017-18 onwards **exceeds ₹ 500 crores** are **mandatorily required to have a Dynamic QR code** from December 1, 2020 vide Notification No. 14/2020 CT dated 21.03.2020.

In this regard, Circular no. 156/12/2021 GST dated 21.06.2021 and

Circular No. 165/21/2021 GST dated 17.11.2021 have clarified that:

1. Dynamic QR Code in case of an invoice, issued to a person having a UIN.
   Any person, who has obtained a Unique Identity Number (UIN), is not a "registered person" as per the definition of registered person provided in section 2(94). Therefore, any invoice, issued to such person having a UIN, shall be considered as invoice issued for a B2C supply and shall be required to comply with the requirement of Dynamic QR Code.

2. In cases, where an invoice is issued to a recipient located outside India, for supply of services, for which the place of supply is in India, as per the provisions of the IGST Act, and the payment is received by the supplier, in convertible FOREX or in Indian Rupees wherever permitted by the RBI (such supply of services is not considered as export of services as per the IGST Act), such invoice may be issued without having a Dynamic QR Code, as such dynamic QR code cannot be used by the recipient located outside India for making payment to the supplier.

❖ Debit Note [Sec 34(3)]

One or more tax invoices have been issued & Taxable Value or Tax charged in that tax Invoice is found to be less than the Taxable Value or Tax payable in respect of such supply.

Note: Debit note shall include a Supplementary Invoice. Any registered person who issues a debit note shall declare details of such debit note in the return for the month during which such debit note has been issued.

Procedure in case of return of time expired medicines/drugs

It is a common trade practice in the pharmaceutical sector that the drugs or medicines are sold by the manufacturer to the wholesaler and by the wholesaler to the retailers on the basis of an invoice/bill of supply as the case may be. Such goods have a defined life term which is normally referred to as the date of expiry. Goods which have crossed their date of expiry are colloquially referred to as time expired goods and are returned back to the manufacturer, on account of expiry, through the supply chain.

In case of return of time expired medicines/drugs, either of the following two options can be followed:

Option 1: Return of time expired goods to be treated as fresh supply

In case the person returning the time expired goods is:

A. A Registered Person (other than a composition taxpayer)

- he may, at his option, return the said goods by treating it is as a fresh supply and thereby issuing an invoice for the same ("return supply").
- The value of the said goods as shown in the invoice on the basis of which the goods were supplied earlier may be taken as the value of such return supply.
- The wholesaler or manufacturer, who is the recipient of such return supply, shall be eligible to avail ITC of the tax levied on the said return supply.

B. A Composition supplier

- he may return the said goods by issuing a bill of supply and pay tax at the rate applicable to a composition taxpayer.
- No ITC will be available to recipient of return supply.

C. An Unregistered Person

- he may return the said goods by issuing any commercial document without charging any tax on the same.

Where the time expired goods which have been returned by the retailer/wholesaler are destroyed by the manufacturer, he/she is required to reverse the ITC availed on the return supply [Sec 17(5)(h)] & not the ITC that is attributable to the manufacture of such time expired goods.

Option 2: Return of time expired goods by issuing "Credit Note"

- The manufacturer / wholesaler who has supplied the goods to the wholesaler / retailer has the option to issue a credit note in relation to the time expired goods returned. Retailer / wholesaler may return the time expired goods by issuing a delivery challan.
- If credit note is issued within the limit specified, 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.

  However, if said time limit has lapsed, a credit note may still be issued for such return of goods but the tax liability cannot be adjusted by him in his hands.
- Further, if time expired goods are returned beyond the time period specified and a credit note is issued consequently, there is no requirement to declare such credit note on the common portal by the supplier (i.e., by the person who has issued the credit note) as tax liability cannot be adjusted in this case.
- Where such returned time expired goods are destroyed by the manufacturer, he / she is required to reverse the ITC attributable to the manufacturer of such goods [Sec 17(5)(h)].

Example:

Date of Supply	Date of Return	Treatment in terms of tax liability & credit
01.07.2023	20.09.2024	Credit note will be issued by the supplier (manufacturer / wholesaler) & the same to be uploaded by him on the common portal. Subsequently, tax liability can be adjusted by such supplier provided the recipient (wholesaler / retailer) has either not availed ITC or if availed has reversed the ITC.
01.07.2023	20.10.2024	Credit note will be issued by the supplier (manufacturer / wholesaler) but there is no requirement to upload the same on the common portal. Subsequently, tax liability cannot be adjusted by such supplier.

AMENDMENTS & CLARIFICATIONS

1. Invoice-cum-Bill of Supply [N. No. 26/2022 – CT dated 26th December, 2022]

Invoice cum bill of supply shall contain particulars as per rule 46 (i.e. for tax invoice) or rule 54 (i.e. for tax invoice in special cases), as the case may be, & rule 49 (i.e. for Bill of Supply).

(Invoice cum bill of supply is a document issued by registered person supplying taxable and exempt supplies together to an unregistered recipient).

2. Exemption from generation of e-invoices available for the entity as a whole and not restricted by the nature of supply being made by the said entity

Issue: The issue which arose for consideration was whether this exemption from mandatory generation of e-invoices is available for the entity as whole, or whether the same is available only in respect of certain supplies made by the said entity.

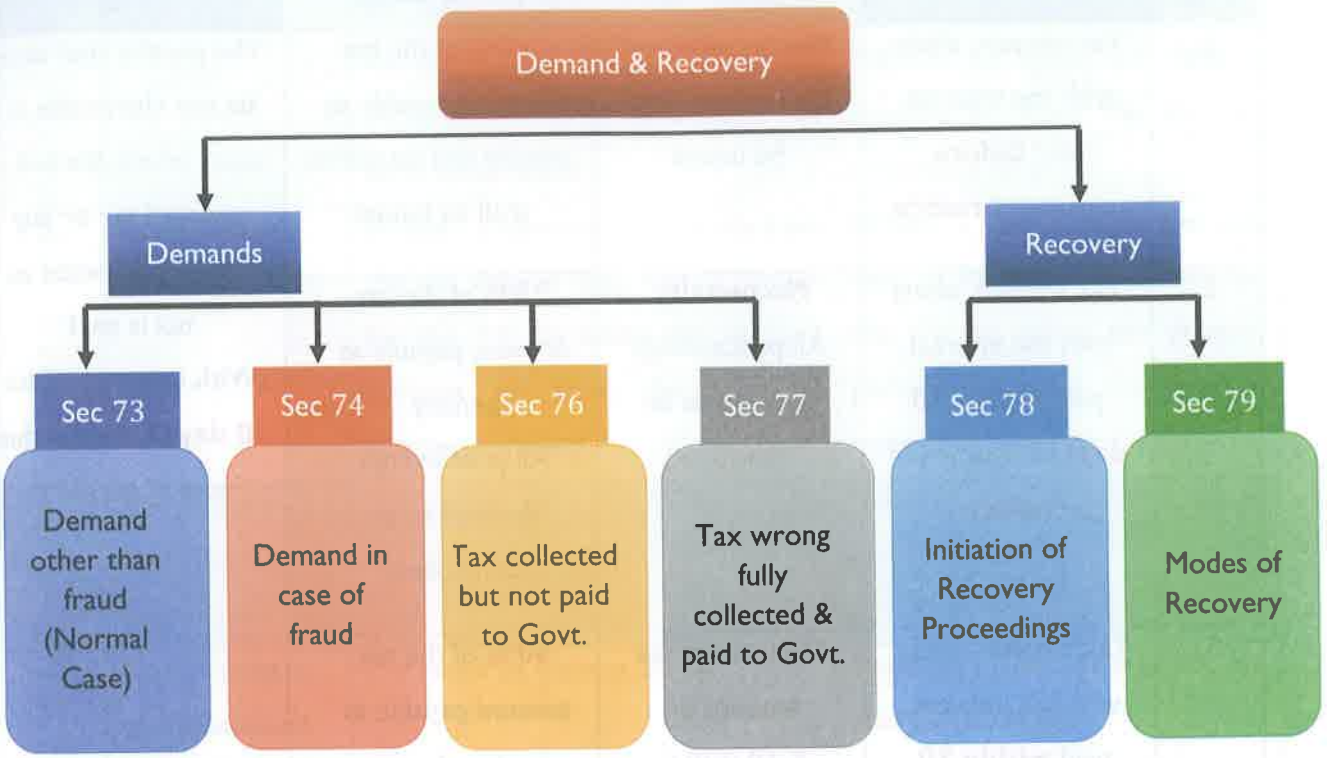
Clarification: Exemption from generation of e-invoices is for the entity as a whole and is not restricted by the nature of supply being made by the said entity.

3. Clarification on applicability of e-invoice w.r.t supplies made to TDS deductors.

Issue: Whether e-invoicing is applicable for supplies made by a registered person, whose turnover exceeds the prescribed threshold for generation of e-invoicing, to Government Departments or establishments/ Government agencies/ local authorities/ PSUs which are registered solely for the purpose of deduction of tax at source as per provisions of section 51 of the CGST Act?

Clarification: Government Departments or establishments / Government agencies / local authorities/ PSUs, registered solely for the purpose of TDS as per provisions of section 51 of the CGST Act, are to be treated as registered persons under the GST law as per provisions of section 2(94) of CGST Act. Accordingly, the registered person, whose turnover exceeds the prescribed threshold for generation of e-invoicing, is required to issue e-invoices for the supplies made to such Government Departments or establishments / Government agencies / local authorities / PSUs, etc. under rule 48(4) of CGST Rules.

DEMAND & RECOVERY



WHEN PO CAN ISSUE NOTICE

- Tax has not been paid
- Tax short paid
- Tax erroneously refunded
- ITC has been wrongly availed
- ITC has been wrongly utilised

PAYMENT OF TAX

S. No.	Action by Tax Payer	Amount of penalty payable		Remarks
		Normal Cases	**Fraud Cases**	
1.	Tax amount, along with the interest, paid **before** issuance of **notice**	**No penalty** and **no notices** shall be issued	**15%** of the tax amount payable as penalty and no notice shall be issued.	The penalty shall also be not chargeable in cases where the self - assessed tax or any amount collected as tax is paid (With interest) within **30 days** from the due date of payment
2.	Tax amount, along with the interest, paid **within 30 days** of issuance of **notice**	**No penalty**. All proceedings deemed to be concluded	**25%** of the tax amount payable as penalty. All proceedings deemed to be concluded.	
3.	Tax amount, along with the interest, paid **within 30 days** of communication of **order**	**10%** of the tax amount or **₹ 10,000/-** Whichever is higher	**50%** of the tax amount payable as penalty. All proceedings deemed to be concluded.	
4.	Tax amount, along with the interest, paid **after 30 days** of communication of **order**	**10%** of the tax amount or **₹ 10,000/-** Whichever is higher	**100%** of the tax amount	

TIME LIMIT FOR ISSUANCE OF NOTICE / ORDER

S. No.	Nature of Case	Time for Issuance of Notice	Time for Issuance of Order
1.	Normal Cases	Within **2 years and 9 months** from the due date of filing Annual Return for the F.Y. to which the demand pertains or from the date of erroneous refund	Within **3 years** from the due date of filing Annual Return for the F.Y. to which the demand pertains or from the date of erroneous refund
2.	Fraud Cases	Within **4 years and 6 months** from the due date of filing Annual Return for the F.Y. to which the demand pertains or from the date of erroneous refund	Within **5 years** from the due date of filing Annual Return for the F.Y. to which the demand pertains or from the date of erroneous refund
3.	Any amount collected as tax but not paid	**No time limit**	Within **1 year** from the date of issue of notice
4.	Non - Payment of self-assessed tax	**No need to issue a SCN**	**Recovery proceedings can be started directly.**

POINTS TO REMEMBER

1. When the Que ask – Time Limit for passing adjudication order?
   Ans: Write time limit for passing order u/s 73 & 74.

2. When service of notice or order is **stayed** by court /tribunal – Such stay period shall be excluded while calculating time limit u/s 73 & 74. (Time Limit u/s 73/74 = Allowed Time + Stay Period)

3. Automatic demand of **Interest**: Whether it is mentioned in order or not, deemed to be payable.

4. In case of self-assessed tax liability, if amount is not paid within 30 days from due date of tax, then penalty will be leviable @ 10% of tax amount or ₹ 10,000 whichever is higher. In this case, relevance of SCN is irrelevant.

SECTION 76: TAX COLLECTED BUT NOT PAID TO GOVT

If any person has collected any amount from any other person in the name of tax and has not paid the said amount to the govt., shall pay the said amount to the govt. irrespective of whether the supplies in respect of which such amount was collected are taxable or not.

Amount Payable = Tax + Interest + Penalty

	Time Limit
SCN	No Time Limit
Order	1 year from SCN

MONETARY LIMITS PRESCRIBED FOR ISSUANCE OF SCN BY DIFFERENT LEVEL OF OFFICERS

CGST Officer	**Monetary Limit of CGST**	**Monetary Limit of IGST**	**Monetary Limit of CGST and IGST**
Superintendent of Central Tax	Not exceeding ₹ 10 Lakh	Not exceeding ₹ 20 Lakh	Not exceeding ₹ 20 Lakh
Deputy or Asst. Commissioner of Central Tax	Above ₹ 10 Lakh and not exceeding ₹ 1 Crore	Above ₹ 20 Lakh and not exceeding ₹ 2 Crore	Above ₹ 20 Lakh and not exceeding ₹ 2 Crore
Additional or Joint Commissioner of Central Tax	Above ₹ 1 Crore without any limit.	Above ₹ 2 Crore without any limit.	Above ₹ 2 Crore without any limit.

SECTION 77: TAX WRONGFULLY COLLECTED AND PAID TO CENTRAL GOVERNMENT OR STATE GOVERNMENT

- IGST paid instead of CGST + SGST, such IGST to be refunded & no interest to be paid.
- CGST + SGST paid instead of IGST, such CGST + SGST to be refunded & no interest to be charged.

SECTION 78: INITIATION OF RECOVERY PROCEEDINGS

Any amount payable by a taxable person in pursuance of an order passed under this Act must be paid within a period of 3 months from the date of service of such order. If a taxable person fails to do so, recovery proceedings are initiated against him.

However, where the proper officer considers it expedient in the interest of revenue, he may, for reasons to be recorded in writing, require the said taxable person to make such payment within such a period less than a period of 3 months as may be specified by him.

SECTION 79: RECOVERY OF TAX

The proper officer may recover the dues in the following manner:

- Deduction of dues from the amount owned by the tax authorities payable to such person.
- Recovery by way of detaining and selling any goods belonging to such person.
- Recovery from other persons, from whom money is due or may become due to such person or who holds or may subsequently hold money for or on account of such person, to pay to the credit of the Central or a State Govt.
- Distrain any movable or immovable property belonging to such person, until the amount payable is paid. If the dues not paid within 30 days, the said property is to be sold and with the proceeds of such sale the amount payable and cost of sales shall be recovered.
- Through the collector of the district in which such person owns any property or resides or carries on his business, as if it was an arrear of land revenue.
- By way of an application to the appropriate magistrate who in turn shall proceed to recover the amount as if it were a fine imposed by him.
- By enforcing the bond / instrument executed under this Act or any rules or regulation made there under.
- CGST arrears can be recovered as an arrear of SGST and vice versa.

SECTION 80: PAYMENT OF TAX & OTHER AMOUNT IN INSTALMENTS

- Commissioner may allow payment in instalments (subject to maximum 24 monthly instalments).
- Such facility shall not be allowed for amount due as per the liability self-assessed in any return.
- In case of default of any instalment, this facility shall be withdrawn and the whole amount shall become payable.

SECTION 81: TRANSFER OF PROPERTY TO BE VOID IN CERTAIN CASES

Where a person, after any amount has become due from him,

- Creates a charge on or parts with the property belonging to him or in his possession by way of sale, mortgage, exchange, or any other mode of transfer whatsoever of any of his properties in favour of any other person.

- With the intention of defrauding the government revenue, such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by the said person.
- Such charge or transfer shall not be void if it is made for adequate consideration, in good faith.

SECTION 82: TAX TO BE FIRST CHARGE ON PROPERTY

Notwithstanding anything to the contrary contained in any law for the time being in force,

- Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016;
- Any amount payable by a taxable person or any other person on account of tax, interest, or penalty which he is liable to pay to the government shall be a first charge on the property of such taxable person or such person.

SECTION 83: PROVISIONAL ATTACHMENT TO PROTECT REVENUE IN CERTAIN CASES

1. Where, after the initiation of any proceeding under Chapter XII (Assessment), Chapter XIV (Inspection, Search, Seizure & Arrest) or Chapter XV (Demand & Recovery), the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue it is necessary so to do, he may, by order in writing, attach provisionally, any property, including bank account, belonging to the taxable person or any person specified in sub-section (1A) of section 122, in such manner as may be prescribed.
2. Provisional attachment order validity – Max. 1 year from date of order
3. Where the property attached is of perishable or hazardous nature, and if the taxable person pays an amount equal to Lower of
   - Market price of such property or
   - The amount that is or may become payable by taxable person

   then such property shall be released.
4. Such person may file an objection to attachment at any time & commissioner to provide opportunity of being heard.

SECTION 84: CONTINUATION AND VALIDATION OF CERTAIN RECOVERY PROCEEDINGS

Where any notice of demand is served and any appeal or revision application is filed or any other proceedings are initiated.

Where govt. dues are enhanced	Commissioner shall serve another notice of demand of the amount enhanced
Where govt. dues are reduced	It shall not be necessary to serve a fresh notice; Commissioner shall give intimation of such reduction

CIRCULAR NO. 171/03/2022 – GST

Transaction	Penal consequences
"A" issued invoice on "B" without supply of goods	Since "A" has issued invoice without supply of goods/services, the same shall not be treated as "supply." Thus, no tax liability is arising for "A". Accordingly, ❖ No demand and recovery against 'A' under the provisions of S. 73 or S. 74 of CGST Act in respect of the same. ❖ **No penal action under the provisions of section 73 or section 74** is required to be taken against 'A' in respect of the said transaction. However, be liable for penal action under section 122(1)(ii) of the CGST Act for issuing tax invoices without actual supply of goods or services or both.
"B" avails and utilises ITC passed on by "A"	❖ Since the registered person 'B' has availed and utilized fraudulent ITC on the basis of the said tax invoice, without receiving the goods or services or both, in contravention of the provisions of section 16(2)(b) of CGST Act, he shall be **liable for the demand and recovery of the said ITC**, along with penal action, under the provisions of **section 74** of the CGST Act with **interest u/s 50**. ❖ **No penalty u/s 122** (as penalty can be levied in any one of the sections)
"B" avails and utilised ITC passed on by "A" and issues invoice on "C" without supply of goods.	❖ Since "B" availed incorrect ITC and has paid tax liability on a transaction which was not a "supply." ❖ No demand and recovery of either input tax credit wrongly / fraudulently availed by 'B' in such case or tax liability in respect of the said outward transaction. ❖ "B" shall be liable for penal action both under section 122(1)(ii) and section 122(1)(vii).

Any person who has retained the benefit of transactions specified under sub-section (1A) of section 122 of CGST Act, and at whose instance such transactions are conducted, shall also be liable for penal action under the provisions of the said sub-section. It may also be noted that in such cases of wrongful/ fraudulent availment or utilization of input tax credit, or in cases of issuance of invoices without supply of goods or services or both, leading to wrongful availment or utilization of input tax credit or refund of tax, provisions of section 132 of the CGST Act may also be invokable, subject to conditions specified therein, based on facts and circumstances of each case.

➢ **Clarification with respect to cases where the notice issued under section 74(1) is deemed as if the notice was issued under section 73(1): -**

1. **Issue:** In some of the cases where SCN has been issued u/s 74(1), the appellate authority or appellate tribunal or the court concludes that the said SCN is not sustainable u/s 74, for the reason that the charges of fraud or any willful-misstatement or suppression of facts to evade tax have not been established and directs the proper officer to re-determine the amount of tax payable by the noticee, deeming the notice to have been issued u/s 73 of CGST Act, in accordance with the provisions of section 75(2). **What would be the time period for re-determination of the tax, interest, and penalty payable by the noticee in such cases?**

   Clarification: Within a period of **2 years** from the date of communication of the said direction by appellate authority or appellate tribunal or the court, as the case may be.

2. **Issue:** How the amount payable by the noticee shall be re-computed by proper officer as per section 75(2)?

   Clarification:

SCN Issue Time	Clarification
➢ If SCN was issued within 2 years & 9 months from the due date of furnishing of annual return for the respective FY or from date of erroneous refund	Amount can be re-determined
➢ If SCN was issued u/s Section 74(1) beyond 2 years 9 months from due date to file annual return	The entire proceedings shall have to be dropped off, being hit by the limitation of time as specified u/s 73.
➢ If SCN was issued for multiple financial years u/s 74(1)	Amount payable shall be re-determined only for that FY for which SCN was issued before expiry of time as specified u/s 73.

➢ **Proceedings conducted under IBC covered under the term 'other proceedings' in Section 84**

As per Section 84 of CGST Act, where such Government dues are reduced as a result of any appeal, revision, or other proceedings and the intimation of such reduction has to be given by the Commissioner to such person and to the appropriate authority with whom recovery proceedings are pending. Thus, proceedings under IBC Law shall be covered under the term "other proceedings".

➢ **Encumbrance on provisionally attached property to be removed upto on expiry of a period of 1 year of order in case written instructions not received from Commissioner:**

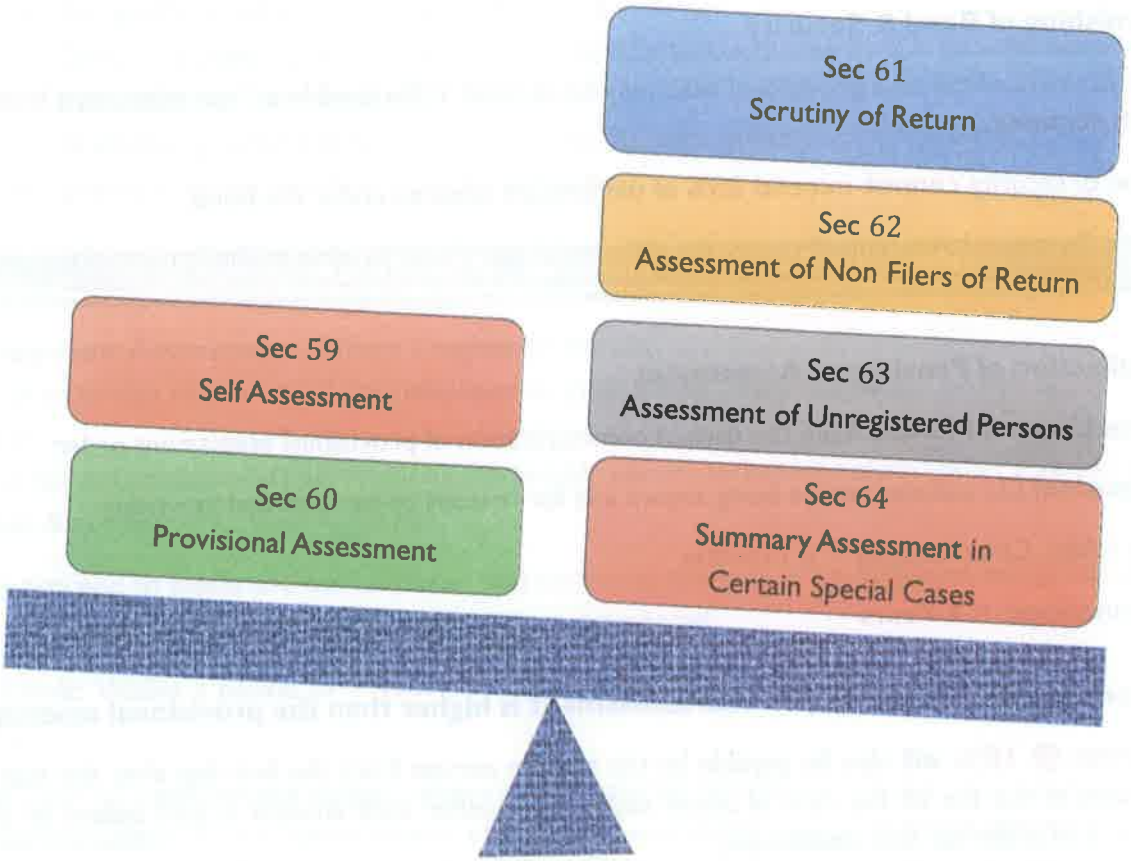
Rule 159(2) stipulates that in case of provisional attachment of property, the encumbrance on the said movable/immovable property shall be removed only on the written instructions from the Commissioner to that effect. This sub-rule has been amended to provide that encumbrance can be removed: **Earlier** of:

(i) on the written instructions from the Commissioner to that effect, or
(ii) on expiry of a period of 1 year from the date of issuance of order of provisional attachment of property.

ASSESSMENT & AUDIT

CGST ACT
Sec 59-64

IGST ACT
Sec 20



SECTION 59: SELF - ASSESSMENT

Every registered person shall self-assess the taxes payable under this Act and furnish a return for each tax period.

SECTION 60: PROVISIONAL ASSESSMENT

Provisional Assessment provides a method for determining the tax liability in case the taxable person is unable to:

- Determine the **value** of taxable goods and/or services; or
- Determine the **rate** of tax applicable thereto at the time of supply.

The proper officer shall issue an order, within a period not later than **90 days** from the receipt of such request.

Furnishing of Bond & Security

The payment of tax on a provisional basis may be allowed, if the taxable person executes a **bond along with security.**

Value of security **cannot exceed 25%** of the amount covered under the bond.

[Here Taxpayer binds himself to pay the differential tax, if any, payable on finalization of the provisional assessment.]

Finalization of Provisional Assessment

Time Limit: **6 Months** from the date of communication of provisional assessment order.

Extension: On sufficient cause being shown and for reasons to be recorded in writing

Joint / Add. Commissioner = **6 Months**

Commissioner = **4 Years**

Where the tax liability as per final assessment is higher than the provisional assessment

Interest @ 18% will also be payable by the taxable person from the first day after the due date of payment of the tax till the date of actual payment, whether such amount is paid before or after the issuance of order for final assessment.

Where the tax liability as per final assessment is less than the provisional assessment

Interest @ 6% shall be paid to the registered person after expiry of **60 days** from the receipt of refund application till the date of refund. [Sub to eligibility of refund and absence of **UNJUST ENRICHMENT**]

Release of Security:

Within **7 Working Days** from the date of the application for release after taxes are paid as per final assessment order.

SECTION 61: SCRUTINY OF RETURNS

- Proper Officer may scrutinize the return to verify its correctness.
- In case of discrepancy, PO shall issue a notice, seeking explanation, within such time **not exceeding 30 days** from the date of service of the notice.
- The registered person shall within a period of **30 days** from the date of service of order either accept the discrepancy and pay tax along with interest or furnish an explanation regarding non-acceptance of discrepancy.
- In case no satisfactory explanation is furnished or where the registered person fails to take corrective measure after accepting the discrepancy, PO may-
  - Proceed to conduct **audit** u/s 65 of the Act
  - Direct the conduct of **special audit** u/s 66 [To be conducted by CA or Cost Accountant nominated by Commissioner]
  - Undertake procedures of **inspection, search, and seizure** u/s 67 of the Act
  - Initiate **proceedings u/s 73 & 74** of the Act.

SECTION 62: ASSESSMENT OF NON-FILERS OF RETURNS

Best Judgment Assessment: Where a registered person

a) Fails to furnish return u/s 39 (monthly/quarterly) or u/s 45 (final return)
And
b) PO has issued notice u/s 46 requiring the taxable person to furnish return within a period of 15 days & taxable person fails to do so,

PO may proceed to assess the tax liability of said person to the best of his judgment taking into a/c all the relevant material which is available or which he has gathered.

Time Limit: Within a period of **5 years** from the date specified u/s 44 for furnishing the **Annual Return.**

Withdrawal of assessment order: where the registered person furnishes a valid return for the default period within **60 days** of the service of the assessment order passed on best judgment basis, the said assessment order shall be deemed to have been withdrawn but the liability for payment of interest (18%) u/s 50(1) or for payment of late fees (**₹ 100 per day** subject to Max of **₹ 5,000**) u/s 47 shall continue.

However, where the registered person fails to furnish a valid return within 60 days of the service of the assessment order, he may furnish the same within a further period of 60 days on payment of an additional late fee of **₹ 100 for each day** of delay beyond 60 days of the service of the said assessment order and in case he furnishes valid return within such extended period, the said assessment order shall be deemed to have been withdrawn, but the liability to pay interest u/s 50(1) or to pay late fee u/s 47 shall continue.

SECTION 63: ASSESSMENT OF UNREGISTERED PERSONS

Best Judgment Assessment: Where a taxable person -

- fails to obtain registration even though liable to do so; or
- whose registration has been cancelled u/s 29(2), for any of the following reason, namely-
  - (a) a registered person has contravened such provisions of the Act or the rules made thereunder as may be prescribed; or
  - (b) a person paying tax under composition levy u/s 10 has not furnished ***the return for a FY beyond 3 months from the due date of furnishing the said return;*** or
  - (c) any registered person, other than a person specified in clause (b), has not furnished returns for ***such continuous tax period as may be prescribed; or***
  - (d) any person who has taken voluntary registration u/s 25(3) has not commenced business within 6 months from the date of registration; or
  - (e) registration has been obtained by means of fraud, wilful misstatement or suppression of facts:

but who was liable to pay tax, the proper officer may proceed to assess the tax liability of said unregistered person to the best of his judgement for the relevant tax periods.

Time Limit: PO shall issue assessment order within a period of **5 years** from the due date of furnishing of **Annual Return** for the F.Y. to which non–payment of tax relates.

Before making the assessment, PO shall issue a notice containing grounds on which assessment is proposed to be made and taxable person shall be given **15 days' time to furnish his reply, if any.** No assessment order shall be passed before giving an opportunity of being heard.

SECTION 64: SUMMARY ASSESSMENT IN CERTAIN SPECIAL CASES

When Summary Assessment can be made: PO has evidence that a taxable person has incurred a liability to pay tax under act and has sufficient grounds to believe that delay in passing an assessment order may adversely affect the interest of revenue then he may initiate summary assessment with prior approval of Additional Commissioner / Joint Commissioner.

Withdrawal of Assessment Order: AC/JC may withdraw either on an application made by taxable person within a period of 30 days from the date of receipt of order or Suo Moto where he finds the order to be erroneous.

Deemed Taxable Person in case of supply of goods: Where the taxable person is not ascertainable then the person in charge of goods shall be deemed to be the taxable person liable to be assessed and liable to pay tax and any other amount due under this section.

AUDIT



SECTION 65: AUDIT BY TAX AUTHORITIES

Authority: Commissioner or any officer authorized by him may conduct audit of any registered person.

Period: Financial Year or part thereof or multiples thereof.

Place of Audit: At the place of Business of the registered person or in their office.

Notice: Prior Notice of **not less than 15 working days** to be issued by PO before commencing audit.

Completion of Audit:

- **Within 3 Months** from the date of commencement of audit.
- **Extension** of **maximum 6 months** may be granted by Commissioner.

Conclusion of Audit:

- The PO shall **within 30 days** inform the registered person whose records are audited, about the findings & the reasons for such findings.
- Where the audit results in detection of tax not paid, short paid, erroneously refunded, or input tax credit wrongly availed or utilized, the PO may initiate action u/s 73 or 74.

What is meant by commencement of audit?

Commencement of Audit means **later** of the following:

a) The date on which the records/accounts called for by the audit authorities are made available to them,

or

b) The actual institution of audit at the place of business of the taxpayer.

SECTION 66: SPECIAL AUDIT

When: If at any stage of scrutiny, inquiry, investigation or any other proceedings before him, officer not below the rank of Asst. Commissioner, having regard to the nature & complexity of case is of the opinion that -

- Value (of goods and/or services) has not been correctly declared; or
- ITC availed is not within the normal limits,

he may nominate **CA/Cost Accountant** for audit with prior approval of Commissioner.

The provisions of special audit shall have effect even if accounts of the registered person have been audited under any other provisions of the GST Act or any other law for the time being in force.

Time Period: 90 Days. Extension of maximum 90 days may be granted by Asst. Commissioner

Who will bear the expenses of Audit?

Expenses including remuneration of CA/Cost accountant shall be determined & paid by commissioner and such determination shall be final.

Conclusion of Special Audit:

- The registered person shall be given an opportunity of being heard in respect of any material gathered on the basis of special audit.
- On conclusion of special audit, the registered person shall be informed of the findings of special audit.
- Where the special audit results in detection of tax not paid, short paid, erroneously refunded, or input tax credit wrongly availed or utilized, the PO may initiate action/proceedings u/s 73 or 74.

INSPECTION, SEARCH, SEIZURE AND ARREST

SECTION 67: POWER OF INSPECTION, SEARCH & SEIZURE

When Inspection can be carried out by PO [Section 67(1)]

PO not below the rank of JOINT COMMISSIONER, if has **reason to believe** that-

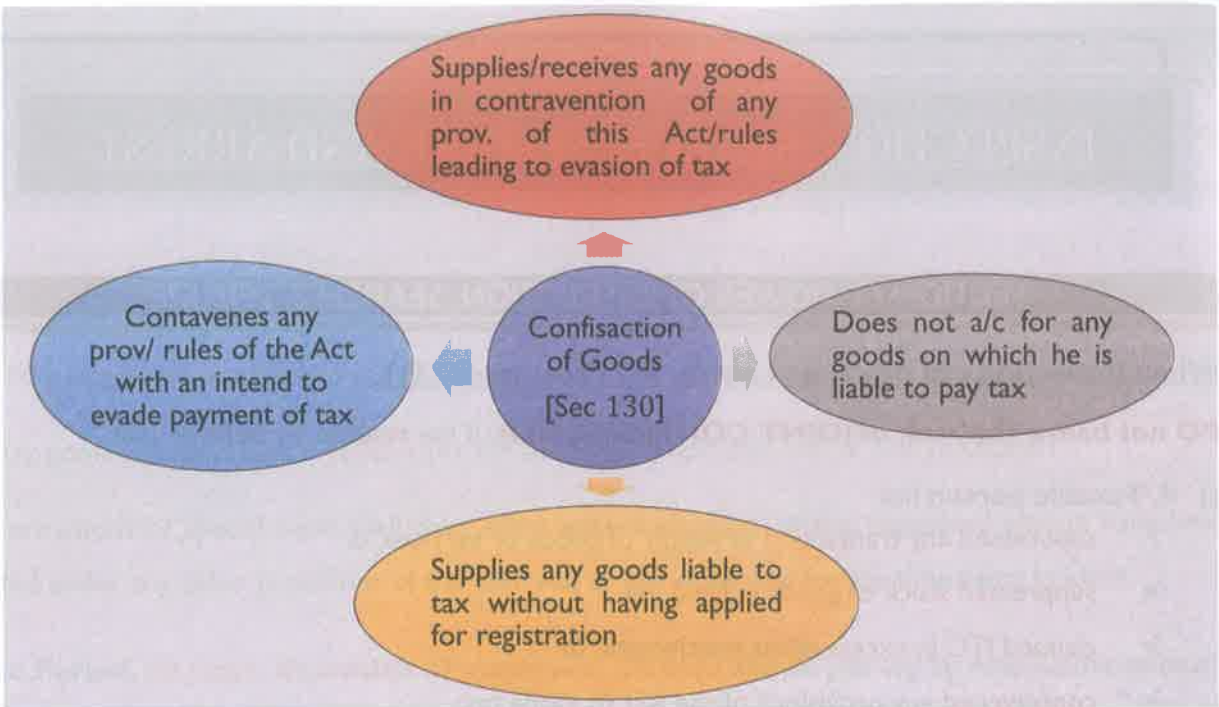
a) A **Taxable person** has
   - suppressed any transaction of supply of goods or services, or
   - suppressed stock of goods in hand, or
   - claimed ITC in excess of his entitlement, or
   - contravened any provisions of the Act to evade tax;

b) Any **person engaged in transporting** of goods or an **owner / operator** of a warehouse / godown / any other place, has kept goods which have
   - escaped payment of tax or
   - has kept accounts / goods in a manner that is likely to cause evasion of tax.

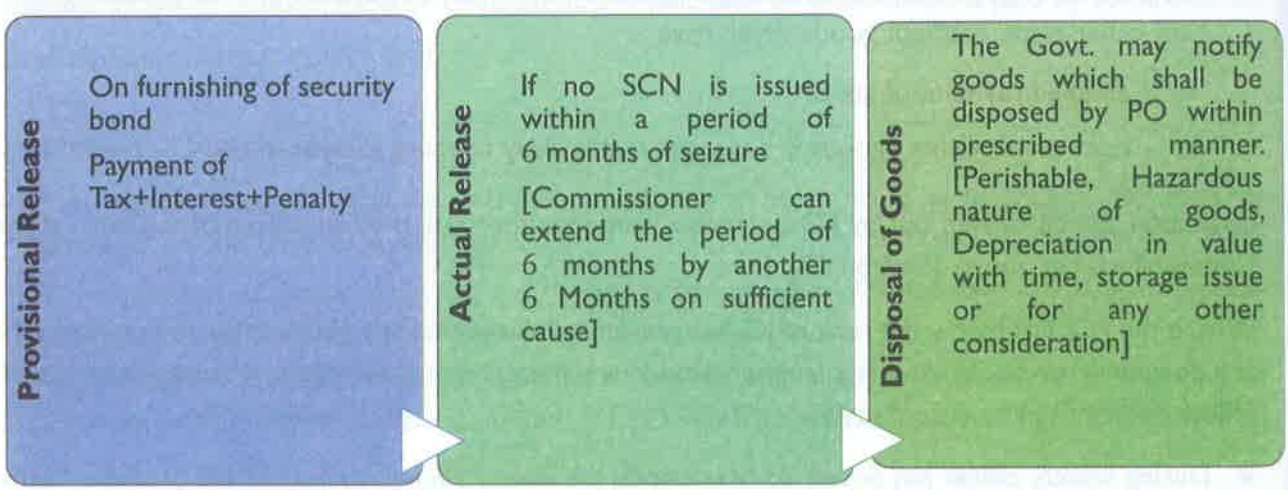
Inspection can be carried out by PO only after written authorization by an officer of the rank of Joint Commissioner or above. [Section 67]

Where the PO, not below the rank of JC, has reason to believe that any goods liable to confiscation or any document, or books or things, are secreted in any place, he may suo-moto or authorize any other officer to search, seize & confiscate.

- During search, officer has power to break open the door / almirah or box of the premise if access to the same is denied and in which any goods, account, registers or documents are suspected to be concealed.
- Authorised officer can also seal the premises if access to it denied.
- The person from whom these are seized shall be entitled to take copies / extracts of seized records.
- The seized documents/books/things shall be retained only till the time the same is required for examination/enquiry/proceedings and if these are not relied on for the case then the same shall be returned within 30 days from the issuance of SCN.



MANNER & RELEASE OF CONFISCATED GOODS / DOCUMENTS



BASIC REQUIREMENTS TO BE OBSERVED DURING SEARCH OPERATIONS

The following principles should be observed during search:

- No search of premises should be carried out without a valid search warrant issued by the proper officer.
- There should invariably be a lady officer accompanying the search team to a residence.

- The officers before starting the search should disclose their identity by showing their identity cards to the person in-charge of the premises.
- The search warrant should be executed before the start of the search by showing the same to the person in-charge of the premises and his signature should be taken on the body of the search warrant in token of having seen the same. The signatures of at least two witnesses should also be taken on the body of the search warrant.
- The search should be made in presence of at least two independent witnesses from the locality. If no such inhabitants are available / willing, the inhabitants of any other locality should be asked to be witness to the search. The witnesses should be briefed about the purpose of the search.
- Before the start of the search proceedings, the team of officers conducting the search and the accompanying witnesses should offer for their personal search to the person in-charge of the premises being searched. Similarly, after the completion of search all the officers and the witnesses should again offer themselves for their personal search.
- A Panchnama / Mahazar of the proceedings of the search should necessarily be prepared on the spot. A list of all goods, documents recovered and seized / detained should be prepared and annexed to the Panchnama / Mahazar. The Panchnama / Mahazar and the list of goods / documents seized / detained should invariably be signed by the witnesses, the in-charge / owner of the premises before whom the search is conducted and also by the officer(s) duly authorized for conducting the search.
- After the search is over, the search warrant duly executed should be returned in original to the issuing officer with a report regarding the outcome of the search. The names of the officers who participated in the search may also be written on the reverse of the search warrant.
- The issuing authority of the search warrant should maintain register of records of search warrant issued and returned and used search warrants should be kept in records.
- A copy of the Panchnama / Mahazar along with its annexure should be given to the person incharge / owner of the premises being searched under acknowledgement.

SEARCH WARRANT AND ITS CONTENTS

The written authority to conduct search is generally called search warrant. The competent authority to issue search warrant is an officer of the rank of Joint Commissioner or above. A search warrant must indicate the existence of a reasonable belief leading to the search. Search Warrant should contain the following details:

- the violation under the Act,
- the premises to be searched,

- the name and designation of the person authorized for search,
- the name of the issuing officer with full designation along with his round seal,
- date and place of issue,
- serial number of the search warrant,
- period of validity i.e., a day or two days etc.

- Where seizure and confiscation are not practicable, PO shall issue Detention Order which shall be served on the owner or the custodian of goods that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer.
- PO shall prepare inventory where seizure is undertaken by him.

SAFEGUARDS PROVIDED FOR IN RESPECT OF SEARCH & SEIZURE

- Seized goods or documents should not be retained beyond the period necessary for their examination.
- Photocopies of the documents can be taken by the person from whose custody documents are seized.
- For seized goods, if a notice is not issued within 6 months of its seizure, goods shall be returned to the person from whose possession it was seized. This period of 6 months can be extended on justified grounds up to a further period of Max. 6 months.
- An Inventory of seized goods shall be made by the seizing officer.
- Certain specified categories of goods such as perishable, hazardous etc. can be disposed of immediately after seizure. For instance, Newspapers, saffron, petroleum products, red sander etc.
- Provisions of Code of Criminal Procedure 1973 shall apply. However, one important modification u/s 165(5) of CCP, the copies of any record made in course of search has to be sent to Principal Commissioner / Commissioner of CGST instead of Nearest Magistrate empowered to take cognizance of the offence.

SECTION 68: INSPECTION OF GOODS IN MOVEMENT

Inspection can also be carried out of a conveyance, carrying a consignment of value exceeding specified limit. The person in-charge of the conveyance has to produce prescribed documents [E-Way Bill] / devices for verification & allow inspection. Inspection during transit can be carried out even without authorization of Joint Commissioner.

SECTION 69: POWER TO ARREST

Meaning of Arrest: Taking into custody of a person under some lawful command or authority.

Authorization of arrest by the proper officer: The commissioner can authorize an officer if he has reason to believe that the person has committed an offence attracting a punishment prescribed u/s 132(1)(a)/(b)/(c)(d) or 132(2). This essentially means that a person can be arrested only where the tax evasion is more than ₹ 2 Crores. However, the monetary limit shall not be applicable if the offences are committed again (even after being convicted earlier), i.e., repeat offender of the specified offences can be arrested irrespective of the tax amount involved in the case.

Safeguards for a person who is placed under arrest:

1. If a person is arrested for cognizable offence, he must be informed in writing of the grounds of arrest and he must be produced before a magistrate within 24 hours of his arrest.
2. If a person is arrested for a non-cognizable and bailable offence, the Deputy/Assistant Commissioner can release him on bail & he will be subject to same provisions as an officer in-charge of a police station u/s 436 of the Code of Criminal Procedure, 1973.
3. All arrest must be in accordance with the prov. of Code of Criminal Procedure, 1973 relating to arrest.

Guidelines for arrest:

Decision to arrest needs to be taken on case-to-case basis considering various factors, such as, nature and gravity of offence, quantum of duty evaded or credit wrongfully availed, nature and quality of evidence, possibility of evidence being tampered with or witnesses being influenced, cooperation with the investigation, etc.

Power to arrest has to be exercised after careful consideration of the facts of the case which may include:

- to ensure proper investigation of the offence;
- to prevent such person from absconding;
- master minds or key operators effecting proxy / benami imports / exports in the name of dummy or non-existent persons / IECs, etc.;
- where the intent to evade duty is evident and element of mens rea/guilty mind is palpable;
- prevention of the possibility of tampering with evidence;
- intimidating or influencing witnesses; and
- large amounts of evasion of tax.

Cognizable Offence (Non-bailable)

Serious Category of offences in respect of which a police officer has authority to make an arrest without a warrant.

Offences realting to taxable goods and/ or services where the amount of tax evaded or the amount of ITC wrongly availed or the amount of refund wrongly taken exceeds ₹ 5 **Crores**, it shall be Cognizable & Non-bailable.

Non Cognizable Offence (Bailable)

Relatively less serious offences in respect of which a police officer does not have the authority to make an arrest without a warrant and an investigation cannot be initiated without order of court.

Other offences under the Act are Non-Cognizable and bailable and all arrested persons shall be released on bail by DC/AC.

Arrest

Supplies any goods or services or both **without issue of invoice,** with the intention to evade tax

Issue any invoice or bill **without supply** of goods or services or both leading to wrongful availment or utilisation of ITC or refund of tax

Avails ITC using such invoices or bill **without supply** of goods or services or both

Collects any amount as **Tax but fails to pay** the same to the Govt. **beyond a period of 3 months** from the date on which such payment becomes due.

Guidelines for issuance of summons:

The Central Board of Indirect taxes and Customs (CBIC) in the Department of Revenue, Ministry of Finance has issued guidelines from time to time to ensure that summons provisions are not misused in the field. Some of the important highlights of these guidelines are given below:

- summons are to be issued as a last resort where assesses are not co-operating and this section should not be used for the top management;
- the language of the summons should not be harsh and legal which causes unnecessary mental stress and embarrassment to the receiver;

- summons by Superintendents should be issued after obtaining prior written permission from an officer not below the rank of Assistant Commissioner with the reasons for issuance of summons to be recorded in writing;
- where for operational reasons, it is not possible to obtain such prior written permission, oral / telephonic permission from such officer must be obtained and the same should be reduced to writing and intimated to the officer according such permission at the earliest opportunity;
- in all cases, where summons is issued, the officer issuing summons should submit a report or should record a brief of the proceedings in the case file and submit the same to the officer who had authorized the issuance of summons;
- senior management officials such as CEO, CFO, General Managers of a large company or a Public Sector Undertakings should not generally be issued summons at the first instance. They should be summoned only when there are indications in the investigation of their involvement in the decision making process which led to loss of revenue.

