

CA CMA FINAL MAY 26, JUNE 26

CHART BOOK

INDIRECT TAX

LAWS

BY CA KEVAL MOTA

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Supply under GST [Section 7, 8 of CGST Act] (1/3)

Backdrop of Supply under GST: Taxable event is very important matter in every tax law. Its determination is most crucial for the proper implementation of any tax law. Taxable event is that event on the happening of which its liability to pay tax is triggered. The taxable event under GST shall be the "supply" of goods or services

Section	Clause	Provision & Analysis
7	(1)	SCOPE OF SUPPLY: FOR THIS ACT THE SUPPLY IS AS BELOW
	(a)	<p>In order to be supply, an activity:</p> <ul style="list-style-type: none"> - should be goods or services - Form of supply such as Sale, transfer, barter, exchange, licence, rental, lease or disposal which are - CONSIDERATION by a person in course or furtherance of BUSINESS. <p>❖ Department Clarification: Securities held by the holding company in the subsidiary company are neither goods nor services. Thus, no GST will be levied. (Circular No. 196/08/2023-GST)</p>
	(aa)	<p>Transaction between members:</p> <p>The activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa for consideration, would be treated as supply</p>
	(b)	<p>Import of Services for Consideration:</p> <ul style="list-style-type: none"> ❖ Import of services for a consideration is always supply whether or not for business. ❖ Import of service for personal purpose is exempt [Exemption Chp] ❖ Import of services are taxable under reverse charge [Chg of GST]
	(c)	SCHEDULE I ACTIVITIES - ACTIVITIES WHICH ARE SUPPLY EVEN IF WITHOUT CONSIDERATION
ENTRY 1		Permanent transfer or disposal of business assets where input tax credit has been availed on such assets:
ENTRY 2		<p>Supply between "related persons" or between "distinct persons".</p> <p>Proviso:</p> <ul style="list-style-type: none"> ❖ Gifts upto Rs. 50,000/- value in a financial year by an E^r to E^a – Not a Supply (ITC not allowed on purchase of gift) ❖ > 50,000/- value in a FY – Entire amount will be supply (ITC allowed on purchase of gift) <p>Distinct person means same PAN but different GST number. Estb. Of distinct person means regd. Entity and unregd. entity having same PAN.</p> <ul style="list-style-type: none"> ➤ Two different states: 2 different regn. ➤ Same state: Min Single regn, max – No. of place of business ➤ Same state (SEZ) – Min 2 regn. <p>Related Circulars:</p> <p>(i) Inter-state movement of modes of conveyance between distinct persons is "not a supply" (unless for further supply). However, if given for repairs or maintenance or for carrying passengers then value of repairs or value for carrying passengers would be treated as supply.</p> <p>(ii) Inter-state movement of rigs, tools & spares between distinct persons – not a supply (unless for further supply). However, usage charges would be treated as supply.</p> <p>(iii) Stock transfer to additional place of business location in a single registration would not be treated as supply. However, stock transferred to distinct person in same state, then it would be treated as supply.</p>

ENTRY 3	<p>SUPPLY OF GOODS (NOT SERVICES) BY: - PRINCIPAL TO AGENT (SELLING AGENT) / AGENT TO PRINCIPAL (PURCHASING AGENT) (Concept of Del-credere agent covered in Value of supply chapter)</p> <p>Related Circulars:</p> <ul style="list-style-type: none"> ❖ If Agent Issues invoice in his own name to recipient – Treated as Supply between principal and agent. ❖ If Agent Issues invoice in name of principal – Not be treated as Supply between principal and agent
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2. SECTION 7(1A) OF CGST ACT: CLASSIFICATION OF SUPPLY OF GOODS OR SERVICES [SCHEDULE II]

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

Transaction	Supply of Goods or services
Transfer of Title in Goods	Supply of goods
Hire Purchase	Supply of goods
Transfer of Right in use (no title)	Supply of services
Lease, Tenancy, letting out & Treatment or Process	Supply of services
Assets of Business transferred	Supply of goods
Goods held for business use put to private use	Supply of services
Ceases to be Taxable person, stock / assets deemed to be supplied (exceptions - where business is transferred as a going concern or business is carried on by a personal representative who is deemed to be a taxable person)	Supply of goods
Renting of Immovable property, under construction building (building where part or entire consideration has been before CC or OC whichever is earlier)	Supply of services
Works contract services, restaurant & outdoor catering	Supply of services
Temporary transfer or permitting the use or enjoyment of any intellectual property right	Supply of services
Development of software	Supply of services
Tolerance of non-performance or agreeing to refrain from act	Supply of services

BY CA KEVAL MOTA

Supply under GST [Section 7, 8 of CGST Act] (2/3)

3. CLASSIFICATION OF GOODS OR SERVICES THROUGH CIRCULARS

1	Printing of Books: [Circular No. 11/11/2017 GST] ❖ Content is supplied by the publisher or the person who owns the usage rights - Printing contract is Service. ❖ Where focus is on Tangible paper (rather than content) – Printing contract is goods (printed envelopes, letter cards, printed box, tissues printed with design supplied by recipient of goods)
2	Transfer of Tenancy Rights (Also Known as “Pagadi” System) (Circular No. 47/21/2018-GST) ❖ Transfer of tenancy rights is not a schedule III item, and consequently it is “Supply of service.” Thus, although stamp duty is applicable on tenancy right transfer, GST shall be applicable as below: ❖ Transfer of tenancy rights by owner of property to incoming tenant – Commercial Property – Taxable, Residential Property – Exempt ❖ Transfer of tenancy rights by existing / incoming tenant to new tenant – For Both types of property – Taxable ❖ Services provided by outgoing tenant by way of surrendering the tenancy rights. Owner of property pays lumpsum amount as tenancy premium to outgoing tenant – For Both types of property – Taxable
3	Priority Sector Lending Certificate – Supply of Goods
4	Re-treading of tyres – Process of re-treading which is a supply of service. However, Supply of re-treaded tyres is supply of goods.

4. Schedule III to CGST Act [Section 7(2) of CGST Act]: Activities treated as neither supply of goods nor supply of services

Schedule III items shall not be added in turnover. However, only Entry 5 & Entry 8(a) shall be considered as exempt turnover only for limited purpose for reversal of ITC u/s 17(3) read with rule 42 & 43 (for CA CMA Finals).

1. **Services by an employee to the employer in relation to his employment (example: Salary)**
❖ Perquisites – under employment contract – not liable to GST
 2. **Services by any Court or Tribunal.** (Court includes, District Court, High Court and Supreme Court.)
❖ **Department clarification:** GST not to be levied on fees/ penalty levied by consumer Disputes Redressal Commission [Circular 32/06/2018 GST dated 12-02-2018]
 3. **Functions performed by MP, MLA, person who holds any post in pursuance of provision of Constitution, duties performed by any person as a chairperson or Member or Director in a body established by CG, SG or LA.** Services by way of any activity in relation to a function entrusted to a Panchayat under article 243G/243W
 4. **Funeral, burial, crematorium or mortuary including transportation of the deceased.**
 5. **Sale of land and completed building** (Entire consideration received after CC or OC whichever is earlier)
Related Circular: whether sold as it is or after some development such as levelling, laying down of drainage lines, water lines, electricity lines, etc.
 6. **Actionable claim** other than *specified actionable claims* i.e., betting, casino, gambling, horse racing, lottery, online money gaming
 7. **Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India.** (w.r.e.f. 1st July, 2017)
 8. (a) Supply of **warehoused goods** to any person before clearance for home consumption (w.r.e.f. 1st July, 2017);
(b) **High Sea Sales** (w.r.e.f. 1st July, 2017)
(aa) Supply of goods warehoused in a SEZ or Free Trade Warehousing Zone (FTWZ) to any person before their clearance for export or sale into the Domestic Tariff Area (DTA)
- As per Notifications,** service by way of **grant of alcoholic liquor licence**, against consideration in the form of licence fee or application fee is not a supply
9. **Activity of apportionment of co-insurance premium** by the lead insurer to the co-insurer for the insurance services jointly supplied subject to the condition that the lead insurer pays tax
 10. Services by **insurer to the reinsurer for which ceding commission or the reinsurance commission** is deducted from reinsurance premium paid by the insurer to the reinsurer, subject to the condition that tax is paid by the reinsurer on the gross reinsurance premium payable.

5. COMPOSITE SUPPLIES [S. 2(30) of CGST Act r/w S. 8(a)]

Definition	“Composite supply” means two or more taxable supplies which are NATURALLY BUNDLED and supplied in conjunction with each other ONE OF WHICH IS A PRINCIPAL SUPPLY.
If a supply is a composite supply, rate of tax applicable to the supply shall all be as per principal supply. [S. 8(a)]	
ANALYSIS WITH EXAMPLES	
Accommodation with breakfast; laptop & laptop Bag; Supply of equipment and installation of the same	
HOW TO DETERMINE BUNDELLING	
❖ Normal and frequent practices ❖ Majority of service providers providing similar bundle ❖ Ancillary services help in better enjoyment of main services	
MIXED SUPPLIES (S. 2(74) of CGST Act)	
Definition	“Mixed supply” means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person FOR A SINGLE PRICE where such supply DOES NOT CONSTITUTE A COMPOSITE SUPPLY.
If a supply is a mixed supply, then the rate of tax shall be as per product having highest rate of tax. [S. 8(b)]	
EXAMPLES	
Diwali Basket with Sweet, Cookies & Candies	

6. CLARIFICATIONS ISSUED BY VARIOUS CIRCULARS

1. **Artwork Galleries:** Artist **sending art work** to the gallery for exhibition is **not a supply**. When the **buyer selects a particular art** work displayed at the gallery it will be **supply**.
2. **Joint Ventures: Cash Calls** by Joint Ventures to Purchase Asset is **not a Supply**; however, if paid as **charges to member** who owns such asset will be a **supply of service**.
3. **Mounting of Bus Bodies (i.e., Bus Body Building):** Activity of **fabrication** and fitting and mounting of bus bodies on chassis supplied **along with bus bodies** – **Supply of Goods** (Composite supply of Goods).
4. **Servicing of Cars involving Supply of Goods (Spare Parts): Lumpsum Charged** – Then Rate of tax of **service. Line item wise** charged – Then Respective **Goods rate** & on **service charges 18%**.
5. **Guest Anchor Services:** - Services provided by the **guest anchors** in lieu of honorarium **attract GST liability** if T/O >10L, 20L.
6. **Supply of Food in Cinema Hall:**
 - Price of ticket (incl. Food): **Cinema Rate on entire price.**
 - Price of ticket (excl. Food) – **Cinema rate of ticket price**, Restaurant rate on food bought separately.
7. **Taxability of Derivatives** – Securities – Not liable to GST.
 - Forward contracts - when settlement takes place by way of actual **physical delivery** – **Supply of Goods.**
 - When net **settlement of in Profit and Loss** – **Not liable under GST**

Supply under GST [Section 7, 8 of CGST Act] (3/3)

8. GST implication on secured debt - Sale, purchase, acquisition or assignment of a secured debt does not constitute a transaction in money, it is in the nature of derivative and hence a security. Thus, not liable to GST

8. GST Implication on transaction in instruments - these transactions are like interest swaps and thus, excluded from the definition of supply since such instruments are classified as derivatives. Thus, not liable to GST

9. Taxability of ESOP – Foreign company providing ESOP to Indian company employee and charging to Indian company is **not import of service as ESOP is Securities**, which is neither goods nor services. However, additional charges taken if any shall be liable to GST.

10. Taxability of Processing Fees: Loan given by Holding co. (foreign) to subsidiary co. (India) without charging processing fees – Not to be taxed under entry 4 of Sch. I – Not a supply as no processing is done. Loan given by Holding co. (Indian) to subsidiary co. (Foreign) without charging processing fees – Not a supply (E2 – NA)

11. COST PETROLEUM AND TAXABILITY WITH EXAMPLES

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

12. CLARIFICATION ON DONATION TO CHARITABLE INSTITUTIONS: If all the three conditions are satisfied then GST will not be levied on (donation) consideration received by charitable entity namely: -

- The gift or donation is made to a charitable organization,
- The payment has the character of gift or donation and
- The purpose is philanthropic (i.e., it leads to no commercial gain) and not advertisement.

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

13. TAXABILITY OF NO CLAIM BONUS:

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

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

Thus, it cannot be treated as supply.

15. Taxability of additional / penal interest on late payment of EMI

Case	Taxability
Purchase of goods/ service on EMI Basis & delaying EMI payment	The amount of additional / penal interest is to be included in the value of supply. If the transaction is of Taxable goods/services such penal / additional interest would be added in Value of supply.
Purchase of goods in cash by taking loan & delaying such EMI	Penal interest charged on a transaction would not be subject to GST , as the same would be covered under exemption notification.

16. Taxability of Liquidated Damages as per Circular No. 178/10/2022-GST

Transaction	Taxability
Liquidated damages	<p>Liquidated damages are “not a Supply” due to below mentioned reasons:</p> <ul style="list-style-type: none"> ❖ Performance is the essence of a contract ❖ Liquidated damages are stipulated to ensure performance and to deter non-performance ❖ Liquidated damages or penalty are not the desired outcome of the contract. ❖ Merely flow of money are not a consideration for any supply <p>Example: Penalty stipulated in a contract for delayed construction of houses,</p> <p>Liquidated damages will be a “Supply” when:</p> <ul style="list-style-type: none"> ❖ Liquidated damages are levied to achieve the object of supply. <p>Example: Railway forfeiting amount if ticket is cancelled, Bank charging pre-payment penalty for foreclosing the loan.</p> <ul style="list-style-type: none"> ❖ These charges are to ensure supply is to happen.
Cheque dishonour	<p>Charges for cheque dishonour is “Not a supply,” due to below:</p> <ul style="list-style-type: none"> ❖ Supplier’s intention was to get cheque clear. ❖ It is not willingness on part of the supplier to earn from cheque dishonour charges as goods have already been sold, his main income lies in sale of goods not in penal charges. ❖ However, Late payment charges - It is an ancillary supply naturally bundled & supplied in conjunction with the principal supply, and therefore should be assessed as the principal supply.
Penalty imposed for violation of laws	<p>“Not a Supply”</p> <ul style="list-style-type: none"> ❖ Penalties imposed for violation of laws cannot be regarded as consideration charged by Government or a Local Authority for tolerating violation of laws. Laws are not framed for tolerating their violation.
Notice pay recovery i.e., Forfeiture of salary for pre-termination	<p>“Not a Supply”</p> <ul style="list-style-type: none"> ❖ Such amounts are recovered by the employer not as a consideration for tolerating the act of such premature quitting of employment but as penalties for dissuading the non-serious employees from taking up employment and to discourage and deter such a situation
Cancellation charges	<p>“Supply”</p> <ul style="list-style-type: none"> ❖ Cancellation charges are for the costs involved in making arrangements for the intended supply. The facilitation service of allowing cancellation against payment of cancellation charges is also a natural part of this bundle.
Fixed Charges of Power	Fixed charges of power - both, minimum fixed charges and variable charges are charged for sale of electricity & are thus not taxable as electricity is exempt from GST
Penalty for breach of Contract	Leviable to GST

BY CA KEVAL MOTI

Charge of GST [S. 5, 7, 8, 9 of IGST Act; S. 9 of CGST Act] (1/4)

Backdrop of Charge of GST: Article 265 of the Constitution of India mandates that no tax shall be levied or collected except by the authority of law. The charging section is a must in any taxing statute for levy and collection of tax. In this chapter we are learning which tax shall be charged viz. CGST SGST or IGST. Further, who is the person liable to pay tax to government whether it is supplier or recipient.

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

Section 7	Description
(1)	Inter-State supply of Goods in India. If LOS & Place of supply (POS) of goods is in different states/Union Territory then it is interstate supply (Movement should be in India)
(2)	Import of Goods, till they cross the custom frontiers of India, shall be treated to be inter-state supply
(3)	Inter-State supply of services If LOS & POS is in different states/Union Territory it is interstate supply (LOS & LOR shall be in India)
(4)	Import of Services is an Interstate Supply (In case of Import of service, supplier is Outside India, recipient is in India & POS is India)
(5)	Other Supplies
(a)	Supplier in India, POS Outside India, would be Inter-state supply (generally export transactions)
(b)	Supplies "to" or "from" a Special Economic Zone developer or a Special Economic Zone unit – Interstate Supply ❖ Supplies to SEZ is zero rated supply, however supplies made by SEZ are treated as import of goods into domestic tariff area (DTA) ❖ Import of goods by SEZ from outside India are exempt
(c)	Residual Provision - Supply in the taxable territory not being intra-State supply is an Inter State

UT are Andaman Nicobar Island, Lakshadweep, Dadra & Nagar Haveli, Ladakh, Chandigarh Delhi, Puducherry, Daman and Diu. Intra-State sale in Delhi, Puducherry & Jammu Kashmir will have levy of CGST & SGST even if they are union territory as they have their own state legislature. (Intra-state in J&K to attract CGST, SGST)

Section 8 of IGST Act: Intra-state Supply

(1)	Intra-State supply of Goods in India. If LOS & POS of goods is same state or same UT then it is intra-state supply (Movement should be in India). Exceptions are as below: (i) Supply to & from SEZ and DTA in same state would be Inter-state supply. (ii) Imports: Goods imported into the territory of India till they cross the customs frontiers of India (iii) Supply to foreign tourist
(2)	Intra-State supply of services in India. If LOS & POS of services is same state or same UT then it is intra state supply (LOR & LOS shall be in India). Exceptions (Proviso): (i) Supply to / by SEZ Meaning of distinct persons for IGST Act (Explanation 1): (i) An establishment in India & outside India/ an establishment in a State or Union territory and any other establishment outside that State or Union territory would be distinct person. (ii) Person carrying on a business through a branch or an agency or a representational office in any territory shall be treated as having an establishment in that territory Circular: Services of short-term accommodation, conferencing, banqueting etc. provided to a SEZ developer/SEZ unit to be treated as an inter- State supply

3. CHARGING SECTION FOR INTRA-STATE SUPPLIES

In GST, the charging section is section 9 of CGST Act for intra-state and section 5 of IGST Act, 2017 for inter-state supplies

Section 9	Description
(1)	CGST on Intra-state Supply except Petroleum Products & Alcoholic Liquor for Human Consumption Charging Sec: Other than petroleum products, CGST shall be levied on all Intra-State supplies, except on the supply of alcoholic liquor for human consumption, extra neutral alcohol and rectified spirit on the value determined under section 15 and at such rates, not exceeding 20% CGST (CGST + SGST together or IGST shall not exceed 40%), shall be payable by Taxable person Taxable person [S. 2(107) of CGST Act]: ❖ Registered person or, ❖ Person liable for registration (<i>person becomes liable for registration on crossing of specific turnover limit</i>)
(2)	Intra - state supply Petroleum Products - Out of Ambit of GST GST shall be levied from notified date on supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel. (Currently out of ambit of GST)
(3)	Notified intra-state supply of goods or services - Reverse Charge Mechanism GST shall be paid under reverse charge basis on notified goods or services Analysis & Inter-linking Concepts: 1. Compulsory Registration for RCM Recipient. [S. 24 of CGST Act] 2. RCM liability to be paid in Cash, then ITC can be availed in same month [S. 2(82) of CGST Act r/w S. 49B] 3. ITC of RCM can be used to pay FCM liability [S. 2(82) of CGST Act r/w S. 49B]
(4)	Reverse charge on purchase from unregistered persons (Not in syllabus)
(5)	Specified Services provided by ECO, tax shall be paid by ECO as if he is supplier 1. Passenger Transport Services: (i) ANY MOTOR VEHICLE EXCEPT OMNIBUS (radio-taxi, motorcab, maxicab and motor cycle) – ALWAYS ECO will be liable to pay Tax. (ia) TRANSPORTATION OF PASSENGER THROUGH OMNIBUS: Supplier – Body Corporate – Supplier will pay tax Supplier – Other than Body Corporate – ECO will pay tax 2. Hotel Accommodation: If Service provider is registered , he will be liable to pay tax, otherwise ECO. (E.g. MMT, Go Ibibio) 3. Services by way of house-keeping, such as plumbing, carpentering etc - If Service provided is registered, he will be liable to pay tax, otherwise ECO (Added by NN 23/2017- CTR) (E.g. Urban clap) 4. Supply of restaurant service (E.g. Zomato, Swiggy): - Restaurant, eating joints etc. located at premises having hotel accommodation charges declared tariff >= Rs. 7,500 per day – Restaurant will pay GST (Inserted vide Notification No. 17/2021-CTR & ITR) - Charges less than Rs. 7,500 per day or No Accommodation: ECO shall be liable to pay tax. 5. Services by way of local delivery through - If supplier is liable to be regd., he shall be liable to pay tax, otherwise ECO. [Example – Porter]
	If ECO does not have a physical presence, then his representative shall pay tax. If ECO does not have a representative in the taxable territory, he shall appoint a person to pay tax

Departmental Clarification: Taxability of Passenger Service Fees (PSF) & User Development Fee (UDF) charged by Airline Companies to Passenger

Airport licensee (Airport Operator) is liable to collect PSF & UDF from embarking passengers. Airline company is providing "Collection Services" to Airport Operator. The amount of PSF and UDF Collected and remitted to Airport Licensee shall not be leviable to GST. However, collection services provided by Airline company to Airport Licensee shall be liable to GST.