PUNISHMENT [SECTION 132(1)]

When a person commits any of the offences stated above the punishment will be as follows:

Where the amount of tax evaded or the amount of ITC wrongly availed or utilized or the amount of refund wrongly taken exceeds	Fine	Imprisonment
Sec 132(1)(i) Exceeding ₹ 5 crores	Yes	Up to 5 Years
Sec 132(1)(ii) Exceeding ₹ 2 crores – ₹ 5 crores	Yes	Up to 3 Years
Sec 132(1)(iii) Exceeding ₹ 1 crore – ₹ 2 crores	Yes	Up to 1 Year

SUBSEQUENT CONVICTION [SECTION 132(2)]

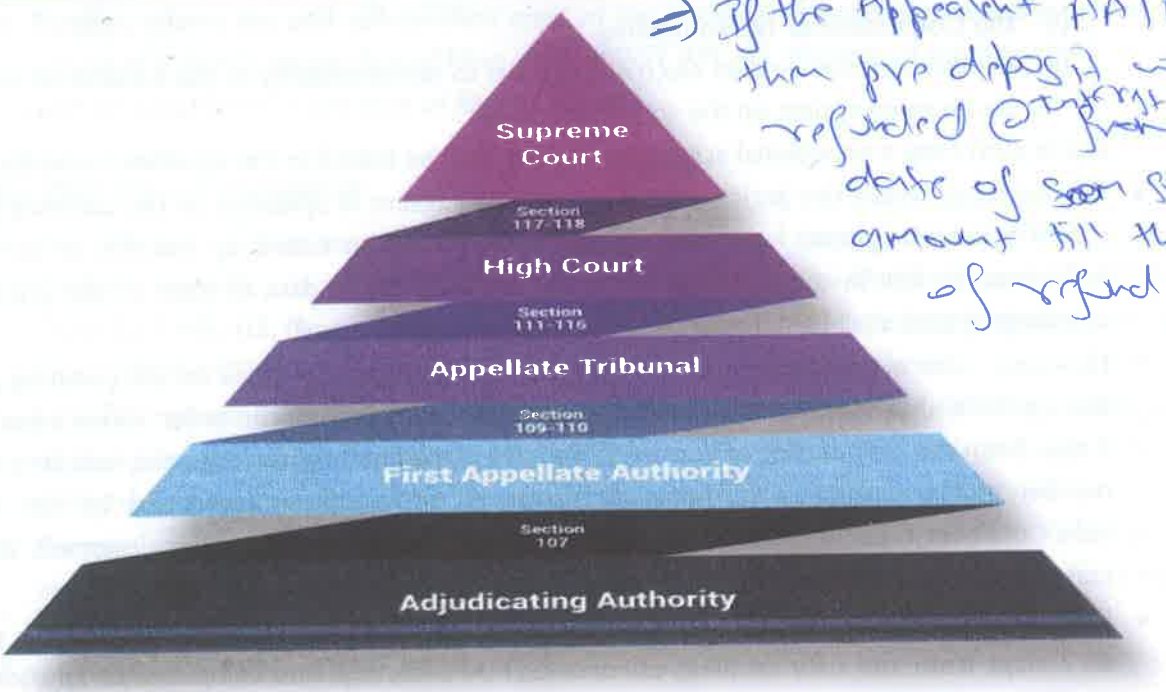
Where any person convicted under this section is again convicted of an offence under this section, then, he shall be punishable for the second and for every subsequent offence with **imprisonment for a term which may extend to 5 years & with fine.**

Section	Contents
Sec 70: Power to summon	PO shall have power to summon any person whose attendance he considers necessary.
Sec 71: Access to Business Premises	• The duly empowered officer can have access to any business premises which may be required for the purpose of enquiry. • Officer can inspect BOA/computer/computer software/documents & such other things as may be required. • Person in charge of the premises is bound to furnish the required documents and also required to furnish required documents within 15 working days to audit party deputed by the PO or the CA / CMA who has been deputed by commissioner to carry special audit. • The following **records are required to be produced**, if called for: ☞ Records prepared & maintained by the registered person & declared to the PO in prescribed manner. ☞ Trial Balance or its equivalent. ☞ Statement of Annual Financial Accounts, duly audited. ☞ Cost Audit Report, if any. ☞ The Income - Tax Audit Report, if any. ☞ Any other relevant record.
Sec 72: Officers to Assist	All officers of Police, Railways, Customs, and those officers engaged in the collection of land revenue, including village officers, officers of State/UT/CG etc. shall assist the PO's in the implementation of this Act.

*** Penalty in case of non-appearance after summon u/s 122(3)(d) = Max ₹ 25,000/-.**

APPEALS & REVISION

⇒ If the Appellant AA/AT then pre deposit will be refunded @ interest from the date of such amount till the date of refund of amount

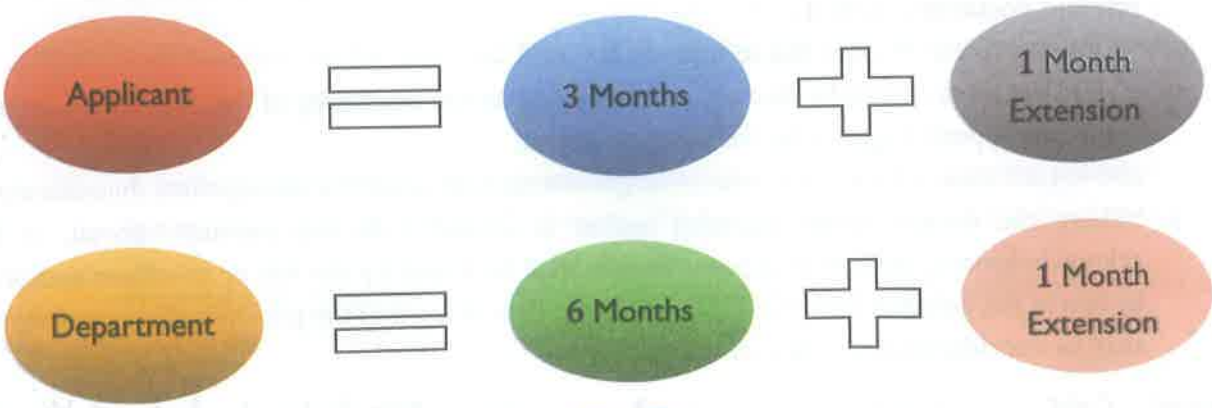


SECTION 107: APPEALS TO APPELLATE AUTHORITY

➢ Orders Appealable to AA

An appeal against any decision / order passed by any adjudicating authority under the CGST Act or SGST Act/UTGST Act lies before the AA.

➢ Time Limit for Filing Appeal



(A) Form of appeal to AA by the aggrieved person (taxpayer) and date of filing appeal

- An appeal is to be filed by aggrieved person within a period of 3 months from the date of communication of decision/order in Form GST APL-01 electronically along with the relevant documents & a provisional acknowledgement is issued to the appellant immediately.
- Provided that an appeal to the AA may be filed manually in FORM GST APL-01, along with the relevant documents, only if-
  (i) the Commissioner has so notified, or
  (ii) the same cannot be filed electronically due to non-availability of the decision or order to be appealed against on the common portal,

  and in such case, a provisional acknowledgement shall be issued to the appellant immediately.
- Subsequently, where the decision or order appealed against is uploaded on the common portal, a final acknowledgment, indicating appeal number, shall be issued by the AA or an officer authorised by him in this behalf in Form GST APL-02 & the date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal.
- However, where the decision/order appealed against is not uploaded on the common portal, the appellant shall submit a self-certified copy of the said decision or order within a period of 7 days from the date of filing of Form GST APL-01 & the final acknowledgment, indicating appeal number, shall be issued by the Appellate Authority or an officer authorised by him in this behalf in Form GST APL-02 & the date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal.
- Further, where the said self-certified copy of the decision/order is not submitted within a period of 7 days from the date of filing of Form GST APL-01, the date of submission of such copy shall be considered as the date of filing of appeal.
- The appeal shall be treated as filed only when the final acknowledgement is issued.

(B) Form of appeal to AA by the Department

- An application to the AA shall be filed within 6 months from the date of communication of decision/order in Form GST APL-03 electronically along with the relevant documents & a provisional acknowledgment shall be issued to the appellant immediately.
- Provided that an appeal to the AA may be filed manually in FORM GST APL-03, along with the relevant documents, only if-
  (i) the Commissioner has so notified, or
  (ii) the same cannot be filed electronically due to non-availability of the decision or order to be appealed against on the common portal,

  and in such case, a provisional acknowledgement shall be issued to the appellant immediately.
- Where the decision/order appealed against is uploaded on the common portal, a final acknowledgment, indicating appeal number, shall be issued by the AA or an officer authorised by him in this behalf in Form GST APL-02 & the date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal.

Normal Case → Dept order → AA → AT (State bench) → HC →

Place of Supply → Dept order → AA → AT (Principal bench) → SC

- However, where the decision or order appealed against is not uploaded on the common portal, the appellant shall submit a self-certified copy of the said decision or order within a period of 7 days from the date of filing of Form GST APL-03.
- The final acknowledgment, indicating appeal number, shall be issued by the AA or an officer authorised by him in this behalf in Form GST APL-02 and the date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal.
- Further, where the said self-certified copy of the decision or order is not submitted within a period of 7 days from the date of filing of Form GST APL-03, the date of submission of such copy shall be considered as the date of filing of appeal.

(C) Withdrawal of Appeal:

- The appellant may, at any time before issuance of SCN or before issuance of the order (i.e., Order-in-Appeal), whichever is earlier, in respect of any appeal filed in Form GST APL-01 or Form GST APL-03, file an application for withdrawal of the said appeal by filing an application in Form APL-01/03W.
- However, where the final acknowledgment has been issued in Form GST APL-02, the withdrawal of the said appeal would be subject to the approval of the AA and such application for withdrawal of the appeal shall be decided by the AA within 7 days of filing of such application.
- Further, any fresh appeal filed by the appellant pursuant to such withdrawal shall be filed within the time limit specified in (A) and (B) points above (i.e., 3 months/6 months), as the case may be.

➢ Appeal Process followed by AA:

- The AA can make further inquiry and pass its order (i.e., Order - in - Appeal) which may **confirm, modify or annul** the decision/order appealed against.
- The law provides an **advisory time limit of 1 year** from date of filing of appeal for the AA to decide the appeal. The period of stay ordered by any Court or Tribunal shall be excluded in computing the period of 1 year.

➢ Pre-Deposit:

No appeal shall be filed before AA, unless the appellant has paid –

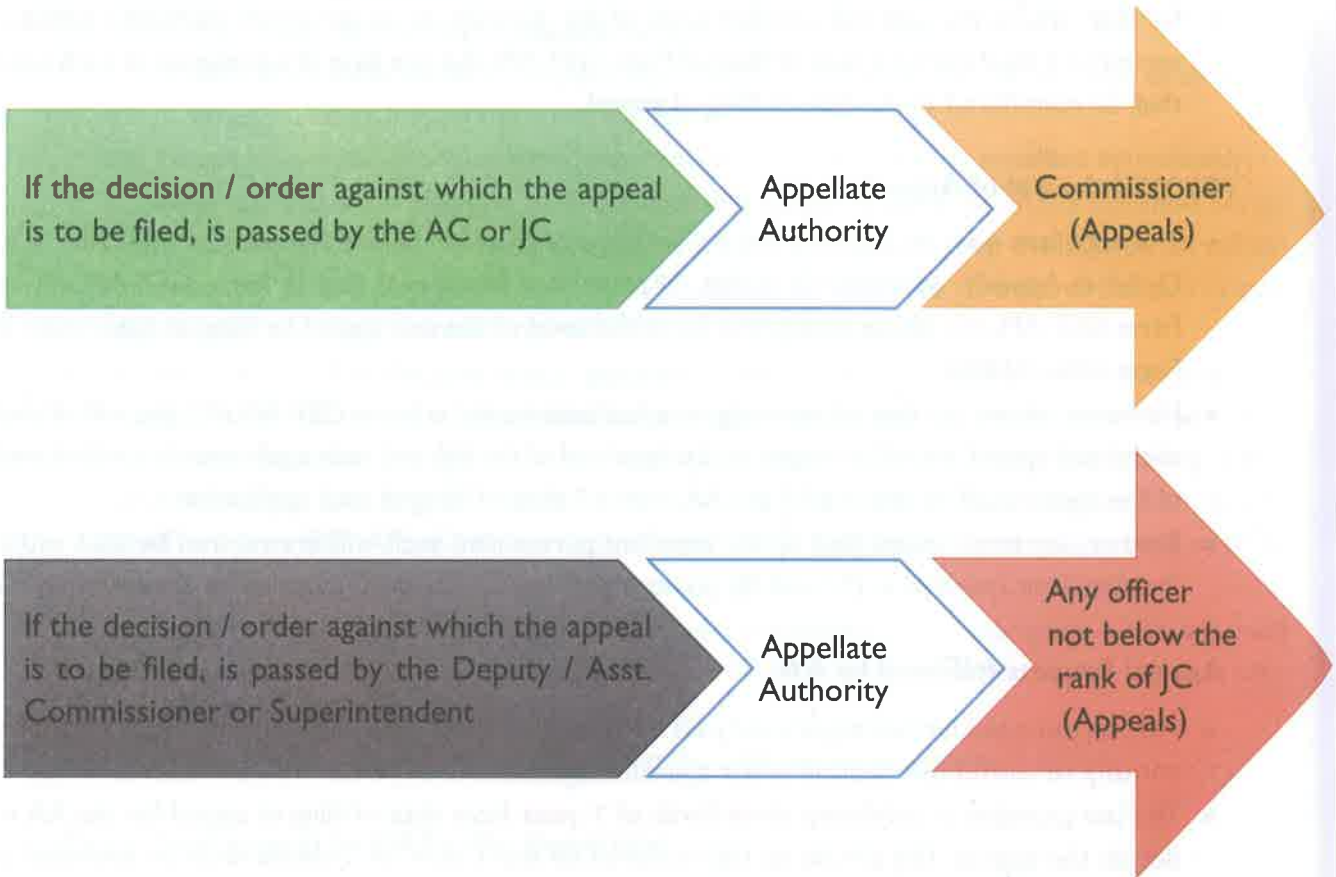
(a) **Full amount** of tax, interest, fine, fee, & penalty arising from the impugned order, as is **admitted by him**; and

(b) A sum equal to **10% of the remaining amount of tax in dispute** arising from the impugned order, subject to a **maximum of ₹ 25 Crores [₹ 50 Crores in case of IGST]**

Provided that no appeal shall be filed against an order u/s 129(3), unless a **sum equal to 25% of the penalty** has been paid by the appellant.

APPOINTMENT OF APPELLATE AUTHORITY

Any person aggrieved by any order / decision passed under GST Law or an officer directed to appeal against any decision / order under the said law may appeal within 3 months (6 months in case of appeal by the department) from the date of communication of said decision / order as follows:



If Assessee is not satisfied then will appeal to A.O.T

SECTION 108: POWERS OF REVISIONAL AUTHORITY

➢ **Orders that can be revised by the RA:**

i. The orders passed by its subordinate officers.

ii. On examination of the case records, if RA is of the view that the decision or order passed under the CGST Act / SGST Act / UTGST Act by any officer subordinate to him

- is erroneous, in so far as it is prejudicial to the interest of the revenue and is illegal or improper;
- has not taken into account material facts.
- in consequence of an observation by the Comptroller & Auditor General of India

he may, if necessary, stay the operation of such decision or order for such period as he deems fit.

➢ **The RA shall not exercise the power of revision if:**

a) The order sought to be revised has been subject to an appeal before AA or Tribunal or High Court or Supreme Court *; or

b) The period of 6 months (from the date of communication of order) has not yet expired or more than 3 years have expired after the passing of the decision/order sought to be revised; or

c) The order has already been taken for revision at an earlier stage; or

d) The order sought to be revised is itself a revisional order.

➢ **Time limit:**

* The RA may still pass an order on any point which has not been raised and decided in an appeal before AA/Tribunal/High Court/Supreme Court, before the expiry of a period of 1 year from the date of the order in such appeal or before the expiry of a period of 3 years from the date of initial order, whichever is later.

Exclusion in time limit: The time spent between:

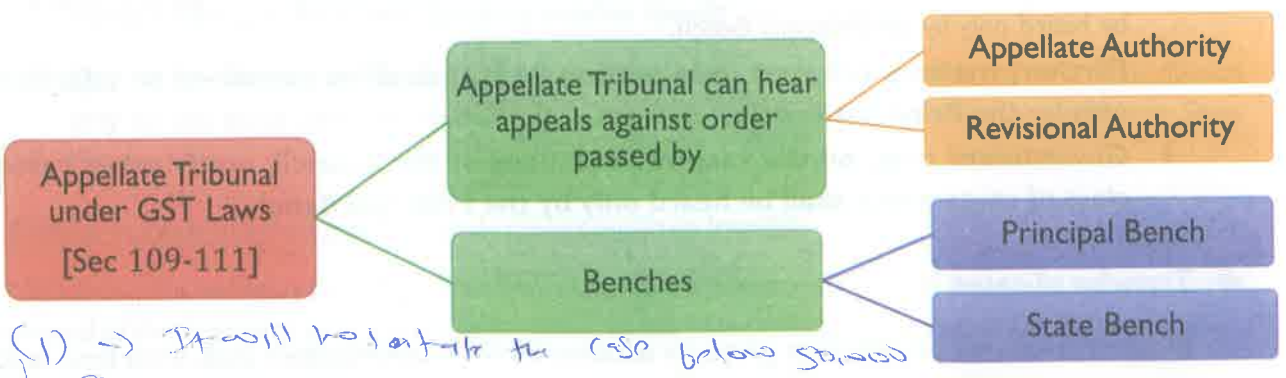
✓ The date of the decision of the Appellate Tribunal & the date of the decision of the High Court; or

✓ The date of the decision of the High Court & the date of the decision of the Supreme Court;

shall be excluded in computing the period of limitation of 3 years.

➢ **Officers authorized as Revisional Authority:**

• For decisions / orders passed by the Additional / Joint Commissioner	Revisional Authority	Principal Commissioner / Commissioner
• For decisions / orders passed by the Deputy Commissioner / Assistant Commissioner / Superintendent		Additional / Joint Commissioner



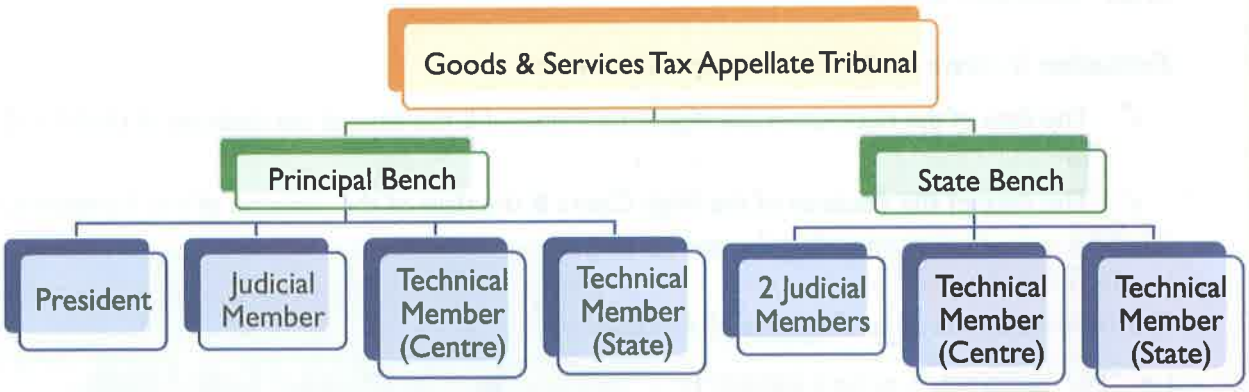
SECTION 109: CONSTITUTION OF APPELLATE TRIBUNAL & BENCHES THEREOF

Constitution:

The Government shall, on the recommendations of the Council, by notification, establish with effect from such date as may be specified therein, an Appellate Tribunal known as the Goods and Services Tax Appellate Tribunal for hearing appeals against the orders passed by the Appellate Authority or the Revisional Authority **or for conducting an examination or adjudicating the cases referred to in section 171(2), if so notified under the said section.**

The jurisdiction, powers and authority conferred on the Appellate Tribunal shall be exercised by the Principal Bench and the State Benches.

Composition:



Jurisdiction [Section 109(5)]:

- The Principal Bench and the State Bench shall hear appeals against the orders passed by the Appellate Authority or the Revisional Authority.
- However, the cases in which any one of the issues involved relates to the place of supply, shall be heard only by the Principal Bench.
- **Further, matters referred to in section 171(2) shall be examined or adjudicated only by the Principal Bench.**
- **Government may, on the recommendations of the Council, notify other cases or class of cases which shall be heard only by the Principal Bench.**

Transfer of cases

Subject to above jurisdiction given in section 109(5), the President shall, from time to time, by a general or special order, distribute the business of the Appellate Tribunal among the Benches and may transfer cases from one Bench to another.

Vice president for State Benches

The senior-most Judicial Member within the State Benches, as may be notified, shall act as the Vice-President for such State Benches and shall exercise such powers of the President as may be prescribed, but for all other purposes be considered as a Member.

Single member bench:

The cases can be heard by a bench consisting of a single member, if following conditions are fulfilled:

- Amount of tax or ITC involved or the amount of fine, fee or penalty determined does not exceed ₹ 50,00,000.
- Matter does not involve any question of law.
- Prior approval of the President has been obtained.
- Any other prescribed conditions.

Majority rule in case of difference of opinion:

In case of difference of opinion between Members, the President shall refer such case for hearing, -

- **where the appeal was originally heard by Members of a State Bench** - to another Member of a State Bench or, where no such other State Bench is available, to a Member of a State Bench in another State.
- **where the appeal was originally heard by Members of the Principal Bench** - to another Member from the Principal Bench or, where no such other Member is available, to a Member of any State Bench.

Note: Case shall be decided on majority basis including the opinion of the Members who first heard the case previously.

Transfer of members for administration efficiency:

- The Government may, in consultation with the President, for the administrative efficiency, transfer Members from one Bench to another Bench.
- However, a Technical Member (State) of a State Bench may be transferred to a State Bench only of the same State in which he was originally appointed, in consultation with the State Government.

Defect in constitution not to render proceedings invalid:

No act or proceedings of the Appellate Tribunal shall be questioned or shall be invalid merely on the ground of the existence of any vacancy or defect in the constitution of the Appellate Tribunal.

The President and members of Appellate Tribunal their qualification, appointment, conditions of service, etc. shall be in the manner prescribed u/s 110 of the CGST Act.

SECTION 111: PROCEDURE BEFORE APPELLATE TRIBUNAL

(i) The AT shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908 except in respect of certain matters such as summoning and enforcing the attendance of person & examining him on oath, requiring the discovery and production of documents, receiving evidence on affidavits, etc.

(ii) The Appellate Tribunal shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908.

(iii) All proceedings before the AT shall be deemed to be judicial proceedings within the meaning of sections 193, 228, and for the purposes of section 196 of the Indian Penal Code.

The Indian Penal Code (IPC) has been replaced with the Bharatiya Nyaya Sanhita, the Code of Criminal Procedure with Nagarik Suraksha Sanhita and the Indian Evidence Act has been replaced with the Bharatiya Sakshya Adhiniyam from 1st July 2024, however the corresponding changes is yet to be made in the GST Law.

SECTION 112: APPEAL TO APPELLATE TRIBUNAL

A. Appeal by the aggrieved person (taxpayer)

➢ **Time Limit for Filing Appeal**

Aggrieved Person	=	**3 Months***	+	**3 Months Extension [If sufficient cause]**
Department	=	**6 Months ** From order date**		

*** The start of the 3 months period shall be considered to be the later of the following dates:-**

(i) date of communication of order; or

(ii) the date on which the President or the State President, as the case may be, of the Appellate Tribunal after its constitution under section 109, enters office.

**** The start of the 6 months period shall be considered to be the later of the following dates:-**

(i) date of communication of order; or

(ii) the date on which the President or the State President, as the case may be, of the Appellate Tribunal after its constitution under section 109, enters office.

Form for filing appeal by the aggrieved person (taxpayer)

- An appeal to the AT shall be filed in FORM GST APL-05, along with the relevant documents, **electronically** and a provisional acknowledgement shall be issued to the appellant immediately.
- An appeal to the AT may be filed **manually** in FORM GST APL-05, along with the relevant documents, **only if the Registrar allows** the same by issuing a special or general order to that effect, subject to such conditions and restrictions as specified in the said order, and in such case, a provisional acknowledgement shall be issued to the appellant immediately.

Power of Tribunal to refuse to admit an appeal:

The Appellate Tribunal can refuse to admit an appeal if the tax or ITC involved or the difference in tax or ITC involved or the amount of fine, fee or penalty determined by such order **does not exceed ₹ 50,000.**

Memorandum of Cross Objections:

It is provided that on receipt of notice that an appeal has been filed (by the appellant), the party **against whom the appeal has been preferred** (i.e., the respondent) may, notwithstanding, that he may not have appealed against such order or any part thereof, file **within 45 days** a memorandum of cross objections electronically (The Tribunal can **condone the delay of upto 45 days** beyond the specified time period of 45 days, if it is satisfied that there was sufficient cause for the delay).

Fees for Filing Appeal:

The fees for filing of appeal or restoration of appeal shall be **₹ 1,000 for every ₹ 1,00,000 of tax** or ITC involved or the difference in tax or ITC involved or the amount of fine, fee or penalty determined in the order appealed against. However, the **fee shall not exceed ₹ 25,000 and a minimum of ₹ 5,000.**

Fees for filing of an appeal in respect of an order not involving any demand of tax, interest, fine, fee or penalty shall be ₹ 5,000.

There shall be no fee for application made before the Appellate Tribunal for rectification of errors.

Mandatory Pre-Deposit:

No appeal shall be filed before Appellate Tribunal, unless the appellant has paid –

(a) **Full amount** of tax, interest, fine, fee, & penalty arising from the impugned order, as is **admitted by him**; and

(b) **20%** of the remaining amount of **tax in dispute**, in addition to the amount deposited before the AA, arising from the said order, subject to a **maximum of ₹ 50 Cr [₹ 100 Cr in case of IGST]**, in relation to which appeal has been filed.

B. Department appeal

- An application to the AT shall be filed in FORM GST APL-07, along with the relevant documents, **electronically** and a provisional acknowledgement shall be issued to the appellant immediately.
- Such application may be filed **manually** in FORM GST APL-07, along with the relevant documents, **only if the Registrar allows** the same by issuing a special or general order to that effect, subject to such conditions and restrictions as specified in the said order, and in such case, a provisional acknowledgement shall be issued to the appellant immediately.

Common provisions in case of appeal by the aggrieved person (taxpayer) and Departmental appeal

(I) Memorandum of cross objections

A memorandum of cross-objections to the Appellate Tribunal, if any, shall be filed **electronically** in FORM GST APL-06.

However, the memorandum of cross-objections may be filed manually in FORM GST APL-06, **only if the Registrar allows** the same by issuing a special or general order to that effect, subject to such conditions and restrictions as specified in the said order.

(II) Date of filing appeal

(i) Where the order appealed against is **uploaded** on the common portal

a final acknowledgement, indicating appeal number, shall be issued in FORM GST APL-02 on removal of defects, if any, and the date of issue of the provisional acknowledgement shall be considered as the date of filing of appeal.

(ii) If the order appealed against is **not uploaded** on the common portal

the appellant shall submit/ upload, as the case may be, a self-certified copy of the said order within a period of 7 days from the date of filing of FORM GST APL-05/ FORM GST APL-07 and a final acknowledgement, indicating appeal number, shall be issued in FORM GST APL-02 on removal of defects, if any, and the date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal.

(iii) Where the said **self-certified copy of the order is submitted/uploaded after a period of 7 days** from the date of filing of FORM GST APL-05/ FORM GST APL-07

a final acknowledgement, indicating appeal number, shall be issued in FORM GST APL-02 on removal of defects, if any, and the date of submission or uploading of such self-certified copy shall be considered as the date of filing of appeal.

- The appeal shall be treated as filed only when the final acknowledgement, indicating the appeal number, is issued.
- The appeal and the memorandum of cross objections shall be signed in the manner specified in the prescribed manner.

C. Orders of the Appellate Tribunal (Section 113):

- The tribunal, after hearing both the sides may pass such orders thereon as it thinks fit, **confirming, modifying or annulling** the decision or order appealed against or **refer the case back to the AA or to the RA,** or to the original Adjudicating Authority.
- The Tribunal may, if sufficient cause is shown, grant upto **3 adjournments** to hearing of appeal for reason to be recorded in writing.
- **Time Limit:** Law provides **advisory time limit of 1 year** from the date of filing of appeal for the tribunal to decide the appeal.
- Every order passed by the Tribunal shall be final and binding on the parties unless the dispute is taken to a higher appellate forum.

Rectification of Errors [Section 113(3)]:

- The tribunal can correct its own order for any apparent mistakes, but it has no power of review.
- The tribunal may amend any order passed by it so as to rectify any error apparent on the face of the record if such error is noticed in the order by its own accord, or is brought to its notice by the commissioner or SGST/UTGST Commissioner or the other party to the appeal within a period of 3 months from the date of the order.
- No amendment which has the effect of enhancing an assessment or reducing a refund of ITC or otherwise increasing the liability of the other party, shall be made, unless the party has been given an opportunity of being heard.

D. Withdrawal of appeal or application filed before the Appellate Tribunal

- The appellant may, at any time before the issuance of the order, in respect of any appeal filed in FORM GST APL-05 or any application filed in FORM GST APL-07, file an application for withdrawal of the said appeal or the application, by filing an application in Form GST APL-05/07W.
- Where the final acknowledgment in GST APL-02 has been issued, the withdrawal of the said appeal or the application, would be subject to the approval of the Appellate Tribunal within 15 days of filing of such application.
- Any fresh appeal or application, as the case may be, filed by the appellant pursuant to such withdrawal shall be filed within the time limit specified in A or B above.

Authority	Pre-Deposit	
	When the tax involved is CGST	When the tax involved is IGST
AA	Admitted CGST Liability in full + 10% of the CGST in dispute, subject to a maximum of ₹ 25 Crores. *	Admitted IGST Liability in full + 10% of the IGST in dispute, subject to a maximum of ₹ 50 Crores.
AT	Admitted CGST Liability in full + 20% of the CGST in dispute, in addition to the amount deposited before AA as pre-deposit, subject to a maximum of ₹ 50 Crores. *	Admitted IGST Liability in full + 20% of the IGST in dispute, in addition to the amount deposited before AA as pre-deposit, subject to a maximum of ₹ 100 Crores.

* Equivalent amount of SGST is also required to be deposited.

SECTION 115: INTEREST ON REFUND OF PRE-DEPOSIT

If the pre-deposit made by the appellant before the AA or the Tribunal is required to be refunded consequent to any order of the AA or of the Tribunal, as the case may be, interest as provided under section 56 shall be payable from the date of payment of the amount (and not from the date of the order of the AA or of the Tribunal) till the date of refund of such amount.

PRODUCTION OF ADDITIONAL EVIDENCE BEFORE THE APPELLATE AUTHORITY OR THE APPELLATE TRIBUNAL

Rule 112 of the CGST Rules lays down that the appellant shall not be allowed to produce before the AA or the Tribunal any evidence, whether oral or documentary, other than the evidence produced by him during the course of the proceedings before the adjudicating authority or, as the case may be, the AA.

Exceptions: Following are the circumstances where additional evidence before AA or AT could be allowed:



where the adjudicating authority or, as the case may be, the AA has refused to admit evidence which ought to have been admitted; or



where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the adjudicating authority or, as the case may be, the AA; or



where the appellant was prevented by sufficient cause from producing before the adjudicating authority or, as the case may be, the AA any evidence which is relevant to any ground of appeal; or



where the adjudicating authority or, as the case may be, the AA has made the order appealed against without giving sufficient opportunity to the appellant to produce evidence relevant to any ground of appeal.

No additional evidence shall be admitted unless the AA or the Appellate Tribunal records in writing the reasons for its admission.

SECTION 117: APPEAL TO THE HIGH COURT

- The law provides that **any person** (whether department or other person), aggrieved by any order passed by the **State Benches** of the Tribunal, may file an appeal to the High Court.
  The High Court may admit such appeal if it is satisfied that the case involves a **substantial question of law.**
- Appeals to the High Court are to be **filed within 180 days** from the date on which the order appealed against is received by the aggrieved person. However, the High Court has the power to condone the delay on being satisfied of sufficient cause for the same.
- Cases to be heard by **at least 2-member bench** (no concept of single member bench).

SECTION 118: APPEAL TO THE SUPREME COURT

- Any **judgment or order passed by the High Court** & **the High Court certifies to be a fit one,** for appeal to the Supreme Court.
- **A (direct) appeal** shall also lie to the Supreme Court from any orders passed by the **Principal Bench of the Tribunal.**

SECTION 119: SUMS DUE TO BE PAID NOTWITHSTANDING APPEAL ETC.

Sums due to the Government as a result of an order passed by the **Principal Bench/State Benches** of the Appellate Tribunal or the High Court, notwithstanding that an appeal has been preferred to the High Court or the Supreme Court, shall be payable in accordance with the order so passed.

SECTION 120: APPEAL NOT TO BE FILED IN CERTAIN CASES

(i) The Board may issue orders or instructions or directions fixing monetary limits for regulating filing of appeal or application by the CGST officer.

(ii) Non-filing of appeal/application by a CGST officer on account of such monetary limits fixed by the Board shall not preclude such officer from filing appeal / application in any other case involving the same / similar issues or questions of law.

(iii) No party in application or appeal can contend that the CGST Officer has agreed in the decision on the disputed issue by not filing an appeal or application (on account of monetary limits).

(iv) The Appellate Tribunal or Court hearing such appeal / application shall have regard to circumstances for non-filing of appeal / application by the CGST officer on account of monetary limits fixed by the Board.

Clarification regarding monetary limits for filing appeals or applications or Special Leave Petition by the Department before GSTAT, High Courts and Supreme Court

Following monetary limits have been fixed for filing appeals/ applications/ Special Leave Petition by the Department before GSTAT, High Courts and Supreme Court subject to specified exclusions:-

Appellate Forum	Monetary Limit (amount involved in ₹)
GSTAT	20 Lakh
High Court	1 Crore
Supreme Court	2 Crore

Amount to be considered for applying the monetary limit for filing appeal has been explained in the below table in relation to the category of disputes:-

S. No.	Dispute pertains to demand of	Amount to be considered for applying the monetary limit for filing appeal
1.	Tax (with or without penalty and/or interest) only	Aggregate of the amount of tax in dispute (including CGST, SGST/UTGST, IGST & Compensation Cess)
2.	Interest only	Amount of interest

3.	Amount of interest	Amount of penalty
4.	late fee only	Amount of late fee
5.	Interest, penalty and/or late fee (without involving any disputed tax amount)	Aggregate of amount of interest, penalty and late fee
6.	Erroneous refund	Amount of refund in dispute (including CGST, SGST/UTGST, IGST and Compensation Cess)

Monetary limit shall be applied on the disputed amount of tax/interest/penalty/late fee, as the case may be, in respect of which appeal or application is contemplated to be filed in a case.

In a composite order which disposes more than one appeal/demand notice, the monetary limits shall be applicable on the total amount of tax/interest/penalty/late fee, as the case may be, and not on the amount involved in individual appeal or demand notice.

Exclusions - Monetary limits specified above shall not be applicable in the following circumstances where the decision to file appeal shall be taken on merits irrespective of the said monetary limits:

(i) Where any provision GST law has been held to be ultra vires to the Constitution of India; or

(ii) Where any rules/regulations made under GST law have been held to be ultra vires parent Act; or

(iii) Where any order, notification, instruction, or circular issued by the Government or the Board has been held to be ultra vires of the GST law or the Rules made there under; or

(iv) Where the matter is related to –
  (a) Valuation of goods/services; or
  (b) Classification of goods/services; or
  (c) Refunds; or
  (d) Place of Supply; or
  (e) Any other issue, which is recurring in nature and/or involves interpretation of the provisions of the Act /the Rules/ notification/ circular/order/instruction etc.; or

(v) Where strictures/adverse comments have been passed and/or cost has been imposed against the Government/Department or their officers; or

(vi) Any other case or class of cases, where it is necessary to contest in the interest of justice or revenue.

Non-filing of appeal based on the above monetary limits, shall not preclude the tax officer from filing appeal or application in any other case involving the same or similar issues in which the tax in dispute exceeds the monetary limit or case involving the questions of law.

SECTION 121: NON-APPEALABLE DECISIONS AND ORDERS (Important)

Section 121 lays down that no appeals whatsoever can be filed against the following orders: - **[TIPS]**

a) An order of the Commissioner or other authority empowered to direct **Transfer of proceedings** from one officer to another officer;
b) An order pertaining to the **Seizure or retention** of books of account, register and other documents; or
c) An order sanctioning **Prosecution** under the Act; or
d) An order passed under section 80 (payment of tax in **Instalments**).

OFFENCES AND PENALTIES

PENALTY FOR CERTAIN OFFENCES [SECTION 122]

Sec 122(1)

Type of Offences:
21 specified offences

Penalty: Higher of:
(i) ₹ 10,000 (each under CGST/SGST/UTGST)
(ii) 100% of tax amount involved

i.	Supplies any goods or services or both without issue of any invoice an incorrect or false invoice.
ii.	Issues of any invoice or bill without supply of goods or services or both.
iii.	Collects any amount as tax but fails to pay the same to the government beyond a period of 3 months from the due date of payment.
iv.	Collects any tax in contravention of provisions of this act but fails to pay the same to the government beyond a period of 3 months from the due date of payment.
v.	Fails to deduct TDS or deducts lower TDS or fails to pay TDS.
vi.	Fails to collect TCS or collects lower TCS or fails to pay TCS.
vii.	Takes or utilizes ITC without actual receipt of goods or services or both.
viii.	Fraudulently obtains refund of tax under this Act.
ix.	Takes or distributes ITC in violation of Section 20.
x.	Falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information or return with an intention to evade payment of tax due.
xi.	Fails to obtain registration.
xii.	Furnishes any false information with regard to registration particulars, either at the time of applying for registration, or subsequently.
xiii.	Obstructs or prevents any officer in discharge of his duties.
xiv.	Transports any taxable goods without the cover of documents.
xv.	Suppresses his turnover leading to evasion of tax.
xvi.	Fails to keep, maintain or retain books of account and other documents.
xvii.	Fails to furnish information or documents called by a CGST/SGST officer.
xviii.	Supplies, transports or stores any goods which he has reasons to believe are liable to confiscation.
xix.	Issues any invoice or document by using the GSTIN of another registered person.
xx.	Tampers with, or destroys any material evidence.
xxi.	Disposes off or tampers with any goods that have been detained, seized, or attached.

For beneficiary – Penalty = 100% of Benefit availed (Tax Evaded or ITC availed or passed)

Sec 122(1A) - Any person who -

- **retains the benefit of a transaction** covered under clauses (i), (ii), (vii) or clause (ix) of sub-section (1) and
- at whose instance **such transaction is conducted,**
- shall be liable to a **penalty = 100% of the tax evaded or ITC availed of or passed on.**

Sec 122(1B) - Any electronic commerce operator who -

i. allows a supply of goods or services or both through it by an unregistered person other than a person exempted from registration by a notification issued under this Act to make such supply;

ii. allows an inter-State supply of goods or services or both through it by a person who is not eligible to make such inter-State supply; or

iii. fails to furnish the correct details in the statement to be furnished u/s 52(4) of any outward supply of goods effected through it by a person exempted from obtaining registration under this Act,

shall be liable to pay **a penalty of ₹ 10,000** (CGST/SGST/UTGST) / **₹ 20,000** (IGST), or an **amount equivalent to the amount of tax** involved had such supply been made by a registered person other than a person paying tax u/s 10, whichever is **higher.**

SECTION 122(2)

Any registered person –

i. who supplies any goods or services or both on which any tax has not been paid or short paid or erroneously refunded, or

ii. where ITC has been wrongly availed or utilised,

Amount of Penalty (each under CGST/SGST/UTGST)

- **In case of fraud: Higher of**
  - ₹ 10,000
  - 100% of tax amount involved

- **Other than Fraud: Higher of**
  - ₹ 10,000
  - 10% of tax amount involved

SECTION 122(3)

Penalty is leviable for any of the following offences committed by a person who –

a) aids or abets any of the 21 offences specified u/s 122(1);

b) deals with any goods which he has reasons to believe are liable to confiscation;

c) receives or deals with supply of services he believes are in contravention of any provisions of act;

d) fails to appear before the officer of central tax when issued with a summon or produce docs;

e) fails to issue invoice in accordance with provisions of this act.

Penalty: Maximum ₹ 25,000 (each under CGST & SGST/UTGST) or **₹ 50,000** (under IGST)

Note: It may be noted that the penalty payable u/s 122 is with reference to only the CGST Act. An equal amount of penalty is payable under the respective SGST/UTGST Act as well. Similarly, under IGST Act, penalty payable will be sum of penalty payable under the CGST Act and penalty payable under SGST/UTGST Act.

SECTION 123: PENALTY FOR FAILURE TO FURNISH INFORMATION RETURN

Section 123

→ **Person who is required to furnish an information return u/s 150 fails to do**

→ **₹ 100** (₹ 50 each under CGST & SGST/UTGST) for every day during such failure continues
Maximum ₹ 5,000 (₹ 2,500 each under CGST & SGST/UTGST)

SECTION 124: FINE FOR FAILURE TO FURNISH STATISTICS

If any person required to furnish any information or return under section 151,

- Fails to furnish such information or return as may be required under that section without reasonable cause; or
- wilfully furnishes or causes to furnish any information or return which he knows to be false,

He shall be punishable with a fine which may extend to **₹ 10,000** (CGST/SGST/UTGST) or **₹ 20,000** (IGST) and in case of a continuing offence to a further fine which may extend to **₹ 100/day** (CGST/SGST/UTGST) or **₹ 200/day** (IGST) after the first day during which the offence continues subject to a **maximum limit ₹ 25,000** (CGST/SGST/UTGST) or **₹ 50,000** (IGST).

SECTION 125: GENERAL PENALTY

Any person, who contravenes any of the provisions of this Act or any rules made thereunder for which no penalty is separately provided for in this Act, shall be liable to a penalty which may extend to **twenty-five thousand rupees. [General Penalty ₹ 25,000].**

SECTION 126: GENERAL DISCIPLINES RELATED TO PENALTY

No penalty for minor offences [amount of tax involved is **less than ₹ 5,000**] which is easily rectifiable and made without fraudulent intent or gross negligence.

SECTION 127: POWER TO IMPOSE PENALTY IN CERTAIN CASES

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

SECTION 128: POWER TO WAIVE PENALTY OR FEE OR BOTH

The Government may, by notification, waive in part or full, any penalty referred to in section 122 or section 123 or section 125 or any late fee referred to in section 47 (for delay in filing of return) for such class of taxpayers and under such mitigating circumstances as may be specified therein on the recommendations of the Council.

SECTION 129: DETENTION, SEIZURE AND RELEASE OF GOODS AND CONVEYANCES IN TRANSIT

If a person contravenes any provision of the Act while transporting or storing goods, then such goods and the conveyance in which such goods are carried and all the documents relating to such goods and conveyance can be detained or seized.

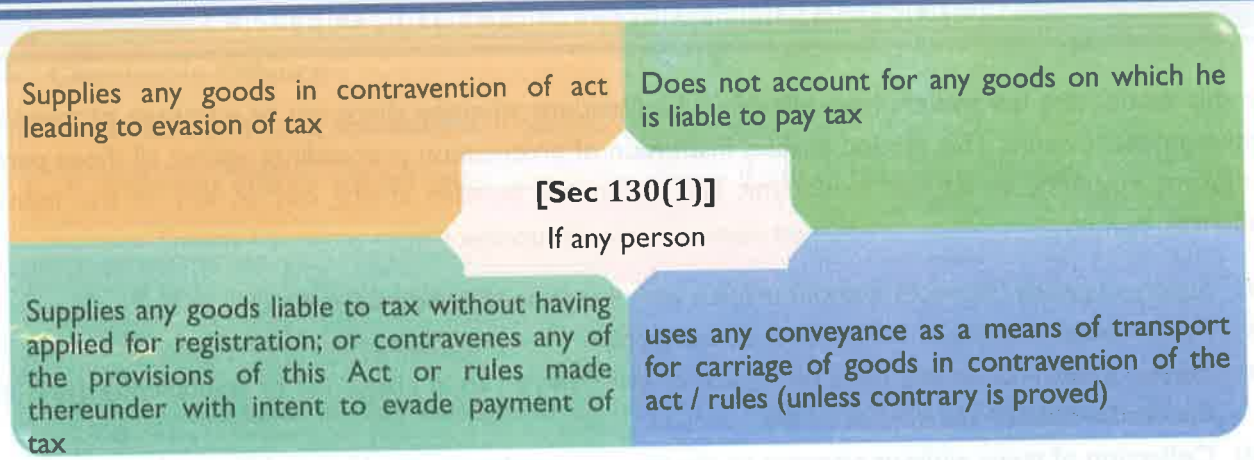
When owner of goods comes forward for payment of penalty:		
Taxable goods	**CGST/SGST/UTGST law**	**IGST law**
	200% of tax payable	200% of IGST payable
Exempted goods	✓ 2% of Value of Goods or ✓ ₹ 25,000 Whichever is **LESS**	✓ 4% of Value of Goods or ✓ ₹ 50,000 Whichever is **LESS**

When owner of goods does not come forward for payment of penalty:		
Taxable goods	✓ 50% of Value of Goods or ✓ 200% of tax payable Whichever is **HIGHER**	✓ 100% of Value of Goods or ✓ 200% of IGST payable Whichever is **HIGHER**
Exempted goods	✓ 5% of Value of Goods or ✓ ₹ 25,000 Whichever is **LESS**	✓ 10% of Value of Goods or ✓ ₹ 50,000 Whichever is **LESS**

- Where the person transporting any goods or the owner of such goods fails to pay the amount of penalty within **15 days** from the date of receipt of the copy of the order, the goods or conveyance so detained or seized shall be liable to be sold or disposed of otherwise, to recover the penalty payable.
- Where the detained/seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of **15 days may be reduced** by the proper officer.

Provided that the conveyance shall be released on payment by the transporter of penalty as above or ₹ 1,00,000 (each under CGST & SGST/UTGST law and ₹ 2,00,000 under IGST law), whichever is **less**.

SECTION 130(1): CONFISCATION OF GOODS OR CONVEYANCE & LEVY OF PENALTY



then, all such goods or conveyances shall be liable to confiscation and the person shall be liable to penalty u/s 122.

SECTION 130(2): REDEMPTION FINE

- **Confiscation from: Owner**

  Where any such conveyance is used for the carriage of the goods or passengers for hire, the owner of the conveyance shall be given an option to pay in lieu of the confiscation of the conveyance a **fine of 100% of tax payable**.

- **Redemption Fine**: Lower of
  1. Penalty decided by the officer u/s 129(1)
  2. Market Price less tax chargeable.

Provided further that the aggregate of such fine & penalty leviable shall not be less than the penalty equal to 100% of the tax payable of such goods.

PO may, after satisfying that the confiscated goods or conveyance are not required in any other proceedings and after giving reasonable time not exceeding 3 months to pay fine in lieu of confiscation, dispose of such goods/conveyance and deposit sale proceeds to Government.

SECTION 131: CONFISCATION OR PENALTY NOT TO INTERFERE WITH OTHER PUNISHMENTS

Without prejudice to the provisions contained in the Code of Criminal Procedure, 1973, no confiscation made or penalty imposed under the provisions of this Act or the rules made thereunder shall prevent the infliction of any other punishment to which the person affected thereby is liable under the provisions of this Act or under any other law for the time being in force.

SECTION 132: PUNISHMENTS FOR CERTAIN OFFENCES

In this section the law makers have identified 12 situations whereby there can be a leakage or revision of government revenue. This section enables institution of prosecution proceedings against all those persons whoever commits, or causes to commit and retain the benefits arising out of, any of the following offences, namely -

(a) Supply of goods / services without invoice with intention to evade tax
(b) Person issues invoice or bill without actual supply
(c) Person avails ITC on the basis of invoice or bill referred to in clause (b) or fraudulently avails input tax credit without any invoice or bill.
(d) Collection of taxes without payment to the government for a period beyond 3 months of due date
(e) Evasion of tax, or obtaining refund with an intent of fraud where such offence is not covered under clause (a) to (d) above.
(f) Falsifying records / production of false documents with intent to evade tax
(g) [omitted]
(h) Acquires / transports / deals with goods liable for confiscation
(i) Receives / deals with services in contravention of this law
(j) [omitted]
(k) [omitted]
(l) Attempts or abets the commission of any of the offences mentioned in clauses (a) to (f) and clauses (h) and (i).

[Clauses (g), (j) & (k) omitted by Finance Act, 2023, w.e.f. 01.10.2023]

Amount of tax evaded / erroneous refund / wrong ITC availed or utilised	**Fine**	**Imprisonment**
Exceeding ₹ 5 crores	Yes	Upto 5 Years
Exceeding ₹ 2 crores - upto ₹ 5 crores	Yes	Upto 3 Years
Exceeding ₹ 1 crores - upto ₹ 2 crores [in the case of an offence specified in clause (b)]	Yes	Upto 1 Year

- If any person commits any offence specified in clause (f) above, he shall be punishable with imprisonment for a term which may extend to 6 months or with fine or with both.
- In case of repetitive offences - an imprisonment term of not less than 6 months which could extend to 5 years plus with a fine.
- All offences mentioned in this section are non-cognizable and bailable except the following cases: Instances covered by (a) to (d) where the amount involved exceeds ₹ 5 Crore.
- Every prosecution proceeding requires previous sanction of Commissioner.

Cognizable vs. Non-Cognizable Offence:

Cognizable Offence

- Serious offence & non-bailable in nature.
- Following offence will fall under cognizable offence if amt of tax evasion exceeds ₹ 5 Crore:
  - Goods / services supply without invoice to evade tax;
  - Issue invoice without supply;
  - Avail ITC in above invoice;
  - Collects tax but fails to pay to the govt. within 3 months from the due date of tax.

In all the above 4 offences, a person will be arrested without warrant if the amt of tax evasion exceeds ₹ 5 Crore.

Non-Cognizable Offence

- Other than cognizable & non-bailable offence.

SECTION 133: LIABILITY OF OFFICERS AND CERTAIN OTHER PERSONS

Officer engaged under this act willfully discloses any information or the contents of any return otherwise than in execution of his duties ⇨ Maximum ₹ 25,000 or Imprisonment for 6 months or both

SECTION 134: COGNIZANCE OF OFFENCES

No court shall take cognizance of any offence punishable under this Act or the rules made thereunder except with the previous sanction of the Commissioner, and no court inferior to that of a Magistrate of the First Class, shall try any such offence.

SECTION 135: PRESUMPTION OF CULPABLE MENTAL STATE

In any prosecution for an offence under this act which requires a **culpable mental state** on the part of the accused, **the court shall presume the existence of such mental state,** however accused can prove contrary.

SECTION 136: RELEVANCY OF STATEMENTS UNDER CERTAIN CIRCUMSTANCES

A **statement made and signed** by a person on appearance in response to any summons **during the course of any inquiry shall be relevant for the purpose of proving the truth of the facts** which it contains when the person who made the statement is **dead** or **cannot be found**, or is **incapable** of giving evidence, or is **kept out of the way** by the adverse party, or whose presence **cannot be obtained** without an amount of **delay or expense** etc.

SECTION 137: OFFENCES BY COMPANIES

Offence committed by company	Company as well as every person in charge for the conduct of the business shall be deemed to be guilty. Such person however can prove contrary.
Offence committed due to the negligence of any director, manager etc.	Such person shall be deemed to be guiltyand liable to be proceeded against.

SECTION 138: COMPOUNDING OF OFFENCES

- Compounding means payment of money instead of undergoing prosecution. It can be either before or after institution of prosecution on payment of tax, interest and penalty.
- Compounding of offences is not permissible when: -
  - (a) a person who has been allowed to compound once in respect of any of the offences specified in clauses (a) to (f), (h), (i) and (l) of section 132(1);
  - ~~(b)~~ [Omitted by Finance Act, 2023, w.e.f. 01.10.2023]
  - (c) a person who has been accused of committing an offence under clause (b) of section 132(1);
  - (d) a person who has been convicted for an offence under this Act by a court;
  - ~~(e)~~ [Omitted by Finance Act, 2023, w.e.f. 01.10.2023]
  - (f) any other class of persons or offences as may be prescribed:

Provided further that any compounding allowed under the provisions of this section shall not affect the proceedings, if any, instituted under any other law.

Provided also that compounding shall be allowed only after making payment of tax, interest and penalty involved in such offences.

- The amount for compounding of offences under this section shall be such as may be prescribed, subject to the **minimum amount** not being less than **25% of the tax involved** and the **maximum amount** not being more than **100% of the tax involved.**

As per **Rule 162(3A),** the Commissioner shall determine the compounding amount as per the Table below:

S.No.	Offence	Compounding amount if offence is punishable u/s 132(1)(i)	Compounding amount if offence is punishable u/s 132(1)(ii)
1.	Section 132(1)(a)	Minimum 50% & Maximum 75% of the amount of tax evaded or the amount of ITC wrongly availed or utilised or the amount of refund wrongly taken.	Minimum 40% & Maximum 60% of the amount of tax evaded or the amount of ITC wrongly availed or utilised or the amount of refund wrongly taken.
2.	Section 132(1)(c)		
3.	Section 132(1)(d)		
4.	Section 132(1)(e)		
5.	Section 132(1)(f)	Amount equivalent to 25% of tax evaded.	Amount equivalent to 25% of tax evaded.
6.	Section 132(1)(h)		
7.	Section 132(1)(i)		
8.	Attempt to commit the offences or abets the commission of offences mentioned in clause (a), (c) to (f) and clauses (h) and (i) of section 132(1)	Amount equivalent to 25% of such amount of tax evaded or the amount of ITC wrongly availed or utilised or the amount of refund wrongly taken.	Amount equivalent to 25% of such amount of tax evaded or the amount of ITC wrongly availed or utilised or the amount of refund wrongly taken.

Provided that where the offence committed by the person falls under more than one category specified in the Table above, the compounding amount, in such case, shall be the amount determined for the offence for which higher compounding amount has been prescribed.

Amount:	Imprisonment [Sec 132(1)]				Compounding [Sec 138]	
Amt of Tax evaded / Erroneous Refund / Wrong ITC availed or utilized	Amt upto 1Crore	Amt >1Cr upto 2Cr	Amt >2Cr upto 5Cr	Amt >5Cr	Amt >5Cr	Amt >2Cr upto 5Cr
(a) Supply without invoice (b) - (c) Avails ITC without invoice or without actual supply (d) Collection of tax without payment to govt. (period>3m)	-	-	Min 6mths upto 3yrs	Min 6mths upto 5yrs	Min 50% & Max 75%	Min 40% & Max 60%
(b) Issues invoice without actual supply	-	Min 6mths upto 1yr	Min 6mths upto 3yrs	Min 6mths upto 5yrs	-	-
(e) Evasion of tax or obtain refund with an intent of fraud [not covered in (a)-(d)]	-	-	Min 6mths upto 3yrs	Min 6mths upto 5yrs	Min 50% & Max 75%	Min 40% & Max 60%
(f) Falsifying records / production of false documents to evade tax	upto 6mths	upto 6mths	Min 6mths upto 3yrs	Min 6mths upto 5yrs	Flat rate 25%	Flat rate 25%
(h) Acquires / transports / deals with goods liable for confiscation (i) Receives / deals with services in contravention of law (L) Attempts or abets the commission of above offences	-	-	Min 6mths upto 3yrs	Min 6mths upto 5yrs	Flat rate 25%	Flat rate 25%

Notes:

- ✓ Sec 132(1)(a),(b),(c)&(d) are cognizable offence i.e., Non-bailable offence (Arrest without warrant). All other cases are non-cognizable offence i.e., Bailable offence.
- ✓ Compounding offence is not permissible for Sec 132(1)(b). In all other cases, Compounding can be done only once.
- ✓ If convicted by court, compounding is not permissible.
- ✓ If repetitive offence – imprisonment not less than 6 months but upto 5 years plus fine.

Amendments made vide The Finance (No. 2) Act, 2024

Since this amendment has become effective from 01.11.2024, said amendment is not applicable for May 2025 examinations. However, **said amendment is applicable for November 2025 examination.**

Section 122(1B):

Any electronic commerce operator, who is liable to collect tax at source u/s 52 -

(i) allows a supply of goods or services or both through it by an unregistered person other than a person exempted from registration by a notification issued under this Act to make such supply;

(ii) allows an inter-State supply of goods or services or both through it by a person who is not eligible to make such inter-State supply; or

(iii) fails to furnish the correct details in the statement to be furnished u/s 52(4) of any outward supply of goods effected through it by a person exempted from obtaining registration under this Act,

shall be liable to pay **a penalty of ₹ 10,000** (CGST/SGST/UTGST) / **₹ 20,000** (IGST), or an **amount equivalent to the amount of tax** involved had such supply been made by a registered person other than a person paying tax u/s 10, whichever is **higher.**

Section 127: Power to impose penalty in certain cases

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

ADVANCE RULING

Advance Ruling means a decision provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in sub-sec (2) of sec 97 or sub-sec (1) of sec 100, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant.

OBJECTIVES OF HAVING A MECHANISM OF ADVANCE RULING

- ✓ Provide certainty in tax liability in advance in relation to an activity being undertaken or proposed to be undertaken by the applicant.
- ✓ Helps taxpayer in financial planning & making new investments.
- ✓ Attract Foreign Direct Investment (FDI).
- ✓ Reduce Litigation.
- ✓ Pronounce ruling expeditiously in transparent & inexpensive manner.



QUESTIONS FOR WHICH ADVANCE RULING CAN BE SOUGHT [SECTION 97]

a) Classification of any goods or services or both
b) Applicability of a notification issued under the provisions of CGST Act
c) Determination of Time & Value of goods or services or both
d) Admissibility of ITC paid or deemed to have been paid
e) Determination of the liability to pay tax on any goods or services or both
f) Whether applicant is required to be registered
g) Whether any particular thing done by the applicant w.r.t any goods or services or both amounts to or results in supply of goods or services or both

MATTERS WHICH CANNOT BE QUESTIONED BEFORE AAR

- Question already pending in any proceedings in the case of applicant under any provisions of the Act.
- Question already decided in any proceedings in the case of applicant under any provisions of the Act.

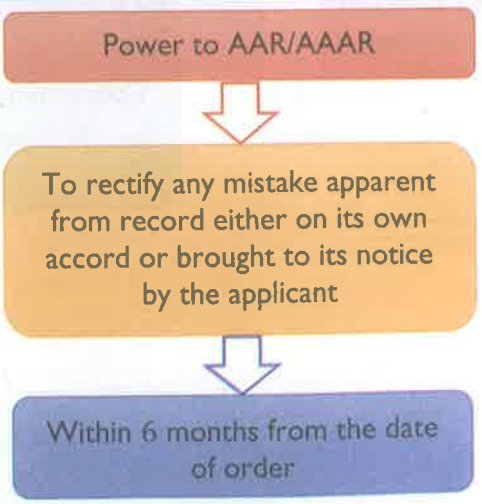
AUTHORITY FOR ADVANCE RULING (AAR) AND APPELLATE AUTHORITY FOR ADVANCE RULING (AAAR) [SECTION 96 & 99]

- The Government shall appoint officers not below the rank of Joint Commissioner as member of the Authority for Advance Ruling.
- Ruling given by AAR & AAAR will be applicable only within the jurisdiction of the concerned state or union territory. [That is why questions on determination of place of supply cannot be raised with the AAR or AAAR].

APPEALS AGAINST ORDERS OF AAR TO APPELLATE AUTHORITY [SEC 100 & 101]

- If the applicant is aggrieved with finding of AAR, he can file appeal with AAAR within 30 days from receipt of order of Advance Ruling Authority. (Extend by addl. 30 days on sufficient cause for delay)
- An appeal to be filed by the applicant along with fee of ₹ 10,000/- each under CGST & SGST Act.
- The appellate authority may, after giving the parties to the appeal or reference an opportunity of being heard, pass such order as it thinks fit, confirming or modifying the ruling appealed against or referred to.
- The order referred to in sub sec (1) shall be passed within a period of 90 days from the date of filing of the appeal under section 100 or a reference under sub-sec (5) of section 98.
- If the members of the AAAR differ on any point referred to in appeal, it shall be deemed that no advance ruling can be issued in respect of the question under the appeal.
- A copy of the advance ruling pronounced by the Appellate Authority duly signed by the members and certified in prescribed manner, and communicated to the applicant, the concerned officer, the jurisdictional officers and to the Authority.

RECTIFICATION OF MISTAKES [SECTION 102]





APPLICABILITY OF ADVANCE RULING [SECTION 103]

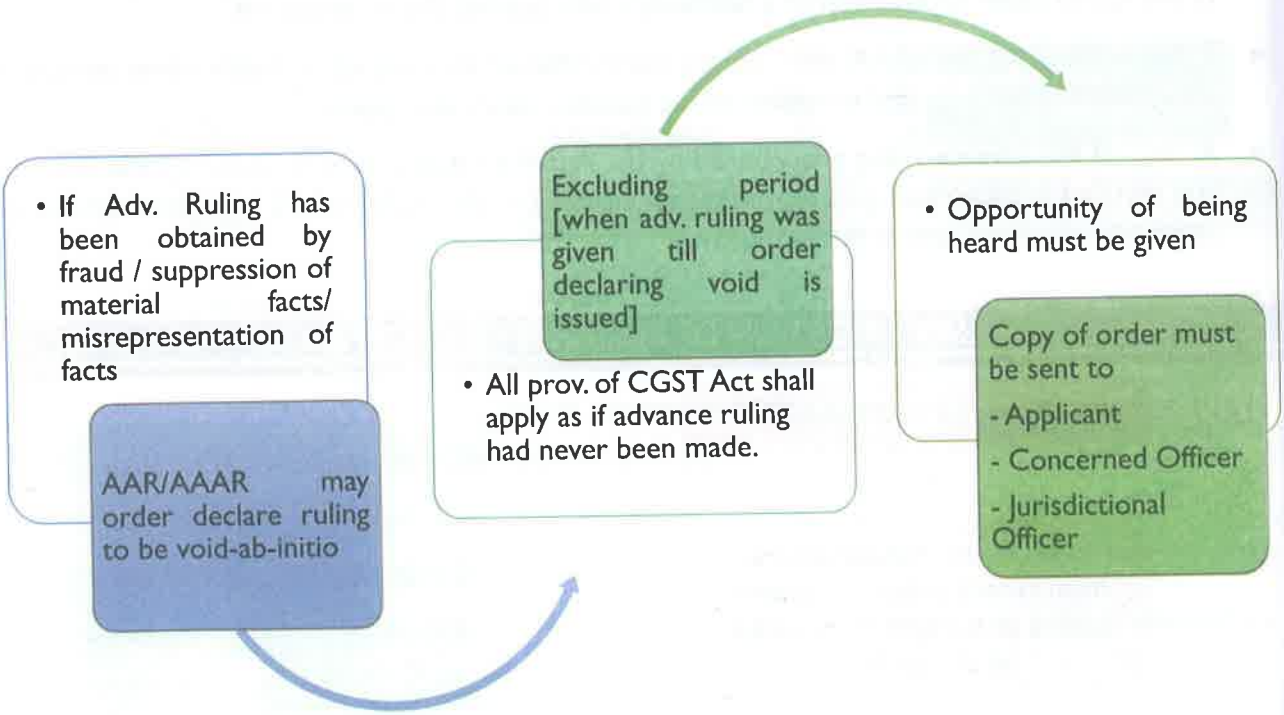
Applicability: Advance Ruling pronounced by AAR or AAAR shall be binding only on -

- Applicant
- Concerned Officer
- Jurisdictional Officer

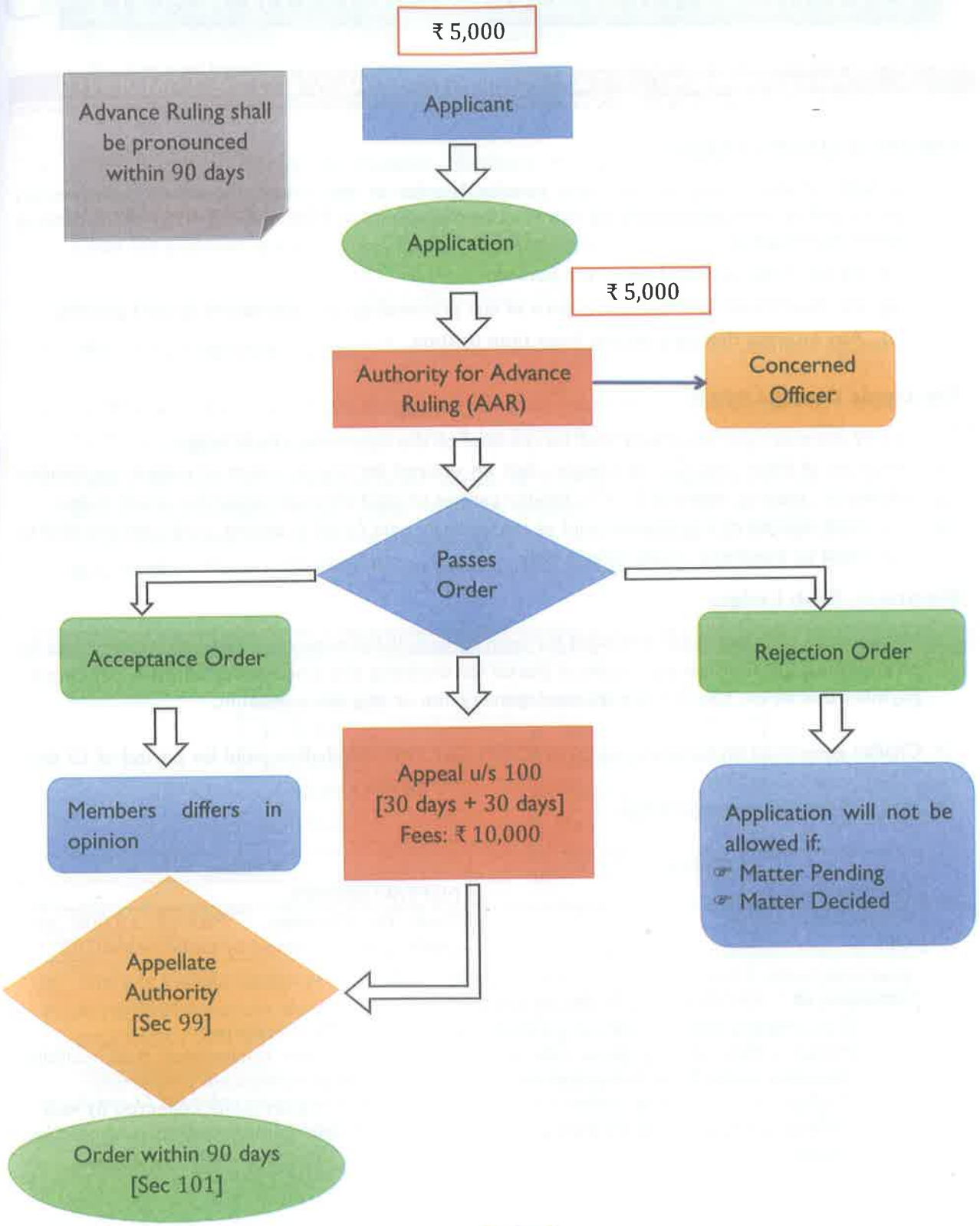
Not applicable for similarly placed other taxable persons in the State & only limited to the person who has applied for an advance ruling.

Time Period: Advance Ruling shall be binding till the period when the law, facts or circumstances supporting the original advance ruling have not changed.

ADVANCE RULING TO BE VOID IN CERTAIN CASES [SECTION 104]



PROCEDURE FOR OBTAINING ADVANCE RULING [SECTION 98]



PAYMENT OF TAX, INT & OTHER AMT

SECTION-49: PAYMENT OF TAX, INTEREST, PENALTY & OTHER AMOUNTS

Electronic Liability Ledger

- A 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 maintained in **FORM GST PMT-01** & debited to the said register:
  a) As per returns furnished by the person;
  b) As determined by PO in pursuance of any proceedings or ascertained by said person;
  c) Any interest that may accrue from time to time.

Electronic Credit Ledger

- Every claim of input tax credit shall be credited to the electronic credit ledger.
- Amount of Electronic Credit Ledger shall be utilised for the payment of output tax liability. However, penalty, interest & RCM liability cannot be paid through electronic credit ledger.
- If refund claimed of any amount paid as tax wrongly paid / paid in excess, such amount shall be refunded to electronic credit ledger only.

Electronic Cash Ledger

- Maintained in **FORM GST PMT-05** for each person, liable to pay tax, interest, penalty, late fee or any other amount, on the common portal for crediting the amount deposited & debiting the payment therefrom towards tax, interest, penalty, fee or any other amount.

- Challan generated on common portal in FORM GST PMT-06 shall be valid for period of 15 days.

- Mode of deposit in e-cash ledger:

Online	Offline
Internet Banking	NEFT/RTGS/IMPS
Credit/Debit Cards UPI	Over the Counter – Max. ₹ 10,000 per challan per tax period by cash/cheque/DD

Restriction of ₹ 10,000 not applicable on deposits made by:
- ✓ Government Departments or persons notified by the Commissioner;
- ✓ Proper officer or any other officer authorised to recover outstanding dues including recovery made through attachment or sale of movable or immovable properties;
- ✓ Proper officer or any other officer authorised for the amounts collected by way of cash/cheque/demand draft during any investigation or enforcement activity or any ad hoc deposit.

- Following are to be paid by Electronic Cash Ledger only:
  1) TDS u/s 51
  2) TCS u/s 52
  3) Amount payable under reverse charge basis
  4) Amount payable u/s 10 (Composition)
  5) Amount payable towards interest, penalty, fee, or any other amount

- CPIN (Common Portal Identification Number): It is generated on successful generation of challan. This is 14 digits unique number remains valid for 15 days.
- Once the payment is successful, CIN (Challan Identification Number) is generated by Bank.

  CIN (18 digits) = CPIN (14 digits) + Bank Code (4 digits)

- BRN (Bank Reference Number): Transaction number given by bank for payment against a challan.
- E-FPB (Electronic Focal Point Branch): Each bank nominates 1 branch on PAN India basis as E-FPB to collect tax on behalf of all govt. & for NEFT/RTGS/IMPS transactions, RBI acts as E-FPB.
- Where the bank fails to communicate details of Challan Identification Number to the common portal, the Electronic Cash Ledger may be updated on the basis of e-Scroll of the RBI in cases where the details of the said e- Scroll are in conformity with the details in challan generated in Form GST PMT-06 on the common portal.

MAJOR & MINOR HEADS OF PAYMENT

Major Heads	Minor Heads
➢ IGST	➢ Tax
➢ CGST	➢ Interest
➢ SGST/UTGST	➢ Penalty
➢ CESS	➢ Fee
	➢ Others

A registered person can transfer amounts internally from one head to another (minor/major) by filing **GST PMT-09.**

- There is a single challan prescribed for all taxes, fees, penalty, interest & other payments.
- A registered person may transfer any amount available in e-cash ledger to e-cash ledger for CGST/IGST of a distinct person by filing GST PMT-09 but no such transfer shall be allowed if said registered person has any unpaid liability in his e-liability ledger.
- Amount transferred from one head to another head would be considered as amount refunded & amount brought by transfer to one head from another shall be considered as amount deposited.

PAYMENTS TO BE MADE IN GST REGIME

For Intra-state supply	CGST & SGST are to be paid
For Inter-state supply	IGST to be paid, having components of both CGST & SGST
Wherever applicable	Interest, penalty, fees & any other amount also to be paid

SECTION 50: INTEREST ON DELAYED PAYMENT OF TAX

- **Case I: Interest because of delay in payment of tax (either in full or any part thereof):**

Interest Rate: 18% p.a. from the date following the due date of payment to the actual date of payment of tax.

- Paid after due date of payment but before commencement of any proceedings u/s 73 or 74. → Interest is paid on Net GST Liability *
- Paid after due date of payment but after commencement of any proceedings u/s 73 or 74. → Interest is paid on Gross GST Liability

* Any **amount credited in the Electronic Cash Ledger** on or before the due date of filing the said return, but is **debited from the said ledger** for payment of tax while filing the said return after the due date, **the said amount shall not be taken into consideration while calculating such interest** if the said amount is lying in the said ledger from the due date till the date of its debit at the time of filing return.

- **Case II: Interest on utilisation of wrongly availed ITC:**

Interest Rate: 18% p.a. from the following the date of utilisation of such wrongly availed ITC till the date of reversal of such credit or payment of tax.

[No interest on wrongly availed ITC but not utilised]

Utilised amount is calculated as: ITC wrongly availed – ITC balance in Elec Credit Ledger

Date of utilisation of ITC would be as below:

- **If Tax is paid through return (3B):** Due date to file 3B or actual filing date whichever is earlier
- **If Tax is paid through other means (DRC 03):** the date of debit in the electronic credit ledger whenthe balance in the electronic credit ledger.

For e.g., If return of July is filed on 17th Aug, then Interest will be levied from 18th Aug (not from 21st Aug).

Let us understand with the help of an example below:

- Mr. Keyur wrongly availed ITC in July (for the month of June) = ₹ 4,00,000

  Actual repayment date = 20th October

  Other Information:

  - Balance in Electronic Credit Ledger in July before availing ITC = ₹ 10,00,000
  - Wrongly availed ITC = ₹ 4,00,000
  - Total Balance = ₹ 14,00,000

	Case I	Case II	Case III
Liability in the month of Aug. (return filed on 16th Aug.)	8,00,000	11,00,000	15,00,000
Liability in the month of Sept. (return filed on 17th Sept.)	5,00,000	4,00,000	3,00,000
Interest	**₹ 4,882** [0 + 3,00,000 x 33/365 x 18%]	**₹ 8,087.67** [1,00,000 x 65/365 x 18% + 3,00,000 x 33/365 x 18%]	**₹ 12,822** [4,00,000 x 65/365 x 18%]

Interest Days Calculation:

Case I: 3 lacs of wrongly availed ITC utilised on 17th Sept.; Interest will be calculated from 18th Sept. to 20th Oct. (33 days)

Case II: 1 lac utilised on 16th Aug.; hence interest will be from 17th Aug. to 20th Oct. (65 days) & 3 lacs utilised on 17th Sept.; hence interest will be from 18th Sept. to 20th Oct. (33 days)

Case III: 4 lacs utilised on 16th Aug.; hence interest will be from 17th Aug. to 20th Oct. (65 days)

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: Clarification regarding charging of interest u/s 50(3) of the CGST Act in the cases where IGST credit has been wrongly availed by a registered person. Clarification is being sought as to whether such wrongly availed IGST credit would be considered to have been utilized for the purpose of charging of interest u/s 50(3) of CGST Act, read with rule 88B of CGST Rules, in cases where though the available balance of IGST credit in the electronic credit ledger of the said registered person falls below the amount of such wrongly availed IGST credit, the total balance of ITC in the electronic credit ledger of the registered person under the heads of IGST, CGST and SGST taken together remains more than such wrongly availed IGST credit, at all times, till the time of reversal of the said wrongly availed IGST credit.

Case I: In the cases of wrong availment of IGST credit by a registered person and reversal thereof, for the calculation of interest under rule 88B of CGST Rules, whether the balance of ITC available in electronic credit ledger under the head of IGST only needs to be considered or total ITC available in electronic credit ledger, under the heads of IGST, CGST and SGST taken together, has to be considered.

Clarification: Since the amount of ITC available in electronic credit ledger, under any of the heads of IGST, CGST or SGST, can be utilized for payment of liability of IGST, it is the **total ITC available in electronic credit ledger, under the heads of IGST, CGST and SGST taken together, that has to be considered** for calculation of interest under rule 88B of CGST Rules and for determining as to whether the balance in the electronic credit ledger has fallen below the amount of wrongly availed ITC of IGST, and to what extent the balance in electronic credit ledger has fallen below the said amount of wrongly availed credit.

Thus, in the cases where IGST credit has been wrongly availed & subsequently reversed on a certain date, there will not be any interest liability u/s 50(3) of CGST Act if, during the time period starting from such availment and up to such reversal, the balance of ITC in the electronic credit ledger, under the heads of IGST, CGST and SGST taken together, has never fallen below the amount of such wrongly availed ITC, even if available balance of IGST credit in electronic credit ledger individually falls below the amount of such wrongly availed IGST credit. However, when the balance of ITC, under the heads of IGST, CGST and SGST of electronic credit ledger taken together, falls below such wrongly availed amount of IGST credit, then it will amount to the utilization of such wrongly availed IGST credit and the extent of utilization will be the extent to which the total balance in electronic credit ledger under heads of IGST, CGST and SGST taken together falls below such amount of wrongly availed IGST credit, and will attract interest as per section 50(3).

Case II: Whether the credit of compensation cess available in electronic credit ledger shall be taken into account while considering the balance of electronic credit ledger for the purpose of calculation of interest under rule 88B(3) of CGST Rules in respect of wrongly availed and utilized IGST, CGST or SGST credit.

Clarification: As per proviso to section 11 of GST (Compensation to States) Act, 2017, ITC in respect of compensation cess on supply of goods and services leviable u/s 8 of the said Act **can be utilised only towards payment of compensation cess leviable on supply of goods and services.** Thus, **credit of compensation cess cannot be utilized for payment of any tax** under CGST or SGST or IGST heads and/ or reversals of credit under the said heads.

Accordingly, credit of compensation cess available in electronic credit ledger **cannot be taken into account while considering the balance of electronic credit ledger** for the purpose of calculation of interest under rule 88B(3) of CGST Rules in respect of wrongly availed and utilized IGST, CGST or SGST credit.

TDS – TCS UNDER GST

TAX DEDUCTION AT SOURCE [SECTION 51 OF CGST ACT]

Notwithstanding anything to the contrary contained in this Act, the Government may mandate, -

- A department or establishment of the Central Govt. or State Govt. or
- Local authority; or
- Governmental agencies; or
- Such persons or category of **persons as may be notified** by the Govt. on the recommendations of the Council

TDS - 1% +1% [CGST +SGST] on net value of taxable supplies of taxable goods and/or services, where the total value of such supply, under a contract, exceeds ₹ 2,50,000 (**excluding** the GST tax & cess).

NOTIFIED PERSONS under clause (d) of section 51(1)

(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% or more participation by way of equity or control, to carry out any function;

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

(c) Public sector undertakings:

(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, from other registered person

TAX IS NOT LIABLE TO BE DEDUCTED AT SOURCE IN THE FOLLOWING CASES

- When goods and/or services are supplied from a public sector undertaking (PSU) to another PSU, whether or not a distinct person.
- When supply of goods and/or services takes place between one person to another person specified under clauses (a), (b), (c) and (d) of section 51(1) of the CGST Act, ***except the person referred to in clause (d). (i.e. recipient of metal scrap)***

APPLICABILITY OF TDS

Situation	Nature of Supply	TDS Applicable
a) Location of Supplier, place of supply and recipient are in the same state.	Intra-State supply	Yes (CGST+ SGST)
b) Supplier as well as the place of supply are in different states.	Inter-State supply	Yes (IGST)
c) Supplier as well as the place of supply are in State A (same state) and the recipient is located in State B (diff state).	Intra-State supply	No

- The amount deducted as tax under this section shall be paid to the Government by the deductor within 10 days after the end of the month in which such deduction is made.
- Failure to pay TDS shall attract Interest @ 18% p.a.
- In case of default, recovery proceedings shall be initiated.
- No TDS is applicable on exempt / non-taxable supply.
- No TDS is applicable on payment made to an unregistered supplier.
- No TDS when tax is to be paid on reverse charge by the recipient i.e., the deductee.

COLLECTION OF TAX AT SOURCE [SECTION 52 OF CGST ACT]

Applicable only to ECO (operator) @ 0.5% of Net value of taxable supplies

Notwithstanding anything to the contrary contained in this Act,

- **every electronic commerce operator** not being an agent, shall collect an amount calculated at such rate not exceeding **0.5% (0.5% IGST or 0.25% CGST & 0.25% SGST, as the case may be),** as may be notified by the Government on the recommendations of the Council.

"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 registered persons through the operator reduced by the aggregate value of taxable supplies returned to the suppliers during the said month.

- The amount collected shall be paid to the Government by the operator within 10 days after the end of the month in which such collection is made.

- ECO shall furnish TCS return within 10 days of the next month (GSTR 8)
- Every operator shall furnish a statement, electronically, containing the details of outward supplies of goods or services or both effected through it, including the supplies of goods or services or both returned through it, and the amount collected during a month, in such form and manner as may be prescribed, within 10 days after the end of such month.

Provided that the Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing the statement for such class of registered persons as may be specified therein:

Provided further that any extension of time limit notified by the **Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.** (Provisions inserted by Finance Act 2019, w.e.f. 1/1/2020)

ECO in case of any omission in return can rectify, subject to payment of interest, return before earlier of 30th November following the end of FY or date of furnishing annual return.

Any authority **not below the rank of Deputy Commissioner** may serve a notice, either before or during the course of any proceedings under this Act, requiring the operator to furnish such details relating to —

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 godown 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.

- ECO shall furnish information within 15 working days of Notice.
- In case a person fails to furnish an information penalty of max. ₹ 25,000 will be leviable.

- The operator shall not be allowed to furnish a statement after the expiry of a period of 3 years from the due date of furnishing the said statement:

  Provided that the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, allow an operator or a class of operators to furnish a statement, even after the expiry of the said period of 3 years from the due date of furnishing the said statement.

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

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

Note - The e-commerce operator who is required to collect tax at source as well as supplier supplying goods through an operator need to compulsorily register under GST.

SOME IMPORTANT FAQs ON TCS (CLARIFICATION BY GST COUNCIL)

Q.1. Whether a supplier of goods or services supplying through e-commerce operator would be entitled to threshold exemption?

Ans 1: Every person supplying goods through an e-commerce operator who is required to collect TCS u/s 52 shall be mandatorily required to register irrespective of the value of supply made by him. However, a person supplying services, other than supplier of services under section 9(5) of the CGST Act, 2017, through an e-commerce platform are exempted from obtaining compulsory registration provided their aggregate turnover does not exceed ₹ 20 lakhs (or ₹ 10 lakhs in case of specified special category States) in a financial year.

Q.2. Whether e-Commerce operator is required to obtain registration in every State/UT in which suppliers listed on their e-commerce platform are located to undertake the necessary compliance as mandated under the law?

Ans 2: As per the extant law, **registration for TCS would be required in each State / UT as the obligation for collecting TCS would be there for every Intra State or Inter State supply**. In order to facilitate the obtaining of registration in each State / UT, the e-commerce operator may declare the Head Office as its place of business for obtaining registration in that State/ UT where it does not have physical presence. It may be noted that each State/UT has indicated one administrative jurisdiction where all e-commerce operators having business (but not having physical presence) in that State/UT shall register. The proper officer for the purpose of registration of ECOs has also been notified by each State/UT.

Q.3. Whether TCS to be collected on exempt supplies?

Ans 3: No, TCS is not required to be collected on exempt supplies.

Q.4. Whether TCS is to be collected in respect of supplies made by the composition taxpayer?

Ans 4: As per section 10(2)(d) of the CGST Act, 2017, a composition taxpayer cannot make supplies through e-commerce operators. Thus, question of collecting TCS in respect of supplies made by the composition taxpayer does not arise.

Q.5. Whether TCS to be collected on supplies on which the recipient is required to pay tax on reverse charge basis?

Ans 5: No, TCS is not required to be collected on supplies on which the recipient is required to pay tax on reverse charge basis.

Special procedure to be followed by the ECO in respect of supplies of goods through them by composition taxpayers [NN. 36/2023-CT, w.e.f. 01.10.2023]

(i) the ECO shall not allow any inter-State supply of goods through it by the said person;

(ii) the ECO shall collect TCS u/s 52(1) in respect of supply of goods made through it by the said person and pay to the Government as per provisions of section 52(3); and

(iii) the ECO shall furnish the details of supplies of goods made through it by the said person in the statement in FORM GSTR-8 electronically on the common portal.

Special procedure to be followed by the ECO in respect of supplies of goods through them by unregistered persons [NN. 37/2023-CT, w.e.f. 01.10.2023]

(i) the ECO shall allow the supply of goods through it by the said person only if enrolment number has been allotted on the common portal to the said person;

(ii) the ECO shall not allow any inter-State supply of goods through it by the said person;

(iii) the ECO shall not collect TCS u/s 52(1) in respect of supply of goods made through it by the said person; and

(iv) the ECO shall furnish the details of supplies of goods made through it by the said person in the statement in FORM GSTR-8 electronically on the common portal.

Where multiple 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.

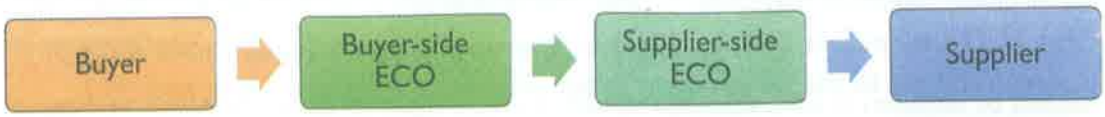
Clarification on TCS liability in case of multiple ECOs in one transaction, in the context of Open Network for Digital Commerce (ONDC) [Circular No. 194/06/2023 – GST, 17.07.2023]

1. In the current platform-centric model of e-commerce, the buyer interface and seller interface are operated by the same ECO. This ECO collects the consideration from the buyer, deducts the TCS u/s 52 of the CGST Act, credits the deducted TCS amount to the GST cash ledger of the seller and passes on the balance of the consideration to the seller after deducting their service charges.

2. In the case of the ONDC Network or similar other arrangements, there can be multiple ECOs in a single transaction - one providing an interface to the buyer and the other providing an interface to the seller. In this setup, buyer-side ECO could collect consideration, deduct their commission and pass on the consideration to the seller-side ECO.

   Issue: Which ECO should deduct TCS and make other compliances u/s 52 of CGST Act in such situations, as in such models having multiple ECOs in a single transaction, both the Buyer-side ECO and the Seller-side ECO qualify as ECOs as per Section 2(45) of the CGST Act.

Case I: In a situation where multiple ECOs are involved in a single transaction of supply of goods or services or both through ECO platform and where the supplier-side ECO **himself is not the supplier** in the said supply, who is liable for compliances u/s 52 including collection of TCS?

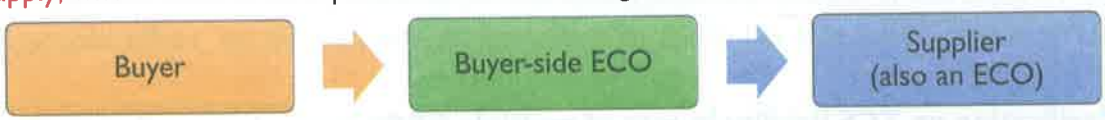


Clarification: In such a situation where multiple ECOs are involved in a single transaction of supply of goods or services or both through ECO platform and where the supplier-side ECO himself is not the supplier of the said goods or services, **the compliances** u/s 52 of CGST Act, including collection of TCS, is **to be done by the supplier-side ECO who finally releases the payment** to the supplier for a particular supply made by the said supplier through him.

E.g.: Buyer-side ECO collects payment from the buyer, deducts its fees/commissions and remits the balance to Seller-side ECO. Here, the Seller-side ECO will release the payment to the supplier after deduction of his fees/commissions and therefore will also be required to collect TCS, as applicable and pay the same to the Government & also make other compliances u/s 52 of CGST Act.

In this case, the Buyer-side ECO will neither be required to collect TCS nor will be required to make other compliances in accordance with section 52 of CGST Act with respect to this particular supply.

Case II: 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 u/s 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.

E.g.: Buyer-side ECO collects payment from the buyer, deducts its fees and remits the balance to the supplier (who is itself an ECO as per the definition in Sec 2(45) of the CGST Act). In this scenario, the Buyer-side ECO will also be required to collect TCS, as applicable, pay the same to the Government & also make other compliances u/s 52 of CGST Act.

Details of TCS furnished by ECO to be made available electronically to only registered suppliers [Rule 67(2) amended]:

(1) Every ECO required to collect tax at source u/s 52 shall furnish a statement in GSTR-8 electronically on the common portal, either directly or from a Facilitation Centre notified by the Commissioner, containing details of supplies effected through such operator and the amount of tax collected as required u/s 52(1).

(2) The details of tax collected at source section 52(1) furnished by the ECO under sub-rule (1) shall be made available electronically to each of the registered suppliers on the common portal after filing of FORM GSTR-8 for claiming the amount of tax collected in his electronic cash ledger after validation.

Rule 78: Matching of details furnished by the e-commerce operator with the details furnished by the supplier

The following details relating to the supplies made through an e-commerce operator, as declared in FORM GSTR-8, shall be matched with the corresponding details declared by the supplier in FORM GSTR-1, **as amended in FORM GSTR-1A, if any,**

(a) State of place of supply; and

(b) net taxable value.

Provided that where the time limit for furnishing FORM GSTR-1 under section 37 has been extended, the date of matching of the above-mentioned details shall be extended accordingly.

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

LIABILITY TO PAY IN CERTAIN CASES

SECTION 85: LIABILITY TO PAY IN CASES OF TRANSFER OF BUSINESS



Sale
Gift
Lease
License
Hire

Transfer his business (In any manner)



Transferor (Registered)

Up to the date of Transfer

Transferor & Transferee Jointly & Severally liable to pay any tax, interest or penalty due from the taxable person up to the time of transfer

Transferee

After the date of transfer

Transferee liable to pay tax on supply of goods/services effected by him from the date of such transfer

- Transfer of Business includes transfer or change in business due to death of sole proprietor.
- If the transferee is registered person, he shall apply for amendment of his certificate of registration within prescribed time.
- The transferee shall be liable to pay tax, interest or any penalty due from the transferor in cases of transfer of business due to death of sole proprietor.

SECTION 86: LIABILITY OF AGENT & PRINCIPAL



Agent supplies or receives any taxable goods on behalf of his principal



Principal & Agent Jointly & Severally liable to pay tax payable on such goods.

SECTION 87: LIABILITY TO PAY IN CASE OF AN AMALGAMATION / MERGER OF COMPANIES

2 or more companies are amalgamated or merged in pursuance of order of court or of Tribunal or otherwise; and

↓

The order is to take effect from a date earlier to the date of the order; and

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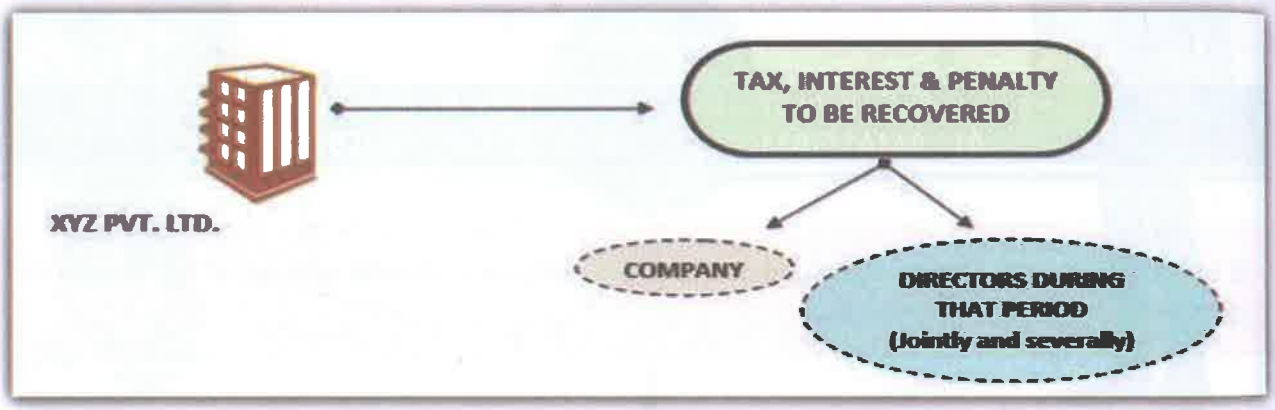
Any 2 or more of such companies have supplied/received any goods/services or both to or from each other during the period commencing on the date from which the order takes effect till the date of order, then **such transactions of supply & receipt shall be included in the turnover of supply or receipt of the respective companies & they shall be liable to pay tax accordingly.**

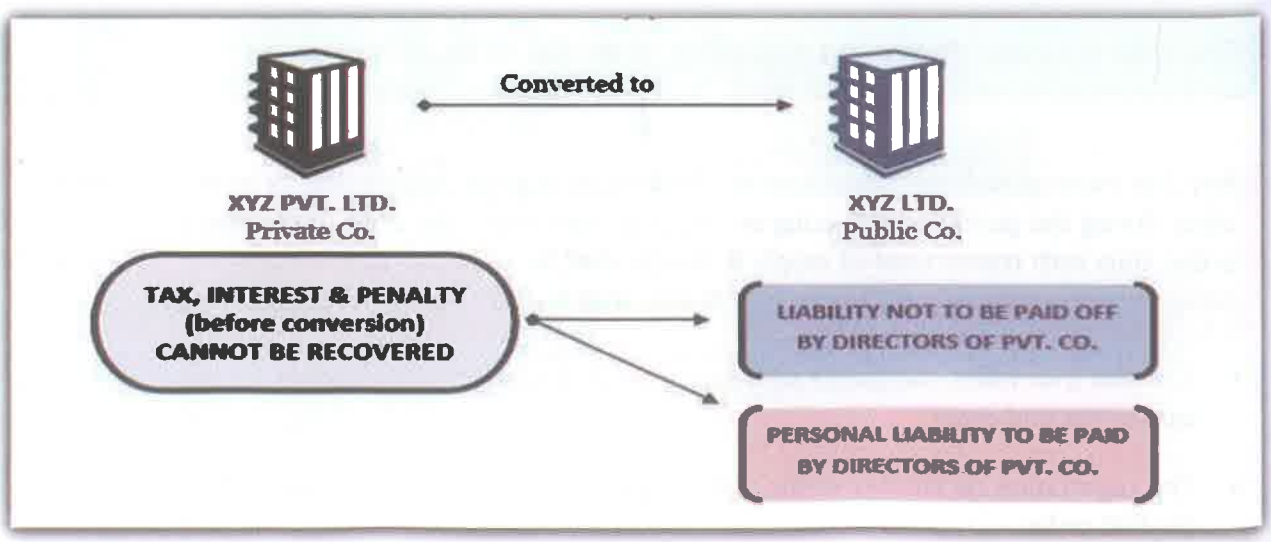
- The said 2 or more companies shall be **treated as distinct companies** for the period up to the date of the said order.
- The registration certificates of the said companies shall be **cancelled** with effect from the date of the said order.