Charge of GST [S. 5, 7, 8, 9 of IGST Act; S. 9 of CGST Act] (2/4)

Clarifications on 9(5) Supplies

Query	Clarification	Query	Clarification
Do ECO have to collect TCS on 9(5) supplies	No TCS as it is notified under S. 9(5)	ITC Eligibility to ECO	GST on 9(5) services has to be paid in cash only. No ITC to be used to pay liability u/s 9(5)
Reqmt of Separate registration for providing services	No, separate registration is not required	Invoice	Invoice shall be issued by ECO to customers in such cases
Addition in whose turnover	Suppliers	Reporting	Suppliers shall report in exempt supplies, ECO shall report in taxable supplies.

4. ANALYSIS OF SECTION 9 OF IGST ACT [TERRITORIAL WATERS]

Where the location of the supplier is in the territorial waters, location of such supplier shall be deemed to be in coastal State or Union Territory where the nearest point of the appropriate baseline is located.

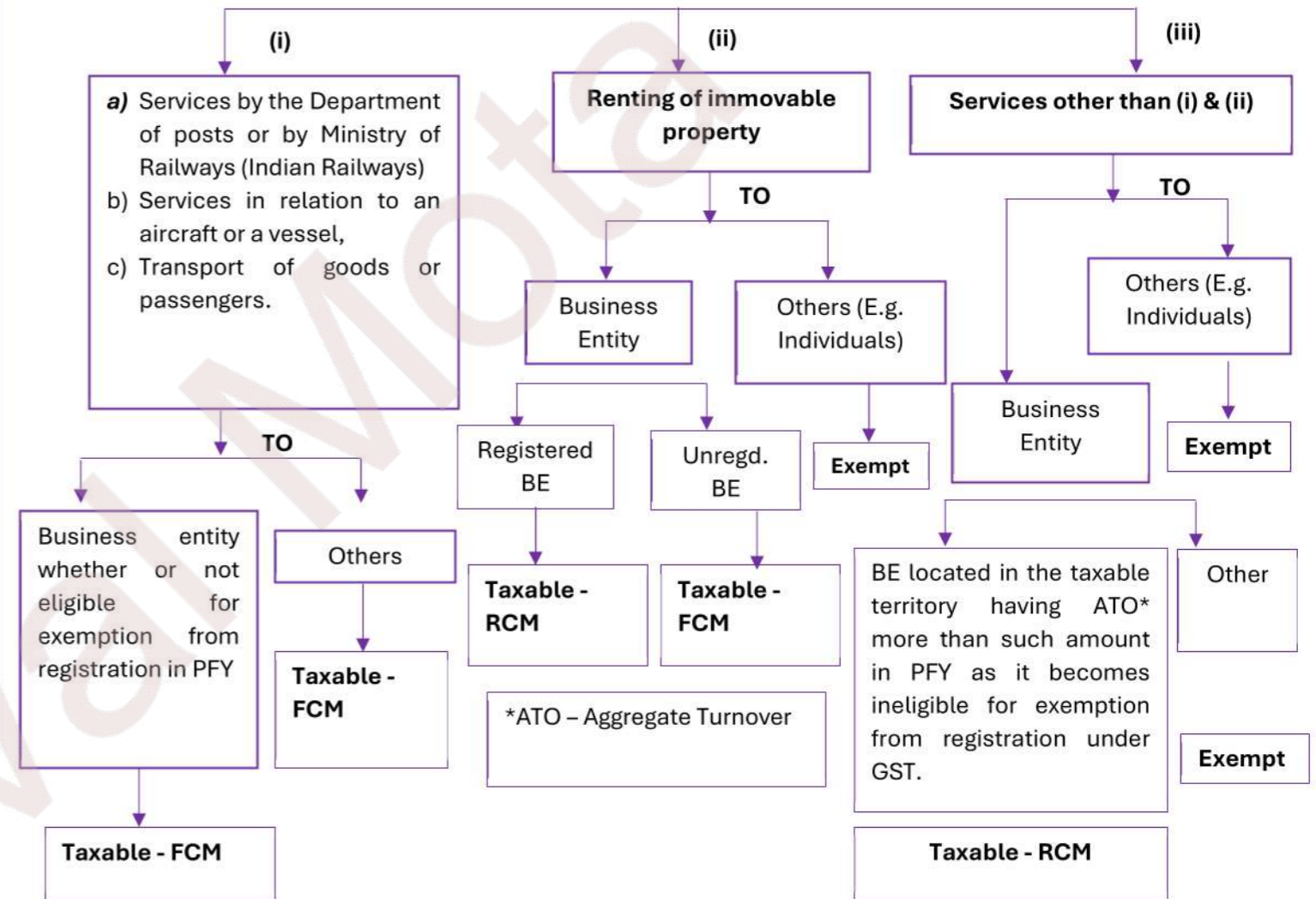
5. RCM SERVICES

Specified Service	Supplier	Recipient
1) Supply of Services by a goods transport agency Notes: - (i) Not applicable to TDS recipient (ii) GTA is person who issues consignment note but does not include - ECO providing local delivery services, - ECO through whom local delivery services are provided. (i) Person who is liable to pay freight is recipient) (ii) Specified GTA to other than Specified recipient (including unregistered Casual Taxable person) it is exempt vide NN 32/2017 – CTR.)	Goods Transport Agency other than FCM Notes: - GTA opting for other than FCM Option (GST shall be payable by recipient at rate of 5%)	a) Factory registered under Factories Act, 1948; or b) Society registered under the Societies Registration Act, 1860 or under any other law or c) Co-operative society established under any law; or d) Person registered under GST e) Body corporate f) Partnership firm (incl. LLP), AOP or g) Casual taxable person; located in the taxable territory.
2) Legal Services supplied by an individual advocate, a senior advocate or firm of advocates	(Covered in Specified service)	Business entity (having turnover of more than threshold in Preceding financial year)
3) Services supplied by an arbitral tribunal to a business entity		Business entity (having turnover of more than threshold in Preceding financial year)
4) Sponsorship Services (Sponsor is recipient)	Any person other than body corporate	Body Corporate / Partnership firm (including LLP) located in Taxable territory

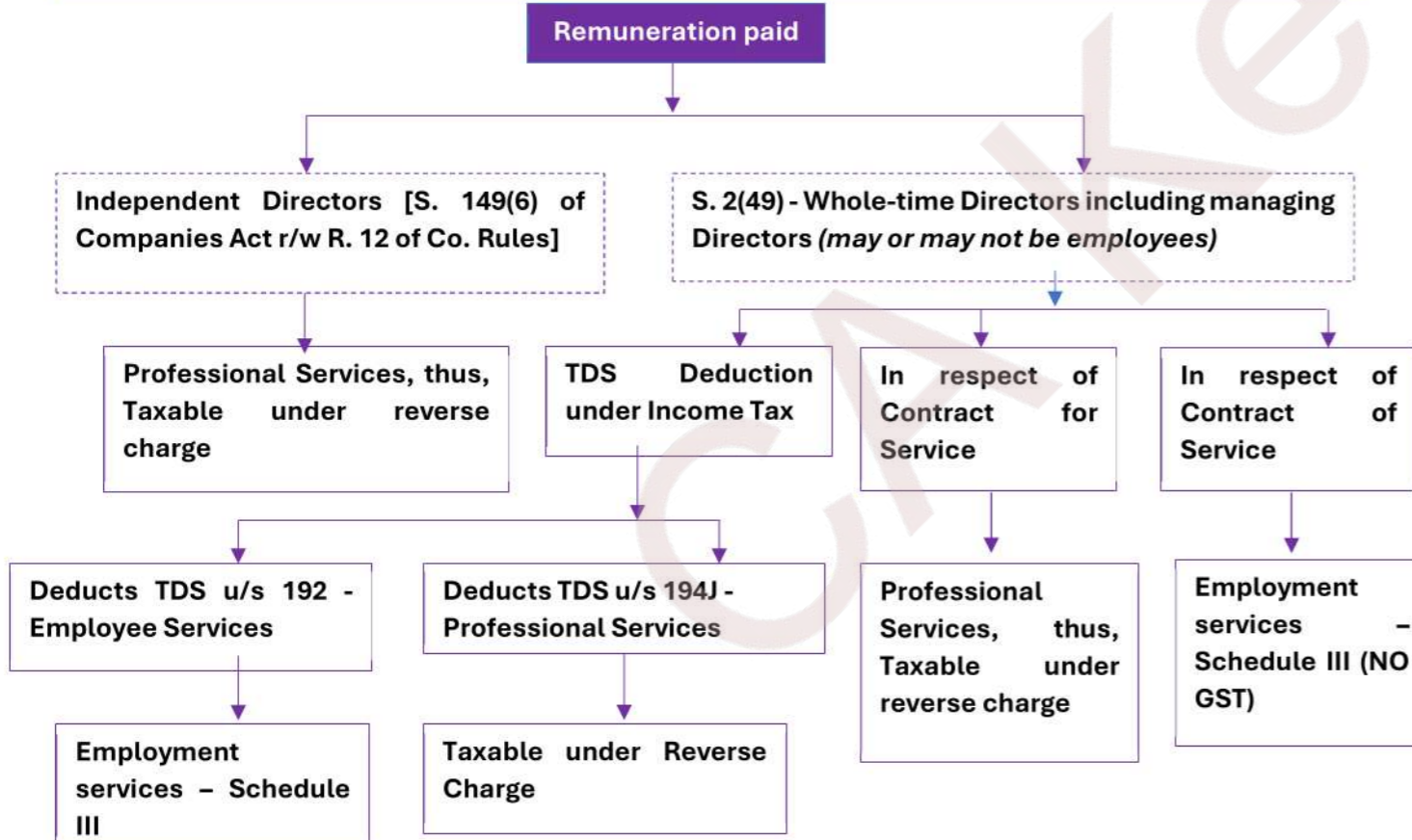
Specified Service	Supplier	Recipient
5. Services supplied by the CG / SG/ UT/ LA/COURT OR TRIBUNAL to a business entity excluding: - ❖ Renting of immovable property, ❖ Services by the Department of posts or Ministry of Railways (Indian Railways), ❖ Services in relation to an aircraft or a vessel, ❖ Transport of goods or passengers.	CG / SG / UT / LA	Any business entity located in the taxable territory having aggregate turnover more than such amount in PFY as it becomes ineligible for exemption from registration under GST. (E 7 of NN 12/2017 r/w NN 21/2019 – CTR) (See Flow Chart 1)
5A. Renting of immovable property by CG/SG/UT/LA/COURT OR TRIBUNAL	CG/SG/UT/LA	Person registered under GST. [Supply to URP is taxable under FCM]
5AA. Service by way of renting of residential dwelling to a registered person.	Any person	Any registered person. (a) If residential property is used by prop. for his personal purposes it would be exempt) (b) Residential dwelling provided by Hostel or PG is exempt where consideration p.m. is upto 20,000 and stay period is > 90 days
5AB. Renting of commercial property	Unregd.	Regd. other than composition scheme
5B. Transfer of Development rights or FSI for Construction of Project	Any Person	Promoter
5C. 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	Any Person	Promoter
6. Director of a company or a body corporate ❖ Private Capacity – No RCM ❖ Director capacity – RCM ❖ Sitting fees – RCM (any director)	A director of a company or a body corporate	The company or a body corporate located in the taxable territory. [If TDS is deducted under 194J – then only RCM Applies]
7. Insurance agency services	An insurance agent	Insurance Company in the taxable territory.
8. Recovery agent Services	A recovery agent	Bank, NBFC, or a financial Institution in taxable territory
9. Supply of services by permitting use of IP / copyright by Music composer, photographer, artist	Music composer, photographer, artist, or the like	Music company, producer or the like, located in the taxable territory.
9A. Supply of services by an author by way of transfer or permitting the use of copyright Note: - The said option cannot be withdrawn within a period of 1 year from the date of exercising such option	Author	Publisher located in the taxable territory provided: - Author can pay under Forward Charge Mechanism if below are satisfied: - (i) The author has taken registration under the GST and filed a declaration, (ii) The author makes a declaration, as prescribed in Annexure II of said Notification on the invoice issued by him in Form GST Inv-I to the publisher.

Specified service	Specified Supplier	Specified Recipient
10. Overseeing Committee to Reserve Bank of India	Overseeing Committee members	RBI
11. Services by Direct Selling Agents (DSAs)	individual DSA other than body corporate, partnership or LLP firm	A banking company or a non-banking financial company, located in the taxable territory. (FI not covered)
12. Services by Business facilitator	Business facilitator (BF)	A banking company, located in the taxable territory (FI & NBFC not covered) (in respect of rural area – Exempt)
13. Services by agent of business correspondent	An agent	A business correspondent, located in the taxable territory. (in respect of rural area – Exempt)
14. Security services This entry is not applicable when recipient is: - (i) Tax Deductors u/s 51 (ii) Composition person (S. 10)	Any person other than a body corporate	A registered person, located in the taxable territory. [OBC to Composition person – FCM or Not liable]
15. Renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged	Other than Body corporate opting for 6% option	Any Body corporate located in the taxable territory. [Renting involves periodic billing, whereas hiring involves specific kms wise billing]
16. Lending of securities under Securities Lending Scheme, 1997	Lender	Borrower (w.e.f. 1 st October, 2019)

Flow Chart 1: Government Services/BY Court or Tribunals



Flow Chart 2: Director Services



Classification of Goods or Services

Meaning of Classification	In order to understand what rate of GST shall be applicable on any goods or services, it is important to check GST Tariff.
HSN Based Classification	Indian Customs Tariff is based on HSN. HSN stands for Harmonized System of Nomenclature. India has developed an 8-digit code of HSN.
Classification basis	Tariff Item, Heading, Sub-heading reference is taken from first schedule to Customs Tariff Act: Tariff item, sub-heading, heading, and chapters referred in the Schedules of rate notification for goods under GST are the Tariff item, sub-heading, heading and chapters of the First Schedule to the Customs Tariff Act, 1975.
Service Accounting Code (SAC)	For classification of services – SAC is used (it is 6 digit maximum)
Composition of SAC / HSN	Chapter No. (2 digit) Heading (2 digit) Sub-heading (2 digit) Tariff Item (2 digit)

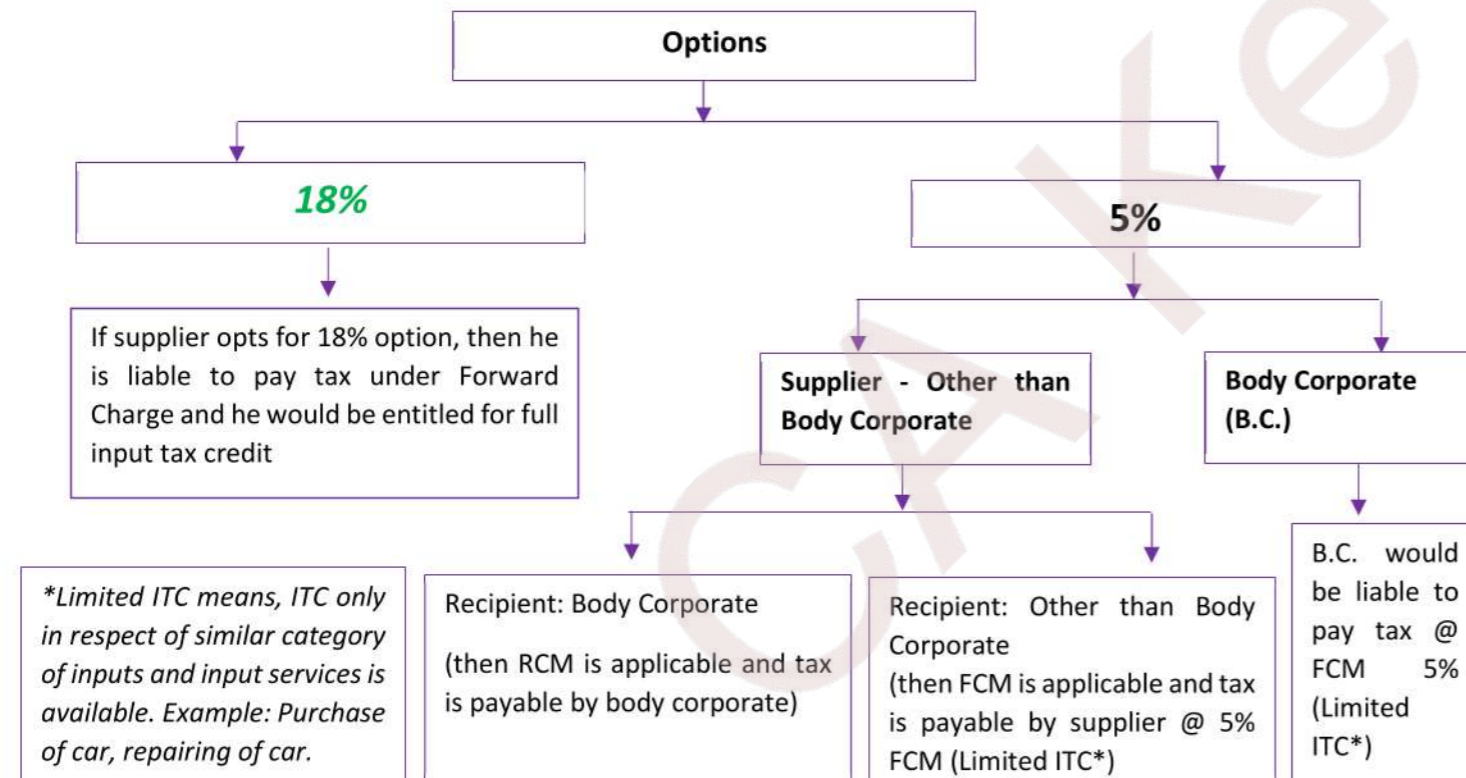
6. Analysis of Section 5 of IGST Act [Charging Section Inter-State Supply]