SECTION 88: LIABILITY IN CASE OF COMPANY IN LIQUIDATION

- Company is being wound up under the order of court or tribunal or otherwise.
- Receiver (liquidator) shall **within 30 days after his appointment** give intimation of his appointment to the Commissioner.
- Commissioner shall,
  - ➢ after making such inquiry or calling for such information as he may deem fit,
  - ➢ notify the liquidator within 3 months of receipt of intimation of liquidator, the amount which in the opinion of the Commissioner would be sufficient to provide for any tax, interest or penalty payable or likely to be payable by the company.
- If such tax or penalty cannot be recovered from the company, every director during the period is jointly & severally liable to pay it unless he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to affairs of the company.

SECTION 89: LIABILITY OF DIRECTORS OF PRIVATE COMPANY

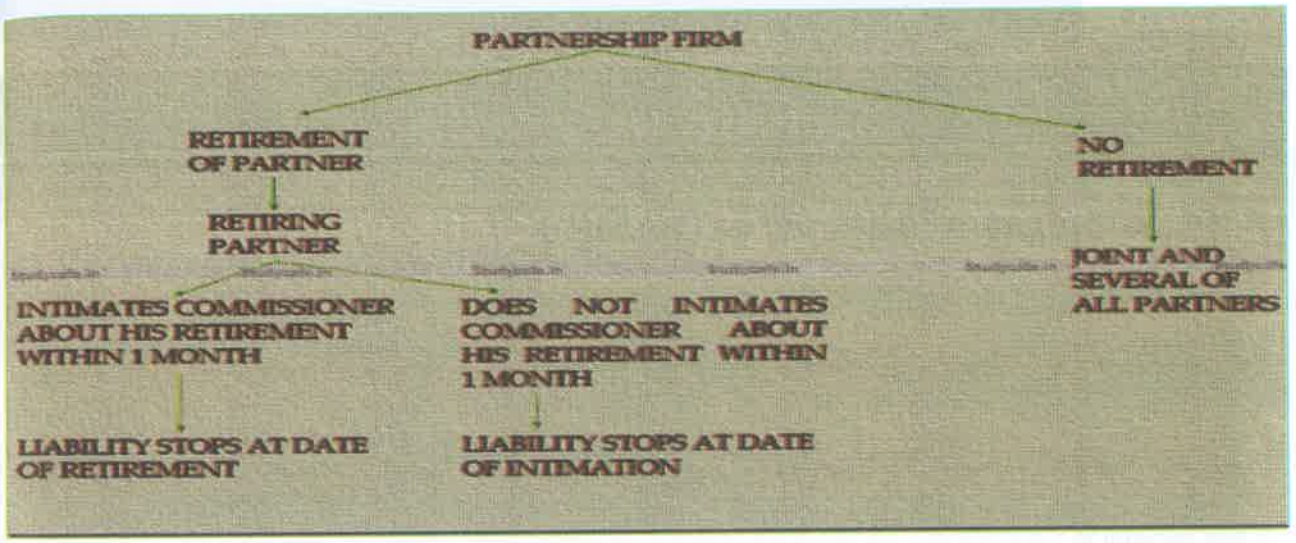




- If amount cannot be recovered from company, then in case of Pvt. Co. every person who was the director during the period for which amount is due shall be jointly & severally liable for payment except where he proves that such non-recovery cannot be attributed to any gross negligence, misfeasance or breach of duty on his part in relation to affairs of the company.

- Where a Pvt. Co. is converted into Public Co. and amt. payable [tax, interest or penalty] cannot be recovered before such conversion, then such amount cannot be recovered from director of such Pvt. Co.: however, nothing shall apply to any personal penalty imposed on such director.

SECTION 90: LIABILITY OF PARTNERS OF FIRM TO PAY TAX



SECTION 91: LIABILITY OF GUARDIANS, TRUSTEES ETC.

Tax, Interest & Penalty shall be levied in the like manner and to same extent as it would be determined & recovered if he were a major or capacitated person & himself conducting the business	Business carried on by any guardian, trustee or agent of a minor or incapacitated person
	on behalf of and for the benefit of such minor or incapacitated person
	Tax, interest, penalty shall be levied & recoverable from such guardian, trustee or agent.

SECTION 92: LIABILITY OF COURT OF WARDS ETC.

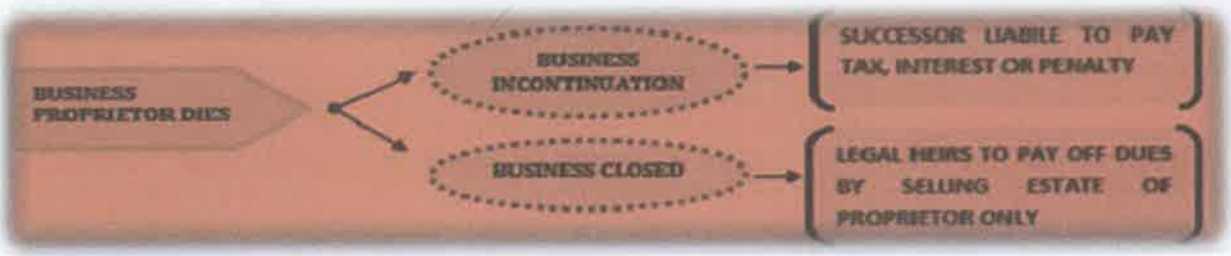
Where estate of a taxable person owing a business in respect of which any amount is payable

is under the contol of the Court of Wards, Official Trustee or any receiver or manager etc.

amount shall be recovered from such Court of Wards, Official Trustee, receiver or manager etc.

SECTION 93: SPECIAL PROVISIONS REGARDING LIABILITY TO PAY TAX, INTEREST OR PENALTY IN CERTAIN CASES

A. On death of person liable to pay tax [Sec 93(1)]



a. If the Business is continued = Legal Representative liable for payment.

b. If the Business is discontinued = Legal Representative liable for payment out of the estate of the deceased person.

B. On partition of HUF or AOP [Sec 93(2)]

a. Each member or group of members shall, jointly & severally liable.

C. Dissolution of Firm [Sec 93(3)]



D. Termination of Guardianship or Trust [Sec 93(4)]

Where a taxable person liable to pay tax, interest or penalty –

a. is the guardian of a ward on whose behalf the business is carried on by the guardian; or

b. is a trustee who carries on the business under a trust for a beneficiary,

- then, if the guardianship or trust is terminated,
- the ward or the beneficiary shall be liable to pay tax, interest or penalty due from the taxable person
- upto the time of the termination of the guardianship or trust,
- whether such tax, interest or penalty has been determined before the termination of guardianship or trust but has remained unpaid or is determined thereafter,

SECTION 94: LIABILITY IN OTHER CASES

1. Discontinuation of Firm/HUF/AOP [Sec 94(1)]

Where the taxable person is a Firm / AOP / HUF and such firm, association or family has **discontinued business** –

- the tax, interest or penalty payable by such firm, association or family up to the date of such discontinuance may be determined as if no such discontinuance had taken place; **and**
- every person who, at the time of such discontinuance, was a partner of such firm, or a member of such association or family, shall jointly & severally, be liable for the payment of interest and tax determined and penalty imposed and payable by such firm, association or family, whether such tax and interest has been determined or penalty imposed prior to or after such discontinuance and the provisions of this Act shall apply as if every such person or partners or members were himself a taxable person.

2. Change in constitution of firm or AOP [Sec 94(2)]

Where a change has occurred in the constitution of a Firm or an AOP, the partners of the firm or members of association, as it existed before and as it existed after the reconstitution, shall be jointly & severally, be liable to pay tax, interest or penalty due from such firm or association for any period before its reconstitution.

3. Dissolution of Firm/AOP or partition of HUF [Sec 94(3)]

The provisions of section 94(1) shall, so far as may be, apply where the taxable person, being a firm/AOP is dissolved or where the taxable person, being a HUF, has effected partition with respect to the business carried on by it and accordingly references in that sub-section to discontinuance shall be construed as reference to dissolution or to partition.

REFUNDS UNDER GST

CASES WHEN REFUNDS ARE ALLOWED

- Export/supply to SEZ developer/unit on payment of IGST



Goods and/or services are exported



Goods and/or services are supplied to an SEZ developer/unit

On payment of IGST, sub to such conditions & procedure as may be prescribed, refund of such IGST paid on such goods/services supplied is available

- Refund of unutilized ITC

Refund of Unutilized ITC is available

- Export / Supply to SEZ developer / unit without payment of IGST
- Inverted Duty Structure

- Refund of tax paid on the supply of goods regarded as deemed exports may be claimed.
- Refund of any balance in the electronic cash ledger after payment of tax, interest, penalty, fee or any other amount. [Sec 49(6)].
- Refund on account of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued (tax paid on advance payment).
- Refund of tax wrongly collected and paid to the Govt. (i.e., CGST & SGST paid by treating the supply as intrastate supply which is subsequently held as interstate supply & vice-versa) [Sec 77 of CGST Act & Sec 19 of IGST Act].
- Refund of IGST paid by tourist leaving India on any supply of goods taken out of India by him. [Sec 15 of IGST Act].
- Tax becomes refundable as a consequence of judgment, decree, order or direction of the Appellate Authority, Appellate Tribunal or any Court.

- On finalization of provisional assessment, if any tax becomes refundable to tax payer (on account of assessed tax on final assessment being less than the tax deposited by the taxpayer). [Sec 60].
- Refund of taxes on purchases made by UN bodies or embassies etc. [Sec 54(2)]
- Refund of advance tax deposited by a CTP/NRTP [Sec 54(13)]
- **Refund of additional IGST paid on account of upward revision in price of the goods subsequent to exports, and on which the refund of IGST paid at the time of export of such goods has already been sanctioned [Sec 54(1)].**
- Refund of excess payment of tax.

Refund to Normal Taxable Person [Section 54(1)]

- **Time Limit** within which refund of any tax & interest can be claimed: **2 Years** from the **RELEVANT DATE** [Date on which refund claim can be established]
- **Application Form** for claiming refund: **Form GST RFD-01**
- Manual as well as electronic filing both allowed at present.
- **Refund of Balance in Electronic Cash Ledger**: Registered person may claim refund through the **Return** Furnished for the relevant tax period in Form GSTR-3/Form GSTR-4/Form GSTR-7. Such return shall be deemed to be a refund claim filed u/s 54.

Cases	Relevant Date
Goods exported** out of India	
• By sea / air	Date on which ship / aircraft leaves India
• By land	Date on which such goods pass the frontier
• By post	Date of dispatch of goods by Post Office
Deemed Exports	Date on which the return relating to such deemed exports is furnished
Supply of goods / services to SEZ unit / developer	Due date of return u/s 39 in respect of such supplies
Services exported out of India	Date of Invoice or Date of Payment Whichever is later
Tax becomes refundable as a consequence of judgment, decree, order, or direction of court / tribunal	Date of communication of such judgment, decree, order, or direction
Refund of unutilized ITC on account of inverted duty structure	Due date of return u/s 39 for the period in which such claim for refund arises
Provisional Assessment	Date of adjustment of tax after the final assessment
Person, other than supplier	Date of receipt of goods / services / both by such person
Any other case	Date of payment of tax

** In case of upward revision of the price of the goods subsequent to exports, refund of additional IGST paid on the same can be claimed within 2 years from the relevant date mentioned here.

FILING OF REFUND CLAIMS

- Supplies regarded as **Deemed Exports:** Application shall be filed by-
  1. **Recipient** of deemed export supplies
  2. **Supplier of deemed export** supplies in cases where **recipient does not avail ITC** on such supplies and **furnishes an undertaking** that the supplier may claim the refund.
- Supplies to **SEZ unit / developer:** Application shall be filed by-
  1. **Supplier** after such **goods** have been **admitted in full in SEZ for authorised operations,** as endorsed by SEZ specified officer;
  2. **Supplier** of services **along with evidence regarding receipt of services for authorized operations** as endorsed by SEZ specified officer.
- Supplies by **CTP/NRTP:** Refund to be claimed in the **last return** required to be furnished by CTP/NRTP.

REFUND TO US BODIES, EMBASSIES ETC. [SECTION 55 READ WITH SEC 54(2) OF CGST ACT]

- **Who is entitled to refund u/s 55-**
  - (i) Any specialised agency of the United Nations Organisation; or
  - (ii) Any Multilateral Financial Institution & Organisation notified under the United Nations (Privileges & Immunities) Act, 1947; or
  - (iii) Consulate or Embassy of foreign countries or
  - (iv) Any other person or class of persons, as notified u/s 55, be entitled to claim a refund of taxes paid on the notified inward supplies of goods or services or both received by them.
- **Time Limit:** Once in every Quarter, but before the expiry of **2 years** from the last day of quarter in which supply was received.

Refund in case of Zero Rated Supplies without payment of tax [Rule 89(4)]	$\frac{\text{(Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services)}}{\text{Adjusted Total Turnover}} \times \text{Net ITC}$

Refund in case of Inverted Duty Structure [Rule 89(5)]

$$\frac{\text{Turnover of Inverted Rated Supply [Goods + Services] x Net ITC (Inputs)}}{\text{(Adjusted Total Turnover)}} - \frac{\text{Tax payable on such Inverted Rated Supply of Goods \& Services x Net ITC (Inputs)}}{\text{ITC availed on Inputs \& Input Services}}$$

Net ITC: -

	Inputs	Input Services	Capital Goods
Rule 89(4)	✓	✓	x
Rule 89(5)	✓	x	x

* Net ITC does not include ITC for which refund is claimed under sub-rules [4A] or [4B] or both.

TURNOVER OF ZRS OF GOODS

The value of zero rated supply of goods made during relevant period without payment of tax under bond or LUT

OR

the value which is **1.5 times the value of like goods domestically supplied,** whichever is less.

other than the turnover of supplies in respect of which refund is claimed under sub-rules [4A]/[4B]/both.

TURNOVER OF ZRS OF SERVICES

Payment received during current period	xxx
Add: ZRS of service provided in current period for which advance payment had been received in past	xxx
Less: ZRS of service to be provided in future but advance payment received in current period	(xxx)
Total Turnover of ZRS of services	**xxx**

Note: Turnover of 89(4A)/(4B) is not to be considered while calculating turnover of ZRS of services.

ADJUSTED TOTAL TURNOVER

Sum Total of the value of:

- Turnover in a state or a UT excluding turnover of services; &
- Turnover of ZRS of services as above and non zero-rated supply of services,

excluding:

(i) Value of exempt supplies other than ZRS during the relevant period. &
(ii) Turnover of supplies in respect of which refund is claimed under Rule 89[4A]/[4B]/both, during the relevant period.

Explanation: For the purpose of this sub-rule, value of goods exported out of India shall be taken as: -

(i) the Free on Board (FOB) value declared in the Shipping Bill or Bill of Export form; or
(ii) the value declared in tax invoice or bill of supply, whichever is less.

Note: "The value of goods exported out of India" to be included while calculating "adjusted total turnover" will be same as being determined as per the aforesaid Explanation inserted in said sub-rule.

E.g.: - A supplier is manufacturing & supplying one type of goods in both domestic market & overseas. Net admissible ITC = ₹ 270

Supply	Value per unit	No. of units supplied	Turnover	Turnover as per definition (1.5 times)
Local (Qty 5)	200	5	1,000	1,000
Export (Qty 5)	350	5	1,750	1,500 [1.5 x (5 x 200)]
			2,750	2,500

Refund amount as per Rule 89(4) = ₹ (1,500 x 270) / 2,500 = ₹ 162

SECTION 54(3): REFUND OF UN-UTILISED ITC

Refund of accumulated ITC is also restricted to ITC as per those invoices, the details of which are uploaded by supplier in Form GSTR-1 and are reflected in Form GSTR-2B of the applicant for the said tax period or for any of the previous tax periods and on which the ITC is available to the applicant.

Refund of un-utilised ITC shall not be allowed in 2 Cases:

- Where the goods exported out of India are subjected to export duty;
- If the supplier of goods or services or both avails of drawback in respect of CGST or claims refund of the IGST paid on such supplies.

SECTION 54(4): DOCUMENTARY EVIDENCES

Refund application shall be supported by –

- Documentary evidences as prescribed
- Documentary or other evidences to prove that Doctrine of unjust enrichment does not exist

No evidence required when refund amount is less than ₹ 2,00,000/-. [Refund can be claimed on the basis of declaration]

Refund claimed is on account of	Documentary Evidence* (Statement showing following details)
Refund order	Copy of the order passed or reference number of the pre-deposit
Export of Goods	Shipping Bills or bills of export and export invoices
Export of Services	Invoices & Bank Realization Certificates or Foreign Inward Remittances Certificates (BRC / FIRC)
Supply of services made to a SEZ unit or a SEZ developer	Statement containing the number and date of invoices, the evidence regarding receipt of services for authoriesd operations as endorsed by the specified officer of SEZ [A declaration to the effect that tax has been collected from the SEZ unit or SEZ developer]
Deemed Exports [Similar to SEZ - Sec 54(1)]	(i) Acknowledgement by the Jurisdictional Tax Officer of deemed exporter that the said supplies have been received by the deemed exporter (ii) Undertaking by the recipient of deemed export supplies that no ITC on such supplies has been availed of by him (iii) He shall not claim the refund and the supplier may claim the refund
Addl. IGST paid for upward revision in price of the goods subsequent to exports	A statement containing number & date of export invoices/ shipping bills or its copies, BRC/FIRC, details of refund already sanctioned, number & date of suppiementary invoices, a reconciliation statement.

*The documentary evidences given in this table are given here only for the reference of the students. They are not relevant for the examination purpose.

SECTION 54(5): REFUND ORDER

When PO is satisfied is due & payable to the applicant, he shall pass an order and if there is any outstanding amount, the amount of refund shall be adjusted against the outstanding amount. [PO will issue payment order]

Refund to be granted both cash & credit, based on original mode of payment [Rule 92]

SECTION 54(6): PROVISIONAL REFUND

In the case of any claim for

- Refund on account of zero-rated supply
- PO may refund on a provisional basis [within a period not exceeding 7 days from the date of the acknowledgement], 90% of the total amount so claimed, &
- Thereafter makes an order u/s 54(5) for final settlement of the refund claim after due verification of documents.

Condition for Provisional Refund:

- The applicant has, during any period of 5 years, immediately preceding the tax period to which the claim for refund related, not been prosecuted for any offence under the Act or under an existing law where any amount of tax evaded exceeds ₹ 2.5 crores.

SECTION 54(7): REFUND ORDER TIME LIMIT

PO shall issue refund order within 60 days from the date of receipt of application complete in all respects in Form GST RFD-06.

THEORY OF UNJUST ENRICHMENT

Unjust means "deficient in justice & fairness" & enrichment means "becoming rich". Thus, unjust enrichment refers to a situation in which a person becomes rich unjustifiably, i.e., at the expense of other. No doubt, GST is payable by supplier but the incidence of tax is borne by ultimate consumer. Now, if on any account, a refund is granted to supplier instead of the consumer who borne the burden of tax which is unreasonable & against the principle of equity.

SECTION 54(8): CASE WHERE THEORY OF UNJUST ENRICHMENT DOES NOT APPLY i.e., PAID TO APPLICANT & NOT CREDITED TO CONSUMER WELFARE FUND

a) Refund of tax paid on Export of goods / services / both or on inputs or input services used in Export;
b) Refund of unutilised ITC in case of zero rated supplies or accumulated ITC on account of inverted duty structure;
c) Refund of taxes paid on a supply which is not provided, either wholly or partly, and for which invoice has not been issued, or where a refund voucher has been issued;
d) Refund of tax paid on a txn treated to be an intra-state supply but subsequently held as inter-state;
e) Tax & interest, or any other amount paid by the applicant, if he had not passed on the incidence of such tax & interest to any other person; or
f) Tax / interest borne by applicant as notified by the Govt. on the recommendation of GST council.

SECTION 54(9) TO (14)

- No refund shall be made except in accordance with Section 54(8).
- Refund granted only after filing return, till then refund is withheld &
- Refund granted after payment of all dues, else refund shall be adjusted
- If refund is challenged, Commissioner may withhold it.

Interest on refund - Max 6% p.a.

- Refund to CTP/NRTP shall be allowed only after filing all returns & refund amount shall be claimed only after the last return required to be furnished by him has been so furnished.

Interest on amount refundable consequent to order passed in an appeal or further proceedings.

- Interest is payable on such refund @ 9% p.a.
- Interest is payable from the date immediately after the expiry of 60 days from the date of recipient of application till the date of refund.

No refund shall be allowed for an amount less than ₹ 1,000.

- The limit of ₹ 1,000 shall apply for each tax head separately & not cumulatively.
- Further, the limit would not apply in cases of refund of excess balance in the electronic cash ledger.

CLARIFICATION: DETERMINATION OF REFUNDABLE AMOUNT IN CASE OF REFUND OF UNUTILIZED ITC ON ACCOUNT OF:

1. Exports without payment of tax
2. Supplies made to SEZ units/ Developer without payment of tax or
3. Accumulation of inverted tax structure

In case of refund of unutilized ITC in above 3 cases, the common portal calculates the refundable amount as the least of the following amounts:

a) The maximum refund amount as per the formula in Rule 89(4)/89(5) of the CGST Rules, 2017
b) The balance in the electronic credit ledger of the applicant at the end of the tax period for which the refund claim is being filed after the return in Form GSTR-3B for the said period has been filed; and
c) The balance in the electronic credit ledger of the applicant at the same time of filing the refund application.

After calculating the least of the above 3 amounts, as detailed above, the equivalent amount is to be debited from the electronic credit ledger of the applicant in the following order:

a) Integrated tax, to the extent of balance available;
b) CGST & SGST/UTGST, equally to the extent of balance available and in the event of a shortfall in the balance available in a particular electronic credit ledger (say CGST), the differential amount is to be debited from the other electronic credit ledger (i.e., SGST/UTGST in this case).

SECTION 56: INTEREST ON DELAYED REFUNDS

A. Interest on amount refundable consequent to order passed by Proper Officer

- If any tax ordered to be refunded u/s 54(5) to any applicant
  - is not refunded within 60 days from the date of receipt of application
  - Interest is payable on such refund @ 6% p.a.
  - Interest is payable to the applicant for the period of delay beyond 60 days from the date of receipt of such application till the date of refund of such tax, to be computed in such manner and subject to such conditions & restrictions as may be prescribed.

B. Interest on amount refundable consequent to order passed in an appeal or further proceedings

- When refund arises from an order passed by an adjudicating authority or appellate authority or appellate tribunal or court which has attained finality and the same

- is not refunded within 60 days from date of receipt of application filed consequent to such order
- Interest is payable on such refund @ 9% p.a.
- From: The date immediately after the expiry of 60 days from the date of receipt of application
- Till: The date of refund

C. Order sanctioning interest on delayed refunds [Rule 94]

➢ **Rule 94(1):**

- Where any interest is due and payable to the applicant u/s 56, the proper officer shall make an order along with a payment order in prescribed form.
- Such order shall specify therein:
  - ❖ the amount of refund which is delayed,
  - ❖ the period of delay for which interest is payable and
  - ❖ the amount of interest payable.
- Such interest shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund.

➢ **Rule 94(2):** The following periods shall not be included in the period of delay under sub-rule (1), namely: -

(a) any period of time beyond 15 days of receipt of notice that the applicant takes to furnish a reply or submit additional documents or reply; and

(b) any period of time taken either by the applicant for furnishing the correct details of the bank account to which the refund is to be credited or for validating the details of the bank account so furnished, where the amount of refund sanctioned could not be credited to the bank account furnished by the applicant.

1. INVERTED DUTY STRUCTURE – REFUND [CIRCULAR NO. 173/05/2022-GST]

➢ Further, there may however, be cases where though inputs and output goods are same but the output supplies are made under a concessional notification due to which the rate of tax on output supplies is less than the rate of tax on inputs.

➢ In such cases, as the rate of tax of output supply is less than the rate of tax on inputs at the same point of time due to supply of goods by the supplier under such concessional notification, the credit accumulated on account of the same is admissible for refund under the provisions of clause (ii) of the first proviso to section 54(3) of the CGST Act.

➢ However, no refund shall be allowed in cases where output supply is either Nil rated or fully exempted.

➢ Further, no refund shall be allowed in case of supply of such goods or services which are notified by the Government for their exclusion from refund of accumulated ITC under this clause.

2. Prescribing manner of filing an application for refund by unregistered persons [Rule 89(2) amended]

There are cases where the unregistered buyers, who had entered into an agreement / contract for supply of services had to get the said contract / agreement cancelled subsequently due to non-completion or delay or any other reasons. In such cases, the period for issuance of credit note on account of such cancellation of service u/s 34 may have expired & the supplier may refund the amount to the buyer, after deducting the amount of tax collected by him from the buyer. In terms of section 54(8)(e), in cases where the unregistered person has borne the incidence of tax and not passed on the same to any other person, the said refund shall be paid to him instead of being credited to Consumer Welfare Fund (CWF).

Thus, in order to enable such unregistered person to file application for refund under section 54(1), the unregistered persons to take a temporary registration and apply for refund under the category **'Refund for Unregistered person'** in Form GST RFD-01. Further, **rule 89(2) has been amended to provide for the documents required** to be furnished along with the application of refund by the unregistered persons and the statement to be uploaded along with the said refund application.

Documentary evidences required:

Rule 89(2)(ka):- a statement containing the details of invoices viz. number, date, value, tax paid and details of payment, in respect of which refund is being claimed along with copy of such invoices, proof of making such payment to the supplier,

- the copy of agreement or registered agreement or contract, as applicable, entered with the supplier for supply of service,
- the letter issued by the supplier for cancellation or termination of agreement or contract for supply of service, details of payment received from the supplier against cancellation or termination of such agreement along with proof.

Rule 89(2)(kb):- a certificate issued by the supplier to the effect that he has paid tax in respect of the invoices on which refund is being claimed by the applicant; that he has not adjusted the tax amount against his tax liability by issuing credit note; and also, that he has not claimed and will not claim refund of the amount of tax involved in respect of these invoices,

Moreover, it has been provided that a certificate by a Chartered Accountant or a Cost Accountant to the effect that there is no unjust enrichment in the case of the applicant is not required to be furnished in cases where refund is claimed by an unregistered person who has borne the incidence of tax evenif the amount of refund claimed exceeds ₹ 2 lakh.

- **Relevant date for filing of refund:** date of issuance of letter of cancellation of the contract/ agreement for supply by the supplier
- **Proportionate Refund:** In cases where the amount paid back by the supplier to the unregistered person on cancellation/termination of agreement/contract for supply of services is less than amount paid by such unregistered person to the supplier, only the proportionate amount of tax involved in such amount paid back shall be refunded to the unregistered person.

3. Clarification in respect of admissibility of refund where an exporter applies for refund subsequent to compliance of the provisions of rule 96A(1)

Issue: References have been received citing the instances where exporters have voluntarily made payment of due integrated tax, along with applicable interest, in cases where goods could not be exported or payment for export of services could not be received within time frame as prescribed in clause (a) or (b) rule 96A(1) of CGST Rules. Clarification is being sought as to whether subsequent to export of the said goods or as the case may be, realization of payment in case of export of services, the said exporters are entitled to claim not only refund of unutilized input tax credit on account of export but also refund of the integrated tax and interest so paid in compliance of the provisions of rule 96A(1) of CGST Rules.

Clarification: The above clarifications imply that as long as goods are actually exported or as the case may be, payment is realized in case of export of services, even if it is beyond the time frames as prescribed in rule 96A(1), the benefit of zero-rated supplies cannot be denied to the concerned exporters. Accordingly, it is clarified that in such cases, on actual export of the goods or as the case may be, on realization of payment in case of export of services, the said exporters would be entitled to refund of unutilized input tax credit in terms of section 54(3) of CGST act, if otherwise admissible.

It is also clarified that in such cases subsequent to export of the goods or realization of payment in case of export of services, as the case may be, the said exporters would be entitled to claim refund of the integrated tax so paid earlier on account of goods not being exported, or as the case be, the payment not being realized for export of services, within the time frame prescribed in clause (a) or (b) of rule 96A(1). It is further being clarified that no refund of the interest paid in compliance of rule 96A(1) shall be admissible.

4. Section 16 of IGST Act: Zero Rated Supply – amended

1. "Zero rated supply" 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 Special Economic Zone developer or a Special Economic Zone unit.

2. Subject to the provisions of sub-section (5) of section 17 of the Central Goods and Services Tax Act, credit of input tax may be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply.

3. A registered person making zero rated supply shall be eligible to claim refund of unutilised input tax credit on supply of goods or services or both, without payment of integrated tax, under bond or Letter of Undertaking, in accordance with the provisions of section 54 of the CGST Act or the rules made thereunder, subject to such conditions, safeguards and procedure as may be prescribed.

   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 Foreign Exchange Management Act, 1999 for receipt of foreign exchange remittances, in such manner as may be prescribed.

4. 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.".

Class of persons who may make zero-rated supply or notified class of goods or services which may be exported on payment of IGST and claim refund thereof notified.

Following goods/services/suppliers have been notified:

(i) **all goods or services** (except the goods specified in note below) as the class of goods or services which may be exported on payment of IGST and on which the supplier of such goods/services may claim the refund of tax so paid; and

(ii) **all suppliers** to a Developer or a unit in SEZ undertaking authorised operations as the class of persons who may make supply of goods or services (except the goods specified in note below) to such Developer or a unit in SEZ for authorised operations on payment of IGST and on which the said suppliers may claim the refund of tax so paid.

Refund of GST paid on inward supplies of goods received by Canteen Stores Department [Rule 95B]

Canteen Stores Department (CSD), under the Ministry of Defence, has been notified as a person who shall be entitled to claim **a refund of 50% of the applicable CGST/IGST paid by it** on all inward supplies of goods received by it for the purposes of subsequent supply of such goods to the Unit Run Canteens of the CSD or to the authorized customers of the CSD.

For the purpose of claiming the said refund, Canteen Stores Department:

- shall apply for refund in different prescribed form once in every quarter, electronically on the common portal.
- Such application shall be dealt in a same manner as application for refund filed in Form GST RFD-01 in accordance with the provisions of rule 89.
- The refund of tax paid by the applicant shall be available, if-
  (i) the inward supplies of goods were received from a registered person against a tax invoice and details of such supplies have been furnished by the said registered person in his details of outward supply in Form GSTR-1 AND supplier has furnished his return in Form GSTR-3B for the concerned tax period;
  (ii) name and GSTIN of the applicant is mentioned in the tax invoice; and
  (iii) goods have been received by CSD for the purpose of subsequent supply to the Unit Run Canteens of the CSD or to the authorised customers of the CSD.

RETURNS UNDER GST

SECTION 37: FURNISHING DETAILS OF OUTWARD SUPPLIES

Following persons not required to file GSTR-1

All registered person including casual taxable person

1. Input service distributor (ISD)
2. Non-resident taxable person
3. Person paying tax under composition scheme
4. Person deducting tax at source
5. Person collecting tax at source i.e., e-commerce operator (ECO), not being an agent
6. Supplier of OIDAR services located in non-taxable territory & providing services to a non-taxable online recipient

Person required to file GSTR-1

- **Form for submission of details of outward supplies:** The details of outward supplies are required to be furnished, electronically in **Form GSTR-1** and additional details or the amendments of the details of outward supplies of goods or services or both furnished in **Form GSTR-1A**, as per the requirement of the registered person.
- **Due date of submission of GSTR-1:** GSTR-1 for a particular month is filed **on or before the 10th day of the immediately succeeding tax period.** In other words, GSTR-1 of a month/quarter can be filed any time between 1st and 10th day of the succeeding month/quarter.
- **Extension:** The due date of filing GSTR-1 may be extended by the Commissioner / Commissioner of State GST / Commissioner of UTGST for a class of taxable person by way of a notification.

The time limit for furnishing the details of outward supplies in Form GSTR-1 is extended as follows:

Class of registered person	Time limit for furnishing the details of outward supplies in Form GSTR-1 for each quarter/tax period
Registered person opting for QRMP scheme	13th day of the month succeeding such quarter
Others	11th day of the month succeeding such tax period

How are the details of outward supply furnished in the current period amended? [Proviso to rule 59(1)]

In cases where a taxpayer, after having filed Form GSTR-1, realizes that some amendment (downward or upward) is required to be made in his tax liability in Form GSTR-1, an optional Form GSTR-1A is provided to him.

This allows him to add any particulars of the current tax period missed out in reporting in Form GSTR-1 of current tax period or amend any particulars already declared in Form GSTR-1 of current tax period (including those declared in IFF, for the first and second months of a quarter, if any, for quarterly taxpayers).

A registered person may, after furnishing the details of outward supplies of goods or service or both in Form GSTR-1 for a tax period but before filing of return in Form GSTR-3B for the said tax period, at his own option, amend or furnish additional details of outward supplies of goods or services or both in Form GSTR-1A for the said tax period [Proviso to rule 59(1)].

For e.g., A supplier issued two invoices INV1 and INV2 in the month of January. Then, he furnished the details of the invoice INV1 on 8th Feb in Form GSTR-1. However, he misses one invoice INV2 and furnishes the details of the same in Form GSTR-1A on 15th Feb.

In this case, INV1 will go to Form GSTR-2B of the recipient for the month of January made available on 14th Feb. Further, INV2 will be made available in Form GSTR-2B of the recipient for the month of February made available on 14th March.

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 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.

- 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.

Amendment in furnishing of invoice wise and consolidated details of outward supplies:

- For B2B supplies, details of all invoices need to be uploaded in GSTR-1 / **Form GSTR-1A** irrespective of whether they are intra-State or inter-State supplies.
- For Inter-State B2C supplies, invoice-wise details shall be uploaded if invoice value exceeds **₹ 1,00,000** ~~₹ 2,50,000~~.
- For Inter-State B2C invoices upto **₹ 1,00,000** ~~₹ 2,50,000~~, State-wise summary is sufficient & for all intra-state B2C invoices, only consolidated details need to be given.
- Debit and credit notes, if any, issued during the month for invoices issued previously shall be shown accordingly.

FURNISHING OF RETURNS U/S 39

1. GSTR-3B [Sec 39(1)]

- Monthly return for every registered person, other than ISD or NRTP or composition taxpayer, a person deducting TDS or collecting TCS i.e., an ECO & supplier of OIDAR services located in non-taxable territory providing such services to non-taxable online recipient.
- It contains summary of outward supplies, inward supplies liable to RCM, eligible ITC, payment of tax etc.
- Invoice-wise data of outward supplies is not required.
- Filing of GSTR-3B is mandatory even if there is no business activity in any particular tax period. A Nil GSTR-3B is to be filed.
- A Nil GSTR-3B can be filed through SMS also using OTP facility.

- Due date for filing return: -
  - ➢ Monthly GSTR-3B – on or before 20th of the month succeeding the month for which return is furnished
  - ➢ Quarterly GSTR-3B – on or before 22nd / 24th of the month succeeding the quarter for which return is furnished in case of a taxpayer opting for QRMP scheme.

QRMP SCHEME

QRMP Scheme is an optional return filing scheme, introduced for small taxpayers having aggregate turnover (PAN based) of upto ₹ 5 crores in the preceding FY to furnish their Form GSTR-1 & Form GSTR-3B on quarterly basis while paying their tax on a monthly basis.

- **Eligibility for QRMP Scheme:**
  Registered persons (other than supplier of OIDAR located in non-taxable territory & providing such services to a non-taxable online recipient), having aggregate T/O upto ₹ 5 crores in the preceding FY, and who has opted to furnish quarterly return under QRMP scheme as the class of persons who shall furnish a return for every quarter & pay the tax due every month.

- **Condition to be fulfilled for becoming eligible to opt for QRMP Scheme:**
  Registered persons must have furnished return for the preceding month, as due on date of exercising such option. He shall not be eligible if he has not furnished the last return due on the date of exercising such option. (For e.g.: If a registered person intending to avail of QRMP scheme for 'Jul-Sept' quarter is exercising option on 27th July for said quarter, he must have furnished return for the month of June which was due on 20th July).

- **Manner of exercising option of QRMP Scheme:**
  A registered person can opt in for any quarter from 1st day of 2nd month of preceding quarter till the last day of the 1st month of the quarter. (For e.g.: A registered person intending to avail of QRMP scheme for 'Jul-Sept' quarter can exercise his option from 1st May to 31st July).

- **Option of QRMP scheme to lapse / Opting out of scheme:**
  - ➢ In case where a registered person's aggregate T/O crosses ₹ 5 crores during the quarter in a FY, he shall not be eligible for furnishing of return on quarterly basis from the first month of the succeeding quarter. He shall opt for furnishing of return on monthly basis, from first month of quarter, succeeding the quarter during which his aggregate T/O exceeds ₹ 5 crores.
  - ➢ The facility for opting out for a quarter will be available from 1st day of 2nd month of preceding quarter to the last day of the 1st month of the quarter. (For e.g.: A person wants to opt out from QRMP for 'July-Sept' quarter can apply for opt out from 1st May to 31st July).

Important Points

- Once QRMP is availed, it will continue in every quarter, unless registered person revises the said option.
- Opting of QRMP scheme is GSTIN wise means some GSTINs for a PAN (distinct person) can opt for the QRMP scheme & remaining GSTINs may not opt for the said scheme.

- **IFF for taxpayers opting for QRMP Scheme**

Particulars	1st month of Qtr.	2nd month of Qtr.	Last month of Qtr.
Details of outward supplies	IFF (Optional)	IFF (Optional)	GSTR-1 (Compulsory)
Due date of furnish	1st - 13th of following month	1st - 13th of following month	13th of next month

- Value of supply (outward supplies) in IFF **shall not exceed ₹ 50 Lakhs** in each of first 2 months of the quarter.
- After 13th of the month, the facility for furnishing IFF for previous month would not be available. -
- Details given in IFF not required to be given again in GSTR-1 (However, if IFF is not furnished for any month, then details of that month to be shown in GSTR-1).

- **Cases where a registered person is debarred from furnishing details of outward supplies in GSTR-1/IFF**

A registered person shall not be allowed to furnish the details of outward supplies for a tax period, if the details of outward supplies for any of the previous tax periods has not been furnished by him.

However, the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, allow a registered person or a class of registered persons to furnish the details of outward supplies, even if he has not furnished the details of outward supplies for one or more previous tax periods [Section 37(3)].

In this regard, rule 59(6) stipulates that:

(a) A registered person shall not be allowed to furnish the details of outward supplies in Form GSTR-1, if he has not furnished the return in **Form GSTR-3B *for the preceding month.***

(b) A registered person, opting for QRMP scheme shall not be allowed to furnish the details of outward supplies in Form GSTR-1 or using IFF, if he has **not furnished the return in Form GSTR-3B for preceding tax period.**

(c) [omitted]

(d) a registered person, to whom an intimation has been issued on the common portal under the provisions of rule 88C(1) in respect of a tax period, shall not be allowed to furnish the details of outward supplies of goods or services or both u/s 37 in FORM GSTR-1 or using IFF for a subsequent tax period, unless he has either deposited the amount specified in the said intimation or has furnished a reply explaining the reasons for any amount remaining unpaid, as required under the provisions of rule 88C(2).

(e) a registered person, to whom an intimation has been issued on the common portal under the provisions of rule 88D(1) in respect of a tax period or periods, shall not be allowed to furnish the details of outward supplies of goods or services or both u/s 37 in FORM GSTR-1 or using the IFF 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 input tax credit that still remains to be paid, as required under the provisions of rule 88D(2).

(f) a registered person shall not be allowed to furnish the details of outward supplies of goods or services or both u/s 37 in FORM GSTR-1 or using the IFF, if he has not furnished the details of the bank account as per the provisions of rule 10A.

★ A taxpayer cannot file GSTR-1 before the end of the current tax period.

However, following are the exceptions to this rule:

a. Casual taxpayers, after the closure of their business
b. Cancellation of GSTIN of a normal taxpayer

A taxpayer who has applied for cancellation of registration will be allowed to file GSTR-1 after confirming receipt of the application.

- **Form and manner of filing return - GSTR-3B under QRMP Scheme**

Due date for filing return in case of a taxpayer opting for QRMP scheme – Quarterly GSTR-3B **on or before 22nd or 24th of the month** succeeding the quarter for which return is furnished.

S. No.	For registered persons whose place of business is in the states of	Due Date
1.	Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, the Union territories of Daman & Diu & Dadra & Nagar Haveli, Puducherry, Andaman and Nicobar Islands or Lakshadweep.	**22nd day** of the month succeeding such quarter
2.	Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha, the Union territories of Jammu and Kashmir, Ladakh, Chandigarh or Delhi.	**24th day** of the month succeeding such quarter

- **Time limit for rectification / amendment**

Particulars furnished in GSTR-1 of prior periods can be amended by way of Amendment Tables given in GSTR-1 of subsequent periods.

Time Limit for such rectification:

- ❑ **30th day of November** following the end of the financial year to which such details pertain

OR

- ❑ **Date of filing** of the relevant **annual return**

whichever is earlier

- **Maximum time-limit for furnishing Form GSTR-1 [Section 37(5)]**

Maximum time-limit upto which a registered person can furnish the details of outward supplies in Form GSTR-1 for a tax period is **3 years** from the due date of furnishing such details.

This time limit can be extended by the Government for a registered person or a class of registered persons subject to such conditions and restrictions as may be specified therein.

- **Maximum time-limit for furnishing Form GSTR-3B [Section 39(11)]**

Maximum time-limit upto which a registered person can furnish the return in Form GSTR-3B for a tax period is **3 years** from the due date of furnishing such return.

This time limit can be extended by the Government for a registered person or a class of registered persons subject to such conditions and restrictions as may be specified therein.

Rule 88C: Manner for dealing with difference in liability reported in statement of outward supplies between Form GSTR-1 and Form GSTR-3B

(1) Where the tax payable by a registered person, in accordance with the statement of outward supplies furnished by him in Form GSTR-1 or using the IFF in respect of a tax period, exceeds the amount of tax payable by such person in accordance with the return for that period furnished by him in Form GSTR-3B, by such amount and such percentage, as may be recommended by the Council, the said registered person shall be intimated of such difference in prescribed form, electronically on the common portal, and a copy of such intimation shall also be sent to his e-mail address, highlighting the difference and directing him to –

(a) pay the differential tax liability, along with interest u/s 50, through prescribed form; or

(b) explain the aforesaid difference in tax payable on the common portal,

within a period of 7 days.

(2) The registered person referred to in sub-rule (1) shall, upon receipt of the aforesaid intimation, either:

(a) pay the amount of the differential tax liability, as specified in intimation, fully or partially, along with interest u/s 50, and furnish the details thereof 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,

within a period of 7 days.

(3) Where any amount specified in the said intimation remains unpaid within 7 days period and where no explanation or reason is furnished by the registered person in default or where the explanation or reason furnished by such person is not found to be acceptable by the proper officer, the said amount shall be recoverable in accordance with the provisions of section 79.

Rule 88D: Manner for dealing with difference in ITC available in Form GSTR-2B and Form GSTR-3B

(1) Where the amount of ITC availed by a registered person in the return for a tax period or periods furnished by him in Form GSTR-3B exceeds the ITC available to such person in accordance with the auto-generated statement containing the details of ITC in Form GSTR-2B in respect of the said tax period or periods, as the case may be, by such amount and such percentage, as may be recommended by the Council, the said registered person shall be intimated of such difference, electronically on the common portal, and a copy of such intimation shall also be sent to his e-mail address provided at the time of registration or as amended from time to time, highlighting the said difference and directing him to –

(a) pay an amount equal to the excess ITC availed in the said FORM GSTR-3B, along with interest payable u/s 50, or

(b) explain the reasons for the aforesaid difference in ITC on the common portal,

within a period of 7 days.

(2) The registered person referred to in sub-rule (1) shall, upon receipt of the aforesaid intimation, either:

(a) pay an amount equal to the excess ITC, fully or partially, along with interest payable u/s 50, and furnish the details thereof, electronically on the common portal; or

(b) furnish a reply, electronically on the common portal, incorporating reasons in respect of the amount of excess ITC that has still remained to be paid, if any,

within a period of 7 days.

(3) Where any amount specified in the said intimation remains unpaid within 7 days period and where no explanation or reason is furnished by the registered person in default or where the explanation or reason furnished by such person is not found to be acceptable by the proper officer, the said amount shall be liable to be demanded in accordance with the provisions of section 73 or section 74, as the case may be.

SECTION 38: FURNISHING DETAILS OF INWARD SUPPLIES

Form GSTR-2A (GSTR-4A For Composition & GSTR-6A For ISD):

- System generated read only statement of inward supplies for a recipient & is updated on a real time basis.
- Details of outward supplies furnished by supplier in Form GSTR-1/5/6/7/8 or IFF is made electronically available to the recipient for view/download & updated incrementally as and when supplier change details in their respective form of return.

Form GSTR-2B:

- An auto-generated statement containing details of eligible ITC is made available to recipient every month & is a static statement and is available only once a month.
- Details of outward supplies furnished by suppliers upto the due date for filing return and additional details or amendments in details of outward supplies furnished by his supplier in Form GSTR-1A filed between the day immediately after the due date of furnishing of Form GSTR-1 for the previous tax period to the due date of furnishing of Form GSTR-1 for the current tax period are reflected in GSTR-2B.
- GSTR-2B is generated on 14th of next month.
  E.g., If a supplier opting for QRMP files an invoice dated 15th July on 13th August, it will get reflected in GSTR-2B of July (generated on 14th August).

ANNUAL RETURN [SECTION 44]

- **Who is required to furnish annual return?**

  All registered persons are required to file an annual return. However, following persons are not required to file annual return:

  i. Casual taxable persons
  ii. Non-resident taxable person
  iii. Input service distributors
  iv. Persons authorized to deduct/collect tax at source u/s 51/52
  v. Any department of the CG/SG or a local authority, whose books of account are subject to audit by the Comptroller and Auditor-General of India or an auditor appointed for auditing the accounts of local authorities under any law for the time being in force.
  vi. Persons supplying OIDAR services from a place outside India to a person in India.

  The Commissioner may, on the recommendations of the Council, by notification, exempt any class of registered persons from filing annual return.

  In exercise of the powers conferred, the Commissioner, on the recommendations of the Council, has **exempted** the registered person whose aggregate turnover in the financial year **2023-24 is upto ₹ 2 Crores,** from filing annual return for the said financial year.

- **Due date & prescribed form for annual return?**

Person	Regular Taxable Person	Composition Taxable Person	ECO required to collect tax at source
Form	GSTR-9	GSTR-9A	GSTR-9B (yet to be notified)
Due Date	31st Dec of the next financial year		

- **Who is required to furnish self-certified reconciliation statement?**

All registered persons are required to file furnish a self-certified reconciliation statement along with annual return if their aggregate T/O during a FY exceeds ₹ 5 Crores. However, following persons are not required to file self-certified reconciliation statement

a) Casual taxable persons
b) Non-resident taxable person
c) Input service distributors
d) Persons authorized to deduct/collect tax at source u/s 51/52
e) Any department of the CG/SG or a local authority, whose books of account are subject to audit by the Comptroller and Auditor-General of India or an auditor appointed for auditing the accounts of local authorities under any law for the time being in force.
f) Persons supplying OIDAR services from a place outside India to a person in India.