Section 5	Description
Technically Section 9 of CGST Act & Section 5 of IGST Act are same barring the difference that Section 9 is for Intra state supplies and section 5 is for Inter-state supplies. In Section 9 Central Tax shall be collected and in Section 5, IGST shall be collected	
(1)	IGST on Inter-state Supply except Petroleum Products & Alcoholic Liquor for Human Consumption, extra neutral alcohol and rectified spirit [Same as 9(1) except the extra proviso here]
	Proviso: IGST on Import of Goods shall be levied u/s 3(7) of Customs Act Explanation: Online money gaming – GST levied as per Section 5 of IGST Act
(2)	Inter - state supply Petroleum Products - Out of Ambit of GST [Same as 9(2)]
(3)	Notified inter-state supply of goods or services - Reverse Charge Mechanism [Same as 9(3) +Extra Service is notified by Ntn 10/2017 - ITR]
(4)	Reverse charge mechanism in case of purchases from unregistered persons [Same as 9(4)]
(5)	Services provided through ECO [Same as 9(5)]

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

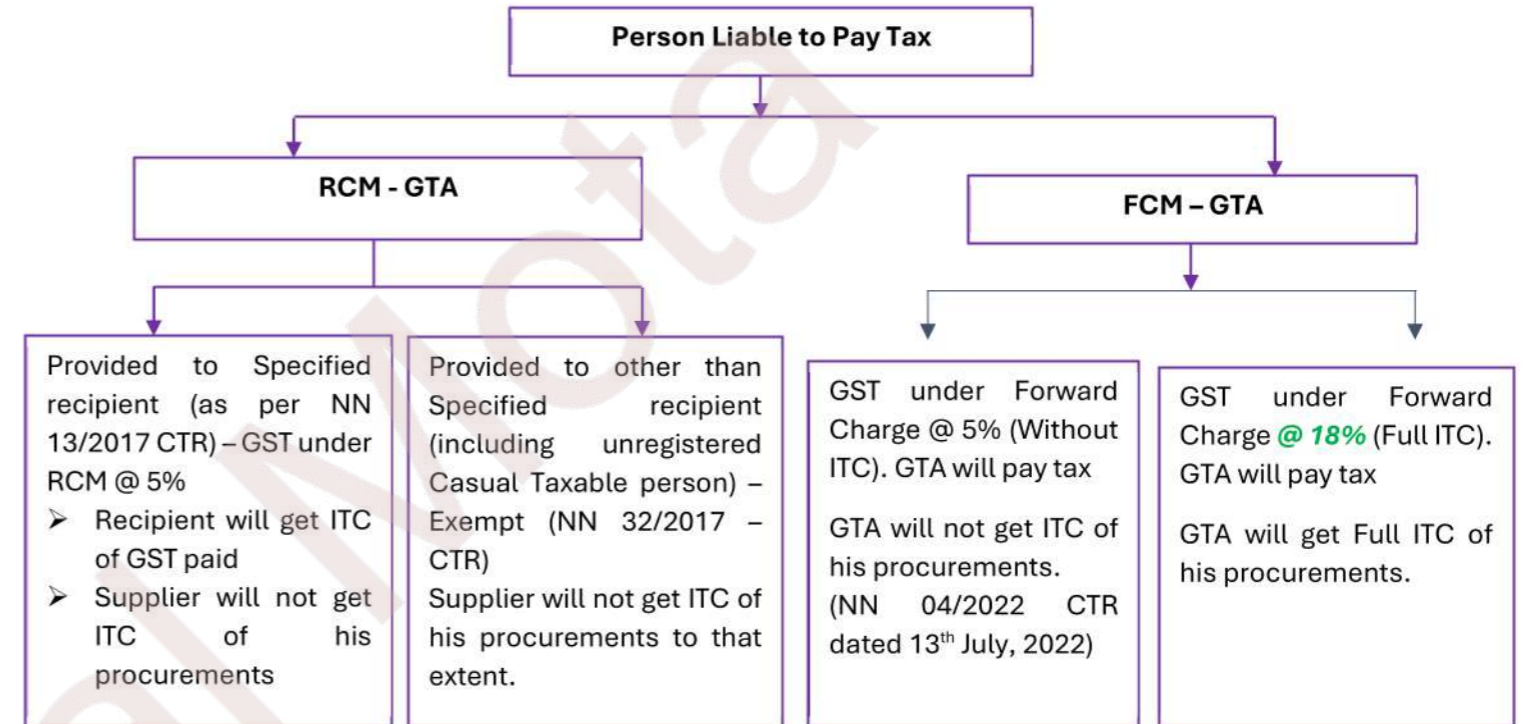
Specified Service	Supplier	Recipient
1. Service supplied by any person who is located in a non-taxable territory to any person other than non-taxable online recipient	Any person located in a non-taxable territory. (NTT)	Any person located in the taxable territory other than non-taxable online recipient.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

Flow chart 4: Renting of Motor Vehicle Chart



*Limited ITC means, ITC only in respect of similar category of inputs and input services is available. Example: Purchase of car, repairing of car.

Flow chart 3: Taxability of GTA services



8. Reverse Charge Mechanism – In respect of Specified Goods

Entry	Description of Goods	Specified Supplier	Specified Recipient
1	Cashew Nuts, not shelled or peeled	Agriculturist	Any registered persons
2	Bidi Wrapper Leaves (tendu)	Agriculturist	Any registered persons
3	Tobacco Leaves	Agriculturist	Any registered persons
3A	Essential Oils other than those of citrus food namely: - Of Peppermint Of other mints: Spearmint oil (ex-mentha spicata), Water Mint Oil, Horse Mint Oil, Bergamot Oil, Mentha Arvensis	Any Unregistered person	Any registered persons
4	Silk Yarn	Manufacturer of silk yarn	Any registered persons
4A	Raw cotton	Agriculturist	Any registered persons
5	Supply of Lottery	SG/UT/LA	Lottery Distributor or selling agent
6	Used, seized vehicles and confiscated goods, old and used goods, waste and scrap	CG (Excluding Ministry of Railways), SG, UT, LA	Any registered persons
7	Priority Sector Lending Certificate	Any registered persons	Any registered persons
8	Metal Scrap	Unregd.	Regd.

Composition Levy [Section 10 of CGST Act r/w Rules] [1/2]

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

1. ELIGIBILITY FOR COMPOSITION LEVY

Eligible if aggregate turnover in preceding financial year is

UPTO Rs. 75 Lakhs TSUNAM ³	UPTO Rs. 1.5 crore
Arunachal Pradesh	All other states & Union Territories & Himachal Pradesh, Assam & Jammu Kashmir
Manipur	
Meghalaya	
Mizoram	
Nagaland	
Sikkim	
Tripura	
Uttarakhand	

2. AGGREGATE TURNOVER

Description INCLUSIONS

- (+) Value of all **taxable supplies** (excluding Inward RCM)
- (+) **Exempt** Supplies (Non-GST, Nil Rated & Wholly exempted supplies)
- (+) **Exports** of goods or services or both
- (+) **Inter-State** to distinct person
- (+) **First Supplies** i.e., T/O from 1st April to date of becoming liable
- (-) **GST & Cess**
- (-) **Interest or discount**
- To be computed on all India PAN Basis**

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

3. PERSONS INELIGIBLE TO OPT [SECTION 10(2) OF CGST ACT]

- a) Supplier of **Non-Taxable Goods** or Services
- b) **Inter-state** supplier of goods or Services
 - ❖ Supply to SEZ, Export of goods/services not allowed.
 - ❖ He can purchase from different state (sale is restricted)
- c) Supplier of **Services through Electronic Commerce Operator** who is required to collect tax u/s 52.
- d) Ineligible Manufacturers (not traders) – **Tobacco, Ice-cream & PAN Masala, Aerated Waters, (TIPA), Fly ash bricks; Fly ash aggregates; Fly ash blocks, building bricks, earthen and roof tile, bricks of fossil meals or similar siliceous earths.**
- e) **Exclusive Supplier of Service** other than restaurant service provider (he may opt for presumptive scheme but not Composition Scheme)
 - ❖ **Nominal Services are allowed** [Proviso 2 to Section 10(1) r/w Explanation to Section 10]: Composition person may supply services (other than restaurant & outdoor catering services), of value not exceeding
 - (i) **10% of Turnover (excl. interest & Disc.) in a State or Union territory in the preceding financial year or,**
 - (ii) **Rs. 5,00,000.**
 whichever is higher [Proviso 2 to Section 10(1)].
- f) **Casual Taxable person & Non-resident taxable person**

Composition person cannot supply specified actionable claims i.e., betting; casinos; gambling; horse racing; lottery; online money gaming.

4. COMPOSITION TAX RATES IN LIEU OF 9(1) OF CGST ACT, 2017: - (AS AMENDED BY CGST AMENDMENT ACT, 2018 W.E.F. 01.02.2019) [Section 10(1) r/w Rule 7]

Type of person	CGST Rate	SGST Rate
(a) Manufacturer (other than notified mfgs)	0.5% of Total Turnover in State or Union Territory	0.5% of Total Turnover in State or Union Territory
(b) Restaurant & outdoor catering services	2.5% of Total Turnover in State or Union Territory	2.5% of Total Turnover in State or Union Territory
(c) Other Suppliers (E.g. – Traders)	0.5% of Taxable supplies of goods and services in State or Union Territory	0.5% of Taxable supplies of goods and services in State or Union Territory

ON RCM SERVICES TAKEN – NORMAL RATE WOULD BE APPLICABLE

Summary: Total Turnover in State = All Taxable Supplies made within State/UT + Exempt Supplies* (except interest & discount turnover) (-) RCM inward supplies (-) First Supplies

5. MEANING & ANALYSIS OF FIRST SUPPLIES

Meaning of First Supplies: -

Value of supplies made by a person **from the 1st day of April of a financial year up to the date when he becomes liable** for registration is called as First Supplies.

For determining eligibility to register – TO BE INCLUDED

For determining payment of tax – TO BE EXCLUDED

Example: If a Business is started on 1st April 2023, by 30th September turnover reached Rs. 20 lakhs & person obtains composition registration; he can do turnover of Rs. 1.3 crore till 31st March, 2024. Tax shall be payable on 1.3 crores.

6. SCHEME FOR SERVICE SUPPLIERS

INTRODUCTION

1. Eligibility:

- ❖ Aggregate Turnover in preceding Financial shall **not exceed Rs. 50,00,000/-** [Exclude exempt interest and discount turnover]
- ❖ The person should **not be eligible for composition scheme** u/s 10(1), (2)

2. Mutually Exclusive Schemes: If any person is eligible (even if not opted) for composition scheme u/s 10(1) then such person cannot take Section 10(2A).

3. Rate of Tax: As per Amended Rule 7 of CGST Rules, **GST shall be paid @ 6% of turnover in State or Union Territory** [CGST 3%, SGST 3%]

4. Person in this scheme can supply goods. However, his primary business shall be of services i.e., hair salon can opt for this scheme and can supply beauty products.

INELIGIBLE CRITERIA

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

BY CA KEVAL MOTA

Composition Levy [Section 10 of CGST Act r/w Rules] [2/2]

Other provisions of Section 10

[1] **Option of Composition / Presumptive Scheme Lapses** if Aggregate **Turnover exceeds** Rs. 1.5 crore, 75 lakhs or 50 lakhs (as the case may be) in current financial year **[S. 10(3)]**

[2] **Tax cannot be collected** from a recipient, by person opting to pay tax under section 10 **[S.10(4)]**

[3] If a taxable person **opts for scheme despite of being ineligible**, the person would be liable to pay **penalty and provisions of sec 73 / 74, 74A** of CGST Act shall be applicable for determination of tax and penalty. **[Section 10(5)]**

One PAN – One type of registration, a regd. person cannot be in normal scheme and Composition scheme on single PAN.

Note 1: ECO has to fulfil certain conditions in order to allow goods (composition scheme) supplier to sell from his platform: -

- (i) Enrolment number has been allotted
- (ii) Not allow any inter-State supply
- (iii) Collect tax at source under section 52(1) of CGST Act and pay to the Government
- (iv) Furnish statement in FORM GSTR-8 electronically on the common portal.

Rule 6

Rule 6	Decoded provision
(1)	Composition scheme valid until conditions are satisfied
(2)	Person is required to pay tax under regular scheme from the day he ceases to fulfil the conditions prescribed for composition levy.
(3)	Person to file application in form GST CMP 04 before withdrawing
(4)	Officer will issue notice in Form GST CMP 05
(5)	SCN to be replied in GST CMP 06 within 15 days of receipt
(6)	Furnish stock details in GST ITC 01 w/i 30 days of withdrawal of option [Person is required to pay tax under regular scheme from the day he ceases to fulfil the conditions prescribed for composition levy. Further, he shall intimate for withdrawal from scheme within 7 days of occurrence of such event.]
(7)	Intimation of withdrawal to be deemed Intimation of all Place of business
(8)	Cancellation of composition scheme by officer, Differential tax and interest be payable with penalty u/s 73/74

Departmental Clarification: In case of denial of option to opt for composition scheme, it has been clarified that effective date of such denial shall be from a date including any retrospective date. However, such effective date shall not be prior to date of contravention of provisions of CGST Act/Rules [Circular 77/51/2018 – GST dated 31st December, 2019]

Important Rules in regards to Composition Scheme:

Rules	Description
3	Intimation to pay tax under composition scheme, shall be filed prior to the commencement of the Financial Year (No need to file fresh intimation every year)
3	<ul style="list-style-type: none"> ❖ ITC shall be reversed if regd. person switches from Normal scheme to composition / presumptive scheme. ❖ GST ITC-03 shall be filed within a period of 60 days from the commencement of the relevant financial year. ❖ Details of Stock to be furnished within 90 days from availing option
3	Single Application deemed to be application for all POB under same PAN
5	<ol style="list-style-type: none"> (a) No CTP no NRTP (b) Normal rate of tax for supplies taxable under RCM (c) No manufacturing of notified products during PFY (d) Mention the words “Composition taxable person, not eligible to collect tax on supplies at the top of the bill of supply” and (e) Mention the words “composition taxable person” on every notice or signboard

RETURN FILING AND OTHER COMPLIANCES

Sr. No.	Compliance	Form No.	Due date
1	Payment of Tax (Quarterly)	CMP 08	18 th Day of month succeeding quarter
2	Filing of return (Annually)	GSTR 4	30 th June of next financial year [e.g., For FY 2024-25, it would be 30 th June, 2025] <i>Consolidated details of sales & Invoice wise details of purchases</i>
3	Annual Return (after finalisation of Books of Accounts)	GSTR 9A	31 st December of next financial year

Exemptions [Section 11 r/w NN 12/2017 - CTR] (1/8)

Before learning exemptions under GST following points must be noted: -

- 1) The person supplying exempt supplies will have to **reverse ITC** in accordance with section 17 of CGST Act, 2017.
- 2) **Zero rated** supplies are not exempt supplies thus **ITC can be availed**.
- 3) Even though **exempt supplies are exported**, registered person **can still claim refund** of taxes paid on manufacture / procurement of such exempt supplies.
- 4) As per section 2(47) of CGST Act, 2017 "**exempt supply**" means supply of any goods or services or both which attracts **nil rate** of tax (e.g., fruits & vegetables) or which may be **wholly exempt** from tax under section 11 (to be learnt in this chapter), or under section 6 of the Integrated Goods and Services Tax Act, and includes **non-taxable supply** (e.g., petrol);
- 5) If notification exemption is issued under CGST Act, the registered person can avail the benefit of same in SGST / UTGST Act also, however vice – versa is not possible. Also, notification issued under IGST Act will only be relevant for inter-state supply purposes only not for CGST / SGST purposes.
- 6) Any person engaged **exclusively** in the business of supplying goods or services or both that are not liable to tax or wholly **exempt** from tax under this Act or under the Integrated Goods and Services Tax Act is **not liable to take registration** under GST Act.
- 7) Section 31(3)(c) of the CGST Act provides that a registered person **supplying exempt** goods or services or both **or** paying tax under the provisions of section **10 of CGST Act (composition) & presumptive levy** shall issue, instead of a tax invoice, a **bill of supply**.
- 8) **For supplying exempt goods E-way bill is not required to be generated.**

WAY AHEAD FOR THIS CHAPTER

EXEMPTIONS
1. Charitable Entity
2. Religious Institution
3. Agriculture Sector
4. Government Services
5. Healthcare Services
6. Education Sector
7. Banking & Financial Sector
8. Construction Industry
9. Goods Transportation
10. Passenger Transportation
11. Legal Services
12. Life Insurance
13. General Insurance
14. Leasing Services
15. Artist Services
16. Admission to various events
17. Services by Unincorporated Body / NPO / RWA
18. Miscellaneous Exemptions
19. Indepth Interlinking of Import of Services
20. IGST Exemptions

"Just when the caterpillar thought the world was ending, he turned into a butterfly."