Such registered person should furnish, electronically, the annual return along with a copy of self-certified reconciliation statement, duly certified, in Form GSTR-9C.

- **Maximum time-limit for furnishing annual return [Section 44(2)]**

Maximum time-limit upto which a registered person can furnish an annual return for a financial year is **3 years** from the due date of furnishing said annual return.
This time limit can be extended by the Government for a registered person or a class of registered persons subject to such conditions and restrictions as may be specified therein.

- **Maximum time-limit for furnishing Form GSTR-8**

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

GSTR-10 - FINAL RETURN [SECTION 45]

Every registered person who is required to furnish return u/s 39(1) & whose registration has been surrendered or cancelled is required to file a final return electronically in Form GSTR-10 **within 3 months of the:**

i. **date of cancellation**, or
ii. **date of order of cancellation**

whichever is **later.**

GSTR-11 - DETAILS OF INWARD SUPPLIES OF PERSONS HAVING UIN [RULE 82]

- **When UIN is required for claiming refund of taxed paid on inward supplies**
  Such person shall furnish details of those inward supplies of taxable goods and/or services on which refund of taxes has been claimed in Form GSTR-11, along with application for refund claim.
- **When UIN is issued for purposes other than refund of taxes paid**
  Such person shall furnish details of inward supplies of taxable goods and/or services as may be required by the proper officer in Form GSTR-11.

GSTR-5A – RETURN FOR PERSONS PROVIDING OIDAR SERVICES / ONLINE MONEY GAMING [RULE 64]

Every registered person 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 **non-taxable online recipient** referred to in section 14 of the IGST Act, 2017 (13 of 2017) or to a registered person **other than a non-taxable online recipient,** shall file return in Form GSTR-5A by 20th day of the month succeeding the calendar month / part thereof. (Nil Return to be filed, if no business activity)

RECTIFICATION OF ERRORS / OMISSIONS [SECTION 39(9)]

- Revision of return is not possible.
- Rectification in subsequent return can be done.
- **Maximum time limit for rectification:**
  - ❑ **30th day of November** of next FY
    OR
  - ❑ Actual date of filing annual return

  → whichever is earlier
- Rectification on account of scrutiny, audit, inspection or enforcement activities is not permitted.

FIRST RETURN [SECTION 40]

The registered person shall declare his outward supplies made during the period between the date on which he became liable to registration till the date on which registration has been granted in the First Return furnished by him after grant of registration.

AVAILMENT OF INPUT TAX CREDIT [SECTION 41]

Every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to avail the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited to his electronic credit ledger.

The credit of input tax availed by a registered person hereunder in respect of such supplies of goods or services or both, the tax payable whereon has not been paid by the supplier, shall be reversed along with applicable interest, by the said person in such manner as may be prescribed.

However, where the said supplier makes payment of the tax payable in respect of the aforesaid supplies, the said registered person may re-avail the amount of credit reversed by him in such manner as may be prescribed.

NOTICE TO RETURN DEFAULTERS [SECTION 46]

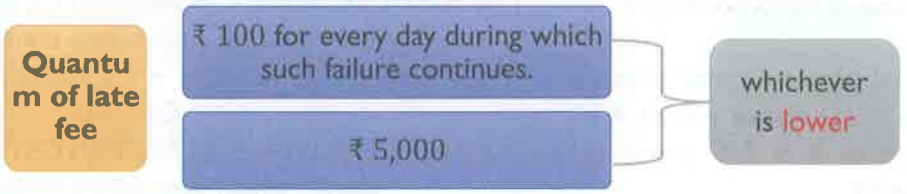
A notice in prescribed form is issued, electronically, to a registered person who fails to furnish return under section 39 [Normal Return] or section 44 [Annual Return] or section 45 [Final Return] or section 52 [TCS Statement].

The notice requires the registered person to furnish the return within 15 days, failing which the tax liability will be assessed under section 62, based on the relevant material available with the proper officer. In addition to tax so assessed, applicable interest and penalty will also be payable.

LATE FEES FOR DELAY IN FILING RETURN [SECTION 47]

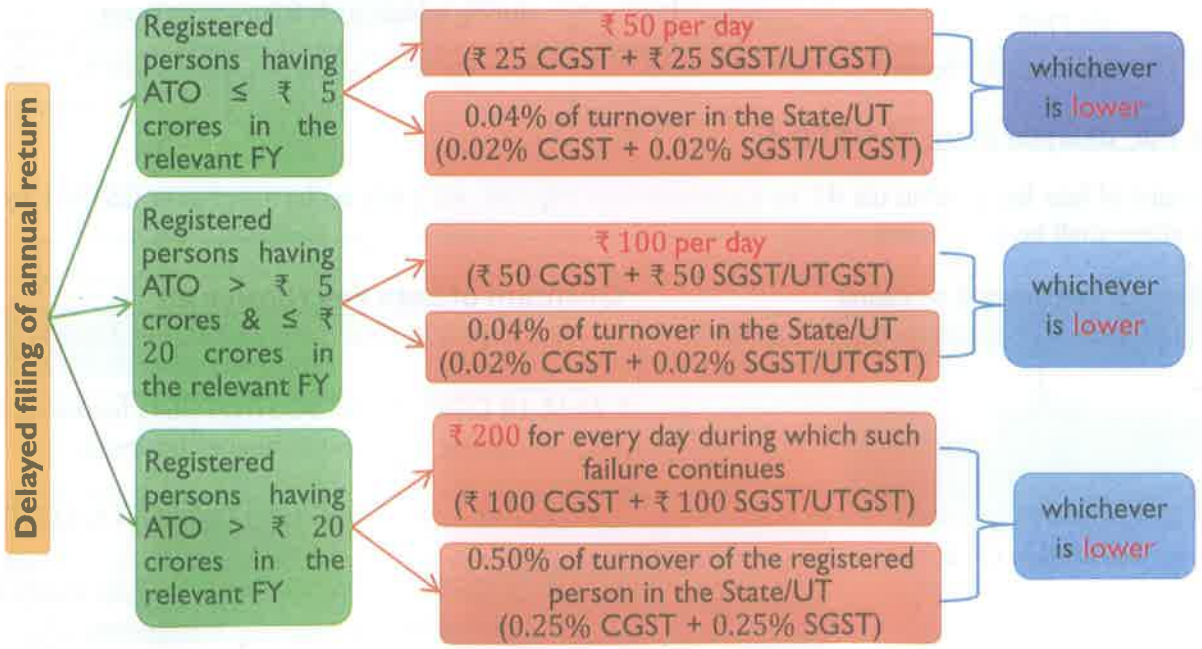
Section 47 stipulates a specified amount of late fee for delay in filing any of the following by their respective due dates:

(A) Statement of Outward Supplies [Section 37]
(B) Returns (including returns under QRMP Scheme) [Section 39]
(C) Final Return [Section 45]
(D) TCS Statement [Section 52]



An equal amount of late fee is payable by such person under the respective SGST/UTGST Act as well.

Late fees for delay in filing annual return u/s 44 [GSTR-9]:-



Class of registered persons | Quantum of Late Fee

Rationalisation of late fees for delayed filing of GSTR-1, GSTR-3B, GSTR-4 & GSTR-7:-

The late fee can be waived off partially or fully by the Central Govt. In view of this, late fees for delayed filing of Forms GSTR-1, GSTR-3B, GSTR-4 & GSTR-7, have been rationalized as follows:-

(i) For delayed filing of GSTR-1 and/or GSTR-3B:-

Total amount of late fee payable under section 47 by the registered person who fail to furnish Form GSTR-1 and/or Form GSTR-3B by the due date, shall be as follows:

Class of registered persons	Quantum of Late Fee (Lower of)
• Registered persons who have nil outward supplies in the tax period / whose total amount of tax payable in the GSTR-3B is Nil, as the case may be	₹ 500 (₹ 250 CGST + ₹ 250 SGST/UTGST) OR ₹ 20 (₹ 10 CGST + ₹ 10 SGST/UTGST) for every day during which such failure continues
• Registered persons other than those covered in (1) above whose ATO ≤ ₹ 1.5 crores in the preceding FY	₹ 2,000 (₹ 1,000 CGST + ₹ 1,000 SGST/UTGST) OR ₹ 50 (₹ 25 CGST + ₹ 25 SGST/UTGST) for every day during which such failure continues
• Registered persons other than those covered in (1) above whose ATO > ₹ 1.5 crores & ≤ ₹ 5 crores in the preceding FY	₹ 5,000 (₹ 2,500 CGST + ₹ 2,500 SGST/UTGST) OR ₹ 50 (₹ 25 CGST + ₹ 25 SGST/UTGST) for every day during which such failure continues
• Registered persons other than those covered in (1) above whose ATO > ₹ 5 crores in the preceding FY	₹ 10,000 (₹ 5,000 CGST + ₹ 5,000 SGST/UTGST) OR ₹ 50 (₹ 25 CGST + ₹ 25 SGST/UTGST) for every day during which such failure continues

* ATO = Aggregate Turnover

(ii) For delayed filing of GSTR-4:-

Amount of late fee payable u/s 47 by a composition supplier who fails to furnish Form GSTR-4 by the due date, shall be as follows:

Class of registered persons	Quantum of Late Fee (Lower of)
(1) Total tax payable in GSTR-4 is Nil	₹ 500 (₹ 250 CGST + ₹ 250 SGST/UTGST) OR ₹ 20 (₹ 10 CGST + ₹ 10 SGST/UTGST) for every day during which such failure continues
(2) Registered persons other than those covered in (1) above	₹ 2,000 (₹ 1,000 CGST + ₹ 1,000 SGST/UTGST) OR ₹ 50 (₹ 25 CGST + ₹ 25 SGST/UTGST) for every day during which such failure continues

(iii) For delayed filing of GSTR-7:-

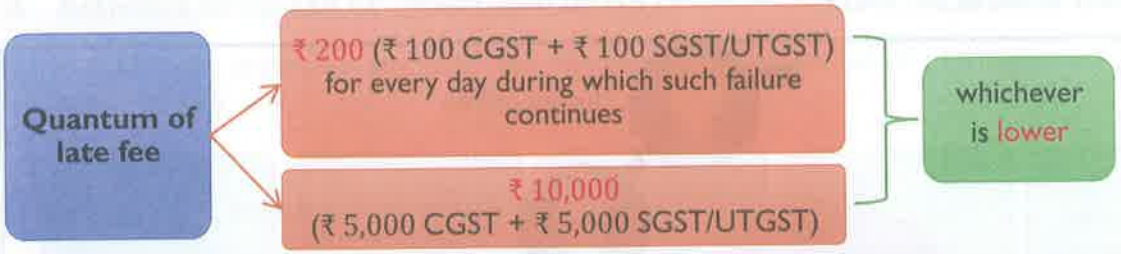
Total amount of late fee payable under section 47 by any registered person, required to deduct tax at source under the provisions of section 51 for delayed filing of GSTR-7, shall be as follows:



Where the total amount of Central and State tax deducted at source in a month is Nil, the total amount of late fee stands waived.

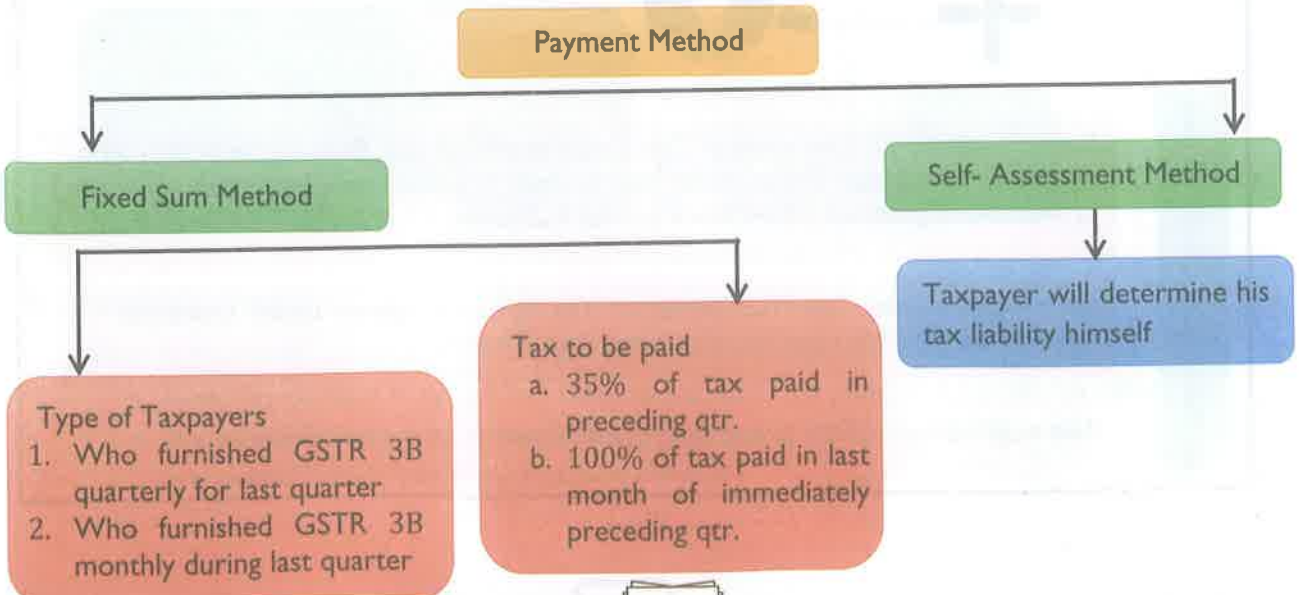
(iv) For delayed filing of GSTR-8:-

Following late fee is applicable for delay in furnishing of TCS statement in Form GSTR-8:



PAYMENT OF TAX

	1st month of Qtr.	2nd month of Qtr.	End of Qtr.
Payment challan	PMT 06	PMT 06	PMT 06
Due date of payment	25th of succeeding month	25th of succeeding month	Along with return

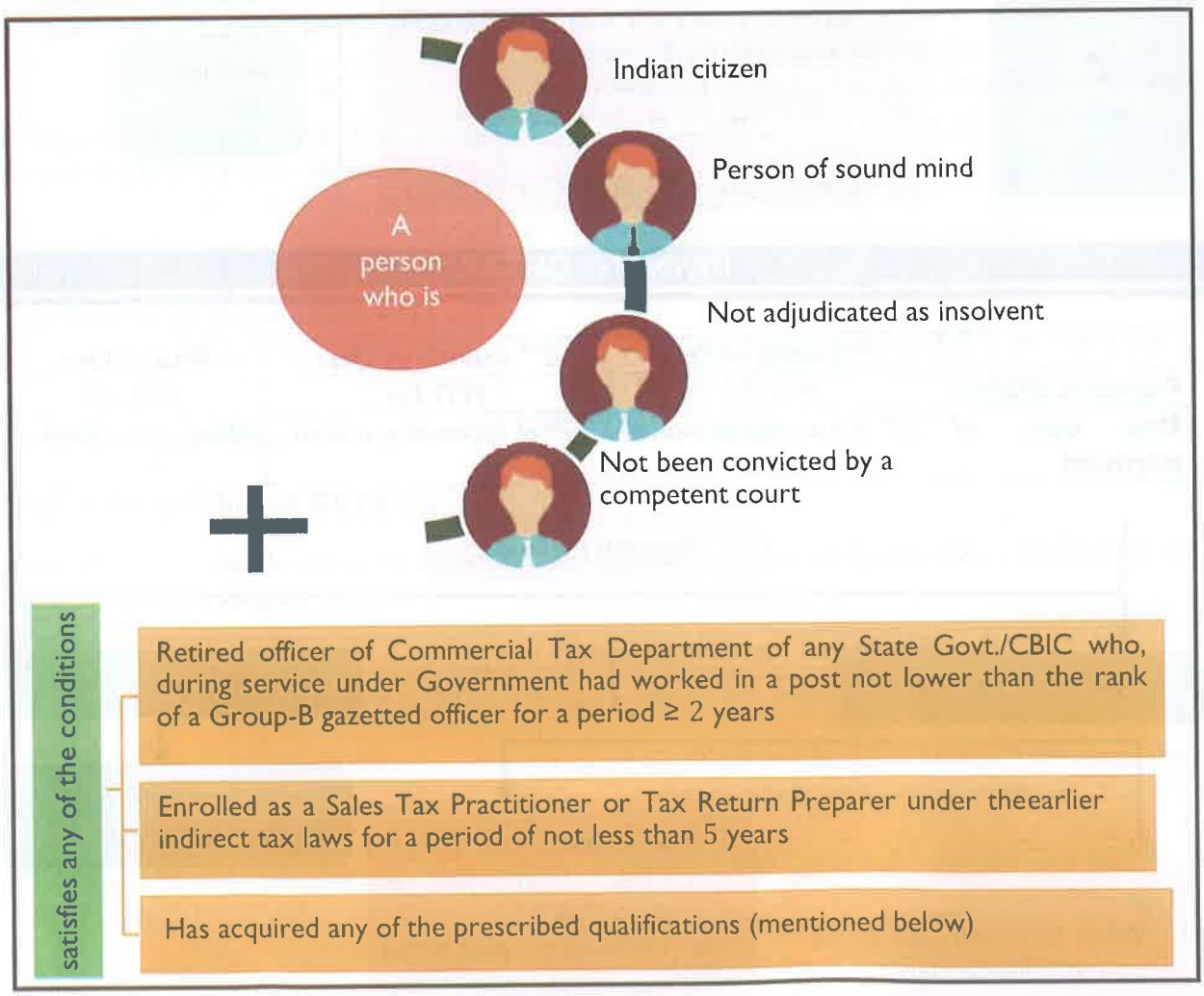


INTEREST PAYMENT UNDER QRMP SCHEME

Tax liability (PMT 06 Form) is not paid by 25th of following month	18% of tax liability from 26th of following month till date of payment
The final tax liability for first two months is higher than the tax amount paid through pre filled form GST PMT 06 & such excess tax liability has not been paid within the quarterly GSTR 3B due date.	18% of tax liability from GSTR 3B due date till date of payment.

GOODS & SERVICE TAX PRACTITIONERS [SECTION 48]

Eligibility criteria for GSTP



Prescribed Qualifications

- (i) Graduate or postgraduate degree or its equivalent examination having a degree in Commerce, Law, Banking including Higher Auditing, or Business Administration or Business Management from any Indian University established by any law for the time being in force
- (ii) Degree examination of any Foreign University recognised by any Indian University as equivalent to the degree examination mentioned in sub-clause (i)
- (iii) Any other examination notified by the Government, on the recommendation of the Council, for this purpose
- (iv) Any degree examination of an Indian University or of any Foreign University recognized by any Indian University as equivalent of the degree examination
- (v) Has passed final examination of ICAI/ ICSI/ Institute of Cost Accountants of India.

Activities which can be undertaken by GSTP

A GSTP can undertake any/all of the following activities on behalf of a registered person, if so, authorised by him:

- Furnish details of outward supplies
- Furnish monthly, annual or final return
- Make deposit for credit into electronic cash ledger
- Furnish information for generation of e-way bill
- Furnish details of challan in the prescribed form
- File an application for amendment or cancellation of enrolment under rule 58
- File an intimation to pay tax under the composition scheme or withdraw from the said scheme
- File a claim for refund
- File an application for registration amendment/ cancellation
- Also allowed to appear as authorised representative before any officer of Department, Appellate Authority or Appellate Tribunal, on behalf of such a registered person provided he is enrolled as GSTP under rule 83.
- Confirmation from the registered person shall be sought

Furnishing returns through GSTP

When a registered person opts to furnish his return through GSTP, such registered person:

- Gives his consent in prescribed form to any GSTP to prepare & furnish his return
- Before confirming submission of any statement prepared by GSTP, ensures that the facts mentioned in the return are true and correct.

Procedure for enrolment as GSTP

ENROLMENT OF GSTP



INFORMATION RETURN [SECTION 150 & 123]

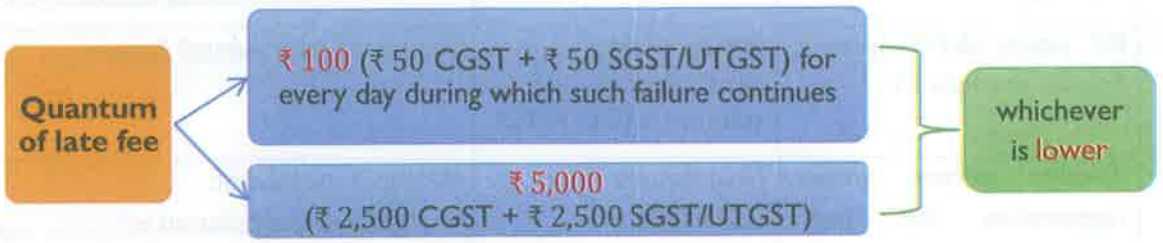
Authorities required to furnish information return

➢ Taxable person	➢ Registering Authority empowered to register motor vehicles under the Motor Vehicles Act, 1988
➢ State Govt.'s authority responsible for the collection of VAT / sales tax / State excise duty or CG's authority responsible for the collection of excise duty or customs duty	➢ Collector referred to in clause (c) of section 3 of the Right to Fair Compensation & Transparency in Land Acquisition, Rehabilitation & Resettlement Act, 2013
➢ Income tax authority	➢ Recognised stock exchange
➢ Banking Co. within the meaning of section 45A(a) of the RBI Act, 1934	➢ Depository
➢ State Electricity Board or an electricity distribution or transmission licensee under the Electricity Act, 2003 or any other entity entrusted with such functions by the CG/SG	➢ Officer of the RBI
➢ Local authority / other public body / association	➢ GSTN
➢ Registrar/Sub-Registrar appointed u/s 6 of the Registration Act, 1908	➢ UIN holder
➢ Registrar within the meaning of Co's Act, 2013	➢ Any other specified person

- Information return is based on the idea of verifying compliance levels of registered person through information procured from independent third-party sources.
- Defective Information Return: intimate the defect to the person & shall rectify within 30 days. If not rectified, then, such information return be treated as not furnished.
- Issuance of notice for failure to furnish information within stipulated time: the said authority may serve upon a notice requiring information return within period not exceeding 90 days from the date of service of notice.

Penalty for failure to furnish information return [Section 123]

If the person to whom the notice has been issued under section 150(3) fails to furnish the information return within the period specified in said notice, the proper officer may direct that such person shall be liable to pay a penalty.



S.No.	Persons	Details of	Periodicity	Time Limit
1	Every registered person (Other than ISD, NRTP, person u/s 10, 51, 52, OIDAR)	Outward Supplies GSTR-1 (QRMP)	Quarterly	13th of month succeeding such quarter
		Outward Supplies GSTR-1 (Others)	Monthly	11th of next month
		Normal (Monthly) Return GSTR-3B		20th of next month
		Normal (QRMP) Return GSTR-3B	Quarterly	22nd/24th of month succeeding such quarter
2	Composition Taxable Person	GSTR-4	Annual (Return for FY)	30th April June of next FY
		GST CMP-08	Quarterly	18th of month succeeding such quarter
3	Every registered non-resident taxable person	Inward and outward supplies GSTR-5	Earlier of: a) Within 13 days after the end of a calendar month. b) Within 7 days after the last day of the period of registration	
4	OIDAR or online money gaming services (located in non-taxable territory)	GSTR-5A	Monthly	20th of next month

5	Every Input Service Distributor (ISD)	GSTR-6	Monthly	13th of next month
6	TDS Deductor	Tax deducted at source (TDS u/s 51) GSTR-7	Monthly	10th of next month
7	TCS Collector (ECO)	Tax collected at source (TDS u/s 52) GSTR-8	Monthly	10th of next month
8	Every taxable person (other than ISD, casual, NR & TDS, Sec 10, 51, 52, OIDAR/Online Money Gaming)	Annual Return GSTR-9 / 9A (Composition) / 9B (ECO)	Annually	31st Dec of next year
9	RP whose ATO exceeds ₹ 5 Cr. during a FY	Self-certified reconciliation statement (GSTR-9C)	Submitted with Annual Return	
10	Taxable person whose registration has been cancelled or surrendered [Sec 45]	Final Return GSTR-10	Within 3 months of: i. Date of cancellation or ii. Date of order of cancellation, whichever is later	
11	Persons having a Unique Identification Number (UIN)	GSTR-11	Details of inward supplies on which refund of taxes has been claimed	

⇒ E way bill provision are liable if ₹ 50000 inclusive of GST.

E-WAY BILL

⇒ TDS Provision are liable if contract value exceeds ₹ 5L (excluding GST value)

A waybill is a receipt or a document issued by a carrier giving details and instructions relating to the shipment of a consignment of goods and the details include name of consignor, consignee, the point of origin of the consignment, its destination, and route. In other words, E-way bill is an electronic document generated on the GST portal evidencing movement of goods.

E-way Bill is generated electronically in Form GST EWB-01 on the common portal (www.ewaybillgst.gov.in).

Every registered person who causes **movement of goods** of consignment value **exceeding ₹ 50,000** -

- in relation to a supply; or
- for reasons other than supply; or
- due to inward supply from an unregistered person, shall furnish the information relating to the said goods as specified in Part A of Form GST EWB-01 before commencement of such movement. Consignment value of ₹ 50,000 **includes** GST amount also, but **excludes** value of exempt supply of goods where the invoice is issued in respect of both exempt & taxable supply of goods.

Common enrolment process for registered transporters having GSTIN in multiple states with same PAN: There may be a transporter who is registered and has registration in more than one State/UT; then, he would have more than one GSTIN as well. A transporter who is registered in more than one State/UT having the same PAN, may apply for a Unique Common Enrolment Number by submitting the details in prescribed form using any one of his GSTINs.

Upon validation of the details furnished, a unique common enrolment number shall be generated and communicated to the said transporter. Once a transporter has obtained a unique common enrolment number, he shall not be eligible to use any of the GSTIN for the purposes of e-way bills under Chapter XVI of these rules.

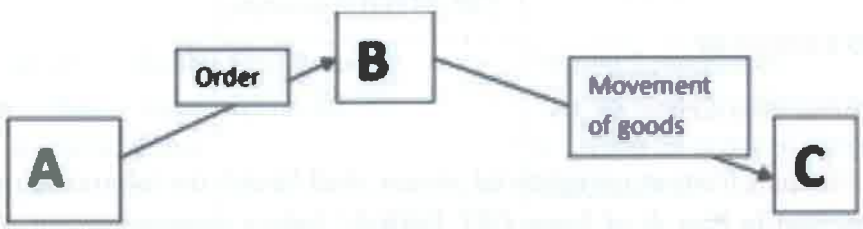
This way the transporters who are GST registered can generate a Common Enrolment number which will allow him to use one registration number for generating the e-way bills and updating Part-B of e-way bill throughout the country. Only registered transporters, which are having GSTIN in multiple states with same PAN number, can register in common enrolment process.

SITUATONS WHERE E- WAY BILL NEEDS TO BE ISSUED EVEN IF THE VALUE OF THE CONSIGNMENT IS LESS THAN ₹ 50,000

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

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

E-WAY BILL IN CASE OF 'BILL TO SHIP TO' MODEL



It is clarified that as per the CGST Rules, 2017, for the movement of goods which is taking place from "B" to "C" on behalf of "A", either A or B can generate the e-way bill but it may be noted that **only one e-Way Bill** is required to be generated.

INFORMATION TO BE FURNISHED IN E-WAY BILL

PART A	[comprising of details of GSTIN of supplier & recipient, place of delivery (indicating PIN Code also), document (Tax invoice, Bill of Supply, Delivery Challan or Bill of Entry) number and date, value of goods, HSN code, and reasons for transportation, etc.]: to be furnished by the **registered person who is causing movement of goods** of consignment value exceeding ₹ 50,000/-
PART B	transport details [Transporter document number (Goods Receipt Number or Railway Receipt Number or Airway Bill Number or Bill of Lading Number) and Vehicle number, in case of transport by road]: to be furnished by the **person who is transporting the goods.**

Note: If goods are transported in his own conveyance / public transport, then registered person shall generate e-way bill (Both Part A & Part B).

OTHER IMPORTANT POINTS

- **Where the goods are transported by railways:** there is no requirement to carry e-way bill along with the goods, but railways have to carry invoice or delivery challan or bill of supply as the case may be along with goods. Further, e-way bill generated for the movement is required to be produced at the time of delivery of the goods. Railways shall not deliver goods unless the e-way bill required under rules is produced at the time of delivery [Proviso to rule 138(2A)].
- The registered person or, the transporter may, at his option, generate and carry the e-way bill even if the value of the consignment is less than ₹ 50,000 [First proviso to rule 138(3)].

WHEN IS IT NOT MANDATORY TO FURNISH THE DETAILS OF CONVEYANCE IN PART-B?

E-way bill is valid when both Part A & Part B are filled but in the following cases if only Part A is filled then also it will be considered valid:

- If goods are transported for a distance of **upto 50 km** within the State/Union territory:
  - ❖ from the place of business of the consignor to the place of business of the transporter for further transportation or
  - ❖ from the place of business of the transporter finally to the place of business of the consignee.

TRANSFER OF GOODS FROM ONE CONVEYANCE TO ANOTHER

- Where the goods are transferred from one conveyance to another, the consignor or the recipient, who has provided information in Part A, or the transporter shall, before such transfer and further movement of goods, update the details of conveyance in Part B of the e-way bill on the common portal.
- Consignment of goods may be required to be transferred from the original conveyance to due to unforeseen exigencies like break down of the vehicle. In such case, the transporter transferring goods from one conveyance to another in the course of transit shall, before such transfer and further movement of goods, update the details of the conveyance.
- In some cases, consignments are transported by the transporter through transshipment using multiple vehicles (same mode of transportation) for carrying the same consignment before it is delivered to the recipient at the place of destination. Hence for each movement from one place to another, the transporter needs to update the vehicle number in which he is transporting that consignment in part B of the e-way bill.
- The user can update Part-B (Vehicle details) as many times as he wants for movement of goods to the destination. However, the updating should be done within the validity period.
- The consignor/recipient, who has furnished the information in Part A, or the transporter, may assign the e-way bill number to another registered/enrolled transporter for updating the information in Part B for further movement of the consignment [Rule 138(5A)]. However, once

the details of the conveyance have been updated by the transporter in Part B, the consignor or recipient, as the case may be, who has furnished the information in Part A shall not be allowed to assign the e-way bill number to another transporter [Proviso to rule 138(5A)].

CONSOLIDATED E-WAY BILL

- After e-way bill has been generated, where **multiple consignments are intended to be transported in one conveyance**, the transporter may indicate the serial number of e-way bills generated in respect of each such consignment electronically on the common portal and a consolidated e-way bill in Form GST EWB-02 may be generated by him on the said common portal prior to the movement of goods [Rule 138(6)].

  Information submitted for e-way bill can be used for filing GST Returns
- The information furnished in Part A of the e-way bill 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 [Rule 138(8)].
- However, when the information has been furnished by an unregistered supplier/unregistered recipient, he shall be informed electronically, if the mobile number or the e-mail is available [Proviso to rule 138(8)].

Rule 138(9): CANCELLATION OF E-WAY BILL

When **goods are either not transported** or are not transported as per the details furnished in the e-way bill, the e-way bill may be cancelled electronically on the common portal **within 24 hours of generation of the e-way bill** [Rule 138(9)].

Points to remember:

- E-way bill (EWB) cannot be modified/edited, it can only be cancelled.
- For each invoice, one EWB has to be generated, irrespective of the fact whether same or different consignors or consignees are involved. Multiple invoices cannot be clubbed to generate one EWB. However, after generating all these EWBs, one Consolidated EWB can be prepared for transportation purpose, if goods are going in one vehicle.
- Penalty in case of Non-issuance of EWB - ₹ 10,000/- or Amount of tax evasion whichever is higher.

Rule 138(10): VALIDITY PERIOD OF E-WAY BILL/ CONSOLIDATED E-WAY BILL

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

Upto **20 km**	One day in case of Over Dimensional Cargo or multimodal shipment in which at least one leg involves transport by ship
For every **20 km or part thereof** thereafter	One additional day in case of Over Dimensional Cargo or multimodal shipment in which at least one leg involves transport by ship

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

VALIDITY'S COMMENCEMENT

The validity of the e-way bill starts when first entry is made in Part-B. It may be noted that validity is not re-calculated for subsequent entries in Part-B.

EXTENSION OF VALIDILTY PERIOD

Commissioner may, on the recommendations of the Council, by notification, extend the validity period of an e-way bill for certain categories of goods as may be specified therein and under circumstances of an exceptional nature.

ACCEPTANCE / REJECTION OF E-WAY BILL

The details of the e-way bill generated shall be made available -

To	When
Supplier	Where details in Part-A of GST EWB-01 has been furnished by the recipient/transporter
Recipient	Where details in Part-A of GST EWB-01 has been furnished by the supplier/transporter

who shall communicate his acceptance or rejection of the consignment covered by the e-way bill.

- E-way generated in one State/UT shall be valid in another State/UT.

SPECIFIED TIME LIMIT

In case, the person to whom the information in Part-A is made available, does not communicate his acceptance or rejection within the specified time, it shall be deemed that he has accepted the said details. The time limit specified for this purpose is:

Earlier of

- **72 hours** of the details being made available to him on the common portal

or

- the **time of delivery of goods**

Rule 138(14): SITUATIONS WHERE E-WAY BILL IS NOT REQUIRED TO BE GENERATED

a) where the goods being transported are the ones given below:

S. No.	Description of Goods
1.	Liquified petroleum gas for supply to household & non-domestic exempted category (NDEC) customers
2.	Kerosene oil sold under PDS
3.	Postal baggage transported by Department of Posts
4.	Natural or cultured pearls & precious or semi-precious stones; precious metals & metals clad with precious metal (Chapter 71)
5.	Jewellery, goldsmiths' and silversmiths' wares & other articles (Chapter 71) **[excepting Imitation Jewellery (7117)]**
6.	Currency
7.	Used personal & household effects
8.	Coral, unworked (0508) & worked coral (9601)

Note: E-way bill required to be generated for transporting Imitation Jewellery.

b) where the goods are being transported by a non-motorised conveyance.

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

d) in respect of movement of goods within such areas as are notified under of rule 138(14)(d) of the State or Union territory GST Rules in that particular State or Union territory.

e) where the goods [**other than de-oiled cake**], being transported, are exempt from tax.

f) where the goods being transported are alcoholic liquor for human consumption, petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas or aviation turbine fuel.

g) where the supply of goods being transported is treated as no supply under Schedule III of the CGST Act.

h) where the goods are being transported –

- ❖ under custom bond from one custom station to another custom station, or
- ❖ under customs supervision or under customs seal.

i) where the goods being transported are transit cargo from or to Nepal or Bhutan.

j) where the goods being transported are exempt from tax.

k) any movement of goods caused by defence formation under Ministry of defence as a consignor or consignee.

l) where the consignor of goods is the Central Government, Government of any State or a local authority for transport of goods by rail.

m) where empty cargo containers are being transported.

n) where the goods are being transported upto a distance of 20 km from the place of the business of the consignor to a weighbridge accompanied by a delivery challan.

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

Rule 138A: DOCUMENTS AND DEVICES TO BE CARRIED BY A PERSON-IN- CHARGE OF A CONVEYANCE

- The person-in-charge of a conveyance shall carry –
  a. the invoice or bill of supply or delivery challan, as the case may be; and
  b. a copy of the e-way bill in physical form or the e-way bill number in electronic form or mapped to a RFID embedded on to the conveyance (except in movement of goods by rail/air/vessel)

  (in case of imported goods, the person in charge of a conveyance shall also carry a copy of the bill of entry)

- In case, e-invoice is issued, the Quick Response (QR) code having an embedded Invoice Reference Number (IRN) in it, may be produced electronically, for verification by the proper officer in lieu of the physical copy of such tax invoice.

Rule 138B: VERIFICATION OF DOCUMENTS AND CONVEYANCES

- Commissioner may authorize the PO to intercept any conveyance to verify the e-way bill in physical form for all inter-State and intra-State movement of goods.
- The Commissioner shall get RFID readers installed at places for verification.
- On receipt of specific information on evasion of tax, physical verification of a specific conveyance can also be carried out by any other officer after obtaining necessary approval of the Commissioner.

Rule 138C: INSPECTION AND VERIFICATION OF GOODS

- A summary report of every inspection of goods in transit shall be recorded online within 24 hours of inspection and the final report shall be recorded within 3 days of such inspection.
- No further physical verification of the said conveyance shall be carried out again in the State/Union territory, unless a specific information relating to evasion of tax is made available subsequently.

Rule 138D: FACILITY FOR UPLOADING INFORMATION REGARDING DETENTION OF VEHICLE

Where a vehicle has been intercepted and detained for a period exceeding 30 minutes, the transporter may upload the said information in specified form on the common portal.

Rule 138E: BLOCKING OF E-WAY BILL GENERATION FACILITY

No person (including a consignor, consignee, transporter, an e-commerce operator or a courier agency) shall not be allowed to furnish the information in Part A of Form GST EWB-01 in respect of any outward movement of goods of a registered person is, -

i. A person paying tax under composition scheme has not furnished the statement for payment of self-assessed tax for 2 consecutive quarters.

ii. A person paying tax under regular scheme has not furnished the returns for a consecutive period of 2 tax periods, or

iii. A person paying tax under regular scheme has not furnished GSTR-1 (Statement of outward supplies) for any 2 months or quarters, as the case may be.

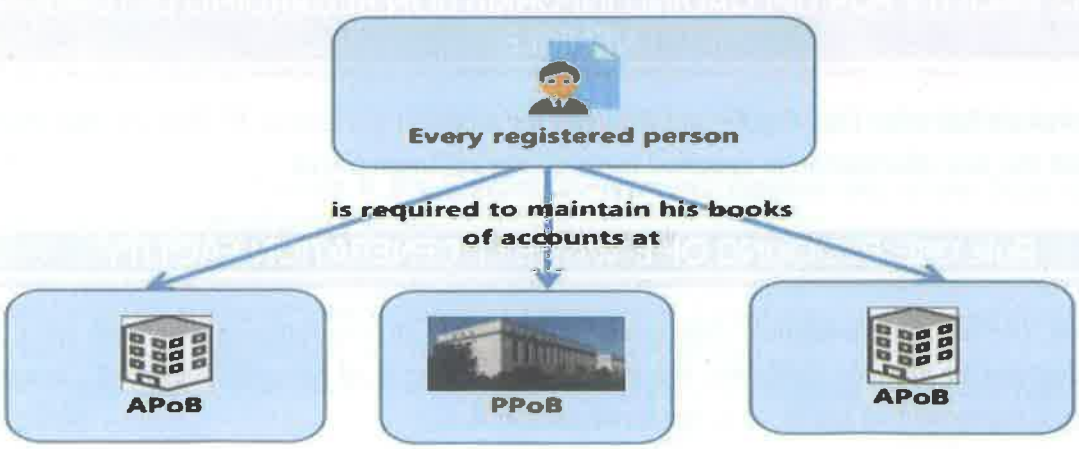
iv. A person whose registration has been suspended under the provisions of rule 21A of the CGST Rules.

Clarification relating to E-way bill in case of storing of goods in godown of transporter

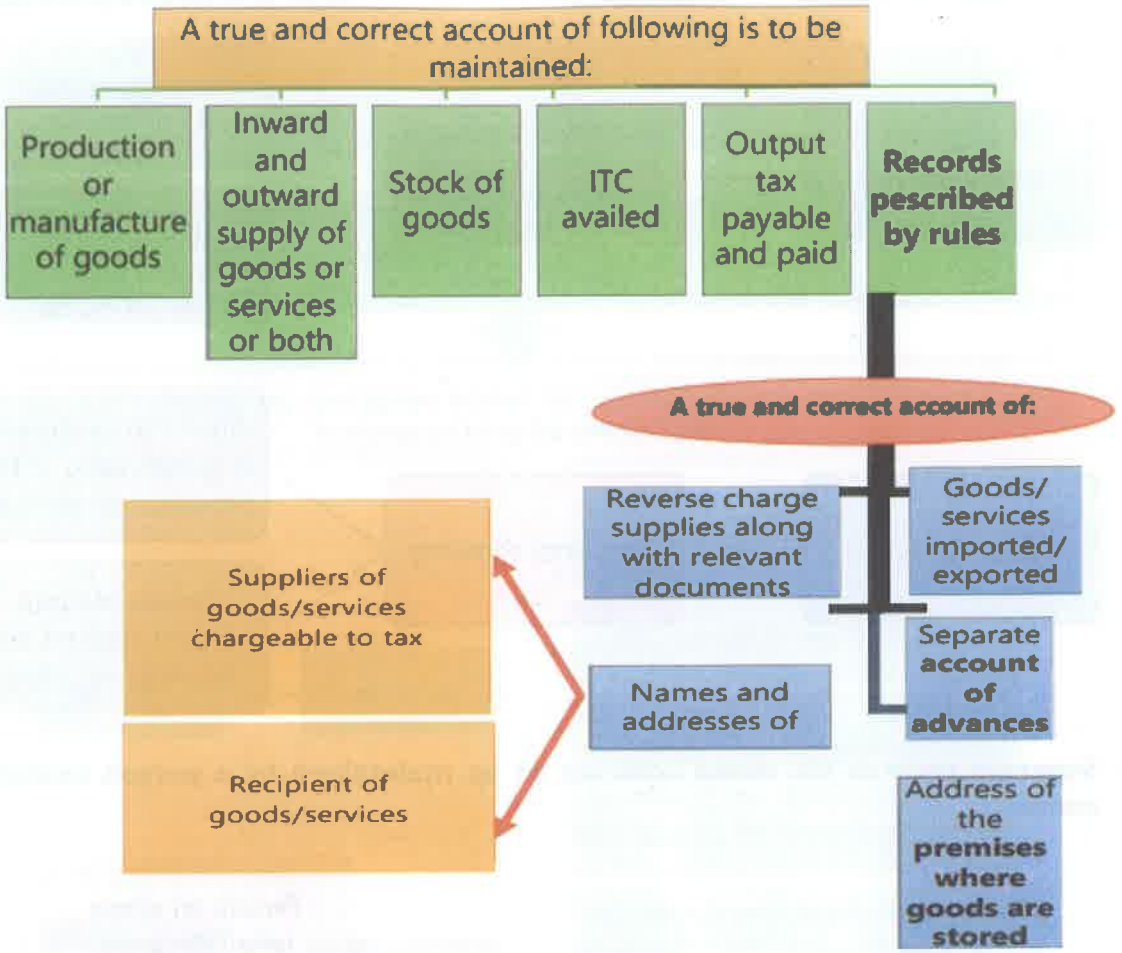
- The recipient taxpayer has to declare the transporter's godown as an APoB.
- The transportation under the e-way bill shall be deemed to be concluded once the goods have reached the transporter's godown (recipient taxpayer's APoB). Hence, e-way bill validity in such cases will not be required to be extended. Further, whenever the goods move from the APoB to any other PoB, a valid e-way bill shall be required.
- Transporter, being a warehouse keeper, has to maintain accounts and records as specified in section 35 read with rule 58.
- Recipient taxpayer shall also maintain accounts and records as required under rules 56 and 57.
- Furthermore, as per rule 56(7), books of accounts in relation to goods stored at the transporter's godown (i.e., the recipient taxpayer's APoB) by the recipient taxpayer may be maintained by him at his PPoB.
- Thus, the facility of declaring APoB by the recipient taxpayer is in no way putting any additional compliance requirement on the transporters.

ACCOUNTS AND RECORDS

Who is required to maintain his books of accounts and at which place?