1. CHARITABLE INSTITUTIONS

In order to avail the benefit of exemption for Charitable Trusts it has to satisfy two conditions: -

- ❖ It should be registered under Section 12AA or 12AB of Income Tax Act.
- ❖ It should provide charitable activities

MEANING OF CHARITABLE ACTIVITY:

- ❖ **Care or counselling** of terminally ill person, HIV AIDS, narcotics drugs or alcohol; or public awareness of **preventive health, family planning**
- ❖ Advancement of **educational programmes** or skill development (Abandoned, orphaned or homeless children etc.)
- ❖ Advancement of **religion, spirituality or yoga**;
- ❖ Preservation of **environment** including watershed, forests and wildlife;

OTHER EXEMPTIONS RELATED TO THIS SECTOR:

❖ Training or coaching in recreational activities such as arts, culture provided by INDIVIDUAL including charitable entities is exempt.	Exempt
❖ Training or coaching in recreational activity in sports is exempt when provided by CHARITABLE ENTITY REGD UNDER 12AA/12AB	Exempt
❖ Camps where the fee charged includes cost of lodging and boarding where principal activity is charitable activity. (Circular 66/40/2018-GST dated 26-09-2018)	Exempt
❖ Hostel Accommodation for students (Circular 32/06/2018-GST dated 12-02-2018)	Taxable
❖ Import of Services (other than OIDAR)	Exempt
❖ Old age home run by 12AA/AB where consideration is up to Rs. 25,000/- per month per member to its residents aged 60 or more	Exempt (If more than Rs. 25,000/- entire would be taxable)

2. RELIGIOUS INSTITUTIONS [E. 13]

Sr. No.	Category	Taxable/Exempt
1	Conduct of religious ceremonies Religious ceremonies are life-cycle rituals including special religious poojas conducted in terms of religious texts by a person so authorized by such religious texts. Occasions like birth, marriage and death involve elaborate religious ceremonies.	100% of supplies made in this nature is exempt
2	Room rent	Taxable if Rs. 1000 or more per day
3	Renting of premises, community halls, Kalyan mandapam or open area etc.	Taxable if Rs. 10,000 or more per day
4	Charges for renting of shops or commercial spaces.	Taxable if Rs. 10,000 or more per month

3. AGRICULTURE SECTOR

Meaning of Agriculture produce: Agriculture Produce means any produce out of cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products, on which either no further processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market.

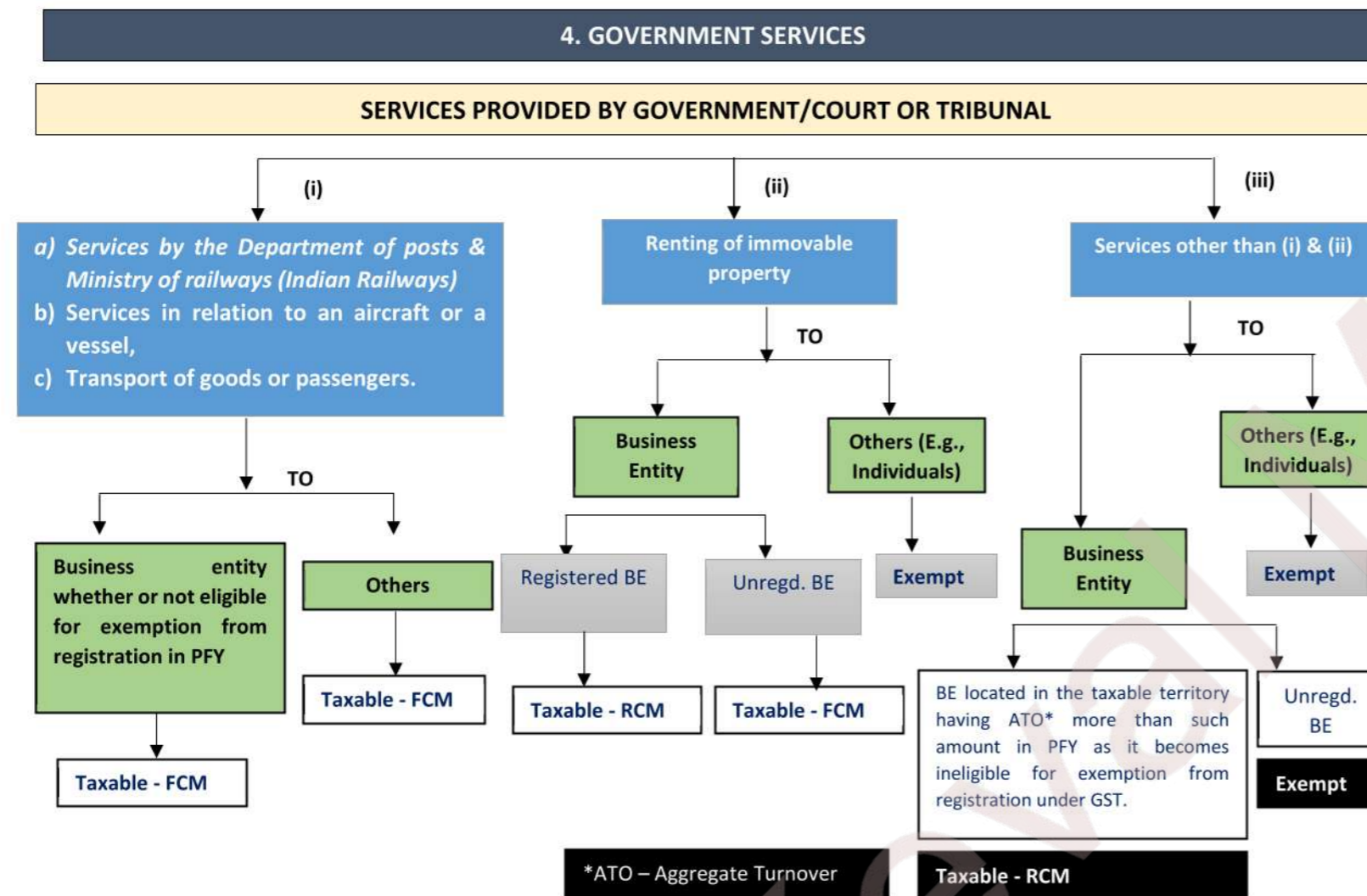
In respect of Agriculture Sector following are exempt:

- ❖ Operations on agriculture produce such as cultivation, Harvesting, Threshing, Testing of Agriculture Produce, Loading / unloading, supply of farm labor, tending, pruning, cutting, which do not alter essential characteristics for primary market are exempt.
- ❖ Renting / Leasing of Agro-machinery or Vacant Land, Services by APMC
- ❖ Agriculture extension services
- ❖ Pisciculture, sericulture, floriculture
- ❖ Whole gram pulse is agriculture produce but not normal pulse (like dal)

Other Important Points

- 1) Rubber, green tea leaves, coffee is exempt (processed coffee is taxable)
- 2) Lease of vacant land with storage shed meant for agriculture produce are exempt (for other purposes taxable)
- 3) Processed products of Black Tea, Green Tea, White Tea, Jaggery are taxable. However, whole grain pulse is exempt
- 4) Pre-conditioning, pre-cooling, ripening, waxing, retail packing, labelling of fruits and vegetables which **do not change or alter the essential characteristics** of the said fruits or vegetables are exempt
- 5) Services provided by the National Centre for **Cold Chain Development** under Ministry of Agriculture, Cooperation and Farmer's Welfare by way of cold chain knowledge dissemination are exempt.
- 6) Cleaning of **wheat outside farm, Sales commission for wheat – exempt**
- 7) **Milling of paddy into rice is taxable.**
- 8) Loading, unloading, packing, storage, or warehousing of agriculture produce including rice are exempt.
- 9) Artificial insemination of livestock (*other than horses*) are exempt.
- 10) Testing activities in relation to agriculture produce such as soil testing, animal feed testing etc. are exempt.
- 11) Services by way of storage or warehousing of cereals, pulses, fruits, and vegetables are exempt

Exemptions [Section 11 r/w NN 12/2017 - CTR] (2/8)



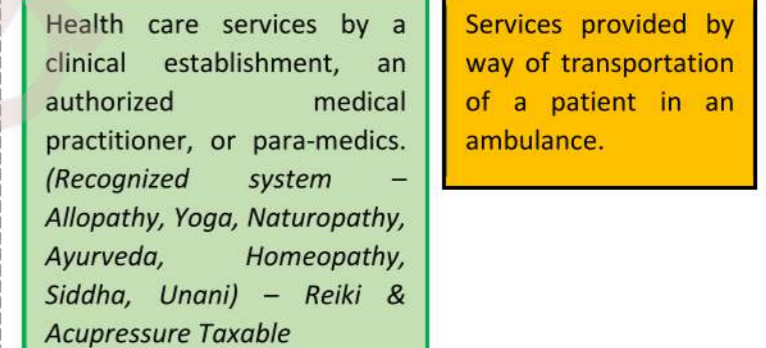
Important Points for Services provided BY CG/SG/UT/LA.:-

- 1) Services of other than (i) above provided by CG/SG/UT/LA to CG/SG/UT/LA are exempt.
- 2) For the purpose of services referred in (ii) & (iii) above, provided by CG/SG/UT/LA where **Gross consideration does not exceed Rs. 5,000 are exempt.**
- 3) Services by CG/SG/UT/LA by way of **guaranteeing loan** taken by their undertakings or PSUs from **banking companies & financial institutions** are exempt.
- 4) Services by CG/SG/UT/LA for **testing/calibration/safety check** or certification relating to **protection or safety of workers & consumers** are exempt.
- 5) Issuance of passport, visa, driving license, birth certificate or death certificate are exempt
- 6) Services provided way of **tolerating non-performance of a contract** entered into by the CG/SG/UT/LA where payments received **by CG/SG/UT/LA by way of fines, penalty** etc. for tolerating non-performance of contract **are exempt.**
- 7) ERCC is a person to whom govt authorized to collect royalty on their behalf from mining lease holder. Mining leaseholders are liable to GST under RCM on such services. ERCC & Govt enters into contract wherein ERCC is required to collect the amount as per agreement entered. Accordingly, services supplied by a State Government to Excess Royalty Collection Contractor (ERCC) by way of **assigning the right to collect royalty on behalf of the State Government on the mineral dispatched by the mining lease holders are exempt.** This exemption is restricted to amount of GST paid by mining lease holder and ERCC shall be liable to pay GST on difference between GST exempted & GST paid by mining lease holders if GST paid by mining lease holder is less than amount of GST exempted.
- 8) Services provided by Ministry of Railways (Indian Railways) to individuals by way of sale of platform tickets; facility of retiring rooms/waiting rooms; cloak room services; battery operated car services are exempt. Services provided by one zone/division under Ministry of Railways (Indian Railways) to another zone(s)/division(s) under Ministry of Railways (Indian Railways) would be exempt.

Important Points for Services provided TO CG/SG/UT/LA.:-

- 1) Pure services (labor contracts) or; **Composite supplies where value of goods is not more than 25% of Total value, in relation to any function entrusted to a Panchayat** under Article 243G or Article 243W
- 2) Services by Govt. entity to CG/SG/UT/LA in form of **grants**
- 3) Services to CG/SG/UT by way of sale of food grains, kerosene, sugar, edible oil, etc. under **Public Distribution System** against consideration in the form of commission or margin
- 4) Services provided to the CG/SG/UT under any **insurance scheme for which total premium is paid by CG/SG/UT**
- 5) Services provided to CG/SG/UT Administration where **75% or more of expenditure is borne by them** are exempt
- 6) Sanitation & Conservancy services are procured by Indian Army or any other Government Ministry/Department which does not perform any functions listed in the 11th and 12th Schedule, in the manner as a local authority does for the general public, they are taxable
- 7) Accommodation services provided by Air Force Mess and other similar messes, to their personnel or any person other than a business entity are exempt.

5. HEALTHCARE SERVICES



- 1) **Room rent charged from in-patients** in hospital is exempt if charges per day is upto Rs. 5,000/-. However, room rent charged from attendants is fully taxable. Further, the room rent charges are fully exempt irrespective of value if the room rented is ICU/ICCU/NICU/PICU.
- 2) **GST is not applicable on consultancy** by doctor.
- 3) **Treatment of Food Supplied by Hospitals:**
 - i) **Food Supplied** directly by Hospital **to in-patients as advised by doctor – Exempt.** (Food Supplied to Attendant of Patient is taxable)
 - ii) **Supply of Food is outsourced** by hospital to another agency – **Agency will charge GST & Hospital will not get ITC** (as providing exempt supplies)
- 4) **GST will not be levied on Retention money.** E.g. If hospital charges Rs. 10,000/- from patient and pays Rs. 7500/- to doctors & keeps Rs. 2500/- with them for ancillary expenses, Rs. 2500 will also be exempt.
- 5) Ambulance services by NHM – **Exempt**
- 6) **Services by recognised rehabilitation professionals are exempt**
- 7) Veterinary services are exempt.
- 8) Services provided as IVF (In vitro fertilisation) or ART (Assisted Reproductive Technology) are healthcare services, thus exempt.

Services provided to a Governmental Authority by way of water supply; public health; sanitation conservancy; solid waste management; and slum improvement and upgradation are exempt.

Exemptions [Section 11 r/w NN 12/2017 - CTR] (3/8)

6. EDUCATION SECTOR [E. 66]

Educational institution means an institution providing services by way of:-

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

An approved vocational education course means,

Trainings by NCVT & SCVT in designated trade:-

- a) Course run by an Industrial training institute/Industrial training centre affiliated to the National Council for Vocational Training (NCVT) or State Council for Vocational Training (SCVT) offering courses in designated trades notified under the Apprentices Act, 1961 or
- b) A Modular Employable Skill Course, approved by the NCVT.
- c) As per Clarifications issued by CBIC any authority, board or body set up by the CG, SG, including National Testing Agency for conduct of entrance examination for admission to educational institutions shall be treated as educational institution.

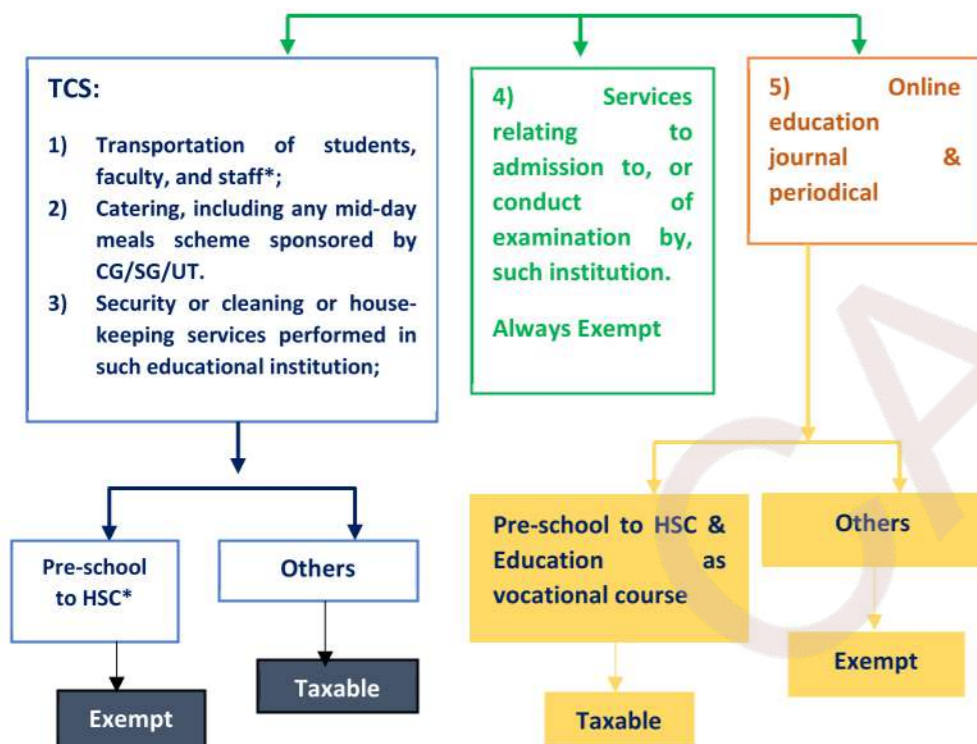
Educational Services exemption we will learn in 2 parts as below

(A) Provided BY Educational Institutions (OUTPUT SERVICES)

To its students, faculty & staff are exempt

By way of conduct of entrance examination against consideration in the form of entrance fee are exempt

(B) Provided TO Educational Institutions (INPUT SERVICES)



*The supply of services, by way giving on hire the motor vehicle to a person who is providing services to educational institution providing pre-school to HSC education, are exempt. [E. 22(c)]

6. EDUCATION SECTOR [E. 66] [Continued]

Other Important Points:-

- 1) Education as a part of curriculum for obtaining qualification recognized under any law in India is exempt (E.g. Pursuing CA)
- 2) Services provided by Boarding Schools along with residence & food is exempt as predominant supply is of education.
- 3) Service of giving motor vehicle on hire for transportation of students, faculty & staff to educational institution of pre-school to HSC – Exempt.
- 4) Placement services provided to educational institutions are taxable.
- 5) Catering services provided by educational institutions is exempt. However, if provided by third party to educational institutional providing pre-school to HSC education then its exempt, otherwise it would be taxable.
- 6) Services by ITI (Industrial Training Institutes) including private ITI:-

Circular 55/29/2018-GST dated 9th August, 2018

Sr. No.	Category	Exemption / Taxable
1	Vocational training provided by private ITIs in designated trades (as per apprentice act e.g. Barber/Hair Cutter/Dresser, CAD-CAM Operator-cum-Programmer, Chemical Laboratory Assistant)	Exempt
2	Vocational training provided by private ITIs in other than designated trades.	Taxable
3	Service, provided by a private Industrial Training Institute for conduct of examination against entrance fees [Sl. No. 66 of notification No. 12/2017-CT(Rate)]	Exempt

- 7) Foreign courses by private institutes are taxable, education for non-recognized qualification is taxable.
- 8) Maritime Institutes are educational institutions under GST Law and the courses conducted by them are exempt from levy of GST.
- 9) Issuance of migration certificate to the leaving or ex-students – Exempt

Summary of Taxability of Input & Output Supplies

Services	Pre-school to HSC	Education as qualification under law (Other than pre-school to HSC)	Coaching Centre	NCVT/SCVT
INPUT SERVICES AVAILED BY THESE INSTITUTIONS				
Transportation of students, faculty and staff	Exempt	Taxable	Taxable	Taxable
Catering, including any mid-day meals scheme sponsored by CG/SG/UT (OUTDOOR CATERING)	Exempt	Taxable	Taxable	Taxable
Security, cleaning house keeping	Exempt	Taxable	Taxable	Taxable
Printing of papers content supplied by institutions, Honorarium, rental	Exempt	Exempt	Taxable	Exempt
Honorarium to paper setter	Exempt	Exempt	Taxable	Exempt
Online education journal	Taxable	Exempt	Taxable	Taxable
OUTPUT SUPPLIES PROVIDED BY THESE INSTITUTIONS				
Any Services (including catering whether or not inhouse)	Exempt	Exempt	Taxable	Exempt
Uniforms (Goods)	Taxable	Taxable	Taxable	Taxable
Entrance fees for conduct of exams	Exempt	Exempt	Taxable	Exempt

TAXABILITY OF COURSES OFFERED BY IIM (INDIAN INSTITUTE OF MGT):

W.e.f. 31st January, 2018 onwards, all **long duration programs** (one year or more) conferring degree/ diploma as recommended by Board of Governors as per the power vested in them under the IIM Act, 2017 including one- year Post Graduate Programs for Executives are **exempt from GST**

All short duration executive development programs or need based specially designed programs (less than one year) which are not a qualification recognized by law **are taxable under GST**

(7) Banking & Financial Sector

- 1) **Services by RBI are taxable. (TO RBI are also Taxable).**
Note:- Services to RBI by members of overseeing committee, GST will be paid by RBI under RCM. (Refer RCM Chapter)
- 2) Services by way of—
(a) **extending deposits, loans or advances** in so far as the consideration is represented by way of interest or discount (**other than interest involved in credit card services**);
(b) inter se **sale or purchase of foreign currency amongst banks or authorized dealers** of foreign exchange or amongst banks and such dealers are exempt.
- 3) Services provided by international finance corporation & Asian development bank are exempt.
- 4) GST shall not be charged on charges charged by bank of payment of upto Rs. 2,000/- made by any person through debit / credit card / **RuPay / BHIM UPI**. The said exemption is to encourage online transaction for small amounts made by credit card, debit card, charge card or other payment card service. (Sl. 34)
- 5) Services by an **intermediary of financial services located in a multi services SEZ with International Financial Services Centre (IFSC) status to a customer located outside India for international financial services in currencies other than Indian rupees (INR) are exempt.**
- 6) Services by the following persons in respective capacities are exempt—
(a) business facilitator (BF) or a business correspondent (BC) to a banking company with respect to accounts in its rural area branch; (*urban area branches covered under RCM*)
(b) any person as an intermediary to a business facilitator or a business correspondent with respect to services mentioned in entry (a); or
(c) business facilitator or a business correspondent to an insurance company in a rural area.

Your circumstances reflect what you have been thinking about

Exemptions [Section 11 r/w NN 12/2017 - CTR] (4/8)

8. CONSTRUCTION INDUSTRY

- 1) **Pure labour contracts** of construction, or any work of a civil structure or any other original works pertaining to the beneficiary-led individual house construction or enhancement under the Housing for **All (Urban) Mission or Pradhan Mantri Awas Yojana** are exempt.
- 2) Services by way of erection or construction of original works pertaining to single residential unit otherwise as a part of a residential complex; *Residential complex means any complex comprising of a building or buildings, having more than one single residential unit.*
- 3) **Transfer of Development Rights / FSI / Lease Land for construction of residential apartments:** -
Exemption is available to in respect of transfer of development rights, FSI made after 1-4-2019 or upfront amount for long term lease paid after 1-4-2019 to the extent of residential apartments by promoter, when sale is made by promoter during construction (i.e. consideration received before completion certificate or first occupation w.es. earlier)

Amount of Exemption on: -

TDR & FSI for Construction of residential properties OR Long-Term Lease (LTL) (>30 years) for construction of residential apartments

$$\text{GST Payable on TDR / FSI or for LTL} \times \frac{\text{Carpet Area of Residential Apt}}{\text{Total Carpet Area of Residential Apt + Commercial Apt.}}$$

Further, promoter will be liable to pay GST under RCM on un-booked flats as on date of CC or first occupation whichever is earlier as per below formula:

$$\text{GST Exempted as per above formula on TDR/FSI or for LTL Construction to the extent of residential apts.} = \frac{\text{Carpet Area of Residential Apt which remain un-booked on date of CC or first}}{\text{Total Carpet Area of Residential Apt}}$$

In simple words, the exemption is to the extent of residential apartments booked before CC or first occupation whichever is earlier.

Location charges or preferential location charges (PLC) collected in addition to the lease premium for long term lease of land are also exempt.

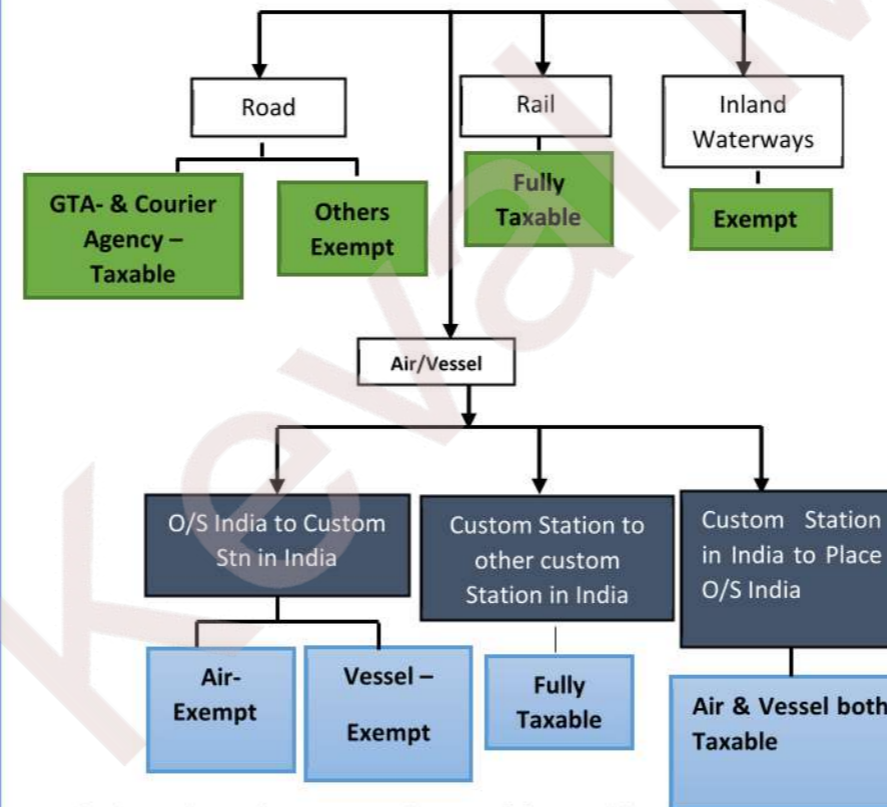
9. GOODS TRANSPORT SECTOR

Exemption on Transportation of specific goods & Value exemption:

- ❖ Agricultural produce;
- ❖ Transportation by rail or a vessel or by GTA of relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap; defence or military equipment; newspaper or magazines registered with the Registrar of Newspapers; or materials; agricultural produce; milk, salt and food grain including flours, pulses and rice; and organic manure.
- ❖ **Transportation of railway equipment or materials by rail or vessel is taxable**
- ❖ Services by way of granting National Permit to a goods carriage to operate through-out India/ contiguous States (E. 61A)

are exempt.

Exemption on Mode of Transportation of Goods

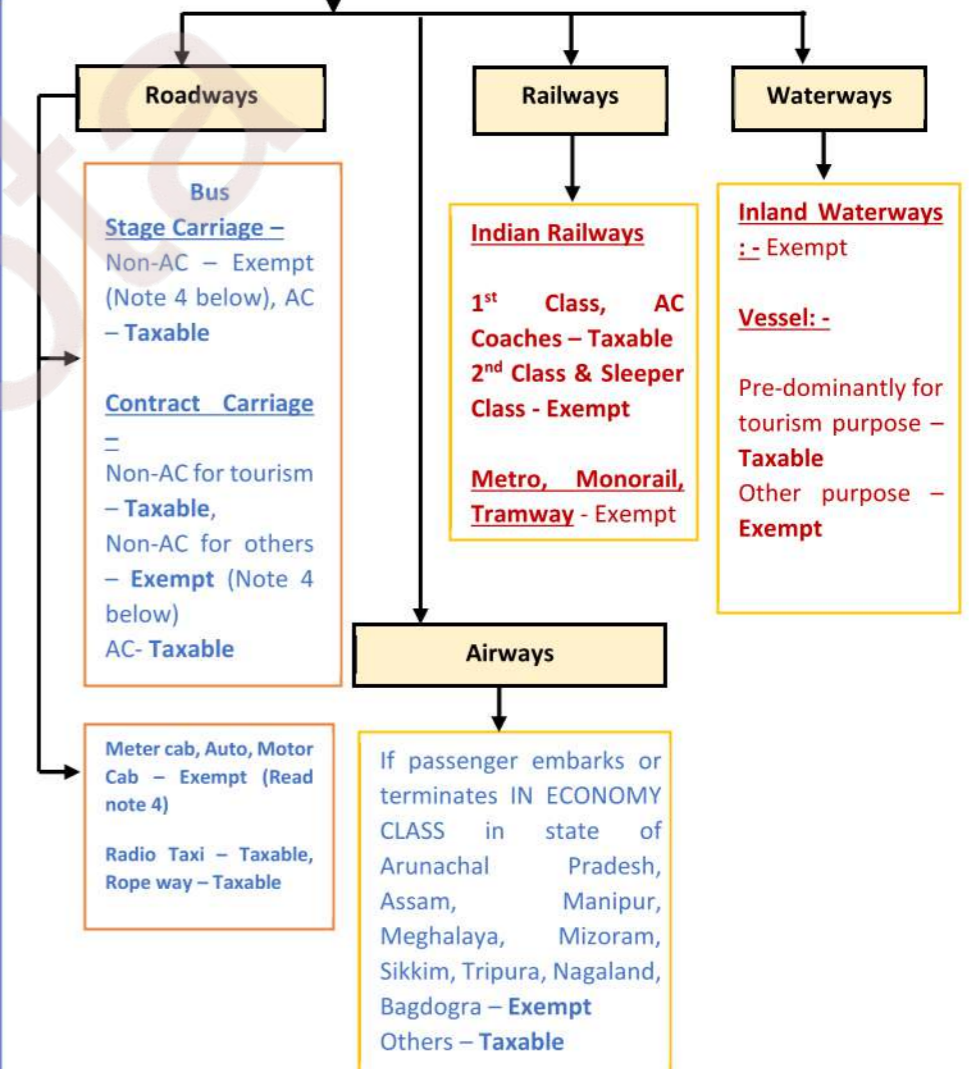


Supply through pipelines or conduit are fully taxable

Other Important Points: -

- 1) GST on supply of services associated with transit cargo to Nepal and Bhutan are exempt. In this regard, it is clarified that exemption under Entry 9B covers services associated with transit cargo both to and from Nepal and Bhutan.
- 2) GST is not leviable on private ferry used for passenger transportation. It is further clarified that, the expression 'public transport' used in the exemption notification only means that the transport should be open to public. Only exclusion is on transportation which is predominantly for tourism, such as services which may combine with transportation, sightseeing, food and beverages, music, accommodation such as in shikara, cruise etc.

10. PASSENGER TRANSPORT SECTOR

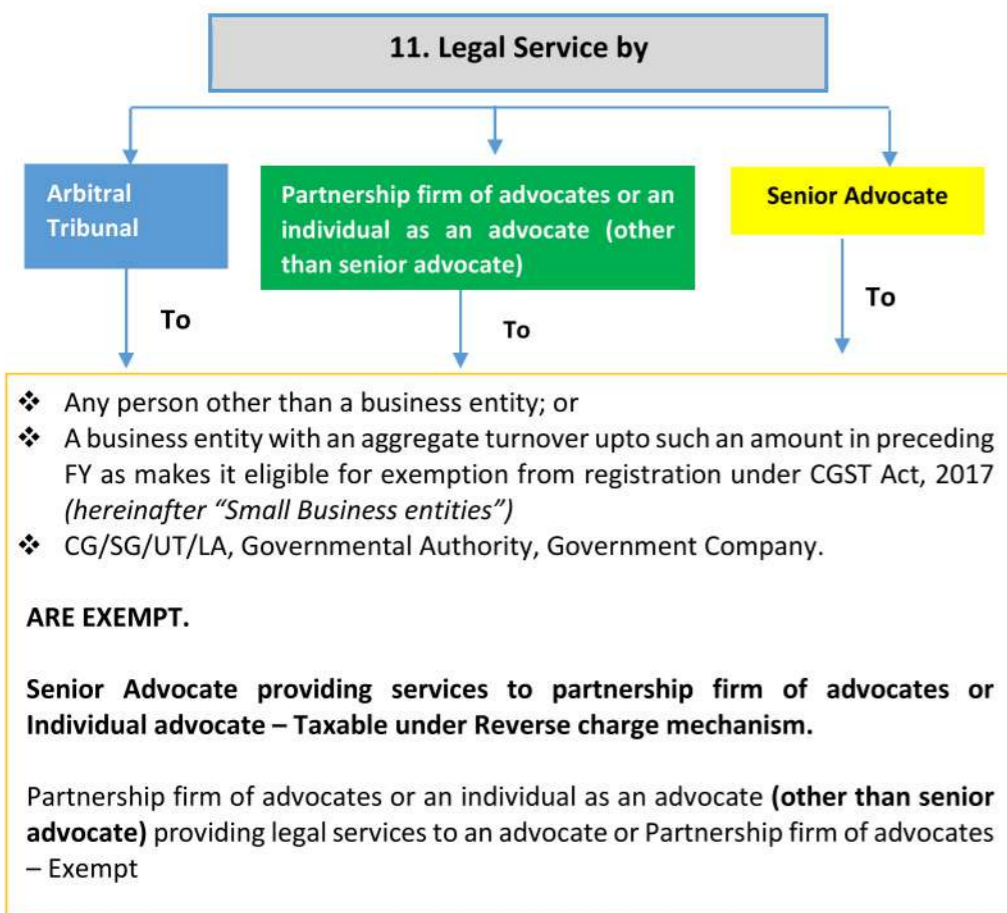


Other Important Points: -

- 1) Services provided by a tour operator to a foreign tourist in relation to a tour conducted wholly outside India.
- 2) Services provided by a tour operator to foreign tourist which is performed partly in India and partly outside India is exempt to the extent of the value of the tour operator service which is performed outside India. (Refer last page)
- 3) Example of Contract Carriage, if a bus is operating between Mumbai & Delhi, it must pick up all its passengers before leaving Mumbai & must drop all its passengers at Delhi & not have any stops in between.
- 4) Stage Carriage can be understood as a MV adapted to carry more than 6 passengers (excluding driver) at separate fares for individual depending on length of journey.
- 5) The services would not be exempt if they are provided through an electronic commerce operator and notified under section 9(5) of CGST Act. (Please refer Section 9(5) wherein few service providers are notified in this regard)

"Whenever you see a successful person, you only see the public glories, never the private sacrifices to reach them."

Exemptions [Section 11 r/w NN 12/2017 - CTR] (5/8)



Service recipient	Supplier - Senior Advocate	Supplier - Individual advocate or Partnership firm of advocates (Other than Senior Advocate)
Other than B.E.	Exempt	Exempt
B.E. having turnover of less than threshold in PFY (registered in CY)	Exempt	Exempt
CG, SG, UT, LA, Govt. Authority, Govt. company	Exempt	Exempt
Individual advocate or Partnership firm of advocates or senior advocate	Taxable, RCM	Exempt
B.E. having turnover more than threshold in PFY (registered in CY)	Taxable, RCM	Taxable, RCM

12. GENERAL INSURANCE BUSINESS (ONLY IMP COVERED)

- ❖ Hutt / Cattle Insurance
- ❖ Insurance for Tribals
- ❖ PM Fasal Bima Yojna
- ❖ PM Suraksha Bima Yojna
- ❖ Nirmaya Health Insurance Scheme
- ❖ w.e.f. 1st October, 2019; Bangla Shasya Bima (Entry 35) are exempt. Note: - Re-insurance of above is also exempt.

13. LIFE INSURANCE BUSINESS

- ❖ Services of life insurance business provided by way of annuity under the **National Pension System** regulated by Pension Fund Regulatory and Development Authority of India (PFRDA) under the Pension Fund Regulatory and Development Authority Act, 2013 (23 of 2013);
- ❖ Life Insurance to members of army, navy, Airforce, under group insurance scheme of CG are exempt.
- ❖ W.e.f. 1st October, 2019, Services of life insurance provided or agreed to be provided by the Central Armed Police Forces (under Ministry of Home Affairs) Group Insurance Funds to their members under the Group Insurance Schemes of the concerned Central Armed Police Force are exempt
- ❖ Coastal Guards under Naval Group Insurance Funds are also exempt.
- ❖ Life Insurance scheme **under various schemes**: - (only imp covered)
 - (i) Janashree Bima Yojna
 - (ii) Life – Micro insurance product approved by IRDA having **MAXIMUM cover of Rs. 2,00,000/- are exempt**
 - (iii) PM Jeevan Bima Yojana
 - (iv) PM Jan Dhan Yojana & Vaya Vandan Yojna are exempt
- ❖ **Life Insurance, Health Insurance, Re-insurance provided to other than group**

14. LEASING SERVICES

- Lease Long term (> 30 years) – Charges payable as upfront amount is exempt if it is
- ❖ Provided by SG Industrial Development or entity having ownership >20% of CG/SG/UT and,
 - ❖ Provided to Industrial units or developers in any industrial / financial business
- Note: - Even if upfront amount is paid in instalment, it is exempt provided it is determined.

15. ARTIST SERVICES

- Services by an artist by way of a performance in folk or classical art forms of Music, or Dance, Theatre, if the consideration charged for such performance is upto Rs. 1,50,000/- are exempt. This exemption shall not apply to service provided by such artist as a brand ambassador.

16. ADMISSION TO VARIOUS EVENTS

- (i) Services by way of admission to a museum, national park, wildlife sanctuary, tiger reserve or zoo.
- (ii) Services by way of admission to a protected monument so declared under the Ancient Monuments and Archaeological Sites and Remains Act 1958 or any other law for time being in force.
- (iii) Services by way of right to admission to, -
 - ❖ Circus, dance, or theatrical performance including drama or ballet;
 - ❖ Award function, concert, pageant, musical performance or any sporting event other than a recognized sporting event;
 - ❖ recognised sporting event & planetarium where the consideration for admission in not more than Rs. 500 per person **are exempt.**

"Try not to become a person of success, but rather try to become a person of value."

17. SERVICES BY UNINCORPORATED BODY OR NOT FOR PROFIT ORGANISATION

(i) Service by an unincorporated body or a non-profit entity registered under any law for the time being in force, to its own members by way of reimbursement of charges or share of contribution –

- ❖ As a trade union;
- ❖ For the provision of carrying out any activity which is exempt from the levy of GST;
- ❖ Up to an amount of **Rs. 7,500/-** per month per member for sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex.