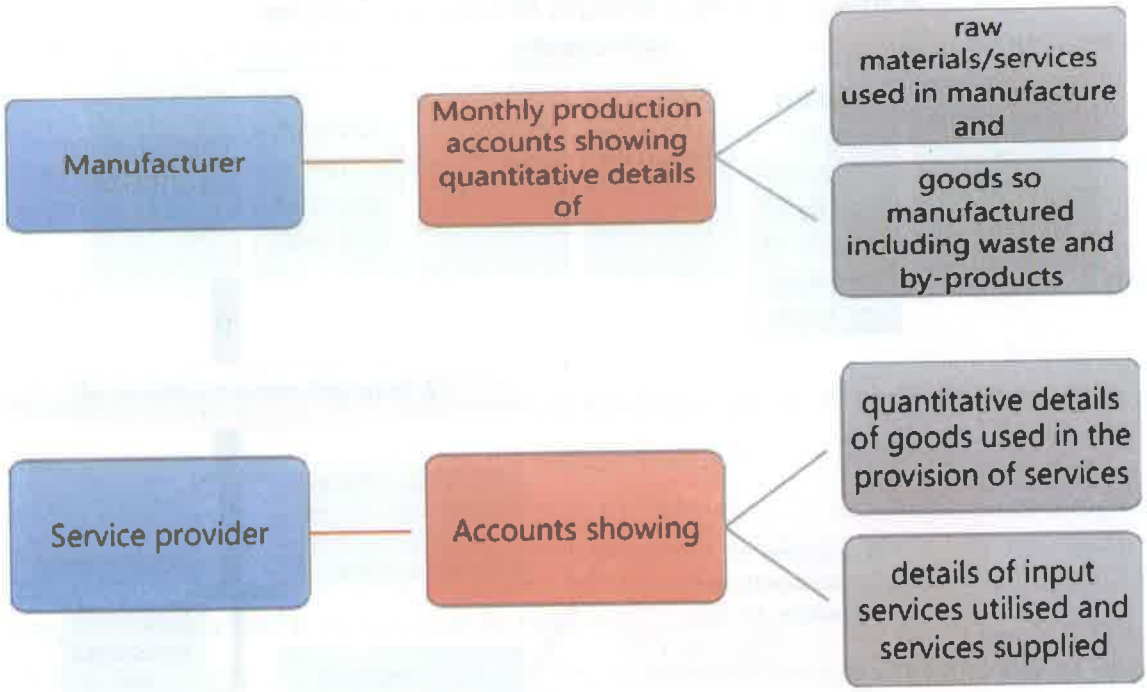
❖ Accounts and records required to be maintained



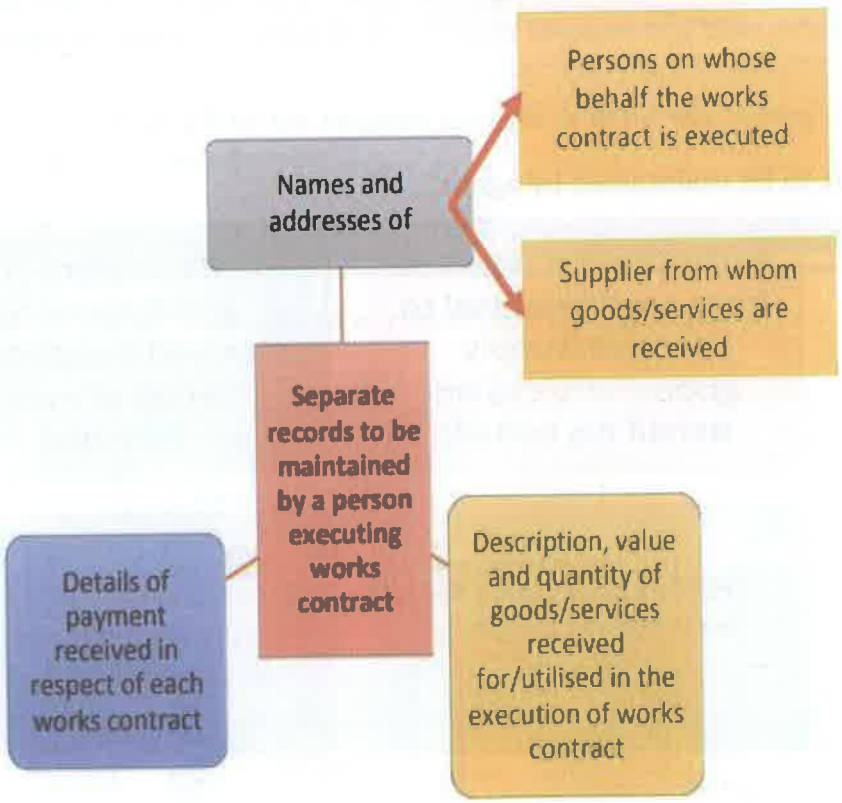
❖ Records to be maintained by agent

Authorisation received from each principal to receive/supply goods/services on behalf his behalf;	Particulars of goods/services received/supplied on behalf of every principal
Details of accounts furnished to every principal	Tax paid on receipts/supply of goods/services effected on behalf of every principal

❖ **Records to be additionally maintained by a manufacturer and service provider**



❖ **Separate records for works contract to be maintained by a person executing work contract**



❖ **Records to be maintained by owner or operator of godown or warehouse and transporters providers**

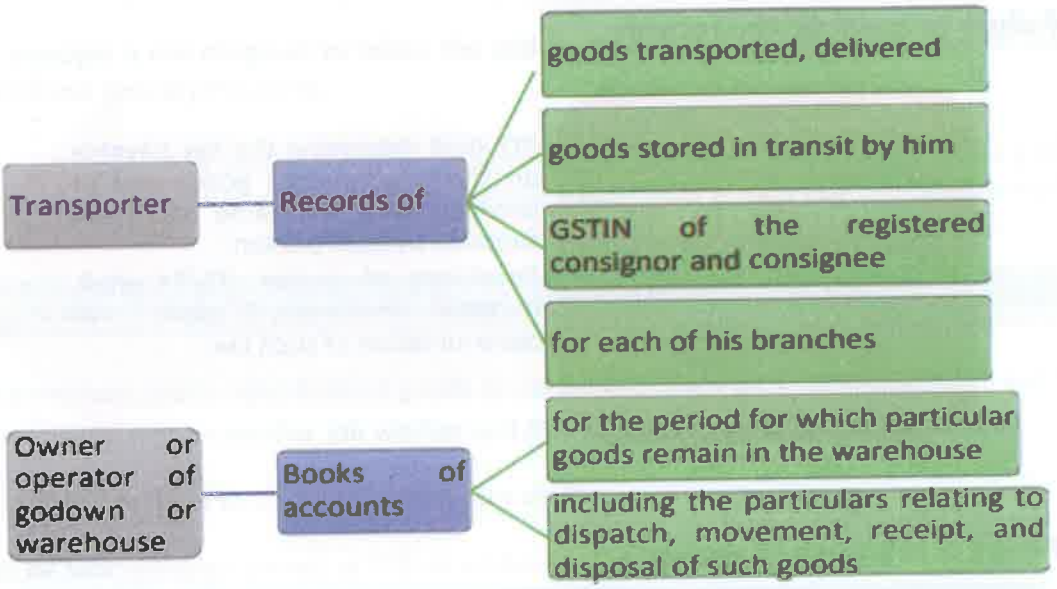
Records to be maintained by owner or operator of godown or warehouse and transporters provider

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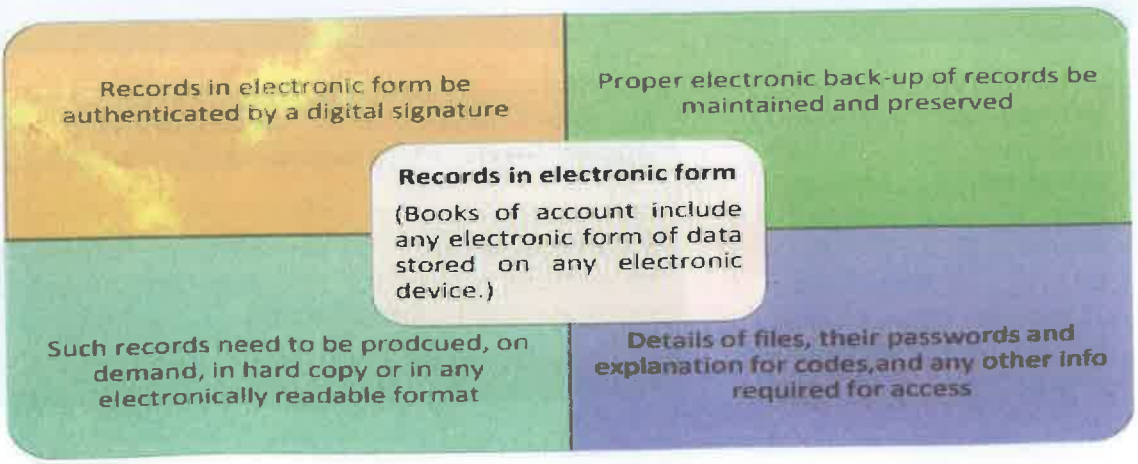
whether registered or not

↓

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



❖ **How the accounts and records will be maintained?**



No entry to be erased/overwritten

Incorrect entries, other than those of clerical nature, be scored out under attestation and there after correct entry be recorded.

In case electronic records beng maintained, a log of every entry edited or deleted shall be maintained.

Books of account maintained manually be serially numbered

Books of accounts, are required to be produced, on demand.

❖ Failure to maintain the records

Failure to maintain the accounts

- PO shall determine the tax payable on the unaccounted goods and/or services, as if the same had been supplied by such person
- Provisions of section 73/74 shall, *mutatis mutandis*, apply for determination of such tax

❖ Period of retention of accounts

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

Where an appeal/ revision/ any other proceedings before any Appellate/ Revisional Authority or Appellate Tribunal or Court, or an investigation is going on

1 year after final disposal of such appeal/revision/proceedings/investigation

or

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

whichever is later

JOB WORK

INTRODUCTION

As per Section 2(68) of the CGST Act 2017, Job work means any treatment or process undertaken by a person on goods belonging to another registered person and the expression "job worker" shall be construed accordingly.

- The provisions of Job work are applicable to a registered person. Thus, a principal, who can send the goods for job work must be a registered person.
- However, principal is not obligated to follow the said provisions. It is his choice whether to avail or not to avail these special provisions.
- In case, the principal is not availing the benefit of provisions, sending of inputs for processing by job worker will attract the provisions relating to a normal supply on both principal and the job worker.

JOB WORK PROCEDURE (SECTION 143, SECTION 19 AND RULE 45)

- ✓ Inputs, Intermediate goods, semi-finished goods or capital goods are sent to a job worker and from there subsequently sent to another job worker and likewise, under cover of delivery challan.
- ✓ The principal shall prepare in triplicate the delivery challan.
- ✓ Goods can be sent without reversal of ITC or without payment of GST.
- ✓ Such inputs, intermediate goods, processed goods or capital goods must be received back by the principal within the time limit as listed below.

Case	Time Period	Extension by commissioner	From
Goods sent by principal to job worker o Inputs o Capital Goods	 1 year 3 years	 1 year 2 years	 Being sent by principal to job worker.

Goods sent directly to job worker without being brought by principal to his place of business: o Inputs o Capital Goods	 1 year 3 years	 1 year 2 years	 From the date of receipt by the job worker.
Moulds, Dies, Jigs and fixtures or tools sent to job worker for job work	No time limit i.e., no need to bring back	---	---

- If goods are not received back by principal within the time limit as prescribed above, then it shall be deemed that such goods had been supplied to job worker and said supply shall be declared in Form GSTR-1 and principal is liable to pay tax-along with applicable rate of interest.
- If received back from job worker, then it will be considered as supply by the job worker to the principal on the basis of which principal can take ITC.
- The ITC shall be allowed even if any inputs and/or capital goods are directly sent to a job worker without being first brought to the premises of the principal and in such case, period of 1 year / 3 years shall be counted from date of receipt of such inputs or capital goods by job worker.
- The details of challan in respect of goods dispatched to a job worker or received from a job worker during **the specified period** shall be included in Form GST ITC-04 furnished for that period on or before 25th day of the month succeeding the said period or within such further period as may be extended by the Commissioner by a notification in this behalf.

  Explanation. – For the purposes of this sub-rule, the expression "specified period" shall mean.-

  (a) the period of 6 consecutive months commencing on the 1st day of April and the 1st day of October in respect of a principal whose aggregate turnover during the immediately preceding financial year exceeds ₹ 5 crores; and

  (b) a financial year in any other case.

Aggregate turnover of principal during preceding F.Y.	Form GST ITC-04 to be filed on	Due date(s) for filing Form GST ITC-04
upto ₹ 5 crore	Annual basis	25th April
Greater than ₹ 5 crore	Half yearly basis	25th October & 25th April

- The responsibility for keeping proper books of accounts for the inputs or capital goods shall lie with principal.

Supply of Goods Directly from the premises of Job worker to customer

- ✓ After processing of goods, the principal also has the option to clear the goods for supply to third party, directly from job worker's premises, on payment of tax within India or without payment of tax for export outside India on fulfilment of prescribed conditions.
- ✓ But principal shall not supply the goods directly from the place of business of job worker unless principal declares premise of the job worker as his additional place of business in his GST registration.
- ✓ Principal is not required to declare the job worker's premises as his additional place of business in case:
  - Where the job worker is registered under GST
  - Where the principal is engaged in supply of such goods as may be notified by the commissioner.
- ✓ **Exception:** Any waste or scrap generated during the job work may be supplied by the job work directly from his place of business on payment of tax, if such job worker is registered, or by principal, if the job worker is not registered.

REGISTRATION REQUIREMENTS

- ✓ A Job worker, being a supplier of service, is required to obtain registration only in cases when his aggregate turnover, to be computed on all India basis, in a financial year exceeds the threshold limit (i.e., ₹ 20 lakh or ₹ 10 lakh in case of Special Category States of Manipur, Mizoram, Nagaland and Tripura) regardless of whether the principal and job worker are located in the same state or different states.

Requirement to generate E-way Bill in case of Job Work:

- ✓ In case of goods sent by principal in one State/UT, to a job worker in any other State/UT, e-way bill needs to be generated irrespective of value of consignment.
- ✓ Since the supply of goods is made by unregistered supplier to registered recipient, it is to be deemed that movement of goods shall be caused by supplier if recipient is known at the time of commencement of movement of goods.

MISCELLANEOUS PROVISIONS

SECTION 161: RECTIFICATION OF ERRORS APPARENT ON THE FACE OF RECORD

Which documents are covered under section 161?	• Decision • Order • Any notice • Certificate • Any other document
Who can rectify the errors apparent on the face of record?	Any authority who has passed or issued any decision or order or notice or certificate or any other document may rectify any error which is apparent on the face of record in such documents.
What type of mistakes or errors can be rectified?	Errors or mistakes which are apparent on the face of record may be rectified. Rectification can only be of error apparent from record. It is a settled law that a decision on a debatable point of law is not a mistake apparent from the record.
When does the Authority rectify the mistakes/errors?	The authority may rectify the mistake/error: • suo moto • when such error or mistake is brought to its notice by a GST officer • when such error or mistake is brought to notice by the affected person within a period of 3 months from the date of issue of such decision or order or notice or certificate or any other document, as the case may be.
What is the time limit for rectification?	No rectification can be made after a period of six months from the date of issue of such decision /order/notice/certificate/any other document. However, such time limit does not apply in cases where the rectification is purely in the nature of correction of a clerical or arithmetical error or mistake, arising from any accidental slip or omission.
What type of precautions should be taken at the time of rectification?	Principles of natural justice should be followed by the authority carrying out such rectification, if such rectification adversely affects any person.

SECTION 169: SERVICE OF NOTICE IN CERTAIN CIRCUMTANCES

Any notice, decision, order, summons, or any other communication under the Act and the related rules are to be served on the assessee in accordance with the provisions of section 169.

SECTION 169(1): MODES OF SERVICE

- Giving/tendering directly including by a courier to the addressee or authorised representative; or
- Registered post/speed post/courier with acknowledgement due at the last known place of business or residence; or
- Email to the e-mail address provided at the time of registration or as amended from time to time; or
- Making the same available at common portal; or
- Publication in newspaper circulating in the locality in which addressee is last known to have resided, carried on business or personally worked for gain; or
- Affixing at last known place of business or residence or on notice board of office of concerned officer.

SECTION 169(2): DEEMED DATE OF SERVING

Every decision/order/summons/notice/communication shall be deemed to have been served on the date on which it is tendered or published or a copy thereof is affixed in manner provided in sub-section (1).

SECTION 169(3): DEEMED DATE OF RECEIPT

When a decision, order, summons, notice or any communication is sent by registered post or speed post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by such post in transit unless the contrary is proved.

SECTION 171: ANTI- PROFITEERING MEASURE

The burden of indirect taxation ultimately falls on the consumers. It is expected that the GST regime will result in an increased flow of input tax credit. In such a scenario, the concern that benefit of such increased input tax credit may not be passed on by certain entities to the consumers is not unreasonable.

Section 171 makes it mandatory that any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices.

ANTI-PROFITEERING AUTHORITY

The Central Government may, on recommendations of the Council, by notification, constitute an Authority, or empower an existing Authority constituted under any law for the time being in force, to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods/services/both supplied by him.

"Authority" includes the "Appellate Tribunal".

The Principal Bench of the Appellate Tribunal, constituted under section 109(3) has been empowered to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods and/or services supplied by that registered person*.

However, the Government may by notification, on the recommendations of the Council, specify the date from which the said Authority shall not accept any request for examination as to whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods and/or services supplied by him.

The term "request for examination" mean the written application filed by an applicant requesting for examination as to whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods/services/both supplied by him.

** Note: It may be noted that the Central Government had constituted the National Anti-Profiteering Authority (NAA) to handle the cases relating to anti-profiteering. NAA was operational until November 2022. The Competition Commission of India (CCI) was empowered to examine the anti-profiteering cases w.e.f. 01.12.2022.*
Further, a sunset date i.e. 01.04.2025 in section 171 has been introduced, which deals with the anti-profiteering measures, so as to allow filing of any application under anti-profiteering provisions only upto the said date vide Notification No. 19/2024 CT dated 30.09.2024.

FUNCTIONS OF THE AUTHORITY

The authority shall discharge the following functions, namely: -

i. to determine whether the reduction in tax rate or the benefit of input tax credit has been passed on by the seller to the buyer (hereinafter collectively referred to as 'benefit') by reducing the prices.

ii. to identify the taxpayer who has not passed on the benefit.

iii. to order
   a) reduction in prices
   b) return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest @ 18% from the date of collection of the higher amount till date of the return of such amount or recovery of amount not returned, as the case may be, in case the eligible person does not claim return of the amount or is not identifiable, and depositing the same in the Consumer Welfare Fund
   c) imposition of penalty
   d) cancellation of registration

iv. to furnish a performance report to the GST Council by the 10th day of the month succeeding each quarter.

ORDER OF THE AUTHORITY

Where the Authority determines that a registered person has not passed on the benefit, the Authority may order -

a) reduction in prices;

b) return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest @ 18% from the date of collection of the higher amount till the date of the return of such amount or recovery of the amount including interest not returned, as the case may be;

c) the deposit of an amount equivalent to 50% of the amount determined under the above clause along with interest @ 18% from the date of collection of the higher amount till the date of deposit of such amount in the Consumer Welfare Fund of Centre and the remaining 50% of the amount in the Consumer Welfare Fund of the concerned State/UT, where the eligible person does not claim return of the amount or is not identifiable.

d) imposition of penalty as specified under the Act; and

e) cancellation of registration under the Act.

SECTION 158A: CONSENT BASED SHARING OF INFORMATION FURNISHED BY TAXABLE PERSON

1. The following details furnished by a registered person may, be shared by the common portal with such other systems as may be notified by the Government, in the prescribed manner and subject to prescribed conditions namely: -
   (a) particulars furnished in the application for registration u/s 25 or in the return filed u/s 39 or u/s 44 [Annual Return];
   (b) the particulars uploaded on the common portal for preparation of invoice, the details of outward supplies furnished u/s 37 and the particulars uploaded on the common portal for generation of documents u/s 68 [Inspection of goods in movement]
   (c) such other details as may be prescribed.

2. For the purposes of sharing details, the consent shall be obtained, of –
   (a) the supplier, in respect of details furnished under clauses (a), (b) and (c) above; and
   (b) the recipient, in respect of details furnished under clauses (b) and (c) above only where such details include identity information of the recipient.

3. No action shall lie against the Government or the common portal with respect to any liability arising consequent to information shared under this section & there shall be no impact on the liability to pay tax on the relevant supply or as per the relevant return.

Rule 163: Consent based sharing of information

(1) Where a registered person opts to share the information furnished in —

(a) application for registration in Form GST REG-01 as amended from time to time;

(b) return in Form GSTR-3B for certain tax periods;

(c) Form GSTR-1, **as amended in Form GSTR-1A if any,** for certain tax periods, pertaining to invoices, debit notes and credit notes issued by him, as amended from time to time,

with a system referred to in section 158A(1), the requesting system shall obtain the consent of the said registered person for sharing of such information and shall communicate the consent along with the details of the tax periods, where applicable, to the common portal.

(2) The registered person shall give his consent for sharing of information furnished in Form GSTR-1 above only after he has obtained the consent of all the recipients, to whom he has issued the invoice, credit notes and debit notes during the said tax periods, for sharing such information with the requesting system and where he provides his consent, the consent of such recipients shall be deemed to have been obtained.

(3) The common portal shall communicate the information referred to in this rule with the requesting system on receipt from the said system-

(a) the consent of the said registered person, and

(b) the details of the tax periods or the recipients, as the case may be, in respect of which the information is required.

The Central Government has notified following as the systems with which information may be shared by the common portal based on consent :-

(1) Account Aggregator

(2) Public Tech Platform for Frictionless Credit

Explanation:

(1) **"Account Aggregator"** means a non-financial banking company (NBFC) which undertakes the business of an Account Aggregator in accordance with the policy directions issued by the Reserve Bank of India (RBI) u/s 45JA of the RBI Act, 1934 and defined as such in the Non-Banking Financial Company - Account Aggregator (Reserve Bank) Directions, 2016.

(2) "**Public Tech Platform for Frictionless Credit**" means an enterprise-grade open architecture information technology platform, conceptualised by the Reserve Bank of India as part of its "Statement on Developmental and Regulatory Policies" dated the 10th August, 2023 and developed by its wholly owned subsidiary, Reserve Bank Innovation Hub, for the operations of a large ecosystem of credit, to ensure access of information from various data sources digitally and where the financial service providers and multiple data service providers converge on the platform using standard and protocol driven architecture, open and shared Application Programming Interface (API) framework.

ETHICAL ASPECTS UNDER GST

MEANING OF ETHICS

- The Oxford Dictionary defines the term **"Ethics"** as the moral principle that governs a person's behavior or how an activity is conducted.
- Ethics provides a framework for distinguishing between right and wrong, guiding decision-making, and determining what is considered morally acceptable in a given context.
- Ethics are fundamental to the effective functioning of any taxation system; this also holds true for the Goods and Services Tax (GST) regime in India. Ethical conduct contributes to increased regulatory compliance and reduced tax evasion which in turn leads to increased Government revenue collection. This tax revenue can be used for public welfare and development projects. It also helps in creating a fair, transparent, and trustworthy tax environment and reduces uncertainty that supports economic growth and development. Unethical practices like issuing bogus invoice without underlying supply, wrongful availment of ITC, etc. not only undermine the tax revenues, but also create an uneven playing field for honest taxpayers. Ethical behavior may also reduce tax-related disputes and litigations.

ROLE OF CHARTERED ACCOUNTANT IN ENSURING ETHICS UNDER GST

- The professional behaviour of a Chartered Accountant is governed by a set of ethical guidelines and principles - known as Code of Ethics - laid down by the ICAI. Every Chartered Accountant has to abide by this code of ethics. It encourages the Chartered Accountants to be honest, fair, and professional in their working and advocates to follow the rules to ensure that they are doing the right thing for their clients and the public at large.
- The **fundamental principles** are: **integrity, objectivity, professional competence and due care, confidentiality, and professional behaviour.**
- The Chartered Accountants Act, 1949 prescribes the disciplinary action if a Chartered Accountant is found guilty of any Professional or Other Misconduct (as defined in Schedules to the Chartered Accountants Act).
- A Chartered Accountant in practice would be deemed to be guilty of professional misconduct under
  - clause (7) of Part I of the Second Schedule to the Chartered Accountant Act, 1949, if he does not exercise due diligence, or is grossly negligent in the conduct of his professional duties.
  - clause (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949, if he fails to obtain sufficient information which is necessary for expression of an opinion or its exceptions are sufficiently material to negate the expression of an opinion.

- A Chartered Accountant needs to follow ethical conduct while discharging his professional duties under the Goods and Services Tax (GST) law, namely, compliance functions, furnishing certifications/reports and advisory roles, by adhering to a set of principles and practices that promote integrity, transparency, and compliance.

- He should maintain professional knowledge and skill at the level required to ensure that a client or employer receives competent professional service based on latest applicable positions of GST law. In case of any violation of law in performing the compliance, certifications/reporting and advisory functions, he shall also be liable to applicable penalty and prosecution (in some cases) under GST law.

- Chartered Accountants play a crucial role in ensuring GST compliance within their clients' organizations. This involves –
  - assisting in the process of obtaining registration,
  - structuring the transactions & conditions stipulated in agreements for making /receiving supply,
  - optimizing tax positions,
  - ensuring the necessary GST compliances including e-way bill,
  - payment of taxes, TDS/TCS compliances,
  - compliances with anti-profiteering provisions and
  - timely filing of periodic returns.

- Generally, Chartered Accountants are responsible for ensuring the maintenance of accurate and detailed records of all GST-related transactions. This includes invoices, receipts, and other relevant documents. Such meticulous record-keeping is **a legal requirement** as well as **an ethical duty** of the Chartered Accountant.

  Another major responsibility of a Chartered Accountant in the realm of GST is to **act as a tax advisor** to their clients. This entails a comprehensive understanding of the client's business operations and goals.

- Chartered Accountants must assess the impact of GST on various aspects of the business, including supply chain, pricing strategies and financial reporting.

- A Chartered Accountant, who
  - holds a certificate of practice and
  - has not been debarred from practice,

  can also appear on behalf of his client before a **GST officer, GST Appellate Authority or GST Appellate Tribunal** in connection with any proceedings under GST law, as an authorised representative of the client.

- Furthermore, Chartered Accountants play a vital role in the GST ecosystem by providing certifications that affirm compliance with GST laws and regulations. These certifications are mandatory in specific situations and are required to ensure compliance with GST regulations.

  They primarily aim at curbing the unethical practices and preventing the leakage of revenue. Thus, it is the duty of every Chartered Accountant to exercise utmost care and due diligence while granting these certifications.

While providing said certification, the Chartered Accountant has to comply with the ethical requirements of the Code of Ethics issued by the ICAI, the relevant applicable requirements of the Standard on Quality Control (SQC-1), Quality Control for Firms that Perform Audits and Reviews of Historical Financial Information, and Other Assurance and Related Services Engagements.

The certifications/reports required to be furnished by a Chartered Accountant under GST law have been explained in detail hereunder.

CERTFICATIONS/REPORTS TO BE FURNISHED BY A CA REQUIRED UNDER GST LAW

1. Certification of the amount of ITC claimed at the time of registration/voluntary registration or switching to regular tax paying status or coming into tax-paying status [Section 18(1) read with rule 40]

The credit on inputs held in stock and contained in semi-finished goods or finished goods held in stock and capital goods at the time of registration/voluntary registration or coming into regular tax/tax-paying status is available in the following manner:

Section No.	Persons eligible to take credit	Goods entitled to ITC	
		Inputs held in stock/capital goods	as on the day immediately preceding
(1)	(2)	(3)	(4)
Sec 18(1)(a)	Person who has applied for registration within 30 days from the date on which he becomes liable to registration and has been granted such registration	Inputs held in stock and inputs contained in semi-finished or finished goods held in stock	The date from which he becomes liable to pay tax
Sec 18(1)(b)	Person who is not required to register, but obtains voluntary registration	Inputs held in stock and inputs contained in semi-finished or finished goods held in stock	The date of grant of registration
Sec 18(1)(c)	Registered person who ceases to pay composition tax and switches to regular scheme	Inputs held in stock, and inputs contained in semi-finished or finished goods held in stock & capital goods	The date from which he becomes liable to pay tax under regular scheme
Sec 18(1)(d)	Registered person whose exempt supplies become taxable supplies	Inputs held in stock and inputs contained in semi-finished or finished goods held in stock relatable to such exempt supply & on capital goods exclusively used for such exempt supply	The date from which such supply becomes taxable

In all the above cases, the registered person has to make an electronic declaration in Form ITC-01 on the common portal, clearly specifying the details relating to the inputs held in stock, inputs contained in semi-finished or finished goods held in stock and capital goods on the days mentioned in column (4) of table above. The declaration is to be **filed within 30 days** (extendable by Commissioner/Commissioner of State GST/Commissioner of UTGST) from the date when the registered person becomes eligible to avail ITC. If the claim of ITC pertaining to CGST, SGST/UTGST, IGST put together **exceeds ₹ 2,00,000**, the declaration needs to be certified by a **practicing Chartered Accountant or Cost Accountant.**

A Chartered Accountant is required to examine the books of accounts and other relevant documents / records of the taxpayer and to provide a reasonable assurance that the amounts declared in the Form GST ITC-01 have been accurately drawn from the books of accounts and other relevant documents / records of the taxpayer and is claimed as ITC.

2. **Certification that the sale, merger, demerger, amalgamation, lease or transfer of business done with a specific provision for the transfer of liabilities [Section 18(3) read with rule 41]**

In case of sale, merger, demerger, amalgamation, transfer or change in ownership of business etc., the ITC that remains unutilized in the electronic credit ledger of the registered person can be transferred to the new entity, provided there is a specific provision for transfer of liabilities in such change of constitution. The registered person should furnish details of change in constitution in Form ITC-02 on the common portal. Further, he needs to submit a certificate from practicing Chartered Accountant or Cost Accountant certifying that the change in constitution has been done with a specific provision for transfer of liabilities.

A Chartered Accountant is required to examine the books of accounts and other relevant documents / records of the taxpayer and to provide a reasonable assurance that the sale, merger, demerger, amalgamation, lease or transfer or business has been done with a specific provision for the transfer of liabilities.

3. **Certification that in case of refund claim exceeding ₹ 2 lakh by the applicant, there is no unjust enrichment [Section 54 read with rule 89(2)(m)]**

A certificate in Annexure 2 of Form GST RFD-01 is to be issued by a Chartered Accountant or Cost Accountant to the effect that the incidence of tax, interest or any other amount claimed as refund has not been passed on to any other person (i.e., there is no unjust enrichment in the case of the applicant) in a case where the amount of refund claimed exceeds ₹ 2 lakh.

The certification by the Chartered Accountant should be based on meticulous examination of the books of accounts and other relevant documents / records supporting the refund claim thereby providing a reasonable assurance that the incidence of tax, interest or any other amount claimed as refund, has not been passed on to any other person.

4. Certification of the amount of ITC to be reversed on cancellation of registration or on switching to composition levy/exit from tax-paying status, in respect of inputs for which tax invoices are not available [Section 29(5)/section 18(4) read with rule 44(5)]

Section 29(5) requires reversal of ITC on cancellation of registration of a registered person. Similarly, section 18(4) requires reversal of ITC when a registered person who has availed ITC switches to composition levy or when his supplies get wholly exempted from tax.

ITC on inputs should be reversed proportionately on the basis of corresponding invoices on which credit had been availed on such inputs. If **invoices are not available**, ITC can be reversed on the basis of the prevailing market price of such goods on the date of switch over/exemption/cancellation of registration. The details so furnished on the basis of prevailing market value need to be duly certified by a practicing Chartered Accountant or Cost Accountant.

The certification by the Chartered Accountant should be based on meticulous examination of the books of accounts and other relevant documents / records of the taxpayer thereby providing a reasonable assurance as regards the correctness of the quantum of the amount of ITC to be reversed in case where the tax invoices related to the inputs held in stock are not available.

5. Audit Report u/s 66

Section 66 provides that if at any stage of scrutiny, inquiry, investigation or any other proceedings before him, any officer not below the rank of Assistant Commissioner, having regard to the nature and complexity of the case and the interest of revenue, is of the opinion that –

- the value (of goods and/or services) has not been correctly declared; or
- the credit availed is not within the normal limits,

he may, with the prior approval of the Commissioner, issue a direction to the registered person to get his records including books of account examined and audited by a Chartered Accountant or a Cost Accountant as may be nominated by the Commissioner and specified in the said direction.

The Chartered Accountant or Cost Accountant shall submit a report of such audit duly signed and certified by him within the period of 90 days to the said Assistant Commissioner mentioning therein such other particulars as may be specified:

The Assistant Commissioner may extend the said period 90 days by a further period of 90 days –

- on an application made to him in this behalf by the registered person or the Chartered Accountant or Cost Accountant; or
- for any material and sufficient reason.

The expenses of the examination and audit of records including the remuneration of such Chartered Accountant or Cost Accountant, shall be determined and paid by the Commissioner and such determination shall be final. On conclusion of special audit, the registered person shall be informed of the findings of special audit.

Upon the conclusion of special audit u/s 66, the registered person is communicated the proposed tax, interest and other liabilities, if any, along with the audit findings and the registered person is called upon to discharge the liabilities.

In case the registered person discharges the liabilities as proposed, no further action is taken. Otherwise, the authorities may initiate the proceedings against the registered person u/s 73 or 74 for determination of the tax liability of the person audited.

A Chartered Accountant must approach the Special Audit with an unbiased and impartial mindset, free from any external influences or conflicts of interest. This ensures that the audit findings are based on factual evidence and professional judgment, rather than personal biases. He should first go through the terms of reference provided by the GST authorities to understand the scope and objectives of the special audit. This document outlines the specific areas and tax periods to be audited. He should conduct a comprehensive review of all relevant documents, including financial statements, invoices, transaction records, and any other documentation provided by the taxpayer. This ensures that the audit findings are based on accurate and reliable information. He should take steps to identify and mitigate any potential conflicts of interest that may arise during the special audit. This includes refraining from engaging in any activities or relationships that could compromise their objectivity or independence. If a conflict of interest does arise, it should be promptly disclosed to the relevant parties.

Apart from the aforesaid specific roles defined in the GST Law for Chartered Accountants, there may be specific scenarios where the attested documents, certificates issued by the Chartered Accountants are relied during the proceedings under GST Law by the tax authorities and also judicial forums, as a general practice while dealing with the GST Law related disputes.

BASIC PROVISIONS OF CUSTOMS

1.1 Constitutional Power

- **List I** enumerates the matters in respect of which the Parliament has an exclusive right to make laws.
- **Entry 83** of Union List has given the power to the Union to frame laws to levy duties of Customs including export duties.

1.2 Section 1 of Customs Act 1962: Extent & Applicability

The Customs Act, 1962 extends to the whole of India and, save as otherwise provided in this Act, it applies also to any offence or contravention thereunder committed outside India by any person.

1.3 Section 2: DEFINITIONS

☞ **India:** It includes the territorial waters of India (up to 12 nautical miles).

Note: 1 nautical mile = 1.1508 land-measured (or statute) miles or 1.852 kilometers

☞ **Territorial Waters of India:**

- As per Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, territorial waters of India extend to 12 NM into sea from the appropriate base line.
- Goods are deemed to have been imported if the vessel enters the imaginary line on the sea at the 12th nautical mile i.e., if the vessel enters the territorial waters of India. Therefore, a vessel not bound to India should not enter these waters.
- India includes not only the surface of sea in the territorial waters, but also the air space above and the ground at the bottom of the sea.

☞ **Indian Customs Water:** Indian customs waters means the waters extending into the sea up to the limit of Exclusive Economic Zone (200 NM), Continental Shelf, Exclusive Economic Zone & other Maritime Zones Act, 1976 and includes any bay, gulf, harbour, creek or tidal river.

☞ **Export:** Taking out of India to a place outside India.

☞ **Import:** Bringing into India from a place outside India.

Garden Silk Mills – 2002 –SC

Import of Goods into India would commence when the same cross into the TWI but continuous and is completed when goods become the part of the mass of goods within the country.

- The taxable event being reached at the time when the goods reach the custom barrier **AND**
- The bill of entry for home consumption is filed.

Stores

It means goods for use in vessel or aircraft and includes fuel & spare parts and other articles or equipment, whether or not for immediate fitting.

Goods

It includes

(a) vessels, aircrafts and vehicles

(b) stores

(c) baggage

(d) currency and negotiable instruments and

(e) Any other kind of movable property.

Note: There is no duty liability on the paper money but is to ensure check over the flow of money in & out of the country.

Conveyance

It includes a vessel, an aircraft and a vehicle.

Customs Station

Means any customs port, customs airport, international courier terminal, foreign post office or land customs station.

Custom Area

Means: The area of a **Custom Station** or a warehouse
Includes: **Any area** in which imported **goods** or export goods **are ordinarily kept** before clearance by Custom Authorities. (e.g., Customs Warehouse)

Beneficial Owner

Means any person on whose behalf the goods are being imported or exported or who exercises effective control over the goods being imported or exported.

LEVY OF & EXEMPTIONS FROM CUSTOMS

No Duty on Pilfered Goods [Section 13]

- Imported goods are **PILFERED:** after unloading and before the proper officer has made an order for home consumption or Warehousing.
- The importer shall **NOT be liable to pay** the duty leviable on such goods except where such goods are restored to the importer after pilferage.

Re-importation of Goods into India [Section 20]

If goods are imported into India after exportation there from, such goods shall be **liable to duty** and subject to all the conditions & restrictions, if any to which goods of the like kind and value are liable to subject, on the importation thereof.

Conditions for Availing Benefits/Exemptions:

- **Time limit for re-importation**
  - 3-years 5 years + extendable upto 2 years. **In case of Bhutan, time limit is 7 years which can be extended further for a period up to 3 years for machinery and equipment exported.**
  - 1 year + extendable upto 1 year, in case of goods exported under AA/DFIA or EPCG or Duty Entitlement Passbook Scheme (DEPB) or any scheme of Chapter 4 of FTP 2023.
- **The exported goods & the re-imported goods must be the same.**
- **No change in ownership of the goods.**

Amount of Import Duty Payable, if re-imported:

Case	Amount of duty to be paid on import
1. Re-importation of goods which were exported earlier under – i. claim for duty drawback ii. claim for refund of IGST paid on export goods iii. bond without payment of tax iv. duty exemption scheme i.e., Advance Authorisation/ DFIA or EPCG v. claim for RoDTEP vi. claim for RoSCTL	Amount of incentive availed at the time of export subject to specified conditions. In case of point (iv), amount of IGST and compensation cess leviable at the time and place of importation of goods subject to specified conditions.
2. Goods exported for repairs abroad	Basic customs duty, IGST or GST Compensation Cess is to be paid on Fair cost of repairs including cost of materials (actually incurred or not), used in repairs + Insurance & Freight charges, both ways.

Goods derelict, wreck etc. [Section 21]

All goods, derelict, jetsam, flotsam and wreck brought or coming into India, **shall be dealt with as if they were imported into India,** unless it be shown to the satisfaction of the proper officer that they are entitled to be admitted duty-free under the Act.

- **Derelict:** It is a property, whether vessel or cargo, abandoned at sea by those in charge of it without hope of their part of recovering or intention of returning to it.
- **Jetsam:** This refers to goods jettisoned from the vessel to save her sinking. Jetsam has been voluntarily cast into the sea by the crew of a ship, usually in order to lighten it in an emergency.
- **Flotsam:** Jettisoned goods, which continue floating in the sea are called flotsam.
- **Wreck:** This refers to cargo or vessel or any property which are cast ashore by tides after ship wreck.

Abatement of Duty on Damaged & Deteriorated Goods [Section 22]

Where it is shown to the satisfaction of the AC/DC of Customs:

Goods	Coverage	During
Any imported goods	Damaged or deteriorated	**Before or during** unloading of goods in India
Any imported goods (other than warehoused goods)	Damaged	**After** unloading but before examination *
Warehoused Goods	Damaged	**At any time** before clearance for home consumption *

*** Not due to mistake of importer or his employee / agent**

- Duty shall be abated proportionately.
- Value of damaged or deteriorated goods at the option of owner may be: -
  - (a) ascertained by PO or
  - (b) goods may be sold by PO by public auction / tender or in any other manner and the gross sale proceeds shall be deemed to be the value of such goods.

Remission & Relinquishment of Duty [Section 23]

a. Remission of duty

Where it is shown to the **Satisfaction of the AC/DC** that any imported goods have been

- Lost (otherwise than as a result of pilferage) or,
- Destroyed, at any time before clearance for home consumption,

the AC/DC shall **remit the duty** on such goods.

b. Relinquishment of duty

The owner of any imported goods may, **at any time before** an order for clearance for home consumption or warehousing has been made,

- **Relinquish** his title to the goods &
- Thereupon he shall **not be liable to pay the duty** thereon.

Relinquishment **not allowed** in case of which an offence appears to have been committed.

Denaturing or Mutilation of Goods [Section 24]

The CG may make rules for permitting **at the request of the owner** the denaturing or mutilation of imported goods which are **ordinarily used for more than one purpose,** so as to render them unfit for one or more of such purposes;

And where any **goods** are so **denatured or mutilated,** they shall be chargeable to duty at such rate as would be applicable if the goods had been imported in the denatured or mutilated form.

Exemption from Customs Duty [Section 25]

General Exemption	Special Exemption
Central Govt. in public interest	Central Govt. in public interest
by notification in the Official Gazette	by special order in each case
exempt generally either absolutely or conditional exemption	exempt from payment of duty only under circumstances – exceptional nature
conditional exemption – valid upto 31st day of March falling immediately after 2 years from the date of such grant/ variation in other than specified cases	No duty – if the amount of duty leviable is equal to or less than ₹ 100.

However limited period of validity shall not apply to any such exemption granted to, or in relation to, -

(a) any multilateral or bilateral trade agreement;

(b) obligations under international agreements, treaties, conventions or such other obligations including with respect to United Nations agencies, diplomats and international organisations;

(c) privileges of constitutional authorities;

(d) schemes under the Foreign Trade Policy;

(e) the Central Government schemes having validity of more than 2 years;

(f) re-imports, temporary imports, goods imported as gifts or personal baggage;

(g) any duty of customs under any law for the time being in force, including IGST leviable u/s 3(7) of the Customs Tariff Act, 1975, other than duty of customs leviable u/s 12.

Effective date of notification

➢ Effective date not mentioned	• Date of its issue by the CG for publication in the Official Gazette.
➢ Exemption through a special order	• Date of its issue.
➢ Clarifications	• Issued within 1 year from the issue of the notification. • Having retrospective effect.

Exemption to re-import of goods & parts thereof for repairs, reconditioning, reprocessing, remaking or similar other process

Particulars	Time limit for re-importation from the date of exportation
Goods manufactured in India & re-imported for repairs / reconditioning other than specified goods	3 years In case of Nepal & Bhutan – 10 years
Goods manufactured in India & re-imported for reprocessing / refining / re-making / any similar process	1 year
Specified goods manufactured in India and re-imported into India for repairs or for reconditioning	7 years (10 years in case of Nepal and Bhutan) subject to Goods be re-exported within 1 year of the date of re-importation.

Customs Duty on Clearance of Capital Goods:

The importer shall have an option to clear the capital goods imported, after having been used for the specified purpose.

Payment of Duty = Duty leviable without exemption (on depreciated value) – Duty already paid

Depreciated value is to be calculated as follows in straight line method as under: -

i. for every quarter or part thereof in the first year @ 4%
ii. for every quarter or part thereof in the second year @ 3%
iii. for every quarter or part thereof in the third year @ 3%
iv. for every quarter or part thereof in the fourth & fifth year @ 2.5%
v. and thereafter for every quarter @ 2%

Note: The depreciation shall be allowed from the date when the capital goods imported have come into use upto the date of its clearance. **[Refer Q17 – Levy & Exemption Chp from Que Bank]**

TYPES OF DUTY

Anti-Dumping Duty u/s 9A:

Where an article is exported by an exporter from any country to India at less than its normal value then, upon the importation of such article into India, Central Govt. may impose anti-dumping duty.

☞ **Conditions for levy of Anti-Dumping Duty u/s 9A:**

- There must be dumping.
- Due to such dumping, there is an injury.

* Dumping is when, Normal value in the exporting market > Export price

☞ **Amount of Anti-Dumping Duty:**

Lower of:

i. Margin of dumping
OR
ii. Injury margin

❖ **Margin of dumping = Normal value (in exporting country) – Export price**

- If normal value (in exporting country) is not available, then take value at which exporting country exports to other countries.

❖ **Injury margin = Fair selling price (in India) – Landed value (CIF + Custom duty except CVD & special duties)**

☞ **Period of Imposition:**

- Initially 5 years but it can be extended by 5 years more.
- Provisionally it can be imposed for 6 months.
- Retrospectively it can be imposed for maximum 90 days.

☞ **Non-applicability:**

Anti-dumping duty/Safeguard duty/CVD shall not apply to the articles imported by 100% EOU or a SEZ unit, unless the imported articles are cleared as such into the DTA or used in manufacture of any articles that are cleared into the DTA.

Countervailing Duty (CVD):

Where any country pays any subsidy upon the manufacture or production therein of any article then, upon the Exportation of any such article into India, Central Govt. may impose a Countervailing Duty.

- No article shall be subjected to both CVD & Anti-Dumping Duty.

Conditions to be satisfied: The countervailing duty on subsidized articles is imposed if the following conditions are satisfied.

a. Any country or territory, directly or indirectly, pays or bestows subsidy upon the manufacture or production or exportation of any article. Such subsidy includes subsidy on transportation of such article.

b. Such articles are imported into India.

c. The importation may/may not directly be from the country of manufacture/production.

d. The article, may be in the same condition as when exported from the country of manufacture or production or may be changed in condition by manufacture, production or otherwise.

Duration of countervailing duty on subsidized articles: 5 years + Extension – upto 5 years

Safeguard Duty

Where any article is imported in India-

- In increased quantity, and
- It is causing threat / serious injury to domestic market

then, CG may impose such safeguard measures on that article as it deems appropriate.

Following safeguard measures may be imposed: -

a) imposition of safeguard duty; or
b) application of tariff-rate quota, or
c) other measures as the CG deems appropriate.

Such duty shall not be imposed on –

a) Articles originating from a developing country, so long as the share of imports of that article from that country does not exceed 3% of total imports of that article into India.

b) Articles originating from more than one developing country, so long as the aggregate of imports of that article from developing countries each with less than 3% import share taken together does not exceed 9% of total imports of that article into India.

Period of importation: Initially – 4 years + Extension – Any period
However, 4 years + Extension = Max. 10 years

Provisional Assessment

(a) The Central Government is also empowered to impose provisional safeguard measures.

(b) This provisional safeguard measures may be imposed on the basis of preliminary determination that increased imports have caused or threatened to cause serious injury to a domestic industry.

(c) The provisional safeguard measures shall be in force for a maximum period of 200 days from the date of its imposition.

(d) If upon final determination, the Central Government is of the opinion that the increased imports have not caused or threatened to cause serious injury to a domestic industry, the safeguard duty collected shall be refunded.

IMPORT / EXPORT PROCEDURE

1. Inland Container Depot & Container Freight Station

Inland container depot (ICD)

- ICD is a stand- alone customs part (independent of the entry port.).
- **ICD is a deemed port** (as it is covered by definition of Customs Port).
- Movement from ICD to a Land Customs Station or Airport is akin to Trans-shipment from one custom station to another Customs Station.
- Facilities for processing of Import Manifest, Export Manifest, Bill of Entry etc. are made available at the ICD itself.

Reason of Emergence of concept of ICD:

- To make goods available at the doorsteps of importers/ exporters.
- ICDs are thus self-sufficient customs stations and for all practical purposes a Custom House in the same way as any port or airport.

Container Freight Station (CFS)

- CFS is not a deemed port.
- It is **an extension of entry port.**
- It by itself cannot have an independent existence; it has to be linked to a customs station within the jurisdiction to the CC.
- Processing of Import Manifest, Export Manifest, Bill of Entry etc. are not carried out at CFS (these functions carried at Main Port)

Reason of emergence of concept of CFS

- It is an extension of customs stations set up with the main objective of decongesting the ports.

2. Person in charge (PIC)

In relation to vessel	Master of vessel
In relation to aircraft	Commander or pilot in charge.
In relation to railway train	Conductor/ Guard
In relation to any other conveyance	Driver or other person in charge.

Other Notes

- PIC shall be responsible for submitting Arrival Manifest or import manifest/Departure or export manifest.
- PIC shall ensure that conveyance does not leave without written order of Custom Authorities.
- PIC shall be responsible to ensure that the conveyance comes through approved route and lands at approved places only.
- In case of false declaration or storages of goods PIC has to be penalized.

Section 29: Arrival of Vessels and Aircraft in India

Landing of Vessel & Aircraft

PIC shall not call or land the vessel or aircraft at any place other than a customs port or airport unless permitted by CBIC.

(Exception: when landing can be done at any place other than customs port or airport i.e. In case of accident, stress of weather, Other unavoidable cause)

PIC Liability : Under Exceptional Cases

PIC shall immediately report such arrival to nearest custom officer or the officer-in - charge of a police station & without obtaining consent from the respective officer, PIC shall not permit any goods to be unloaded from, or any of the crew or passenger to depart from the vicinty of, the vessel or the aircraft: and shall also comply with any direction given by any such officer

Passenger or Crew Member's Liability : Under Exceptional Cases

Passenegr or crew cannot leave the vicinity without obtaining consent of any such officer, leave the immediate vicinity of the vessel or the aircraft.

(Exception: where the departure or removal is necessary for reasons of Health, safety or the preservation of life or property)

Section 30: Delivery of Arrival Manifest or Import Manifest or Import Report

Mode of Import	Vessel or Aircraft	Land
Document Name	Arrival Manifest or Import manifest	Import Report
Time of Filing	Before arrival of vessel or aircraft (At any time)	Within 12 hours after its arrival
Mode of Filing	Electronically (Mandatory) unless allowed by Commissioner of customs	Manually
Note: If Arrival Manifest / Import Manifest / Import Report is not delivered within the specified time limit then it can be filed belatedly if PO is satisfied that there was sufficient cause. If PO is not satisfied then delivery can be made after paying penalty of **Max ₹ 50,000**. If the PO is satisfied that the produced documents are incorrect or incomplete, and there was no fraudulent intention, he may permit it to be amended or supplemented.		

Section 30A: Passenger & Crew Manifest & Passenger Name Record Information

- Person in charge shall deliver passenger & crew arrival manifest (before arrival of aircraft or vessel & upon arrival for vehicle) and passenger name record information of arriving passengers.
- If not delivered within stipulated time limit, then it can be filed belatedly if PO is satisfied that there was sufficient cause.
- If PO is not satisfied then it can be filed after paying penalty of Max ₹ 50,000.