Legal position on taxability of maintenance charges collected by RWA (Circular No.109/28/2019- GST dated 22nd July, 2019)

Particulars	Case I	Case II	Case III	Case IV
Annual Turnover	More than Rs. 20L/-	More than Rs. 20L/-	Less than or equal to Rs. 20L/-	Less than or equal to Rs. 20L/-
Charges per month per member for each residential apartment	More than Rs. 7,500/-	Less than or equal to Rs. 7,500	More than Rs. 7,500/-	Less than or equal to Rs. 7,500
Taxability	Taxable	Exempt	Exempt	Exempt
Notes	Entire amount is taxable not just in excess of Rs. 7,500/-	NA	NA	NA

ITC on Inputs / Input Services & Capital Goods

- ❖ RWAs are entitled to take ITC of GST paid by them on capital goods (generators, water pumps, lawn furniture etc.), goods (taps, pipes, other sanitary/hardware fillings etc.) and input services such as repair and maintenance services provided: -
 - ❖ Amount charged by RWA is more than Rs. 7,500/- per month per member & RWA is registered under GST (i.e. annual turnover is more than Rs. 20 Lakhs).
 - ❖ Further, it is important to note that if charges per member are less than or equal to Rs. 7,500/- and RWA is registered under GST, RWA shall be liable to reverse ITC as per Section 17 of CGST Act)

Work to become a resourceful person, make yourself a treasure of knowledge. Do not work only for money, it shall be a by-product. Live a life with a purpose, otherwise you will be alive without liveliness - CA Keval Mota

18. MISCELLANEOUS EXEMPTIONS (ONLY IMP)

1. Services provided to a **recognised sports body** by (a) an **individual** as a player, referee, umpire, coach or team manager for participation in a sporting event organised by a recognized sports body; (b) **another recognised sports body is exempt.**
2. **Royalty & License Fees included in transaction value u/r 10(1)(c) of Customs Valuation Rules is exempt.**
3. GTA Services to recipient registered only for the purpose of deduction of TDS is exempt.
4. Services by **sponsorship** of event organised by **National Sports Federation, Indian Sport Council for Deaf, Paralympic, Indian Olympic Association etc. are exempt**
5. Services by **National Skill development corporation / sector skill council** in relation to recognised skill development program is **exempt.**
6. Transfer of business as a going concern is exempt
7. Services by way of **renting of residential dwelling to any person other than registered person for use as residence is exempt**
8. **Services by a hotel, inn, guest house, club or campsite etc. for residential or lodging purposes are taxable**
9. Services by way of **giving on hire** to
 - ❖ To a **state transport undertaking**, a motor vehicle meant to carry > **12 passengers**;
 - ❖ To a **GTA**, a means of **transportation of goods**; or
 - ❖ **Motor vehicle for transport of students, faculty and staff**, to a person providing services of transportation of students, faculty and staff to an **educational institution** providing services by way of **pre-school education and education upto higher secondary school or equivalent**;
 - ❖ To a local authority, an Electrically operated vehicle meant to carry more than twelve passengers; to a goods transport agency, a means of transportation of goods.**are exempt.**
 [Renting of trucks and other freight vehicles with driver for a period of time is a service of renting of transport vehicles is not eligible for exemption under notification 12/2017 – CTR.]
10. Service by way of access to a road or a bridge on payment of **toll charges or Additional toll / fees collected from non-fastag vehicle is exempt**
11. Transmission or distribution of electricity by an **electricity transmission or distribution utility – exempt.**
12. Services provided by an incubatee up to a total turnover of Rs. 50 Lakhs in a financial year subject to the following conditions, namely: -
 - the **total turnover had not exceeded Rs. 50 lakhs during the preceding financial year**;
 - and a period of **three years has not elapsed** from the date of entering into an agreement as an incubatee are exempt
13. Services by way of **public conveniences** such as provision of facilities of bathroom, washrooms, lavatories, urinal or toilets **are exempt.**
14. Service provided by (FIFA) and its subsidiaries directly or indirectly related to any of the events under FIFA U-17 Women's World Cup 2020 to be hosted in India is exempt.
15. Services by way of right to admission to the events organized under FIFA U-17 Women's World Cup 2020 whenever rescheduled are exempt.
16. Satellite launch services are exempt.

1) ANALYSING CONCEPT OF ERC CONTRACTOR

It is pertinent to note that there are two considerations flowing from miner to state govt. viz. Dead (fix) Rent at periodic interval & Royalty to State Government. Dead Rent is pre-determined amount, royalty % is determined on suitable basis such as % of sales by miner etc.

Excess Royalty Collection Contract" means a contract for specified mineral(s) and area given to collect royalty in excess of annual dead rent, on behalf of the Government from the holder of mining lease (s) under the contract whereunder the contractor shall pay a fixed amount annually to the Government as per terms of the contract.

Example if ONGC Limited has obtained license from Maharashtra State Government. Maharashtra State Govt. agrees to receive dead rent of Rs. 5,00,000/- per annum. Further, they agree that royalty shall 10% of Sales value for first 3 years i.e. contract period. Maharashtra SG appoints Mr. Kumar as a person to collect revenue for this contract. Maharashtra State assigns right to collect royalty from ABC Ltd to Mr. Kumar for Rs. 85,00,000. Thus, Mr. Kumar is treated as ERCC. Determine Taxability in below cases

- i) ONGC Ltd. was able to sell 8,30,00,000 of mineral
- ii) ONGC Ltd. was able to sell 5,50,00,000 of mineral

Let us understand taxability of above example as per Entry 65B & Notification 13/2017 – CTR.

Case (i) ONGC Ltd. was able to sell 8,30,00,000 of mineral

➤ Tax Impact on Miner – ONGC

Thus, ONGC is liable to pay GST under reverse charge as per entry no. 4 of Notification 13/2017 – CTR

Amount on which reverse charge is to be discharged: -

- a) Fixed Rentals: - Rs. 5,00,000 x 3 years = 15,00,000
- b) Royalty: - 8,30,00,000 x 10% = 83,00,000

Totalling to Rs. 98,00,000 x 18% = 17,64,000

(Please note that Tax has to be discharged in accordance with Time of Supply provisions)

➤ Tax Impact on ERCC Contractor i.e. Mr. Kumar

As per Entry No. 65B Mr. Kumar will get an exemption of Rs. 85,00,000. Since total tax is paid by ONGC Ltd. on amount exceeding 85,00,000/-. ERCC will not be liable to pay tax.

Case (ii) ONGC Ltd. was able to sell 5,50,00,000 of mineral

➤ Tax Impact on Miner – ONGC

Thus, ONGC is liable to pay GST under reverse charge as per entry no. 4 of Notification 13/2017 – CTR

Amount on which reverse charge is to be discharged: -

- a) Fixed Rentals: - Rs. 5,00,000 x 3 years = 15,00,000
- b) Royalty: - 5,50,00,000 x 10% = 55,00,000

Totalling to Rs. 70,00,000 x 18% = 12,60,000/-

(Please note that Tax has to be discharged in accordance with Time of Supply provisions)

➤ Tax Impact on ERCC Contractor i.e., Mr. Kumar

As per Entry No. 65B Mr. Kumar will get an exemption of Rs. 85,00,000 when he will pay this amount to SG (at first instance). However, since ONGC Ltd. discharged tax on Rs. 70,00,000/-, ERCC Contractor has to pay GST on shortfall of Rs. 15,00,000 [85,00,000 (-)70,00,000].

2) Liquidated Damages: -

(a) Fines / Penalties or liquidated damages payable to Government

As per entry 62 of NN 12/2017 – CTR Fines / Penalties or liquidated damages payable to Government or Local Authority are Exempted, therefore, **NO GST IS CHARGED NOR EVEN PAYABLE ON RCM BASIS.**

(b) Fines / Penalties or liquidated damages payable by Government

However, as per Circular 178/10/2022, Liquidated damages will not be "supply."

Exemptions [Section 11 r/w NN 12/2017 - CTR] (8/8)

20. MISCELLANEOUS IGST EXEMPTIONS & ANALYSIS

Sr. No.	IGST Exemptions [NN 9/2017 - ITR]
1.	Services provided by a tour operator to a foreign tourist in relation to a tour conducted wholly outside India .
2.	Services supplied by an establishment of a person in India to any establishment of that person outside India, which are treated as establishments of distinct persons [in accordance with Explanation 1 in section 8 of the IGST Act] provided the place of supply of the service is outside India [in accordance with section 13 of IGST Act].
3.	Import of services by United Nations or a specified international organisation for official use of the United Nations or the specified international organisation. Specified international organisation means an international organisation declared by the Central Government in pursuance of section 3 of the United Nations (Privileges and Immunities Act) 1947, to which the provisions of the Schedule to the said Act apply.
4.	Intra-State supplies received by a TDS deductor from any unregistered supplier exempt from CGST. Intra-State supplies of goods or services or both received by a deductor under section 51, from any unregistered supplier, is exempt provided registration is not taken by such deductor to make any taxable supply. [There are 2 registrations for deductor, one works like TAN in income tax, i.e., to deduct tax & another to provide services i.e., normal registration.
Analysis: Thus, Tax shall not be deducted at source when unregistered persons supply to persons who are responsible to deduct tax (Government Agencies).	
6.	Services imported by unit/developer in SEZ exempt from IGST All services imported by a unit/developer in the Special Economic Zone (SEZ) for authorised operations are exempt from the whole of the integrated tax leviable thereon under section 3(7) of the Customs Tariff Act, 1975 read with section 5 of the IGST Act, 2017 [Notification No. 18/2017 IT (R) dated 05.07.2017] .
Analysis: (i) It is pertinent to note that, services imported by SEZ are exempt from GST if they are for carrying out authorised operations. Authorised operations have been notified by laws governing SEZ. Total 64 services are there which are called as authorised operations. (ii) The question here arises that, whether services provided from DTA to SEZ would be exempt or not, it is to be noted that, supply of services to SEZ is zero rated supply. Since, the supply is zero rated the question of taxability does not arise. Reverse charge is just a mechanism to pay tax by recipient only when supply is chargeable to tax. In case of SEZ, the supply is zero rated, thus, in my opinion tax is not payable under reverse charge. However, contrary views are available in market, which proclaims SEZ to claim refund of tax paid under Reverse charge.	
7.	Central Government's share of profit petroleum exempted from CGST Intra-State supply of services by way of grant of license or lease to explore or mine petroleum crude or natural gas or both, has been exempted from so much of CGST as is leviable on the consideration paid to the Central Government in the form of Central Government's share of profit petroleum as defined in the contract entered into by the Central Government in this behalf. [Notification No. 5/2018 CT (R) dated 25.01.2018] . Parallel exemption from IGST has been extended to inter-State supply of such services vide Notification No. 5/2018 IT (R) dated 25.01.2018.

SERVICES TO FOREIGN TOURIST WHERE TOUR IS PERFORMED PARTLY IN India AND OUTSIDE India [ENTRY 52A]

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

However, value of the tour operator service performed outside India shall be such proportion of the total consideration charged for the entire tour which is equal to the proportion which the number of days for which the tour is performed outside India has to the total number of days comprising the tour, or 50% of the total consideration charged for the entire tour, whichever is less.

Further that in making the above calculations, any duration of time equal to or exceeding 12 hours shall be considered as one full day and any duration of time less than 12 hours shall be taken as half a day.

Explanation. - "foreign tourist" means a person not normally resident in India, who enters India for a stay of not more than six months for legitimate non-immigrant purposes.

Illustrations:

- (a) A tour operator provides a tour operator service to a foreign tourist as follows: - (a) 3 days in India, 2 days in Nepal; Consideration Charged for the entire tour: Rs.1,00,000/- Exemption: Rs.40,000/- (=Rs.1,00,000 x 2/5) or, Rs.50,000/- (= 50% of Rs.1,00,000/-) whichever is less, i.e., Rs.40,000/- (i.e., Taxable value: Rs. 60,000/-);
- (b) 2 days in India, 3 nights in Nepal; Consideration Charged for the entire tour: Rs.1,00,000/- Exemption: Rs.60,000 (=Rs.1,00,000/- x 3/5) or, Rs.50,000/- (= 50% of Rs.1,00,000/-) whichever is less, i.e., Rs.50,000/- (i.e., Taxable value: Rs.50,000/-);
- (c) 2.5 days in India, 3 days in Nepal; Consideration charged for the entire tour: Rs.1,00,000/- Exemption: Rs.54,545 (=Rs.1,00,000/- x 3/5.5) or, Rs.50,000/- (= 50% of Rs.1,00,000/-) whichever is less, i.e., Rs.50,000/-(i.e., Taxable value: Rs.50, 000/-).

"If you don't value your time, neither will others. Stop giving away your time and talents - start charging for it.

INTRODUCTION: Time of supply means the date when govt. states “supply” is made. Time of supply (TOS) is important component to be determined as it is the date when the tax liability of a registered person triggers / gets crystallized. Tax Liability shall be paid upto 20th of next month (of time of supply)

Time of Supply [Section 12, 13, 14 of CGST Act] (1/2)

1. TOS for GOODS

Normal Supply of Goods S. 12(2) of CGST

- 1) Date of issue of invoice or
- 2) Last date to issue Tax Invoice u/s 31 whichever is earlier

Last date to issue invoice (S. 31): -

- ❖ Removal – Supply involving movement or
- ❖ Delivery – Supply not involving movement of goods

(Ex. In Bill to Ship to Model third person shall issue invoice on recipient at the time when goods are removed from supplier's place)

Last date to issue invoice in case of Goods Sent on sale on approval basis [S. 31(7)] –

- ❖ Before or at the time of supply (approval) or
- ❖ six months from the date of removal, whichever is earlier.

Reverse Charge S. 12(3) of CGST

Earlier of –

- 1) Receipt of Goods or,
- 2) Date on which debited in his bank account or date on which entered in BOA of recipient whichever earlier
- 3) 31st Day from the date of issue of invoice

(Also refer common note for supply of goods or services under RCM)

Notes: - No GST on Advance received for supply of goods under forward charge

However, if advance is paid for supply of goods taxable under reverse charge, GST is applicable

CG has the power to prescribe time-limit for issuance of invoice [CGST Amendment Act]

Continuous Supply S. 12(2)

- 1) Date of issue of invoice or,
- 2) Last date to issue Tax Invoice u/s 31 Whichever is earlier

Last date to issue of Tax Invoice [S. 31(4) of CGST Act]: -

Where successive statements or successive payments as the case may be.

[In order to determine successive statement of payment check which is more frequent]

Supply = Value covered by inv. (Explanation i)

2. TOS for SERVICES

Normal Supply of Service [S. 13(2)]

(A) If invoice is issued within Time Limit*: -

Date of issue of Tax Invoice or Receipt of payment whichever is earlier

(B) If invoice is not issued within Time Limit: -

Date of supply of service or Receipt of payment whichever is earlier

If TOS is not determinable as per (A) or (B) above, it shall be date on which recipient shows receipt of service in its books of accounts.

*Time limit to issue Tax Invoice

- ❖ 30 days from provision of service (R. 47)
- ❖ 45 days from provision of service in case of insurer or a banking company or a financial institution (incl. NBFC). (R. 47)

Reverse Charge S. 13(3)

Services received from Associate enterprise outside India

Earlier of: -
Date of Entry in Books of accounts of recipient
Date of Payment

Services received from other than Associate Enterprise outside India

Purchase from Regd. Supplier:

- ❖ Date on which debited in his bank account or
- ❖ Date on which entered in BOA of recipient
- ❖ 61st Day from the date of invoice from reg. supplier
Whichever is earlier

Purchase from Unregd. Supplier:

- ❖ Date on which debited in his bank account or
- ❖ Date on which entered in BOA of recipient
- ❖ Date of issue of self-invoice
Whichever is earlier

Common Note for Supply of Goods or Services under RCM: - [Proviso to S. 12(3) & 13(3)] –

Where it is not possible to determine the time of supply of goods or services under RCM, the time of supply shall be the date of entry in the books of account of the recipient of supply.

In respect of specified actionable claims – GST shall be paid at the time of receipt of payment

Common Note for Supply of Goods or Services under FCM: - [Proviso to S. 12(2) & 13(2)]

Where the supplier of taxable goods / Services receives an amount up to Rs. 1,000/- in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess amount shall, at the option of the said supplier, be the date of issue of invoice in respect of such excess amount.

As per Notification 06/2019 CTR – TOS in case of TDR, FSI, Long term Lease for construction of Residential or commercial apartment - Date of issuance of Completion Certificate or First occupation whichever is earlier. TDR, FSI & Long-term lease are taxable in the hands of promoter under reverse charge.

3. TOS (Common Provisions) for Goods & Services

Special Charges (Interest, Late fees etc.) 12(6) & 13(6)

Date on which the supplier receives such consideration.

Others S. 12(5) & 13(5)

If impossible to determine the ToS under the above provisions the ToS shall: -

In a case where a periodical return has to be filed, be the date on which such return is to be filed; or

In any other case, be the date on which the tax is paid

Time of Supply [Section 12, 13, 14 of CGST Act] (2/2)

4. TOS in case of Change in Rate Effective of Tax (CERT) S. 14 of CGST

Section 14 is non-obstante to anything contained in section 12/13, meaning thereby, in case of change in rate of tax, section 14 will prevail over section 12/13.

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

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

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

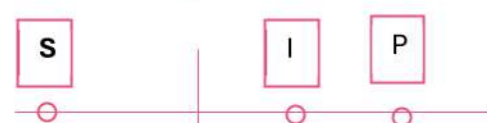
Date on which the payment is entered in the books of account of the supplier or;

The date, on which the payment is credited to his bank account, whichever is earlier

After 4 working days from Change of Rate of Tax

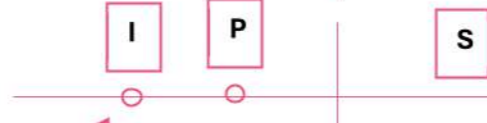
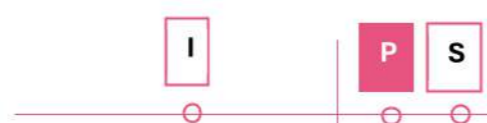
Shall be date on which payment is credited in Bank account.

Supply provided before change in Rate of Tax



Whichever is earlier

Supply provided after change in Rate of Tax



Whichever is earlier

When I or P are before CERT i.e. near to S they will be time of supply

When I or P are after CERT i.e. near to S they will be time of supply

5. Time of Supply for Continuous supply of Services (Sec 13)

If issued within Time limit: -

- ❖ Date of issue of Tax Invoice or
- ❖ Receipt of payment whichever is earlier

If not issued: -

- ❖ Date of supply of service or
- ❖ Receipt of payment whichever is earlier

Time limit to issue Tax Invoice [S. 31(5)]

Case	Due date to issue invoice
Due date of payment is ascertainable from the contract	on or before such due date.
If not ascertainable	on or before receipt of payment,
Payment linked to completion of event	on or before completion of such event.

Department Clarifications:

Hybrid Annuity Model Contracts:

- ❖ HAM contracts are treated as a single **“continuous supply of services”** (construction + operation & maintenance, typically 15–17 years) under Section 2(33) CGST Act.
- ❖ Based on Section 13(2) + 31(5) CGST, **invoice shall be issued within time limit** as per sec 31(5) & TOS will be as per **13(2) only**.
- ❖ The **interest component in annuity payments by NHAI is taxable**, per Section 15(2)(d) CGST. TOS provisions applicable as per 31(5) r/w **13(2) of CGST Act**.
- ❖ **Example:** NHAI awards a ₹600 crore road project under HAM, where 40% (₹240 crore) is paid during construction and 60% (₹360 crore) is paid as semi-annual annuity over 15 years, including interest. GST at 18% is applicable on both EPC and annuity payments. The construction is treated as a continuous supply of service. Time of supply is based on milestone due dates or payment, whichever is earlier. Interest on annuity is also taxable under GST.

Spectrum Circular:

As per Circular No. 222/16/2024-GST, spectrum allotment by Dept. of Telecommunications is treated as a continuous supply of service, and GST is payable under reverse charge by telecom operators. For deferred payments, GST is payable on the earlier of

- ❖ The due date of payment or
- ❖ Date of actual payment.

For upfront payment, GST is due on the earlier of payment or when it becomes due. Frequency Assignment Letter is not treated as a tax invoice. Tax invoice must be issued as per Section 31(5)(a).

Circular on Vouchers [Circular No. 243/37/2024-GST dated 31st December, 2024]:

- ❖ Vouchers recognized as RBI-approved **prepaid instruments are treated as money**, hence not supply of goods/services, and not liable to GST.
- ❖ **Non-RBI vouchers** may qualify as actionable claims, exempt under **Schedule III**, thus also not taxable.
- ❖ Pure **trading of vouchers** on principal-to-principal basis is not supply, **so no GST**.
- ❖ When **distributed on commission/fee basis, GST is applicable** on commission as service.
- ❖ **Additional services** like marketing, tech support are **taxable separately under GST**.
- ❖ **Unredeemed vouchers** (breakage) involve no supply, **so no GST is applicable on such amounts**.

Value of Supply [Section 15 of CGST Act read with Rules] (1/3)

BACKDROP OF VALUE OF SUPPLY

GST shall be calculated as a percentage of value of Supply; thus, it is quite relevant to note the provisions of value of supply. In this chapter we will learn how to compute value of supply in various conditions, inclusions and exclusions in value of supply & CGST Rules governing value of supply.

By CA Keval Mota

Value of Supply (VOS) S. 15 of CGST Act

This section is applicable only when below conditions are **CUMULATIVELY SATISFIED**:

1. Unrelated Party; **AND**
2. Price is sole consideration

This means if (i) & (ii) are satisfied, Value of supply is **transaction value** i.e. **price actually paid / payable in respect of supply**.

INCLUSIONS & EXCLUSIONS IN VALUE OF SUPPLY

Section 15(2)	Description & Analysis
(a)	Taxes, duties, cesses, fees and charges levied other than GST & GST Cess if separately charged. ❖ TCS under income tax SHALL NOT BE INCLUDIBLE in value of supply as it is interim levy
(b)	Amount paid by recipient on behalf of supplier not included in price. (Seller obligation settled by recipient)
(c)	Incidental Expenses charged at the time of delivery of goods or supply of services ❖ If contract of supply is on ex-factory basis where buyer pays the outward freight & insurance, the same will not be included in VOS.
(d)	Interest or late fee or penalty for delayed payment of any consideration
(e)	Price linked Subsidies excluding subsidies provided by the CG & SG
	Notes: <ul style="list-style-type: none"> • Included only when received to supplier. (Note: Capital Subsidy - Not to be added) • Incentives paid by MeitY to acquire banks are subsidy, thus not taxable.
Departmental Clarification	While computing value of supply for component manufacturer, value of Free of Cost Moulds & Dies supplied by Original Equipment Manufacturer shall not be added. However, if provided under obligation, only amortised cost shall be added. (Circular 47/21/2018-GST). Responsibility of OEM & provided by OEM: Not to be added Responsibility of Component Mfg. & provided by OEM: To be added (Amortised cost)

EXCLUSIONS (Also refer discussion at right side corner)

- ❖ Pre - Supply discounts shall be reduced if recorded in invoice.
- ❖ **Cash Discount** to be **reduced** if offered at time of supply (provided afterwards not to be reduced)
- ❖ Post - supply discount shall be reversed by issuing credit note:
 - (i) discount is established in terms of an **agreement** entered into at or before the time of supply
 - (ii) **Specifically linked** to relevant invoices and **ITC be reversed** by recipient of supply

Circular on Post supply discount:

Financial credit note: **Liability cannot be reduced & ITC also cannot be reduced**

Offering discount to retailers so that they can sell at reduced price: **Liability cannot be reduced & ITC also cannot be reduced**

Discount for encouraging dealer - Allowed., Dealer providing marketing services to Manufacturer: **Supply of service**

Related Party

- Such persons are officers or directors of one another's business
- Legally recognised partners of business
- Employer & Employee

- Third person holds, controls, owns ≥ 25% of voting power/shares of both
- One of them controls the other
- A third person controls both of them
- Together control a third person

- Such persons are members of same family. (Spouse and children - Always part of family, brother, sister, parents and grandparents - Would be "Family" only when wholly or mainly dependent)

Person who are associated in the business of one another in that one is the sole agent or distributor, shall be deemed to be related.

2) Value of Supply (VOS) (applicable when parties related or price is not the sole consideration wholly or partially) Rule 27 to Rule 31 r/w Section 15(4) of CGST

- Rule 27: - Consideration not wholly in money
- Rule 28: - Related persons or distinct persons (same PAN) other than through Agent
- Rule 29: - Supply **OF GOODS (not services)** between principal & agent
- Rule 30: - Value of supply based on cost - 110% of Cost of Supply
- Rule 31: - Residual method

The following points from (i) to (v) in Table shall be applied in below order only meaning thereby if (i) is not available then move on to (ii), if (i) & (ii) not available then (iii) & so on.

Parameter	Rule 27	Rule 28	Rule 29
(i) Open Market Value	✓	✓	✓
(ii) Consideration in Money + non-monetary consideration	✓	X	X
(iii) Value of like kind and quality	✓	✓	X
(iv) Consideration in Money + non-monetary consideration as per Rule 30 or 31 in order (i.e., Rule 30/ 31 for consideration in kind "received")	✓	X	X
(v) Rule 30 (110% of cost of production / manufacture / acquisition) (i.e., Rule 30 for what is "supplied")	X	✓	(Refer Note 2)
(vi) Rule 31 (Residual) (i.e., Rule 31 for what is "supplied") ❖ Reasonable means consistent with the principles ❖ Service provider can apply Rule 31 before Rule 30)	X	✓	(Refer Note 2)
At the option of supplier, 90% of the price charged for goods of like kind and quality by recipient to his unrelated customer (For R. 28 this is applicable if goods are further supplied as such by recipient. For R. 29 it is applicable without "as such" restriction. (Nevertheless, agent always sells as such)	X	✓	✓
If recipient is Eligible for Full ITC, any value in invoice is VOS	X	✓	X

- ❖ **Staggered Discounts** are **excluded** from Value of supply (buy more save more offers)
- ❖ **Periodic / year ending discounts**/volume discounts are **excluded** only when they satisfy the post supply discount **conditions**

Secondary discounts: These are the discounts which are not known at the time of supply or are offered after the supply is already over. (example: - revaluation of price). Such secondary discounts shall **not be excluded** while determining the value of supply as they were not known at time of supply

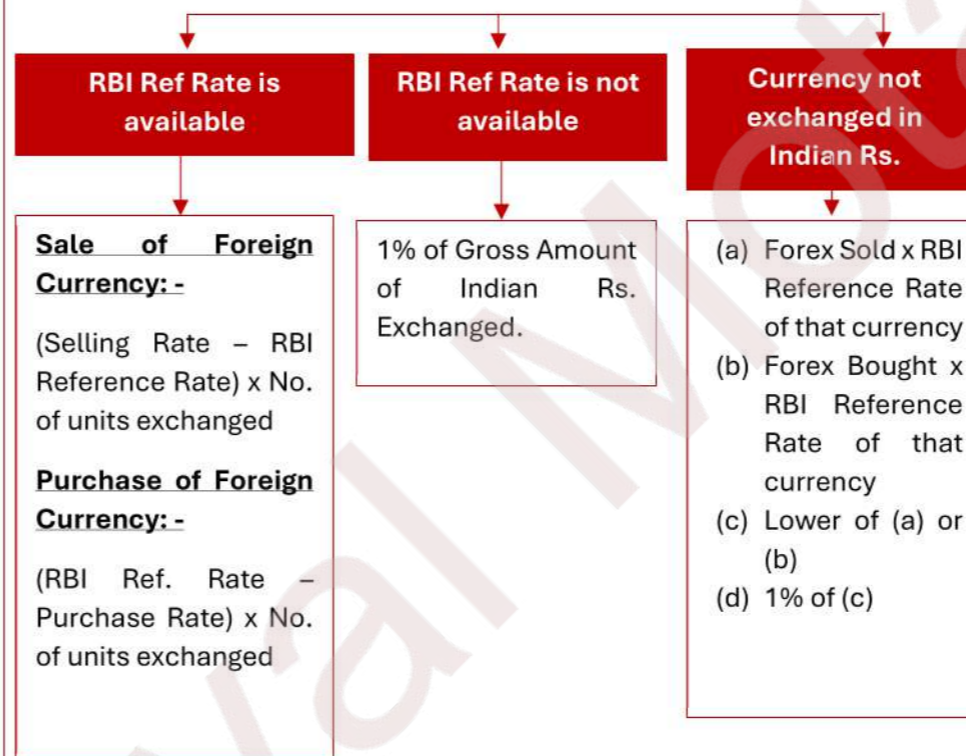
Value of Supply [Section 15 of CGST Act read with Rules] (2/3)

NOTES ON RULE 27 TO 31

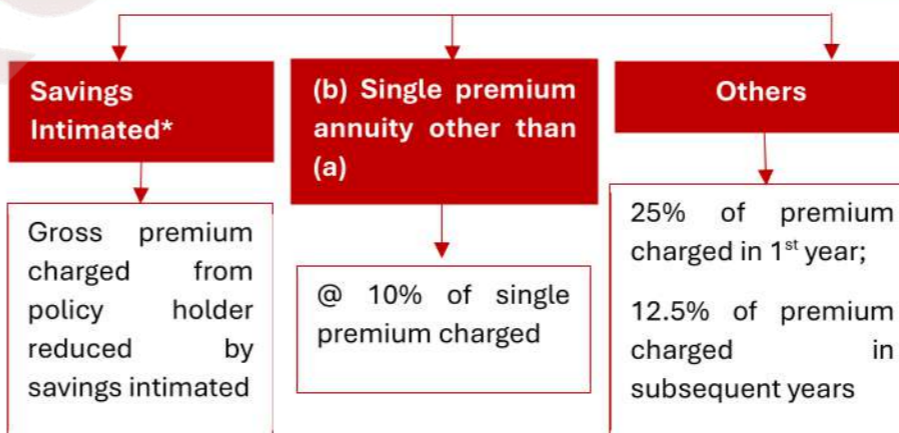
- 1) "Open Market Value" of a supply of goods or services or where the **supplier and the recipient of the supply are not related** and the **price is the sole consideration (supplier's price)**
- 2) **Rule 29:** For the purpose of rule 29, we have to take OMV or 90% whichever is beneficial.
- 3) **Clarification on Personal Guarantee by Directors:** As per circular 204/16/2023 dated 26th October 2023 it has clarified that the personal guarantee given by directors to company without a consideration is not leviable to GST.
- 4) **Clarification on Corporate Guarantee given by Company:**
 - ❖ A **corporate guarantee** by a holding company to a bank for its related subsidiary is treated as a **supply of service**, even without consideration, under **Schedule I of CGST Act**.
 - ❖ **Rule 28(2)** (inserted via Notification No. 52/2023) governs valuation of such guarantees between **related persons in India**.
 - ❖ Valuation = **1% per annum of guarantee amount or actual consideration, whichever is higher**.
 - ❖ This rule **does not apply to personal guarantees** by directors.
 - ❖ If the recipient is eligible for **full ITC**, **invoice value** will be deemed as the correct value.
 - ❖ **Rule 28(2)** applies to corporate guarantees **issued or renewed on or after 26th Oct 2023**, based on the **guaranteed amount**, not the disbursed loan.
 - ❖ If **loan takeover** includes a **new or renewed guarantee**, GST is payable; otherwise, no GST impact.
 - ❖ For **multiple guarantors**, GST is payable proportionately based on the amount guaranteed.
 - ❖ **Domestic intra-group guarantees** follow **forward charge**, while **overseas guarantor cases** attract **reverse charge**.
 - ❖ "**Per annum**" means 1% per year; for multi-year guarantees, total % is calculated upfront; **exported guarantees** (recipient outside India) are **excluded** from this rule.
- 5) DCA Guarantees payment to supplier. Following scenarios are pertinent with respect to advance credit given to customer to enable him to make payment to principal. These situations have been clarified vide **Circular No. 73/47/2018-GST dated 05-11-2018**: -
 - (a) **If DCA issues invoice in his own name:**
Interest charged will be added in value of supply and chargeable to GST
 - (b) **If DCA issues invoice in name of principal:**
Interest charged by DCA to customer is an independent supply & shall not be added in VOS of goods. Further, such interest is exempt in terms of notification 12/2017-CTR.
- 6) Import of services from a related party without consideration is treated as a supply under GST and is taxable under the RCM. Since it's a related party transaction, Rule 28 applies. If the recipient is eligible for full input tax credit (ITC), the invoice value (even if Nil) is deemed to be the open market value as per the second proviso to Rule 28(1) [Circular No.210/4/2024-GST]

3. SPECIAL VALUATION RULES [RULE 32]

Purchase / Sale of Foreign incl. Money Changing [R. 32(2)(a)]



Value of Supply for Life Insurance business [R. 32(4)]



***Policy with dual benefits of risk coverage & investment**

If entire premium is for risk cover – 100% of premium is VOS

Circular: The portion of life insurance premium not included in taxable value under Rule 32(4) is not exempt or non-taxable, as no exemption is notified under Section 11 of CGST Act. Since it's excluded by statutory valuation and not treated as exempt supply, no ITC reversal under Rule 42 or 43 is required for this portion of premium.

Value of Supply for money changing business (optional) [R. 32(2)(b)]

For an Amount (Rs.)	Value of Supply (Not Tax)
1. Upto 1,00,000	1% of Gross Amount Exchanged or Rs. 250 Whichever is higher (i.e., minimum Rs. 250)
2. 1,00,001 – 10,00,000	Rs. 1000 + 0.5% of Gross Amount Exchanged (in excess of Rs. 1,00,000)
3. 10,00,001 & above	Rs. 5500 + 0.1% of Gross Amount Exchanged (in excess of Rs. 10,00,000) or Rs. 60,000/- whichever is lower. (i.e., maximum Rs. 60,000)

Option shall not be withdrawn during financial year
Please note these limits are to be taken on basis of per transaction and not aggregate of whole day or month.

Value of Supply for Online Money Gaming (R. 31B)

The value of supply of online gaming, including supply of actionable claims involved in

- ❖ **R. 31B – 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.
- ❖ **R. 31C – Casino shall be:**
 - (i) purchase of the tokens, chips, coins or tickets, by whatever name called, for use in casino; or
 - (ii) participating in any event, including game, scheme, competition or any other activity or process, in the casino, in cases where the token, chips, coins or tickets, by whatever name called, are not required:

However, any amount returned or refunded shall not be deductible from the value of supply of online money gaming.

(It is imp to note that, if winnings are used to play another game, then GST would not be levied)

Value of Supply [Section 15 of CGST Act read with Rules] (3/3)

Margin Scheme under GST [R. 32(5) of CGST Rules, 2017]

MARGIN SCHEME FOR SECOND HAND DEALERS:

Normally GST is charged on the transaction value of the goods. However, where person is

- ❖ Selling second-hand goods i.e., used goods as such (minor processing & repairs are allowed) or after minor processing and
- ❖ where no input tax credit has been availed on the purchase of such goods

Tax shall be paid on Selling Price (-) Purchase Price = Margin

If Negative Margin then no GST.

Margin Scheme applicability (Summary)

If ITC is availed by Second Hand Dealer: Margin Scheme is not available, normal provisions will apply.

ITC is not availed by Second Hand Dealer: - Margin scheme is available, VoS = Selling Price (-) Purchase Price (Where VoS is negative ignore)

Taxability of Re-possession of Assets from Defaulting Borrower

VoS for Lender: - Selling Price (-) Purchase Price

Defaulting borrower is URP: -
Purchase price for borrower (-) 5% p.q. or part thereof, from date of purchase by borrower to date of disposal by lender. (Quarter – Jan to Mar, Apr to June and so on.)

Defaulting borrower is Registered Person: -
No reduction as purchase price.

Sale of Old & Used Motor Vehicle: In case of sale of old and used motor vehicle (where ITC was not availed), GST shall be paid on difference between Sale value (-) Depreciated Value as per Income Tax Act. However, if difference is negative then no GST shall be payable. (NN 8/2018 – CT (R))

R. 32 (6) The value of a token, or a voucher, or a coupon, or a stamp shall be equal to the money value of the goods or services or both redeemable against such token, voucher, coupon, or stamp.

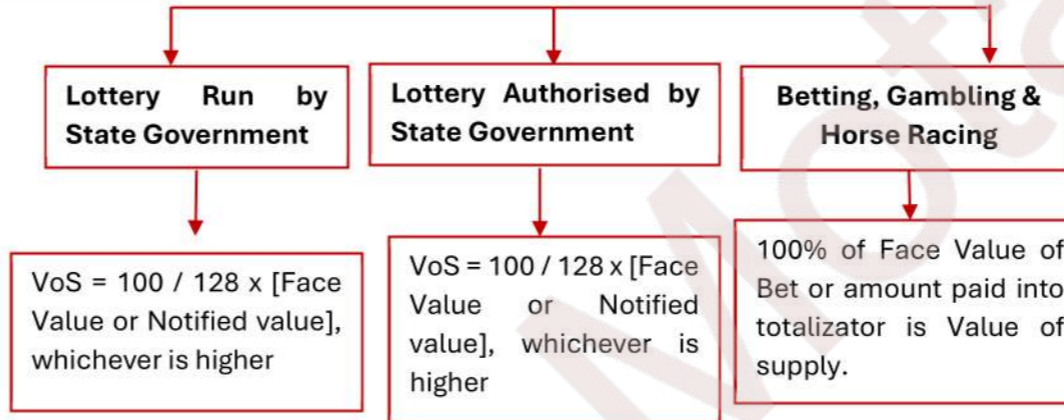
R. 32(3): - Air Travel Agent: -

The value of the supply of services in relation to booking of tickets for travel by air provided by an air travel agent

In case of Domestic Bookings: - Basic Fare x 5%
In case of International Bookings: - Basic Fare x 10%

Rule 31A is not optional rule. It supersedes other rules

Rule 31A: - VOS in case of Lottery Tickets, Betting, Gambling & Horse Racing



5. Pure Agent (R. 33 of CGST Rules)

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

- The **supplier acts as a pure agent of the recipient on authorisation** by such recipient. (A)
- The **payment has been separately indicated in the invoice**; and, (S)
- The **supplies procured by the pure agent are in addition** to the services he supplies on his own account. (A)

Pure Agent means: -

- Enters into a **contractual agreement with the recipient** to incur expenditure (C)
- Neither intends to hold nor holds any title** G/S procured; (T)
- Does **not use for his own interest**; (I) and
- Receives only the actual amount incurred** (A)

Examples of Pure Agent are: -

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

6. Rate of Exchange (R. 34 of CGST Rules)

For Import of Goods: -

Relevant rate for import of goods is rate notified by CBIC u/s 14 of Customs Act, 1962

For Import of Services: -

Rate of exchange shall be as per the **generally accepted accounting principles for the date of time of supply** of such services in terms of **section 13 of CGST Act.**

7. Price cum Tax (R. 35 of CGST Rules)

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

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

Tax amount = (Value inclusive of taxes X tax rate in % of IGST or, as the case may be, CGST, SGST or UTGST) ÷ (100+ sum of tax rates, as applicable, in %)

8. Circular on Salvage Value

(i) When Salvage Value is Deducted:
If the insurance company deducts salvage value from the claim as per the contract, it is not a supply of goods or services. Hence, **no GST is payable** on such deducted salvage value.