Section 31: Imported Goods not to be unloaded from vessel until inwards granted

- Master of a Vessel shall not permit the unloading of any imported goods until an order has been given by the PO granting entry inwards to such vessel.
- No entry inward required in case of goods imported through Aircraft/Vehicle.
- Entry inward shall not be required for unloading of
  - Baggage accompanying a passenger or a member of the crew,
  - Mail bags
  - Animals
  - Perishable goods and
  - Hazardous goods
- Shipping Line/Agent (PIC) is liable to file import manifest/arrival manifest, and shall be liable for fine/penalty for improper filing of Import manifest and not the importer.

Section 32: Imported goods not to be unloaded unless mentioned in import manifest or import report

No imported goods required to be mentioned in an import manifest or import report shall, except with the permission of the proper officer, be unloaded at any customs station unless they are specified in such manifest or report for being unloaded at that custom station.

Section 33: Unloading and Loading of Goods at Approved Places only

Except with the permission of proper officer,

- No imported goods shall be unloaded, and
- No export goods shall be loaded

At any place other than a place approved under clause (a) of section 8 for the unloading or loading of such goods.

Section 34: Goods not to be Unloaded or Loaded Except under Supervision of Custom Officer

Imported goods shall not to be unloaded from, and exported goods shall not be loaded on, any conveyance except under the **supervision of the proper officer**.

Provided that the Board may, by notification in the OG, give permission and the proper officer may in any particular case give **special permission,** for any goods or class of goods to be unloaded or loaded without the supervision of the proper officer.

Section 35: Restriction on goods being borne

If the port is busy & it is not possible for vessel to come on port, then small boats/ships are used to bring goods on port. This is known as **Water Borne.**

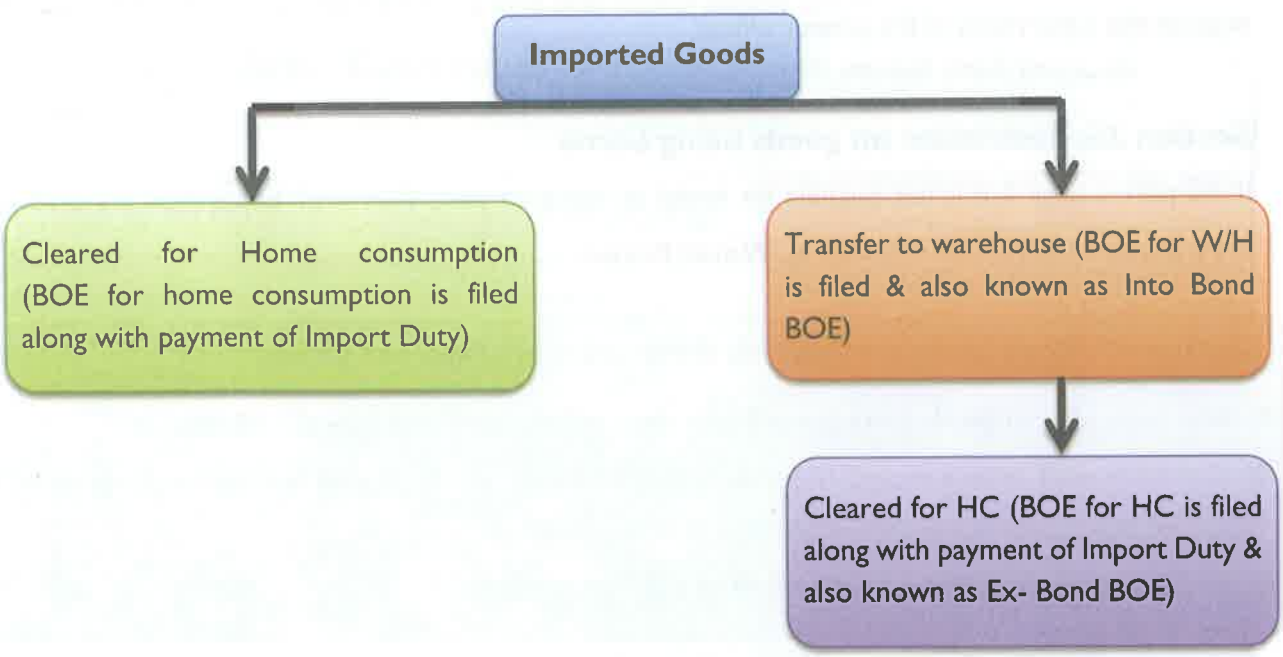
Section 45: Restriction on Custody & removal of imported goods

- After unloading of goods custodian will take them into custody until they are cleared.
- Custodian shall keep a record of goods and send a copy to PO. It shall not permit Removal of Goods from custom area except with the permission of PO.
- In case of pilfered goods, custodian shall be liable to pay duty.

Section 46: Entry of Goods on Importation

- Importer of goods (except goods intended for transit or trans-shipment) shall present Bill of Entry for home consumption or warehousing electronically on customs automated system.
- Commissioner of customs may allow it to be presented manually when electronic filing is not feasible.
- Bill of entry shall include all goods mentioned in Bill of Lading or other receipt given by carrier.
- Importer who files BOE shall ensure its accuracy, completeness, authenticity, validity etc.
- The importer shall present the bill of entry before the end of the next day following the day (excluding holidays) on which the aircraft or vessel or vehicle carrying the goods arrives at a customs station at which such goods are to be cleared for home consumption or warehousing.
- Provided that a BOE may be presented at any time not exceeding 30 days prior to the expected arrival of the aircraft or vessel or vehicle by which the goods have been shipped for importation into India.
- There are 3 types of B/E prescribed by regulation
  - Form I: For home consumption
  - Form II: For warehousing (Into Bond)
  - Form III: Clearance for home consumption from warehouse (Ex-bond).

    [This Bill of Entry is to be submitted u/s 68 & not under Sec. 46]



Section 47: Clearance of Goods for Home Consumption

- Where the PO is satisfied that any goods entered for home consumption are not prohibited goods and the importer has paid the import duty, the PO may make an Out of Charge Order.
- Provided that such order may also be made electronically through the customs automated system on the basis of risk evaluation through appropriate selection criteria.
- For notified importers [Importer certified under Authorised Economic Operator Programme as AEO (Tier two/three)] deferred payment of duty is allowed.

Due date of payment of duty:

The importer shall pay the import duty-

(i) On the date of presentation of the BOE in case of self- assessment; or

(ii) Within 1 day (excluding holidays) from the date on which the bill of entry is returned to him by the PO for payment of duty in case of assessment, reassessment or provisional assessment; or

(iii) In case of deferred payment:

For goods corresponding to Bill of Entry returned	Duty shall be paid by
For payment from 1st day to 15th day of any month	16th day of that month
From 16th day till the last day of any month except march	1st day of following month
From 16th day till the 31st day of March	31st March

The Central Government may, under exceptional circumstances, and for reasons to be recorded in writing, allow payment to be made on a different due date.

In case of eligible importer fails to pay duty in full by due date more than once in a period of three consecutive months shall not be permitted to make deferred payment until he pays duty along with Interest.

However, the eligible importer shall be permitted to make the deferred payment if he has –

1. paid the duty for a bill of entry within due date; and
2. paid the difference duty for the same bill of entry along with the interest on account of reassessment within one day (excluding holidays).

Section 48: Procedure in case goods not cleared within 30 days / + Extension of unloading

- If imported goods are not cleared for home consumption or warehouse or transshipped within 30 days (+ Extension by PO) from the date of the unloading, Custodian may after giving notice to the importer and with the permission of PO **sell such goods**.
- **Exception** (i.e., can be sold even before 30 days)
  - Animals, perishable goods, hazardous goods may be sold with permission of PO.
  - Arms and ammunition with the permission of CG.

Section 49: Warehousing without warehousing

- Cases: Where
  - In the case of any imported goods, whether dutiable or not, entered for home consumption, the AC or DC of customs is satisfied on the application of the importer that the goods cannot be cleared within a reasonable time.
  - In the case of any imported dutiable goods, entered for warehousing, the AC or DC of Customs is satisfied on the application of the importer that the goods cannot be removed for deposit in a warehouse within a reasonable time, then in such cases,
    - The goods may pending clearance or removal, as the case may be, be permitted to be stored in a public warehouse for a period **not exceeding 30 days**.
    - Provided that the provisions of warehousing shall not apply to goods permitted to be stored in a public warehouse under this section.
    - Further provided that the Principal Commissioner of Customs or Commissioner of Customs may extend the period of storage for a further period **not exceeding 30 days at a time.**

Section 85: Warehousing of Stores

Where the imported goods are entered for warehousing and

- The importer makes and subscribes to a declaration
- that the goods are to be supplied as stores to vessels or aircraft without payment of import duty,
- the proper officer may permit the goods to be warehoused without the goods being assessed to duty.

EXPORT PROCEDURE

Section 50: Entry of goods for Exportation

- Exporter of goods shall present Shipping Bill (for export by vessel or aircraft) or Bill of Export (for export by vehicle) electronically on customs automated system.
- Exporter who files Shipping Bill shall ensure its accuracy, completeness, authenticity, validity etc.

Section 51: Clearance of Goods for Home Consumption

- Where the PO is satisfied that any goods entered for export are not prohibited goods and the importer has paid the export duty (if any), the PO may make a Let Export Order (Let Ship Order).

  Provided that such order may also be made electronically through the customs automated systems on the basis of risk evaluated through appropriate selection criteria.
- For notified exporters deferred payment of duty is allowed.
- For delay in payment, interest @ 15% p.a. to be paid.

Section 39: Export Goods not to be loaded on Vessel until Entry-Outwards granted

1. Entry Outward Order: Export goods are not to be loaded on vessel until entry outwards is granted. The master of the vessel shall not begin the loading of any export goods until an order has been given by the PO granting entry- outward to such vessel.
2. This provision is not applicable on:
   - Goods exported by baggage and mail bags
   - Goods exported by aircraft and vehicles.

Section 41A: Passenger & crew departure manifest & passenger name record information

- PIC shall deliver a passenger & crew departure manifest (before arrival of aircraft or vessel & upon arrival for vehicle) and passenger name record information of arriving passengers.
- If above is not delivered within the specified time limit, then it can be filed belatedly if PO is satisfied that there was sufficient cause.
- If PO is not satisfied then it can be filed after paying penalty of Max ₹ 50,000.

Section 42: No conveyance to leave without written order

The person in charge of a conveyance which has brought any imported goods or has loaded any exported goods at a customs station shall not cause or permit the conveyance to depart from the customs station until a written order to that effect has been given by the proper officer.

Transit & Transhipment

Transit [Sec 53 & 55]	Transhipment [Sec 54 & 55]
➢ Goods are transited in the same conveyance which brings the goods into India.	➢ Goods are transhipped in a conveyance other than the conveyance which brings the goods into India.
➢ No need of filing any fresh documentation for carrying goods from first port to another port.	➢ Fresh documentation is required for carrying goods from first port to another port. **[Bill of Trans-shipment]**
Goods shall be entered at this port as if they have been directly imported at this port for the first-time goods into India & duty shall be payable at destination port [if in India] [Sec 55]	

Section 51A: Phased implementation of Electronic Cash Ledger (ECL) in Customs

The Electronic Cash Ledger (ECL) functionality is covered in Section 51A of the Customs Act, 1962. It provides enabling provision whereby the importer, exporter or any person liable to pay duty, fees etc., under the Customs Act, has to make a non-interest- bearing deposit with the Government for the purpose of payment.

Section 51A(4) provides that CBIC may by notification exempt certain deposits to which provisions of Electronic Cash Ledger will not be applicable.

CBIC has exempted following deposits from the provisions of section 51A of the Customs Act -

(i) with respect to goods imported or exported in customs stations where customs automated system is not in place;

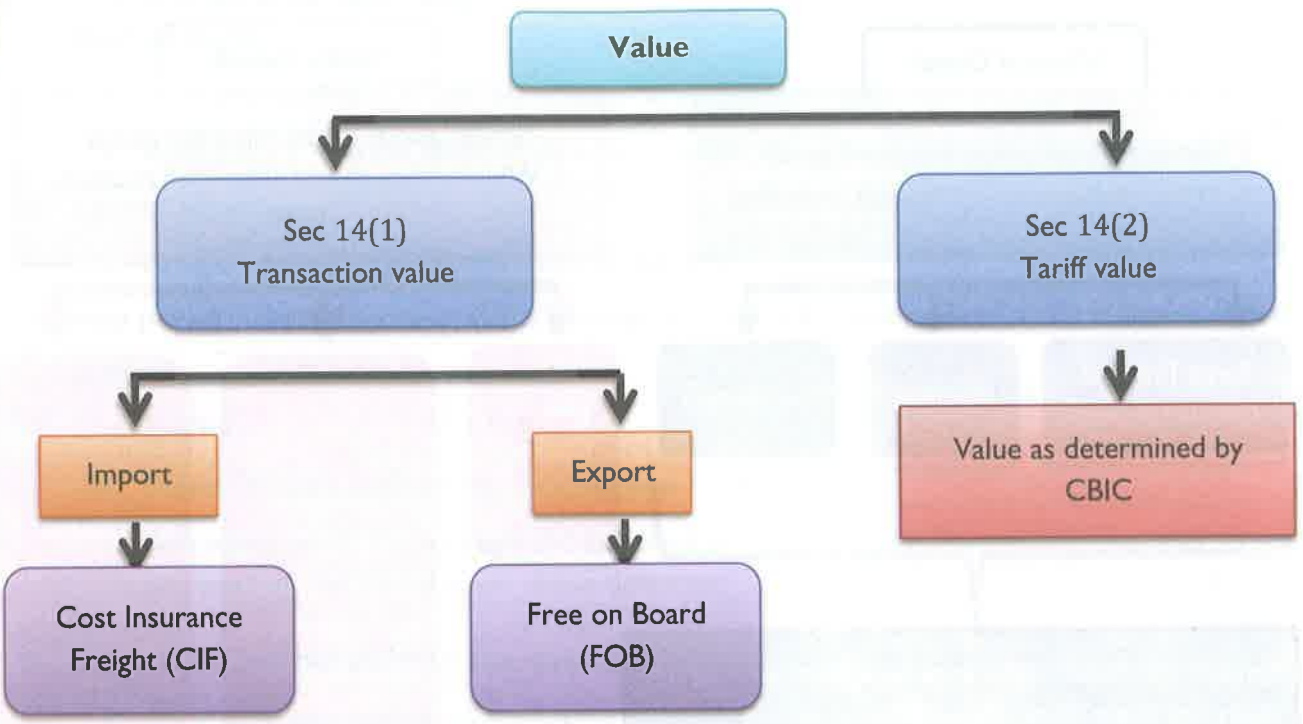
~~(ii) with respect to goods imported or exported at international courier terminals [exempted only till 29.02.2024] (In other words, payments relating to Courier shipments would be required to be done through ECL from 01.03.2024 onwards);~~ [omitted]

(iii) with respect to accompanied baggage;

(iv) other than those used for making electronic payment of:
- (a) any duty of customs, including cesses and surcharges levied as duties of customs;
- (b) IGST;
- (c) GST Compensation Cess;
- (d) interest, penalty, fees or any other amount payable under the Act, or Customs Tariff Act, 1975.

VALUATION UNDER CUSTOMS ACT

[Section 14]



❖ Transaction Value

(i) Price actually paid or payable for the goods when **sold for export to India**.

(ii) For export to India for **delivery at the time & place of Importation/ Exportation**.

(iii) Where the buyer & seller are **not related**.

(iv) Price is the **sole consideration** for the sale.

(v) Subject to such **other conditions** as may be specified in rules made in this behalf.

❖ Applicable Exchange Rate [3rd Proviso to Sec 14(1)]

Import: Rate of exchange determined by **CBIC** on the date on which **Bill of Entry is presented u/s 46.**

Export: Rate of exchange determined by **CBIC** on the date on which **Shipping Bill of Export is presented u/s 50.**

☞ The CBIC Board notifies the exchange rates twice a month, i.e. every 1st and 3rd Thursdays. These notified exchange rates become effective from midnight of the following day. Where a due date, i.e. 1st or 3rd Thursday, falls on a holiday, the rates are notified on the previous working day.

Customs Valuation (Determination of Value of Imported Goods) Rules, 2007

✓ Rule & Definitions:

Identical Goods

Identical goods mean imported goods,
i. Which are same in all respect, including
- Same Physical Characteristics
- Quality
- Reputation

Except for minor difference in appearance which does not affect price of goods being valued

Similar Goods

Similar goods mean imported goods
i. Which although not alike in all respect, have
- Like Characteristics
- Like Component material which enable to perform same function
- Commercially inter-changeable with the goods being valued having regard to quality reputation and trade mark

ii. Produced in the **same country** in which the goods being valued were produced, and

iii. Produced by the **same person** who produced the goods, **or where no such goods are available, goods produced by a different person,**

But shall not include imported goods where engineering, development work, art work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods.

✓ **Related Persons:** Person shall be deemed to be related only if:

They are

- Officer or directors of one another's business; or
- Legally recognized partners in business or
- Employer & employee; or
- Member in the same family

Both of them

- Are controlled by a 3rd person whether directly or indirectly.
- Controls a 3rd person whether directly or indirectly.

One of Them

- Control the other whether directly or indirectly.

Any person owns, controls or holds whether directly or indirectly, 5% or more of shares of both of them.

❖ **Explanation**

- Person includes Legal person i.e., company, firm etc.
- Sole selling agents are not regarded as related person by default. They will be treated as related persons only if covered under above definition.

❖ **Rule 3: Determination of the method of Valuation [AV = TV + Rule 10]**

- AV shall be transaction value adjusted in accordance with Rule 10.

Transaction Value shall be adopted provided that: [Conditions for accepting TV]

I. There are **no restrictions as to the disposition, use of the goods by the buyer** other than the restrictions which-
   - Are imposed or required by law or by public authorities in India; or
   - Limit the geographical area in which goods may be resold; or
   - Do not substantially affect the value of goods.

II. The **sale is not subject to some conditions or consideration for which a value cannot be determined** in respect of goods being valued.

III. No **part of the proceeds of any subsequent resale, disposal or use of goods** by the buyer will accrue directly or indirectly to the seller for which an **Appropriate Adjustment cannot be made under Rule 10.**

IV. The buyer and seller are **not related**.

☞ **In a sale between related persons, the TV shall be accepted provided that- [2 cases]**

a) The examination of circumstances of the sale of the imported goods indicate that the **relationship does not influence the price**.

b) Otherwise, if the **importer demonstrates that the declared value** of the goods being valued **closely approximates to one of the following values:**

- ➢ TV of identical/similar goods in sales to unrelated buyers in India.
- ➢ Deductive Value
- ➢ Computed Value.

Provided that in applying the values used for comparison: Due account shall be taken of demonstrated difference in

- Commercial Levels
- Quantity Levels
- Adjustment as per Rule 10.

TV of Identical Goods [Rule 4] / Similar Goods [Rule 5]

Rule 4:

1. If TV of imported goods is not acceptable, the value of imported goods shall be **TV of identical imported goods in India at or about the same time.**
   - TV of Identical Goods in as sale at the **Same Commercial Level** & **In substantially the Same Quantity** as the goods being valued **shall be used.**
   - Where no sale at commercial level & same quantity is found, the TV of identical goods sold at different commercial level or in different quantity or both shall be-
     ADJUSTED to take account of different attributable
     - ✓ To commercial level or
     - ✓ To the quantity level or
     - ✓ To both
2. TV of Identical Goods shall be adjusted for freight/insurance cost differences.
3. If more than 1 TV of identical goods is found; **LOWEST** of such value shall be used.

Rule 5:

If TV of Identical goods is not available then TV of similar goods shall be used. The above provision shall apply in respect to Rule 5 also.

Rule 6: If value cannot be determined under the provision of Rule 3, 4 & 5

- It shall be determined under Rule 7 or
- When the value cannot be determined under that Rule, under Rule 8.
  - → At the request of Importer & on the approval of PO, order of application of Rule 7 & 8 can be reversed.

Rule 7: Deductive Value

Value: Sale price of Identical/ Similar goods at which goods are sold in Greatest Aggregate Quantity to the person who are not related to the seller in India

Less: Deductions for general expenses, post import costs & local taxes.

- ➢ If the goods are expected to be sold in next 90 days, computation may be withheld & when sold, the same shall be used for deductive value.

Rule 8: Computed Value

Value: Cost of production of Imported goods + Profit + Costs & Services as per Rule 10.

Rule 9: Residual Method / Best Judgment

AV is calculated with data available in India for Imported goods with reasonable means.

Unacceptable basis for the purpose of Best Judgment Valuation: -

No values shall be determined under the provision of this rule on the basis of:

i. The **selling price in India of the goods produced in India;**
ii. A system which provides for the acceptance for customs purposes of the **highest of the two alternative values;**
iii. The **price of goods on the domestic market of the country of export;**
iv. The **cost of production other than the computed values which have been determined for identical or similar goods in accordance with the provision of Rule 8.**
v. The **price of the goods for the export to a country other than India;**
vi. **Minimum custom values; or**
vii. **Arbitrary or fictitious values**

Rule 10: Costs & Services

Rule 10(1): In determining the transaction value, there shall be added to the price actually paid or payable for the imported goods.

Rule 10(1)(a): Commission, Brokerage & Packaging etc.

- Commission and brokerage except buying commission.
- Cost of containers
- Cost of packing whether for labor or material

Rule 10(1)(b): Free Assistance by buyer

The value, apportioned as appropriate of following goods & services

- Where supplied directly or indirectly by the buyer at free of cost or reduced cost for use in connection with production & sale of imported goods.
- To the extent that such value has not been included in the price actually paid or payable.
- Material components, parts & similar items.
- Tools, dies, moulds and similar items used in the production
- Materials consumed in the production of the imported goods;
- Engineering, development, art works & plans & sketches undertaken elsewhere than in India.

Rule 10(1)(c): Royalty & License Fee

- Related to imported goods.
- Buyer is required to pay directly or indirectly as a condition of sale of goods being valued.
- To the extent that such royalty & license fees are not included in price actually paid or payable
- Royalty & license fees includes patents, know how, copyrights, brand name or trade name except payments made for the right to distribute or resell imported goods.

Rule 10(1)(d): Value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues, directly or indirectly, to the seller except dividend.

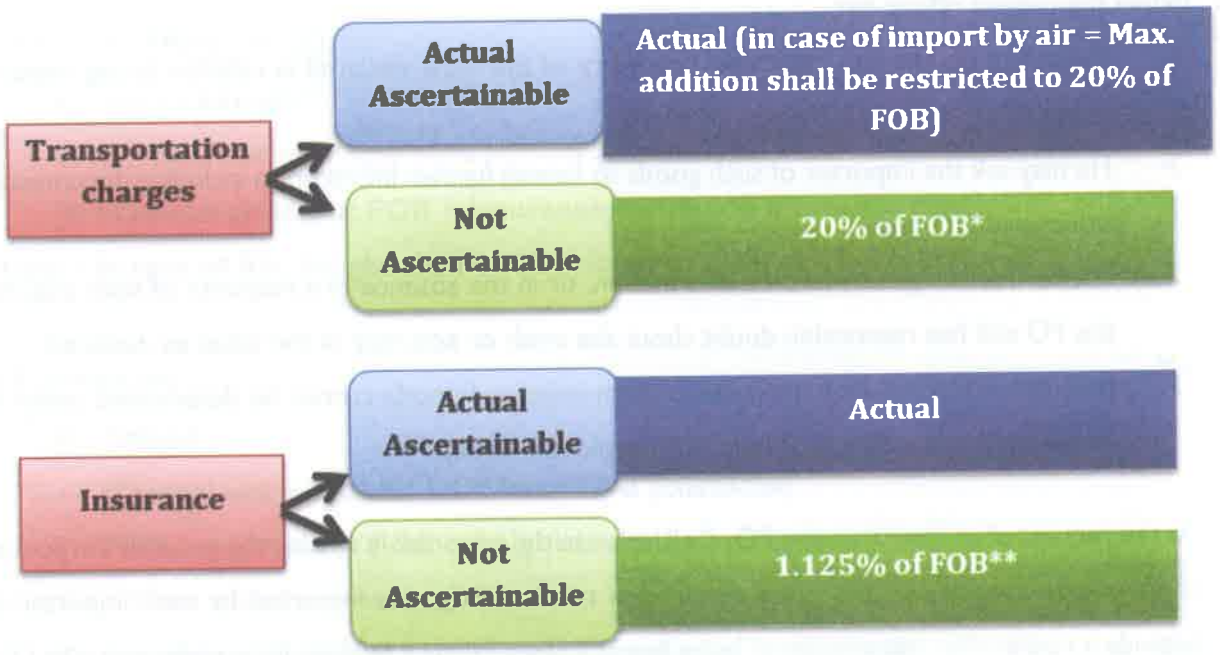
Rule 10(1)(e): All other payments actually made to be made as a condition of sale of the imported goods

Post-Importation Exp: Will not come

Pre-Importation Exp: Only if condition is fulfilled.

Rule 10(2): Value of the imported goods shall be the value of such goods, for delivery at the time & place of importation & shall include

1. Cost of transport, unloading & handling charges associated with the delivery of the imported goods at the place of importation **AND**
2. Cost of insurance to the place of Importation



* If FOB value not available but FOB + Insurance charges combined value is available, then 20% of such combined value shall be taken.

** If FOB Value not available but FOB + freight charges combined value is available, then 1.125% of such combined value shall be taken.

In case of goods imported by sea or air & transshipped to another custom station in India (from port to ICD), the cost of Insurance, Loading, Unloading, Handling charges associated with such transshipped shall be excluded.

The cost of transport of the imported goods referred above include the

- Ship demurrage charges on charted vessels
- Lighterage or barge charges.

Rule 11: Declaration by Importer

Importer or his agent shall furnish a declaration disclosing full & accurate details relating to the value of Imported goods & any other statement or documents as considered necessary by PO.

Rule 12: Rejection of Declared Value

1. When the proper officer has
   - Reason to **doubt the truth or accuracy** of the value declared in relation to any imported goods,
   - He may ask the importer of such goods to furnish further information including documents or other evidence and
   - If, after receiving such further information, or in the absence of a response of such importer, the PO still has reasonable doubt about the truth or accuracy of the value so declared,
   - It shall be deemed that the value of such imported goods cannot be determined under the provision of sub rule (1) of Rule 3 (Transaction Value).

2. At the request of an importer, the PO, shall intimate the importer in writing the grounds for doubting the truth or accuracy of the value declared in relation to goods imported by such importer and provide a reasonable opportunity of being heard, before taking a final decision under sub rule (1).

Section 15: Relevant date for determining rate of duty & tariff value for Imported goods

Situation	Rate & Value in Force
In case of goods entered for home consumption u/s 46 or 68	Date of entry inward or Date of filing BOE whichever is **later**
Any other goods	On the date of payment of Duty

Calculation of Assessable value u/s 14(1)

→ Always start calculation from FOB, even if CIF is given.

Free on Board (FOB)	**XXX**
Add: Rule 10(1) ADJUSTMENTS	**XXX**
Free on Board Value (FOB) as per Customs	**XXX**
Add: Freight [Rule 10(2)]	**XXX**

- **Actual Freight***
- **If actual not available 20% of FOB (customs)**

[If FOB not given but FOB + Insurance combined given, use that]

*** Note: - In case of Air, freight shall be restricted to 20% of FOB (customs)**

Add: Insurance	**XXX**

- **Actual**
- **If actual not available, 1.125% of FOB (customs)**

[If FOB not given but FOB + freight combined given, use that]

Cost Insurance Freight	**XXX**
Convert the CIF in INR as per rates of exchange announced by CBIC on the date of filing of Bill of Entry u/s 46	**XXX**
Note: Do not consider RBI rate or any other rate	
Assessable Value	**XXX**

Calculation of Custom Duties (Import)

Duties	Calculated on	Amount
Basic Customs Duty (BCD)	Assessable Value [Sec 14(1)]	Generally, @ 10%
SWS	BCD	@ 10%
IGST u/s 3(7)	14(1) Value + BCD + SWS	Generally, @ 18%

BAGGAGE

Baggage [Section 2(3)]: It **includes** unaccompanied baggage but **does not include** motor vehicles.

Entry of Baggage by Owner [Section 77]

Under this section, the owner of the baggage has to make a declaration of its content to the PO of customs, for the purpose of clearing it. This is known as **Baggage Declaration Form**.

Green & Red Channels:

- Green channel for passenger not having any dutiable goods.
- Red channel for passenger having dutiable goods.

Rate of Duty & Tariff Valuation Applicable to Baggage [Section 78]

The rate of duty and tariff valuation, if any applicable to baggage, shall be the rate and valuation in force on the date on which a declaration is made in respect of such baggage under section 77.

Effective Custom Duty: 38.5%

Duty Exemption to Baggage [Section 79]

Item	Exemption
Used Personal Effect	Unlimited
New Items	General Free Allowance Limit

Temporary Detention of Baggage [Section 80]

Where the baggage of a passenger contains any article which is dutiable or the import of which is prohibited and in respect of which a true declaration has been made proper officer may, at the request of the passenger:

- ✓ Detain such article for the purpose of being returned to him on his leaving India
- ✓ And if for any reason, the passenger is not able to collect the article at the time of his leaving India the article may be returned to him through any other passenger authorized by him and leaving India or as cargo consigned in his name.

Points to Remember:

- The free allowance shall not be pooled with free allowance of any other passenger.
- Free allowance is not applicable to **ANNEXURE-I** goods.
- Jewellery shall **never** be treated as **Used Personal Effect;** they shall always be deemed to be **New Article.**
- **One Laptop** computer (notebook computer) over and above the above the said free allowance mentioned above is also allowed duty free if imported by any passenger of the age of 18 years and above.

Baggage Rules 2016

Definitions

- **Resident:** Resident means a person holding a valid passport issued under the Passport Act, 1967 and normally reside in India.
- **Tourist:** Tourist means a person not normally resident in India, who enters India for a stay of **not more than 6 months** in the course of any 12 months period for legitimate non-immigrant purposes.
- **Bona Fide Baggage:** It means used Personal effects, travel souvenirs and articles other than those mentioned in ANNEXURE-I.
- **Infant:** Infant means a child not more than **2 years** of age.

Rule	Class of Passenger	Origin Country	Articles allowed free of duty
3	Indian resident or Foreigner residing in India or Tourist of Indian origin, excluding an Infant	Any country other than Nepal, Bhutan or Myanmar	(i) Used personal effects and travel souvenirs; and (ii) Articles up to the value of ₹ 50,000 (excluding articles mentioned in Annexure-I), if carried or in person or in the accompanied baggage of the passenger
3	Tourist of foreign origin excluding infants	Any country other than Nepal, Bhutan or Myanmar	(i) Used personal effects and travel souvenirs; and (ii) Articles up to the value of ₹ 15,000 (excluding articles mentioned in Annexure-I), if carried or in person or in the accompanied baggage of the passenger

4	Passenger arriving from Nepal, Bhutan or Myanmar	I. Indian resident or II. A foreigner residing in India or III. A tourist of Indian origin	1. Used personal effects and travel souvenirs; and 2. Articles other than those mentioned in Annexure-I a. Passenger is arriving by land route: No benefit b. Passenger is arriving by other route: ₹ 15,000
		Tourist of foreign origin	1. Used personal effects and travel souvenirs; and 2. Articles other than those mentioned in Annexure-I a. Passenger is arriving by land route: No benefit b. Passenger is arriving by other route: ₹ 15,000
		Infant	1. Used personal effects and travel souvenirs 2. Articles other than those mentioned in Annexure-I : No Benefit

☞ Rule shall not be allowed to pool with the free allowance of any.

❖ Jewellery Allowance [Rule 5]

Rule	Class of Passenger	Origin Country	Articles allowed free of duty
5	Passenger residing abroad for more than one year	Any country	**Gentlemen:** Jewellery up to a weight of **20 gms** with a value cap of **₹ 50,000** **Lady Passenger:** Jewellery up to a weight of **40 gms** with a value cap of **₹ 1,00,000.**

Rule 3 & Rule 4

[GFA - Person (other than infant i.e., upto 2 years child]

Arriving From:-

- Other than Nepal, Bhutan, Myanmar (Rule 3)
  - a) Indian Resident
    b) Foreigner Residing in India
    c) Tourist of Indian Origin
    - a) Personal Effects (excl. jewellery) & Travel Souvenirs - No Duty
      b) Other Articles (excl. Annexure 1) - **upto ₹ 50,000** - No Duty
  - Tourist of foreign origin
    - a) Personal Effects (excl. jewellery) & Travel Souvenirs - No Duty
      b) Other Articles (excl. Annexure 1) - **upto ₹ 15,000** - No Duty
- From Nepal, Bhutan, Myanmar (Rule 4)
  - a) Indian Resident
    b) Foreigner Residing in India
    c) Tourist of Indian Origin
    - a) Personal Effects (excl. jewellery) & Travel Souvenirs - No Duty
      b) Other Articles (excl. Annexure 1) - **upto ₹ 15,000** - No Duty

One Laptop is exempt irrespective of value (other than crew member) – of age of 18 years or above

Rule 5

Jewellery Allowance for passenger staying abroad > 1 year

→

a) For Gentlemen Passenger - Jewellery upto 20 gm weight with a value cap of ₹ 50,000

b) For Lady Passenger - Jewellery upto 40 gm weight with a value cap of ₹ 1,00,000

❖ Transfer of Residence [Rule 6]

A person, who is engaged in a profession abroad, or is transferring his residence to India, will be allowed duty free clearance of articles on his return in the manner given in the Appendix below.

This allowance would be in addition to the general duty-free baggage allowance under Rule 3 or 4, as the case may be.

Duration of stay abroad	Articles allowed free of Duty	Conditions	Relaxation
From 3 months upto 6 months	Personal and household, other than those mentioned in Annexure I or Annexure II but including articles mentioned in Annexure III up to an aggregate value of ₹ 60,000.	Indian Passenger	-
From 6 Months upto 1 year	Personal and household articles, other than those mentioned in Annexure I or Annexure II but including articles mentioned in Annexure III up to an aggregate value of ₹ 1,00,000.	Indian Passenger	-
Minimum stay of 1 year during the preceding 2 years	Personal and household articles, other than those mentioned in Annexure I or Annexure II but including articles mentioned in Annexure III up to an aggregate value of ₹ 2,00,000.	The Indian passengers should not have availed this concession in the preceding 3 years.	-
Minimum stay of 2 years or more	Personal and household articles, other than those mentioned in Annexure I or Annexure II but including articles mentioned in Annexure III up to an aggregate value of ₹ 5,00,000.	1. Minimum stay of 2 years abroad immediately preceding the date of his arrival on transfer of residence.	The shortfall of up to 2 months in stay abroad can be condoned by Deputy/Assistant commissioner of Customs if the early return is on account of i. Terminal leave or vacation being

			availed of by the passenger; or ii. Any other special circumstances for reasons to be recorded in writing
		2. Total stay in India on short visit during the two preceding years should not exceed 6 months; and	The principal commissioner/ commissioner may condone short visit in excess of 6 months in special circumstances for reason to be recorded in writing.
		3. Passenger has not availed his concession in the preceding 3 years	No Relaxation

- **Currency [Rule 7]:** The import and export of currency under these rules shall be governed by FEMA Regulations 2015.
- **Unaccompanied Baggage [Rule 8]:** The various provisions in the above rule are also applicable to the unaccompanied baggage unless specifically excluded.

Conditions:

a. If unaccompanied baggage had been in possession, abroad, of the passenger and is dispatched within 1 month of his arrival in India or such further period as the Deputy/Assistant commissioner may allow.

b. The said unaccompanied baggage can also land in India up to 2 months before the arrival of the passenger. However, if the passenger is not able to arrive in India within 2 months due to circumstances beyond his control like sudden illness to himself or any member of family, natural calamities, disturbed conditions, disruption of the transport or travel arrangements in the country etc., the Deputy/Assistant Commissioner may extend the said period of 2 months up to maximum of 1 year for reasons to be recorded.

❖ Crew Baggage Rule [Rule 9]:

These baggage rules are also applicable to the members of the crew engaged in foreign going conveyance for importation of their baggage, when they are finally paid off on termination of their engagement.

However, other crew member of a vessel and aircraft will be allowed to bring items like chocolate, cheese, cosmetics and other petty gift items for their personal or family use for a value not exceeding ₹ 1,500.

Annexure-I [See Rule 3, 4 and 6]



1. Firearms
2. Cartridge of firearms exceeding 50
3. Cigarettes exceeding 100 sticks or cigars exceeding 25 or tobacco exceeding 125 gms
4. Alcoholic liquor or wines in excess of 2 litres.
5. Gold or silver in any form other than ornaments.
6. Flat panel (Liquid Crystal Display/Light-Emitting Diode/Plasma) television.

Annexure-II [See Rule 6]

1. Color Television
2. Video home theatre system.
3. Dish washer
4. Domestic Refrigerator of capacity above 300 litres or its equivalent.
5. Deep Freezer
6. Video camera or the combination of any such Video camera with one or more of the following goods, namely:-
   a. Television receiver;
   b. Sound recording or reproducing apparatus;
   c. Video reproducing apparatus.
7. Cinematographic films of 35 mm and above.
8. Gold or silver, in any form, other than ornaments.

Annexure III [See Rule 6]

1. Video Cassette Recorder or Video Cassette Player or Video Television Receiver or Video Cassette Disk Player.
2. Digital Video Disc Player
3. Music System
4. Air-Conditioner
5. Microwave Oven
6. Word Processing Machine
7. Fax Machine
8. Portable Photocopying Machine
9. Washing Machine
10. Electrical or Liquefied Petroleum Gas Cooking Range
11. Personal Computer (Desktop Computer)
12. Laptop Computer (Notebook Computer)
13. Domestic Refrigerator of capacity up to 300 litres or its equivalent.

WAREHOUSING

Types of Warehouses

Section 57: Licensing of public warehouses:

The Principal Commissioner of Customs or Commissioner of Customs may, subject to such conditions as may be prescribed, licence a public warehouse wherein dutiable goods may be deposited.

Section 58: Licensing of private warehouses:

The Principal Commissioner of Customs or Commissioner of Customs may, subject to such conditions as may be prescribed, licence a private warehouse wherein dutiable goods imported by or on behalf of the licensee may be deposited.

Section 58A: Licensing of special warehouses:

- The Principal Commissioner of Customs or Commissioner of Customs may, subject to such conditions as may be prescribed, licence a special warehouse wherein dutiable goods may be deposited.
- Such warehouse shall be caused to be locked by the proper officer and no person shall enter the warehouse or remove any goods therefrom without the permission of the PO.
- Only the dutiable goods notified by CBIC may be deposited in Special Warehouse.

Warehouses - Private and Public Warehouses - are not under physical control (under customs lock), but are under record-based controls, except for Special Warehouses which would remain under customs lock. In a Private Warehouse, dutiable goods imported only by licensee are deposited. In a Public Warehouse, goods can be kept by any importer.

Following Notified Goods shall be deposited in a special warehouse:

- gold, silver, other precious metals and semi-precious metals and articles thereof;
- goods warehoused for the purpose of:
  - supply to DFS (Duty Free Shops) in a customs area;
  - supply as stores to vessels/aircrafts;
  - supply to foreign privileged persons *

Note: Examples of goods which can be kept in Special Warehouse have been given hereunder only for the knowledge of the students. These are not relevant for examination purposes.

* Privileged person means a person entitled to import/purchase locally from bond goods free of duty for his personal use/for the use of any member of his family/for official use in his Mission, Consular Post or Office or in Deputy High Commission/Assistant High Commission.

Section 58B: Cancellation of License

a) Cancellation of License by Principal CC or CC:

- Where a licensee contravenes any of the provisions of this Act or breaches any of the conditions of the licence, the Principal Commissioner of Customs or Commissioner of Customs may cancel the licence granted u/s 57/58/58A.
- Provided that before any licence is cancelled, the licensee shall be given a reasonable opportunity of being heard.
- Once the license is cancelled, the warehoused goods will be removed from such warehouse within 7 days (+ Extension) from the date on which order of such cancellation is served on the licensee.

b) Suspension of License by Principal CC or CC:

During the pendency of an enquiry, operations of warehouse may be suspended & no goods will be deposited in such warehouse during the period of suspension. However, the goods already deposited in the warehouse will continue to be governed by the warehousing provisions.

Section 59: Warehousing Bond (Imp)

a) Importer shall furnish a bond equal to **THRICE** the amount of the duty assessed on such goods (Consignment bond) to comply with all the provisions of the Act, to pay all duties and interest payable and to pay all penalties and fines incurred for the contravention of the provisions of this Act.

b) In addition to bond, importer may also be required to furnish prescribed security.

c) Bond shall remain in force on transfer of the goods to another warehouse.

Any bond executed under this section by an importer in respect of any goods shall continue to be in force notwithstanding the transfer of the goods to another warehouse.

In case of transfer of goods, the transferee shall execute a bond and furnish prescribed security.

Section 60: Warehousing Order

After furnishing of warehousing bond, proper officer will issue warehousing order permitting removal of the goods from a customs station for the purpose of deposit of goods in a warehouse.

Section 61: Warehousing Period (Imp)

The period for which imported goods may be kept in a warehouse without payment of duty is called warehousing period. Such period may be extended to a limited extent, with interest on the duty thus deferred.

Warehousing Period [Sec 61(1)]	Goods intended to be used by 100% EOU	Goods intended to be used by others
Warehousing Period	Till clearance of such goods from warehouse.	1 year from date of warehousing order u/s 60(1).
Extension of above period (if goods are not likely to deteriorate)	Not applicable	The above period may be extended by Commissioner / Principal Commissioner for max 1 year at a time.
Reduction of above period (if goods are likely to deteriorate)	Cannot be reduced	Above period of 1 year may be reduced by Commissioner to such shorter period as he may deem fit.

Warehousing Interest [Sec 61(2)] – not applicable to 100% EOU	Goods intended to be used by others i.e., other than 100% EOU
When	Such goods remain in warehouse beyond 90 days from date of order permitting deposit of goods in a warehouse u/s 60 is made.
Rate of Interest	**15% p.a.**
Amount on which interest is payable	Duty payable at the time of clearance of goods.
Period for which interest is payable	From the expiry of the 90 days till the date of payment of duty on the warehoused goods.
Waiver of interest	CBIC may waive interest (wholly or partially) by ad-hoc order or by notification.

Note: If no customs duty is payable at the time of clearance of goods from warehouse, no interest is payable. Interest is mere 'accessory' to principal.

Section 64: Owner's right to deal with warehoused goods

The owner of any warehoused goods may, after warehousing the same, —

- inspect the goods;
- deal with their containers in such manner as may be necessary to prevent loss or deterioration or damage to the goods;
- sort the goods; or
- show the goods for sale.

Section 65: Manufacture and other operations in relation to goods in a warehouse

1. With the permission of the Principal Commissioner of Customs or Commissioner of Customs, the owner of any warehoused goods may carry on any manufacturing process or other operations in the warehouse in relation to such goods.

2. **Treatment of waste & scrap arising out of manufacturing operations: -**

- If the whole or any part of the goods resulting from such operations are exported

  Import duty shall be remitted on the quantity of the warehoused goods contained in so much of the waste or refuse as has arisen from the operations carried on in relation to the goods exported:

  Provided that such waste or refuse is either
  - destroyed or
  - duty is paid on such waste or refuse as if it had been imported into India in that form.

- If the whole or any part of goods resulting from such operations are cleared from warehouse for home consumption

  Import duty shall be charged on the quantity of the warehoused goods contained in so much of the waste or refuse as has arisen from the operations carried on in relation to the goods cleared for home consumption.

Section 66: Power to exempt import materials used in manufacture of goods in warehouse

- If any imported materials are used for the manufacture of any goods in accordance with the provisions of section 65 and
- the rate of duty leviable on the imported materials exceeds the rate of duty leviable on such goods,
- the Central Government, if satisfied that in the interests of the establishment or development of any domestic industry it is necessary so to do, may, by notification in the Official Gazette, exempt the imported materials from the whole or part of the excess rate of duty.

Removal of goods from the warehouse [Sections 67, 68 & 69]

The warehoused goods can be removed from the warehouse for any of the following 3 reasons:

- transfer from one warehouse to another [Section 67]; or
- clearance for home consumption [Section 68]; or
- clearance for export [Section 69].

Section 67: Removal of goods from one warehouse to another

The owner of any warehoused goods may, with the permission of the proper officer, remove them from one warehouse to another, subject to such conditions as may be prescribed for the due arrival of the warehoused goods at the warehouse to which removal is permitted.

Section 68: Clearance of warehoused goods for home consumption

Any warehoused goods may be cleared from the warehouse for home consumption, if –

a) a bill of entry for home consumption in respect of such goods has been presented in the prescribed form;

b) the import duty, interest, fine and penalties payable in respect of such goods have been paid; and

c) an order for clearance of such goods for home consumption has been made by the PO:

E-clearance Order:

Provided that the order referred to in clause (c) may also be made electronically through the customs automated system on the basis of risk evaluation through appropriate selection criteria.

Relinquishment of title of warehoused goods:

Provided further that,

- the owner of any warehoused goods may, at any time before an order for clearance of goods for home consumption has been made in respect of such goods,
- relinquish his title to the goods upon payment of penalties that may be payable in respect of the goods and
- upon such relinquishment, he shall not be liable to pay duty thereon.

The owner of any such warehoused goods shall not be allowed to relinquish his title to such goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force.

Section 69: Clearance of warehoused goods for export

1. Any warehoused goods may be exported to a place outside India without payment of import duty if –
   a) a shipping bill or a bill of export or the form as prescribed under section 84 has been presented in respect of such goods;
   b) the export duty, fine and penalties payable in respect of such goods have been paid; and
   c) an order for clearance of such goods for export has been made by the proper officer.

E-clearance Order:

Provided that the order referred to in clause (c) may also be made electronically through the customs automated system on the basis of risk evaluation through appropriate selection criteria.

2. **Precautionary measures to avoid smuggling:**
   - If the CG is of opinion that warehoused goods of any specified description are likely to be smuggled back into India,
   - it may, direct that such goods shall not be exported to any place outside India without payment of duty or may be allowed to be so exported subject to such restrictions and conditions as may be specified.

Section 70: Allowance in case of volatile goods

- When any warehoused goods to which this section applies, [Notified by CG having regard to the volatility of the goods & the manner of their storage, e.g., aviation fuel, motor spirit, methanol, wine, spirit & beer, etc.]
- are at the time of delivery from a warehouse found to be deficient in quantity on account of natural loss,
- the AC/DC of Customs may remit the duty on such deficiency.

Section 71: Goods not to be taken out of warehouse except as provided by this Act

No warehoused goods shall be taken out of a warehouse **except**

- on clearance for home consumption or
- export, or
- for removal to another warehouse, or
- as otherwise provided by this Act.

Section 72: Goods improperly removed from warehouse, etc.

1. **Improper Removal:**

In any of the following cases, that is to say, -

- where any warehoused goods are removed from a warehouse in contravention of section 71;
- where any warehoused goods have not been removed from a warehouse at the expiration of the period during which such goods are permitted under section 61 to remain in a warehouse;
- where any goods in respect of which a bond has been executed u/s 59 and which have not been cleared for home consumption or export or are not duly accounted for to the satisfaction of the proper officer,
  - the PO may demand, and
  - the owner of such goods shall forthwith pay, the full amount of duty chargeable on account of such goods together with interest, fine and penalties payable in respect of such goods.

2. **Demand not paid, PO to proceed to sell the goods**

If any owner fails to pay any amount demanded under sub-section (1), the proper officer may, detain and sale, such sufficient portion of his goods, as the said officer may deem fit after notice to the owner.

Section 73: Cancellation and return of warehousing bond

When the whole of the goods covered by any bond executed u/s 59 -

- have been cleared for home consumption or exported or transferred or are otherwise duly accounted for, and
- when all amounts due on account of such goods have been paid,
- the PO shall cancel the bond as discharged in full, and shall on demand deliver it, to the person who has executed it.

Section 73A: Custody and removal of warehoused goods

1. All warehoused goods shall remain in the custody of the person who has been granted a licence under section 57 or section 58 or section 58A until they are cleared for home consumption or are transferred to another warehouse or are exported or removed as otherwise provided under this Act.
2. The responsibilities of the person referred to in sub-section (1) who has custody of the warehoused goods shall be such as may be prescribed.
3. Where any warehoused goods are removed in contravention of section 71, the licensee shall be liable to pay duty, interest, fine and penalties without prejudice to any other action that may be taken against him under this Act or any other law for the time being in force.

REFUND

Sometimes customs duty is found to have been paid in excess of what was actually leviable on the goods due to various reasons, like error or lack of information. In such cases, refund of excess amount of duty paid can be claimed and any excess interest paid by the importer/exporter can also be claimed.

APPLICATION FOR REFUND OF DUTY OR INTEREST [SECTION 27]

- Person who can claim refund of duty / interest:

The claim for refund of duty or interest can be made by

- the person who paid the duty or interest in excess
- **OR**
- the person who borne the incidence of such duty or interest.

- Application for refund to be made in proper form and manner
- Application for refund to be filed within **one year**:

1. A claim by the importer / exporter for refund of duty / interest, must be made before the expiry of one year from the date of payment of such duty or interest [Section 27(1)].
2. A claim by person, other than the importer, from whom duty was collected, must be made before expiry of one year from the date of purchase of the goods [Explanation to Section 27(1)].

Other situations requiring computation of limitation of one year

Events	Exemption of duty by a special order issued u/s 25(2)	Refund of duty arising as a consequence of any judgement, decree, order or direction of the appellate authority, Appellant Tribunal or any court	Provisional payment of duty u/s 18
Limitation From	Date of issue of such order	Date of such judgement, decree, order or direction	Date of adjustment of duty (after final assessment) or Date of reassessment

- No limitation in case of duty paid under protest:

  In case of duty / interest paid under protest, refund claim may be filed without any time-limit [Section 27(1) second proviso].

- Minimum amount of refund is ₹ 100 or more [Section 27(1) third proviso)]
- Documentary evidence to be furnished to prove that incidence of the duty/interest for which refund claim has been filed is not passed on to any other person.

Refund application must be accompanied by evidence to establish that the amount, was collected from or paid by him, and that the incidence of such amount has not been passed on by him to any other person [Section 27(1A)].

(It must be noted that Section 28D creates a statutory presumption that the incidence of duty has been passed on to the buyer, unless the contrary is proved. The documents enclosed to the refund claim must refute this presumption. Refer the section on unjust enrichment).

PROCESSING OF REFUND CLAIM [SECTION 27(2)]

The application of refund, if found to be complete in all respects by Customs, is processed and order for refund is passed. However, in view of the provisions of unjust enrichment enshrined in the Customs Act, the amount found refundable has to be transferred/credited to the Consumer Welfare Fund.

Only in following situations, the amount of duty and interest found refundable, instead of being credited to the Consumer Welfare Fund, is to be paid to the applicant:

- if the importer or the exporter, as the case may be, has not passed on the incidence of such duty and interest to any other person
- if imports were made by an individual for his personal use
- if the buyer who has borne the duty and interest, has not passed on the incidence of such duty and interest to any other person
- if amount found refundable relates to export duty paid on goods which has returned to exporter as specified in section 26
- if amount relates to drawback of duty payable under section 74 and 75
- if the duty or interest was borne by a class of applicants which has been notified for such purpose in the Official Gazette by the Central Government.
- if the duty paid in excess by the importer before an order permitting clearance of goods for home consumption is made where—
  - (i) such excess payment of duty is evident from the bill of entry in the case of self-assessed bill of entry; or
  - (ii) the duty actually payable is reflected in the reassessed bill of entry in the case of reassessment.

DOCTRINE OF UNJUST ENRICHMENT WITH RESPECT TO REFUND OF DUTY

When an importer imports goods or in case when goods are exported, the incidence or burden of duty is passed on to the purchaser, from whom the importer or exporter collects the customs duty. Subsequently, if the importer or exporter makes a claim for refund of duty and receives the refund from the government, he would be called to have enriched himself as he collected the duty both from his customer and as refund from the government. Such enrichment is referred to as 'unjust enrichment'.

Accordingly, the doctrine of 'unjust enrichment' implies that no person should enrich himself at the cost of others.

Therefore, wherever there is excess collection of duty, the refund is to be given only to the person who has borne the burden of duty and interest, if any. When the person who applies for refund is not the person who has borne the burden of duty, the refund is paid into a fund called 'Consumer Welfare Fund'.

In terms of Section 27, the importer or his agent, or the buyer who has been charged the duty by the importer, has to prove that he has not passed the burden of duty to another person, in order to be given refund of duty. Section 28D creates a statutory presumption that he did pass on the burden of duty; this presumption has to be refuted by proving the contrary. If he succeeds in this, the claimant is given the refund in terms of Section 27(2), clause (a) for the importer and clause (c) for the buyer.

Example 1

The importer has imported an article, which has been valued at ₹ 1,000/-. The customs duty on this article comes to ₹ 250/-. Now the importer adds his profit margin of say ₹ 250/- and sells the article for ₹ 1,500/-. Now the price charged by the importer consists of the duty element which has been passed on to the buyer.

If later on it is found that there was an error resulting in excess payment of duty, such excess duty is liable to be refunded. But as may be seen above, the importer has already collected the duty from the purchaser and if any refund is granted to him, it would confer on him a double benefit to which he does not have a valid right. Therefore, in such cases the refund is credited to the "Consumer Welfare Fund".

The landmark judgment on refund is by a Nine Member Bench of the Supreme Court in Mafatlal Industries Ltd. v. U.O.I.- [1997 (89) E.L.T. 247].

The principles laid down in this judgment can be summarized as under:

The theory of unjust enrichment is valid and constitutional. However, the theory that, conversely, the manufacturer would be unjustly impoverished in case of demands has not been agreed to.

Section 27 (Customs Act) is self contained code for refunds; resort to civil suits or writs is not permissible unless the taxing provision is struck down as unconstitutional. The general theory laid down in certain judgments of both the Supreme Court and High Courts that refund could be claimed within three years of discovery of mistake has been disapproved.

Unless the levy is struck down as unconstitutional, all Courts must exercise jurisdiction in terms of section 11B of the Central Excise Act, 1944 and refuse to grant relief if the incidence of tax has been passed on.

Whatever amount is collected as duty will have to paid to the Government. If excess is collected than that payable, it would be credited to the Consumer Welfare Fund or given as refund to the person who has borne the incidence of duty.

Further, the Supreme Court in the case of CCE v. Allied Photo graphics 2004 (166) ELT 3 has held that doctrine of unjust enrichment applies even when duty is paid under protest.

Exceptions to the Doctrine of Unjust Enrichment

Sub-section (2) provides for certain exceptions to the doctrine of unjust enrichment. In these exceptions refund of duty and interest may be paid to the applicant if such amount is relatable to:

- drawback of duty payable under sections 74 and 75;
- export duty as specified in section 26;
- the duty and interest on imports made by an individual for his personal use;
- the duty and interest borne by any other such class of applicants as the Central Government may, by notification in the Official Gazette, specify.
- the duty paid in excess by the importer before an order permitting clearance of goods for home consumption is made where
  1. such excess payment of duty is evident from the bill of entry in the case of self-assessed bill of entry; or
  2. the duty actually payable is reflected in the reassessed bill of entry in the case of reassessment.

Illustration:

State briefly with reference to the provisions of section 27 of the Customs Act, 1962 whether the principle of "unjust enrichment" will apply in case of refund of excess duty paid on car imported for personal use?

Answer:

The bar of unjust enrichment applies in case of refund of customs duty under section 27(2) of the Customs Act, 1962.

The principle of unjust enrichment will not apply to refund of duty on car imported for personal use, as clause (b) of the proviso to sub-section (2) of section 27 of the Customs Act, 1962 stipulates that in case of imports made by an individual for his personal use, the refund should not be credited to consumer welfare fund, but shall be paid to the applicant.

INTEREST ON DELAYED REFUND [SECTION 27A]

The Customs authority has to finalize refund claims without delay upon receipt of the refund application in proper form along-with all the documents. In case any duty ordered to be refunded to an applicant is not refunded within 3 months from the date of receipt of application for refund, interest is to be paid to the applicant.

Currently, **the rate of interest is 6%** vide NNo. 75/2003-Cus (NT) dated 12.09.2003.

The interest is to be paid for the period beginning from the date immediately after the expiry of 3 months from the date of receipt of such application, till the date of refund of such duty.

In cases where no refund claim has been made, if a refund results from an order passed by the appellate authorities mentioned or by a court of law, refund is to be paid within 3 months of the order, and interest will be payable after that.

The interest on delayed refund is payable only in respect of delayed refunds of Customs duty and no interest is payable in respect of deposits such as deposits for project imports, security for provisional release of goods etc.

REFUND OF EXPORT DUTY IN CERTAIN CASES [SECTION 26]

Where export duty has been paid on the exportation of any goods, such duty shall be refunded to the person by whom or on whose behalf it was paid, if -

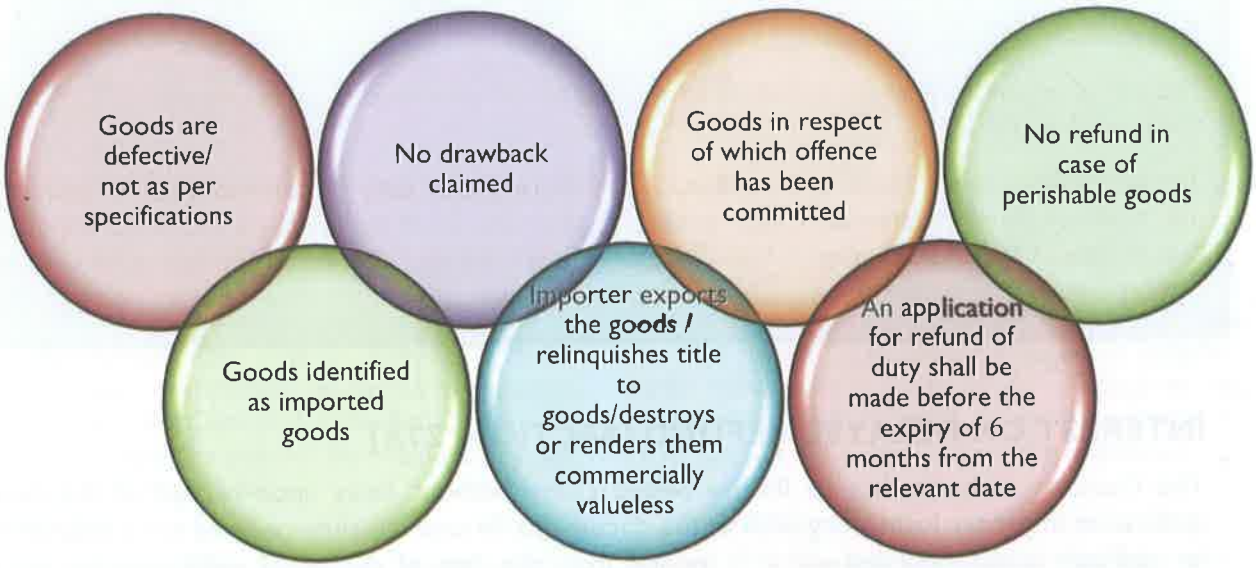
(a) the goods are returned to such person otherwise than by way of re-sale

(b) the goods are re-imported within one year from the date of exportation; and

(c) an application for refund of such duty is made before the expiry of six months from the date on which the proper officer makes an order for the clearance of the goods.

REFUND OF IMPORT DUTY IN CERTAIN CASES [SECTION 26A]

Section 26A provides that the import duty paid on clearance of imported goods for home consumption capable of being easily identified shall be refunded to the person by whom or on whose behalf such duty was paid subject to the fulfillment of the following conditions:



Meaning of relevant date: Explanation to sub-section (2) provides the relevant dates in various circumstances as under:

S.No.	Case	Relevant date
1.	In case the goods are exported out of India	Date on which proper officer makes an order permitting clearance and loading of goods for exportation u/s 51
2.	In case of relinquishment of title to the goods	Date of such relinquishment
3.	In case of goods being destroyed or rendered commercially valueless	Date of such destruction or rendering of goods commercially valueless

REFUND CLAIM CANNOT BE A SUBSTITUTE FOR APPEAL

Appeal to the Commissioner (Appeals) is to be made within 60 days of receipt of the order against which the person is aggrieved. On the other hand, a refund claim can be filed within 1 year from the date of payment of duty or clearance of goods or such other event as specified in section 27. However, a refund claim cannot be a substitute for an appeal.

In the case of *Priya Blue Industries Limited, 2004 (172) ELT 145 (SC)*, duty was assessed on the imported item and the importer paid the duty under protest. Thereafter, the importer filed a claim for refund of the duty. In this matter the Supreme Court ruled that, "Once an Order of Assessment is passed the duty would be payable as per that order. Unless that order of assessment has been reviewed under Section 28 and/or modified in an Appeal that Order stands. So long as the Order of Assessment stands the duty would be payable as per that Order of Assessment. A refund claim is not an Appeal proceeding. The Officer considering a refund claim cannot sit in appeal over an assessment made by a competent Officer. The Officer considering the refund claim cannot also review an assessment order."

Appeal should be filed and not a refund claim when adjudication order has been issued or even when self-assessment made

An adjudication order should be appealed against, if assessee is aggrieved by adjudication order. The order cannot be challenged by filing refund application.

In *CCE v. Flock (India) Pvt. Ltd. 2000 (120) E.L.T. 285 (S.C.)*, it was observed, "Refund is in nature of execution of a decree/order. Thus, issue of clarification (which has become final as no appeal was filed) cannot be agitated in refund proceedings. If the order is appealable, appeal should be filed. Otherwise, provisions of appeal will become redundant. Refund claim cannot be used as an appeal against an adjudication order.

IMPORTANT JUDGMENTS ON REFUND

Refund claim cannot be a substitute for appeal	Priya Blue Industries Limited v.CCus, 2004 (172) ELT 145 (SC)
Burden of proof that incidence of duty has not been passed on to consumers is on assessee.	Banmore Foam v. CCE 2006 (193) ELT 112 (Tribunal-Delhi)
It has been held that appeal is required to be filed and not refund claim, even in respect of self-assessment.	ITC Limited v. CCE, 2019 (368) ELT 216 (SC)

FOREIGN TRADE POLICY

Foreign Trade Policy 2023

Introduction

- Foreign trade policy Is set of guidelines or instructions issued by the Central Government which specifies policy for exports and imports viz., foreign trade. Its primary purpose is not merely to earn foreign exchange, but also to stimulate greater economic activity.
- It is governed by Ministry of Commerce and Industry.
- FTP 2023 (as updated) is notified by the Central Government in exercise of powers conferred u/s 5 of the Foreign Trade (Development & Regulation) Act, 1992 [FT(D&R) Act], as amended.
- It was announced and came into force w.e.f. 01.04.2023 and shall continue to be in operation unless otherwise specified or amended.

Objectives of FTP

- Aims at developing export potential
- Improving export performance
- Encouraging foreign trade
- Creating favorable balance of payment position

WTO Provisions in respect of Foreign Trade

India is member of World Trade Organisation (WTO). The four main WTO guidelines are –

(i) Trade without discrimination
(ii) Predictable and growing market access
(iii) Promoting fair competition and
(iv) Encouraging development and economic reforms.

WTO promotes free trade by lowering tariffs, quotas, import restrictions, quantity restrictions etc. Countries should 'bind' their commitments so that stability and predictability and investment is encouraged.

WTO discourages direct export incentives or subsidies on goods or services exported, as it distorts free competition. However, goods and services can be made free of Indian taxes. Hence, all our export promotion schemes are designed to suit WTO stipulations.

Role of DGFT (Director General of Foreign Trade)

- Issues Authorization for import/export.
- Grants Importer Exporter Code (IEC) Number
- Decision of DGFT is final & binding in respect of interpretation of FTP.
- Grant exemption or relief from policy/procedures by imposing certain conditions.

Importer Exporter Code (IEC)

- It is a 10-character alphanumeric number issued by DGFT.
- IEC is mandatory to export any goods out of India or to import any goods into India.
- DGFT has decided to use Income Tax PAN as IEC.
- IEC details have to be electronically updated every year, even if there are no changes; failing which it will be de-activated till updation.

Authorised Economic Operator (AEO)

- Under AEO programme of Indian Customs, a business entity engaged in international trade is granted AEO status if it is approved by Customs as compliant with supply chain security standards. Such entities are considered as trusted trade partner of Indian customs.

- AEO status holders get extensive benefits including preferential customs treatment in terms of reduced examination and faster processing and clearance of cargo, deferred payment of duty, direct port delivery/entry, enhanced border clearance privileges in Mutual Recognition Agreement (MRA) partner countries, greater facilitation and self- certification. AEO programme is based on WCO's SAFE Framework of Standards (FoS).

Towns of Export Excellence (TEE)

Selected towns which are contributing handsomely to India's exports by producing goods of specified amount may be granted recognition as TEE. They will be provided targeted support and infrastructure development to maximize their export competitiveness and enable them to move up the value chain and also to tap new markets by granting specified privileges to them.

Status Holders

Status Category	Export Performance (Threshold in US $ million)
One Star Export House	3
Two Star Export House	15
Three Star Export House	50
Four Star Export House	200
Five Star Export House	800

- An applicant shall be categorized as status holder upon achieving the threshold export performance in the current and preceding 3 FYs.

Points to be considered while computing export performance for grant of status

- The export performance shall be counted on basis of FOB of export earnings in freely convertible foreign currencies or in Indian Rupees.
- For deemed export, FOR value of exports in Indian Rupees shall be converted in US$ at exchange rate notified by CBIC, as applicable on 1st April of each financial year.
- For granting status, an export performance would be necessary in all 3 preceding FYs.
- Export performance is not transferable among IEC holders.
- Exports made on re-export basis shall not be counted for recognition.
- Export of items under authorization, including SCOMET items, would be included for calculation of export performance.
- For calculating export performance for grant of One Star Export House Status category, exports by IEC Holders under Micro & Small Enterprises, manufacturing units having ISO/BIS certification, units located in Northeastern States including Sikkim & UTs of J&K and Ladakh and export of fruits & vegetables shall be granted double weightage once in any of these categories.

Privileges of Status Holders

a) Authorization and custom clearances for both imports and exports on self-declaration basis.
b) Fixation of Input Output Norms on priority i.e., within 60 days by Norms Committee.
c) Exemption from compulsory negotiation of documents through banks. Exception are remittance / receipts.
d) Exemption from furnishing of Bank Guarantee in Schemes under FTP unless otherwise specified.
e) Two Star Export Houses and above are permitted to establish export warehouses.
f) Manufacturers who are also status holders (Three Star/Four Star/Five Star) will be enabled to self-certify their manufactured goods [as per their Industrial Entrepreneurs Memorandum (IEM) / Industrial License (IL) / Letter of Intent (LOI)] as originating from India with a view to qualify for preferential treatment under specified agreements.
g) Status holders shall be entitled to export freely exportable items (excluding Gems and Jewellery, Articles of Gold and precious metals) on free of cost basis for export promotion subject to a specified annual limit.
h) The status holders would be entitled to preferential treatment and priority in handling of their consignments by the concerned agencies.

Developing Districts as Export Hubs

A District Export Action Plan (DEAP) may be prepared for each district. 2-3 high potential products/services from the districts may be prioritised and comprehensive plan for their export growth may be prepared and implemented. DGFT Regional Authorities will be engaging with all the relevant State and Central agencies to take forward this initiative in each district.

General Provisions Applicable to Import & Export of Goods

a) Samples:

Import of samples of even 'restricted' items, is allowed without import authorisation except defence / security items, seeds, bees, and new drugs. Duty free import of samples upto ₹ 3,00,000 for all exporters shall be allowed subject to terms & conditions. Exports of trade & technical samples of goods of freely importable items are allowed without any limit.

b) Gifts:

Import of gifts (including those purchased from e-commerce portals) through post / courier, where customs clearance is sought as gifts, is prohibited except 'rakhi' & life-saving medicines. Gifts can be imported upon payment of applicable customs duties. If duty leviable on rakhi is upto ₹ 100, no duty will be collected on the same. Goods including edible items of value not exceeding ₹ 5,00,000 in a licensing year (1st April-31st March) may be exported as gift. However, items mentioned as restricted for exports in ITC (HS) shall not be exported as a gift, without an authorisation.

c) Re-import of repaired goods:

Capital goods, equipment, components, parts & accessories, whether imported or indigenous, except those restricted under ITC (HS) may be sent abroad for repairs, testing, quality improvement or upgradation or standardization of technology and re-imported without an Authorisation.

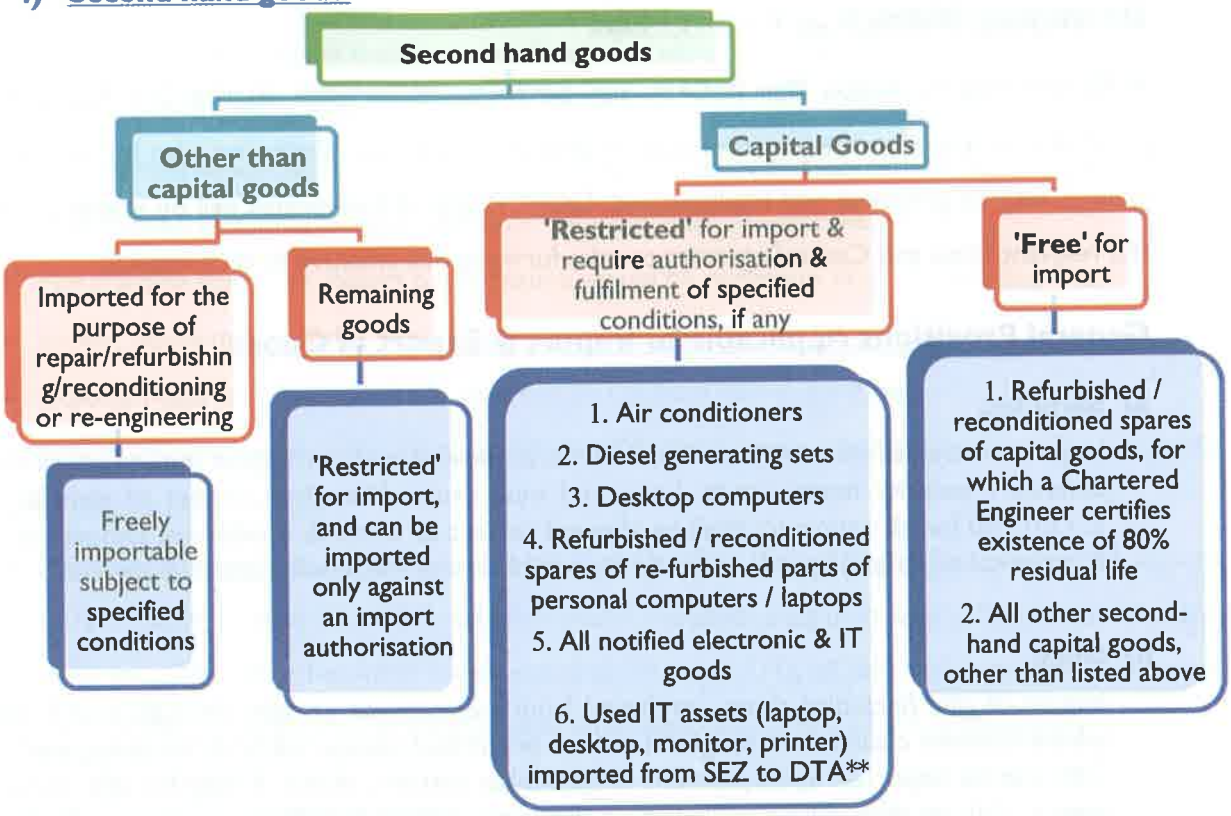
d) Goods used in projects abroad:

Project contractors after completion of projects abroad, may import without an Authorisation, goods including capital goods used in the project, provided they have been used for at least one year.

e) Metallic waste & scrap:

Import of any form of metallic waste, scrap will be subject to condition that it will not contain hazardous, toxic waste, radioactive contaminated waste / scrap containing radioactive material, any types of arms, ammunition, mines, shells, live or used cartridge or any other explosive material in any form either used or otherwise.

f) Second hand goods:



** Import policy of used IT assets (laptop, desktop, monitor, printer) imported from SEZ to DTA, subject to fulfilment of specified conditions, has been notified in the FTP. The said import is restricted and requires authorization.

g) Third Party Exports:

Third party exports are allowed under FTP. It means exports made by an exporter/manufacturer on behalf of another exporter(s). In such cases, export documents such as shipping bills shall indicate names of both manufacturer exporter/manufacturer and third-party exporter(s). Bank Realisation Certificate (BRC), Self-Declaration Form (SDF), export order & invoice should be in name of third-party exporter.

Import of items under Advance Authorisation/EOU/SEZ enabled without compliance to mandatory Quality Control Orders (QCOs)

Quality Control Orders (QCOs) are regulatory mandates issued by the Indian government to ensure that products meet specific quality standards. These orders, typically issued by the Bureau of Indian Standards (BIS) under the BIS Act, 2016, apply to a wide range of products to protect consumer safety, health, and environment. Domestic manufacturers as well as importers need to ensure that products covered by QCOs must not be manufactured/imported without compliance with specific standards.

Enabling provisions have been incorporated in FTP for exempting inputs imported by Advance Authorisation holders, EOUs and SEZ from mandatory Quality Control Orders (QCOs). However, import of inputs under Advance Authorisation/EOU/SEZ without compliance to the mandatory QCOs, shall be subjected to the following conditions:

(i) For Advance Authorisation (AA):

(a) Import of inputs under the AA without compliance to the mandatory QCOs shall be with pre-import condition. Such inputs shall be utilised in the manufacturing of the export product (making normal allowance for wastage) and exported under the same authorization.

(b) Unutilized imports shall not be transferred to DTA, even after regularization of default in fulfilment of export obligation & shall be destroyed in the presence of jurisdictional GST/Customs authorities or re-exported. In addition, such unutilised imports shall be liable to payment of effective duty along with interest to customs authorities and specified composition fee to DGFT.

(c) Exemption shall be specifically endorsed on the request of the authorization holder.

(d) Exemption from QCO will be available for physical exports only and not be allowed for deemed exports for Advance Authorisation Holders.

(e) Import of Inputs without compliance to the mandatory QCOs under DFIA scheme is not allowed.

(ii) For EOUs

Exemption from applicability of mandatory QCOs shall be provided to EOU on import of inputs which are required for export production. No DTA clearance of such inputs or goods manufactured made out of such inputs, are allowed.

An undertaking to that effect will be submitted to the Customs authorities by the EOU at the time of importation and a copy of the same shall also be submitted to the Development Commissioner concerned. The exemption from QCO will be available for physical exports only and such exemption will not be allowed for deemed exports.

(iii) For SEZ

Exemption from applicability of mandatory QCOs shall be provided to SEZ on import of inputs which are required for export production. No DTA clearance of such inputs or goods manufactured made out of such inputs, are allowed.

An undertaking to that effect will be submitted to the concerned Development Commissioner of the SEZ by the SEZ Unit at the time of importation. The exemption from QCO will be available for physical exports only.

Above exemption shall be applicable only for the list of notified Ministries/Departments whose notifications on mandatory QCOs are exempted by the DGFT for goods to be utilised/consumed in manufacture of export products.

Miscellaneous provisions regarding import:

Some of the provisions to be noted are –

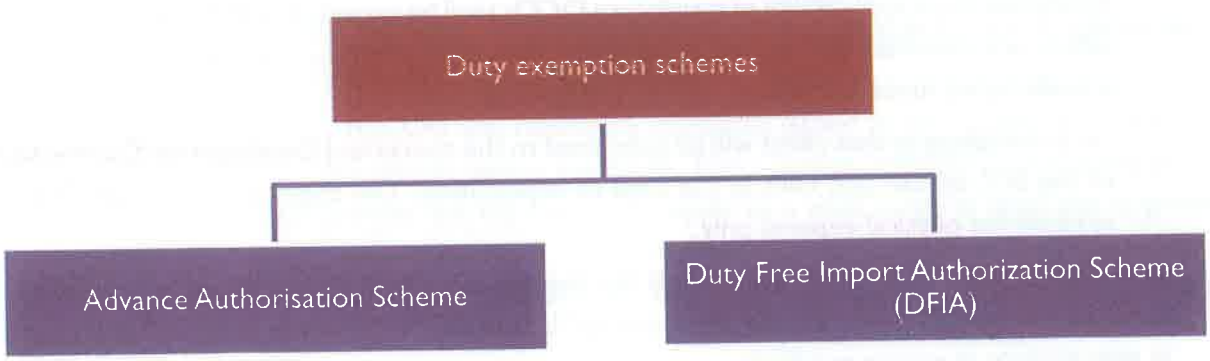
- Goods for import into India can be sold on the high seas, subject to FTP/other laws in force.
- Merchanting trade means shipment of goods from one foreign country to another foreign country without touching Indian ports, involving an Indian intermediary. This is allowed, subject to RBI guidelines, except for goods in the CITES* and SCOMET lists.
- Further, merchanting trade carried out within one specific foreign country is also permitted, subject to RBI guidelines, except for goods in the CITES* and SCOMET lists.
- Import of capital goods under lease financing does not require any specific permission from the DGFT.
- For imported goods, Bank Guarantee / Letter of Undertaking/ Bond (BG/ LUT /Bond) is to be executed with customs in case of duty-free import or otherwise required, before clearance of goods. For indigenously sourced goods, an authorisation-holder has to execute LUT/BG/Bond with the RA concerned, before sourcing such material.

** CITES (Convention on International Trade in Endangered Species of Wild Fauna and Flora) is an international agreement between governments. Its aim is to ensure that international trade in specimens of wild animals and plants does not threaten the survival of the species.*

Duty Exemption and Remission Schemes

- Duty Exemption Schemes - Duty Exemption Schemes enable duty free import of inputs required for export production.
- Duty Remission Schemes - Duty Remission Scheme enables post export replenishment / remission of duty on inputs used in export product. Duty Drawback (DBK) Scheme, administered by Department of Revenue is designed for this purpose.
- Scheme for Remission of duties and taxes on exported products (RoDTEP) has been notified by Department of Commerce and administered by Department of Revenue.

Duty Exemption Schemes



1. Advance Authorisation Scheme

Items can be imported duty free against advance authorization:

- Input that is physically incorporated in export product (making normal allowance for wastage).
- Fuel, oil, catalyst which is consumed / utilized in process of production of export product.

Eligible Applicant / Export:

- Advance Authorisation can be issued either to a manufacturer exporter or merchant exporter tied to supporting manufacturer.
- Advance Authorisation for pharmaceutical products manufactured through Non-Infringing (NI) process shall be issued to manufacturer exporter only.

Eligible Supply:

Advance Authorisation is issued for procurement of inputs for the following kinds of supply: -

- Physical export (including export to SEZ)
- Intermediate supply; and/or
- Deemed exports
- Supply of 'stores' on board of foreign going vessel / aircraft, subject to condition that there is specific SION in respect of item supplied.

Basis of issuance of Advance Authorisation:

Advance Authorisation is issued for inputs in relation to resultant product, on the following basis:

- As per Standard Input Output Norms (SION) notified; or
- On the basis of self-declaration; or
- Applicant-specific prior fixation of norm by the Norms Committee; or
- On the basis of Self Ratification Scheme.

Pre-import Condition:

Imported inputs are subject to pre import condition & they should be physically incorporated in the export product. In case of local procurement under invalidation/ARO, the inputs shall be procured prior to manufacture of export item and shall be physically incorporated in the export product.

Validity Period for Import:

- Validity period of Advance Authorisation shall be **12 months** from the date of issue of Authorisation. This means that import under the authorisation must be made within this period. Re-validation for another 12 months allowed once & can be applied online.
- Validity of Advance Authorisation for supplies under deemed exports shall be co-terminus with contracted duration of project execution or 12 months from the date of issue of Authorisation, whichever is **later**.

Advance Authorisation (AA) for Annual Requirement & Eligibility Condition:

- AA for Annual Requirement shall only be issued for items notified in SION and not available in case of adhoc norms under Self-Declared Authorisations where SION does not exist.
- AA for Annual Requirement shall also not be available in respect of SION where input is notified.
- Exporters having past export performance (in at least preceding 2 FYs) shall be entitled.
- Entitlement in terms of CIF value of imports shall be upto 300% of FOB value of physical export and / or FOR value of deemed export in preceding FY or ₹ 1 Crore, whichever is higher.

Value Addition:

Value addition is calculated as follows:

VA = (A-B) / B x 100, where

A = FOB value of export realised / FOR value of supply received.

B = CIF value of inputs covered by Authorisation, plus value of any other input used on which benefit of duty drawback is claimed or intended to be claimed.

- **Minimum value addition** required to be achieved is **15%.** However, in case of specified products (petroleum products etc.), value addition could be less than 15%.
- Spares that are required to be supplied with the export product can be imported duty-free up to a value of **10% of CIF value** of the authorisation.
- Actual User condition is applicable, so **shall not be transferable** even after completion of export obligation.

Details of Duties exempted:

Imports under Advance Authorisation are exempted from payment of -

- Basic Customs Duty,
- Additional Customs Duty,
- Education Cess,
- Anti-Dumping Duty,
- Countervailing Duty,
- Safeguard Duty,
- Transition Product Specific Safeguard Duty, wherever applicable.

Export Obligation Period (EOP):

"Export Obligation" means obligation to export product or products covered by Authorisation or permission in terms of quantity, value or both, as may be prescribed or specified by Regional or competent authority.

EOP of Advance Authorisations issued for such items shall be **90 days** from the date of clearance of import consignment and **no extension** in EOP shall be **allowed**.

2. Duty Free Import Authorisation Scheme (DFIA)

Provisions applicable to Advanced Authorisation are broadly applicable in case of DFIA. However, these Authorisations shall be issued **only for products for which SION have been notified.**

- DFIA is issued to allow duty free import of inputs as well as of oil and catalyst which is consumed / utilised in process of production of export product.
- Import of Tyre under DFIA scheme is not allowed.

Duties Exempted:

- DFIA shall be exempted only from payment of Basic Customs Duty (BCD).
- Drawback as per rate determined & fixed by Customs authority shall be available for duty paid inputs, whether imported or indigenous, used in export product.

Eligibility:

- DFIA shall be issued on **post export basis** for products for which SION have been notified.
- Application is to be filed with concerned Regional Authority **before starting export** under DFIA.
- Merchant Exporter shall be required to mention name & address of supporting manufacturer of the export product on export document.

No DFIA for inputs with 'Actual User' condition:

No DFIA issued for an input which is subject to pre-import condition or where SION prescribes 'Actual User' condition or certain other specified inputs with pre import condition.

Minimum Value Addition:

Minimum value addition of **20%** shall be required to be achieved.

Transferability of DFIA:

Regional Authority shall issue **transferable DFIA.**

Validity of DFIA:

- Export shall be completed within **12 months** from the date of online filing of application & generation of file number.
- DFIA is **valid for 12 months** from the date of issue.
- **No further revalidation** shall be granted by Regional Authority.
- **Separate DFIA** shall be issued **for each SION.**

Scheme for Remission of Duties and Taxes on Exported products (RoDTEP)

- RoDTEP scheme is based on the globally accepted principle that taxes and duties should not be exported, and taxes and levies borne on the exported products should be either exempted or remitted to exporters.
- The scheme aims to refund such duties and taxes on exported products, as are otherwise not being refunded under other provisions of law.

Salient Features of RoDTEP:

- Rebate amount is issued in the form of a **transferable duty credit / electronic scrip** (e-scrip), which will be maintained in an electronic ledger by the CBIC.
- Such duty credit shall be **used only to pay basic customs duty** on imported goods.
- The duty credit scrips are **freely transferable**, i.e., credits can be transferred to other importers.
- The rebate under scheme **shall not be available** in respect of **duties and taxes already exempted or remitted or credited.**

Reward under the scheme:

Rebate to eligible exporters at a notified rate as **a % of FOB value with a value cap per unit** of the eligible exported product, wherever required, on export of items. However, for certain items, **a fixed quantum of rebate amount** per unit may also be notified.

Ineligible supplies / items / categories under RoDTEP:

Ineligible supplies under RoDTEP:

- ✓ Export of imported goods in same or substantially the same form
- ✓ Exports through trans-shipment, i.e., exports originating in third country but trans-shipped through India
- ✓ Export products which are subject to minimum export price or export duty
- ✓ Products which are restricted / prohibited for export under FTP
- ✓ Deemed Exports
- ✓ Supply of products manufactured by DTA units to SEZ units
- ✓ Products manufactured partly/wholly in a warehouse under section 65 of the Customs Act
- ✓ Products manufactured or exported availing the benefit of *Notification No. 32/1997 Cus. dated 01.04.1997* (job work and re-export of goods supplied by the foreign supplier)
- ✓ Exports for which the electronic documentation in ICEGATE EDI has not been generated/ exports from non-EDI ports
- ✓ Goods which have been taken into use after manufacture

Export Promotion Capital Goods Scheme (EPCG)

- ✓ EPCG Scheme permits exporters to import capital goods for pre-production, production, and post production at **zero customs duty** or procure them indigenously without paying duty. In return, exporter is under an obligation to fulfill the export obligation.
- ✓ Capital goods imported under EPCG are **exempt from IGST & GST Compensation cess.**
- ✓ Authorisation shall be valid for **24 months** from the date of issue of Authorisation. **Revalidation** of EPCG Authorisation shall **not be permitted.**
- ✓ Imported Capital goods shall be subject to Actual User condition till export obligation is completed & Export Obligation Discharge Certificate (EODC) is granted.
- ✓ Import under EPCG scheme shall be subject to an export obligation equivalent to **6 times of duties, taxes and cess saved on capital goods to be fulfilled in 6 years reckoned from the date of issue of authorization.**
- ✓ Import/procurement under scheme shall also be subjected to Average Export Obligation (AEO).
- ✓ Export obligation consists of average export obligation & specific export obligation:

  Specific export obligation (SEO) under EPCG scheme is equivalent to 6 times of duty saved on capital goods imported under EPCG scheme, to be fulfilled in 6 years reckoned from Authorization issue-date. Specific EO is over and above the Average EO.

  Average export obligation (AEO) under EPCG scheme is the average level of exports made by the applicant in the **preceding 3 licensing years** for the same and similar products. It has to be achieved within the overall EO period (including extended period unless otherwise specified).

  AEO shall be fulfilled every financial year, till export obligation is completed. Exports/supplies made over and above AEO shall only be considered for fulfillment of Export Obligation.

- ✓ In case of **indigenous sourcing of capital goods**, SEO shall be **25% less than the EO** mentioned above, i.e., EO will be is 4.5 times (75% of 6 times) of duty saved on such goods procured.
  There shall be **no change in average EO** imposed, if any.
- ✓ Both physical exports as well as specified deemed exports are also counted towards export obligation.

Eligible exporters:

- Manufacturer exports with or without supporting manufacturer(s),
- Merchant exporters tied to supporting manufacturer(s), and
- Service providers including service providers designated as Common Service Provider (CSP) subject to prescribed conditions.

Eligible capital goods:

- Capital goods including capital goods in CKD/SKD condition
- Computer systems and software which are a part of the Capital Goods being imported
- Spares, moulds, dies, jigs, fixtures, tools & refractories
- Catalysts for initial charge plus one subsequent charge

EOU/EHTP/STP/BTP Schemes

- ✓ EOU - Export Oriented Unit Scheme
- ✓ EHTP - Electronics Hardware Technology Park Scheme
- ✓ STP - Software Technology Park Scheme
- ✓ BTP - Bio Technology Park

- ➢ Units may export all kinds of goods and services except items that are prohibited in ITC (HS).
- ➢ Units may import or procure all types of goods without payment of BCD, additional duty, IGST & compensation cess or procure from DTA on payment of GST & cess.
- ➢ Trading units are not covered under these schemes.
- ➢ Units shall be a positive net foreign exchange earner that are calculated cumulatively in blocks of 5 years.
- ➢ For establishment as EOUs, projects having a minimum investment of ₹ 1 Crore in plant & machinery shall be considered. However, it is not applicable to existing units, units in EHTP / STP / BTP & EOUs in handicrafts / agriculture / floriculture / aquaculture / animal husbandry / IT, services, brass hardware & handmade jewellery sectors.
- ➢ Transfer of manufactured goods/capital goods from one EOU/EHTP/STP/BTP unit to another EOU/EHTP/STP/BTP unit is allowed on payment of applicable GST & cess.
- ➢ Units may opt out of scheme with approval of DC/Designated officer subject to payment of applicable excise & customs duties, GST, cess. Also liable to penalty, if obligations have not been achieved by the unit.
- ➢ Existing DTA units may also apply for conversion into an EOU/EHTP/STP/BTP unit. Existing EHTP/STP units may also apply for conversion / merger to EOU unit and vice-versa. In such cases, units will avail exemptions in duties and taxes as applicable.

Deemed Exports

Goods supplied do not leave country, and payment is received either in INR / free foreign exchange & provided goods are manufactured in India are regarded as "Deemed Exports".

Deemed exports broadly covers three areas:

a) Supplies to domestic entities who can import their requirements duty free or at reduced rates of duty.
b) Supplies to projects / purposes that involve international competitive bidding.
c) Supplies to infrastructure projects of national importance.

(I) Categories of Supplies Considered as 'Deemed Export'

- Supply of goods against Advance Authorisation / Advance Authorisation for annual requirement / DFIA.
- Supply of goods to projects or turnkey contracts financed by multilateral or bilateral agencies.
- Supply of goods to units located in EOU / STP / EHTP / BTP.
- Supply of goods to any project or for any purpose where import is permitted at zero BCD.
- Supply of capital goods against EPCG authorisation.
- Supply of goods to mega power projects.
- Supply of goods to UN or international organisations for their official use.
- Supply of goods to nuclear projects.

(II) Benefits for Deemed Exports

Deemed exports shall be eligible for any / all of following benefits in respect of manufacture and supply of goods, qualifying as deemed exports, subject to specified terms and conditions:

(a) Advance Authorisation/ Advance Authorisation for Annual requirement/ DFIA

(b) Deemed Export Drawback

Refund of drawback on the inputs used in manufacture and supply under the deemed exports category can be claimed on ***'All Industry Rate'*** of Duty Drawback Schedule provided no CENVAT credit has been availed by supplier of goods on excisable inputs or on ***'Brand rate basis'*** upon submission of documents evidencing actual payment of basic custom duties.

(c) Refund of terminal excise duty for specified excisable goods

Supply of goods will be eligible for refund of terminal excise duty provided recipient of goods does not avail CENVAT credit/rebate onsuch goods and supply is eligible under that category of deemed exports.

(III) Common Conditions for Deemed Export Benefits

(i) Supplies shall be made directly to entities listed in the point (I) above. Third party supply shall not be eligible for benefits/exemption.

(ii) In all cases, supplies shall be made directly to the designated Projects/Agencies/Units/ Advance Authorisation/ EPCG Authorisation holder. Sub-contractors may, however, make supplies to main contractor instead of supplying directly to designated Projects/ Agencies. Payments in such cases shall be made to sub-contractor by main-contractor and not by project Authority.

(iii) Supply of domestically manufactured goods by an Indian Sub- contractor to any Indian or foreign main contractor, directly at the designated project's/ Agency's site, shall also be eligible for deemed export benefit.

Aggregate Turnover

REGISTRATION

Includes :
- All taxable outward supplies
- All exempt supplies (including Nil rated & Non taxable supplies but does not include Schedule III supplies .
- Export
- Supply to distinct person (Inter/Intra)
- Supply made from Job worker's premises to be included in turnover of Principal

Excludes :
- GST Taxes
- Inward supplies on which tax is payable under RCM

COMPOSITION LEVY

→ Same

(-) Interest on loan/ deposit / advances

ITC

Same as Registration T/O (-) Excise duty / VAT / Sales Tax

However, following items are to be included in Exempt T/O & Total T/O of ITC :
- Sale of Land & Building (SDV)
- Sale of Security (1% of sale consideration)
- Outward supply under RCM
- Supply of warehoused goods before clearance for Home consumption.

Following items are to be excluded from Exempt T/O but to be included in Total T/O :
- Interest on loans/Advances & deposits.
- Sale of duty scrips.

REFUND

T/O of ZRS of Goods

↓

Value of ZRS of goods without payment of Tax
or
1·5 Times of like goods supplied domestically
~~(excluding T/O u/s 89(1A) or (1B)~~

whichever is lower

T/O of ZRS of Services

↓

Total amount received in current year for ZRS of services	xx
(+) Advance received in previous years but ZRS of service to be provided in CY	xx
(-) Advance received in CY but ZRS of service to be provided in upcoming yrs.	(xx)

~~Note : T/O of 89(1A)/(1B) is not to be deducted from ZRS of service~~

Adjusted Total T/O

↓

sum total of :
(i) T/O in State or UT excluding turnover of services &

(ii) T/O of ZRS of services & Non ZRS of services

Excluding :
(i) Value of Exempt supplies other than ZRS.

~~(ii) T/O of supplies u/s 89(1A) or (1B) (both for Goods & Services).~~

ABOUT THE AUTHOR

CA Akshansh Garg, a well-known Chartered Accountant and leading teacher in IDT, inspires future CAs with his deep knowledge. His strong commitment to helping CA students worldwide has made him a respected figure in the field. With a vision to transform CA education, Akshansh Garg uses his youthful energy to support and nurture aspiring CAs.

Choosing to follow his childhood dream of teaching, Akshansh Garg turned down high-paying jobs at famous firms. With great passion, he started a teaching career that has become very successful, earning much love and support from his students. In his four years of teaching, he has taught thousands of students and continues to inspire many more.

Every line in this book is carefully written by Akshansh to give students the most important information without unnecessary details. The book shows his dedication to giving students an easy and effective learning experience.

Known for his skill in teaching tricks and simple learning methods, Akshansh helps students understand difficult topics quickly and easily. He goes beyond just teaching the subject by motivating and uplifting students through long study sessions and personal guidance, helping them develop a strong determination.

For more updates and giving feedback, join our Telegram channel
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