(ii) When Full IDV is Paid (No Deduction):
If the insurer pays the full claim without deducting salvage, the salvage becomes insurer's property. In this case, **GST is payable** when the insurance company **sells/disposes** of the salvage.

Place of Supply [Section 10, 11, 12, 13, 14 of IGST Act read with Rules] (1/4)

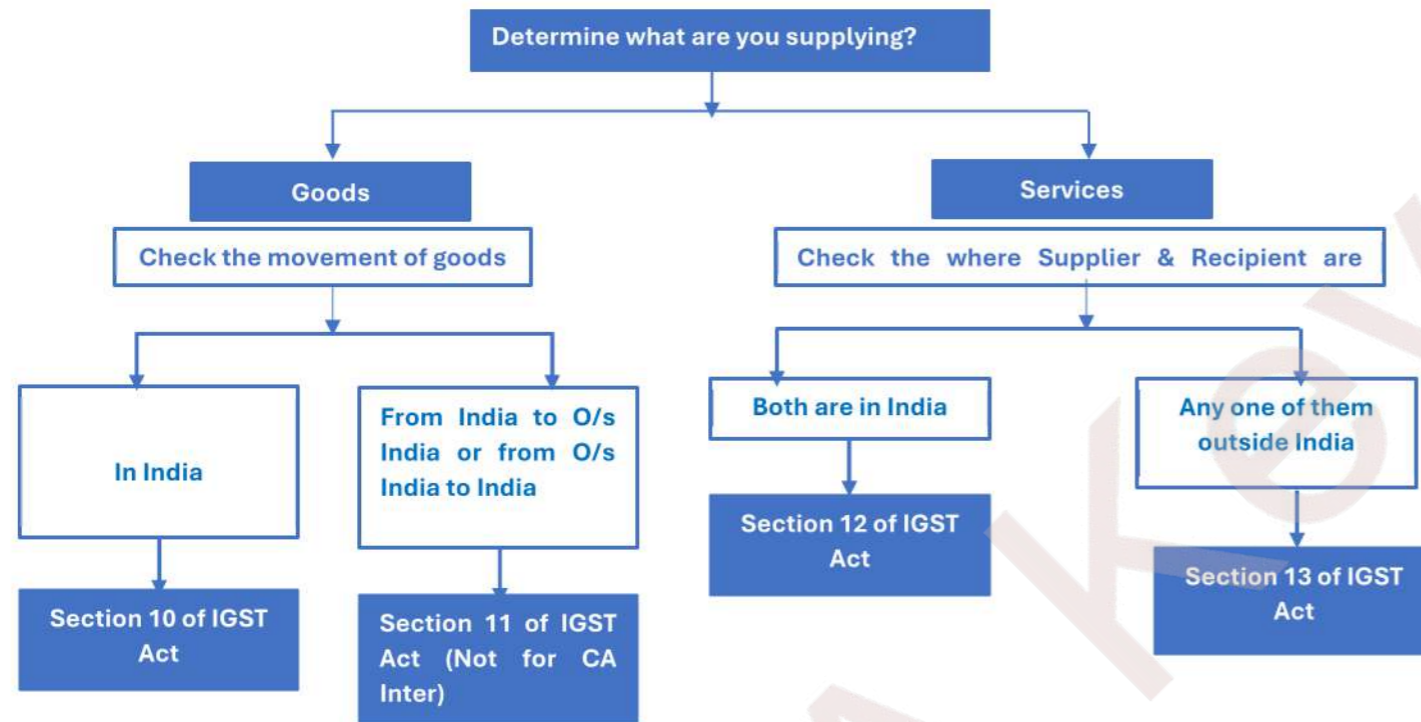
BACKDROP OF PLACE OF SUPPLY

GST is understood as a “Destination-Based Consumption Tax’ but there is no provision that declares this fact. Destination based consumption tax means the revenue would accrue to that state in which the goods or services are consumed. It is here in Place of Supply that we find that the destination principle of GST is fully captured (*except 3 services as enumerated in section 13(8) of IGST Act – discussed later*). The law maker has declared, in each case of supply, its destination of supply.

RELEVANCE OF PLACE OF SUPPLY: -

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

- (i) Determining Nature of supply & Kind of Tax
- (ii) Helpful in Government Settlements
- (iii) Determining Exports of Goods or Services



BY CA Keval Mota

Section 10(1): - The place of supply of goods in case of domestic transactions, other than supply of goods imported into, or exported from India (For Import of goods & Export of goods Section 11 applies)

Section	Description	Place of Supply
10(1)(a)	Supply involves movement of goods whether by supplier / recipient or any other person.	Location of delivery [In case of Ex-factory delivery – Location of recipient as per address in invoice]
10(1)(b)	Goods are delivered on the direction of a third person. (Bill to Ship to Model) [B to A] A – Third person B – Supplier C – Recipient	Location of third person Interlinking: - ❖ This provision is exception to receipt of goods condition in ITC chapter. ❖ A to C – Section 10(1)(a)
10(1)(c)	Supply does not involve movement of goods	Location of such goods at time of delivery (Examples – Sale of Asset in Finance Lease, Sale or return basis / hire-purchase)
10(1)(d)	Goods are assembled, or installed at site	Location of such installation or assembly
10(1)(e)	Goods are supplied on board a conveyance, including a vessel, an aircraft, a train, or a motor vehicle.	Location where goods are taken on board.
10(1)(ca)	Supply of goods to unregd. person [It overrides section 10(1)(a) & 10(1)(c)]	❖ If LOR available - LOR ❖ If not available – LOS ❖ If billing address is different from shipping address – Shipping address is place of supply [Circular]

Sec 11: - POS for Import & Export of Goods –

Import means bringing goods into India from a place outside India.

Export means taking goods out of India to a place outside India.

Import of Goods & Export of goods are inter-state supplies.

Sec 11(a)	Import of Goods (IGST is levied as per S. 3(7) of Customs Tariff Act, 1975)	Location of Importer [If goods are cleared through other than regd. place of business, still location of importer will be place of supply]
Sec 11(b)	Export of Goods (Zero-Rated supply as per S. 16 of IGST Act)	Location Outside India

Place of Supply [Section 10, 11, 12, 13, 14 of IGST Act read with Rules] (2/4)

Section 12 of IGST Act is applicable only when location of supplier of SERVICE and recipient of SERVICE is in India.

Section	Description of Service	PoS when supplied to URP	PoS when supplied to RP
12(2)	Default Rule for all services except 12(3) to 12(14)	i) Address in record exists – LOR [As per rule 46, mandatory recpt. add should be available for OIDAR Services] ii) Address in record do not exists – LOS	PoS location of such registered person
12(5)	Services in relation to Training & Performance appraisal	Actual Place of performance	
12(7)	Event Management Services or assigning of sponsorship to such events.	If held in India: - Place where event is actually held. If held O/S India: - LOR	
12(8)	Transportation of goods including mail or courier.	Place where goods are handed over for their transportation	
12(9)	Passenger transport service	Place where passenger embarks on the conveyance for continuous journey (If point of embarkation is not known then 12(2) shall be applicable)	
12(13)	Insurance service	LOR of service in records of insurance company	
12(3)	Service directly related to immovable property like agents, architect experts, renting of immovable property, lodging in hotels, inn, accommodation for functions & including house boat or any other vessel	Immovable Property/ house boat/ vessel Located in India: Location (intended location) of immovable prop. Immovable Property/ house boat/ vessel Located O/S India: LOR	
12(4)	Restaurant & catering, personal grooming, fitness, beauty treatment, health services including plastic surgery	Place where service is actually performed.	
12(6)	Admission to event	Place where event actually held or park is located.	
12(10)	Services on board a conveyance, including a vessel, an aircraft, a train or a motor vehicle	Location of the first scheduled point of departure	
12(11)	Telecomm services including data transfer, broadcast, cable or DTH (a) Fixed telecommunication line, leased circuits, internet leased circuit, cable or dish antenna	(a) Location of installation	
	(b) Post-paid mobile, internet, DTH (c) Pre-paid vouchers - Through selling agent, distributor of SIM Card - By any person to final subscriber	- Billing Address - Address of selling agent as per record of supplier. Location where such pre-payment is received / such vouchers are sold.	
	Proviso - Prepaid – electronic Payment	LOR	
	In other cases: - - Add of recipient in records of supplier is available. - Where such address is not available	Address of recipient as per records of supplier. Location of supplier of service.	
12(12)	Banking & Financial Sector including stock broking	LOR if address available in records of supplier else, LOS	
12(14)	Advertisement services to CG/SG/Statutory body/LA/UT (Refer Rule 3 on Next Page)	Value in each of such state/UT where advertisements broadcasted run, played.	

POS for Advertisement Services [Circular No. 203/15/2023-GST dated 27th October, 2023]:

Nature of service	Place of supply
Hoarding on Land or Structure erected on Land	Supply of Space on Hoarding (Immovable Property). If the hoarding or structure is fixed/embedded in the earth, it is treated as immovable property. Place of supply is governed by Section 12(3)(a) of IGST Act — i.e., the location of the hoarding. This applies when there is a sale of space or grant of rights to use space for advertisement.
Services provided by Vendor to Advertisement company for display of the advertisement	If the vendor does not transfer rights or space, but only displays ads on a structure he owns or rents, it's not a supply of immovable property. It is considered a pure advertisement service. Place of supply is governed by Section 12(2) of IGST Act — i.e., location of the recipient of service.
POS for Co-location data centre	Co-location is a data centre facility in which a business/company can rent space for its own servers and other computing hardware along with various other bundled services. POS shall be determined as follows: ❖ Co-location service with components of hosting such as air conditioning, security service, fire protection system: Section 12(2) applicable ❖ Co-location service without components of Hosting (just physical space with basic infra): Section 12(3) applicable

Section 13 of IGST Act is applicable for services when LOS or LOR any one of them is O/S India

Section	Service	PoS
13(2)	All services other than covered in 13 (3) to 13(13) default rule	If LOR available: - LOR If LOR is not available: - LOS
13(3)	(a) Services supplied on goods made physically available by recipient of service (b) Service supplied to individual, represented either as recipient of service / person acting on behalf of recipient which require physical presence of recipient or person acting on behalf of recipient, with service supplier.	Place of performance Exceptions: - i) Electronic Means: - Location of Goods at Time of supply ii) Imported temporarily for repairs or for any other treatment or process exported without use in India - POS 13(2) LOR

Departmental Clarifications in relation to Section 13(3) of IGST Act:

- (i) **Clarification of Place of Supply in case of pharmaceutical sector (Notification No. 04/2019- Integrated Tax w.e.f. 1st October, 2019)**
POS for certain services in pharma sector such as Integrated discovery & development, Bio-equivalence shall be the location of the recipient of services (and not where performed) if services from the taxable territory are provided as per a contract.
- (ii) **Clarification regarding determination of POS in case of software/design services related to Electronics Semi-conductor and Design Manufacturing (ESDM) industry**
❖ If developing and designing is the principal supply then the place of supply for testing of kits would be location of recipient (not place of performance)
❖ If testing of kits provided physically by recipient of service is the principal supply, then place of supply would be place of performance.
- (iii) **POS for cutting and polishing activity on unpolished diamonds** which are temporarily imported into India which are not put to any use in India, would be LOR [CBIC vide Circular No. 103/22/2019-GST]
- (iv) **Place of supply for “Supply of maintenance, repair or overhaul service in respect of aircrafts, aircraft engines, vessel and other aircraft components or parts supplied to a person for use in the course or furtherance of business”** would be LOR

Place of Supply [Section 10, 11, 12, 13, 14 of IGST Act read with Rules] (3/4)

Section 13 of IGST Act is applicable for services when location of supplier or location of recipient is outside India (any one of them is outside India)

Section	Service	PoS
13(4)	Supply of service directly on immovable property [like 12(3)]	Location of Immovable Property (or intended location)

Departmental Clarification:

Vide Circular No. 103/22/2019-GST dated 28th June, 2019, CBIC clarified that cargo handling services are not related to immovable property thus POS shall be as per 12(2) or 13(2).

13(5)	Admission/Organisation to events including ancillary services.	Place where event is actually held
13(6)	Supply of service u/s 13(3), (4), (5) in multiple location including location in Taxable territory.	Taxable territory. Entire contract in taxable territory.
13(7)	Supply of service u/s 13(3), (4), (5) more than 1 state/UT (Refer Rule 7, 8, 9 respectively)	As per value of supply of service in each respective State as per contract or agreement In absence of contract IGST Rules to be considered.
13(8)	<p>Services Supplied by: -</p> <p>1) Banks/FI/NBFC to A/c holders Circular: 'Custodial Services' in relation to securities means safekeeping of securities of a client and providing services incidental thereto. POS shall be as per 13(2) and not as per 13(8)(a)</p> <p>2) Intermediary services <i>Note: - Sub contracting of a service is not an intermediary service</i></p> <p>3) Hiring all means of transport (incl. yacht) other than vessel or aircraft up to 1 month. (For vessel & aircraft S. 13(2) applies irrespective of period of hire)</p>	Location of supplier of Service.
13(9)	Removed	

Departmental Clarification:

Taxability of satellite services provided by ANTRIX Corporation Limited to (Circular 2/1/2017 – IGST dated 27/09/2017): -

❖ Customers Located Outside India – POS would be as per Section 13(2) of IGST Act & such supplies will be zero-rated services as per Section 16 of IGST Act, 2017

Example: ANTRIX launches a satellite for NASA (USA) from India. As the recipient is located outside India, Section 13(2) applies. The service qualifies as export of service and is zero-rated under Section 16 of IGST Act. ANTRIX can supply without GST under LUT or pay IGST and claim refund.

❖ Customers Located in India – POS would be determined as per Section 12(8) of IGST Act, 2017 would be taxable.

Example: ANTRIX launches a satellite for an Indian tech startup (Bangalore-based). As the recipient is located in India, Section 12(8) applies. The service is taxable, and GST is charged (IGST or CGST+SGST). ANTRIX must issue a tax invoice and pay GST accordingly.

13(10)	Passenger transport service	Place where passenger embarks for continuous journey
13(11)	Services provided on board	First scheduled point of departure
13(12)	Online Information Database Access or Retrieval Service	Location of Recipient

Rule 3 – Mode of Advertisement	Basis of Proportion in each State / UT
a) Newspapers and publications	Amount Payable for Publication in each state
b) Printed Material like pamphlet, leaflets, diaries, t-shirts and the like	Amount payable for the distribution of specified number of such printed material
c) i) Hoardings (other than those on trains)	Amount payable for the hoardings
ii) Advt. on trains	Proportion to the length of the railway track
d) i) Back of utility bills	number of consumers having billing addresses in such State/UT
ii) Railway Tickets	proportion to the number of railway stations
e) Radio stations	Amount payable to each radio station
f) Television channels	Viewership as per Broadcast Audience Research Council for last week of quarter.
Viewership figures relate to a region comprising of more than one State/UT	Ratio of populations in those States/UTs as per the last census.
g) Cinema Halls or screens in Multiplex	Amount payable to cinema hall or screens in multiplex.
h) Internet	Number of internet subscriber figures published by TRAI for the last quarter of the immediately preceding financial year.
Internet subscribers' figures relate to a region comprising of more than one State/UT	Ratio of populations in those States/UTs as per the last census.
i) SMS	Number of telecom subscriber figures published by TRAI for the immediately preceding quarter
Fig. of Telecom subscribers relate to a telecom circle comprising of more than one state or UT	Ratio of populations in those States/UTs as per the last census.

Rule No	Type of Service	Basis
4.	Lodging accommodation (except located in two or more contiguous States or Union territories or both) [S.12(3)]	Number of nights
4.	Where such property is a single property located in two or more contiguous States or UT or both (except house boat or any other vessel) [S.12(3)]	Area of the immovable property lying in each State or Union territory
4.	Lodging accommodation by a house boat [S.12(3)]	Time spent in the boat or vessel in each such State or Union territory
5.	Event management services referred under 12(7)	Generally Accepted Accounting principles
6.	Leased circuit where the leased circuit is installed in more than one State or Union territory [12 (11)]	In proportion to the number of points lying in the State or Union territory The number of points in a circuit shall be determined in the following manner. a) Start point and end point be treated separate b) Intermediate point is also a point.
7.	<ul style="list-style-type: none"> ❖ Supply of services in respect of goods which are required to be made physically available ❖ Services supplied to an individual which require the physical presence, etc. covered by 13(3) of IGST Act, 2017 	a) Services supplied on the same goods , by equally dividing the value b) Services supplied on different goods , by taking the ratio of the invoice value of goods on which service is performed c) Services supplied to individuals , by applying the GAAP .
8.	For 13(4) – Rule 8 applies like Rule 4	
9.	For 13(5) – Rule 9 applies like Rule 5	

Place of Supply [Section 10, 11, 12, 13, 14 of IGST Act read with Rules] (4/4)

Meaning of OIDAR Services

As per Section 2(17) of the IGST Act, "Online information and database access or retrieval services" means services whose delivery is **mediated by information technology** over the internet or an **electronic network** and the nature of which renders their supply and **impossible to ensure in the absence of information technology** and includes electronic services such as advertising on the internet, providing cloud services, provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet etc.

Online money gaming as defined in 2(80B) of CGST Act shall not be treated as OIDAR service.

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

[In case where person is providing online money gaming services from outside India, he shall be liable to be registered in India for the purpose of payment of tax. He shall be registered in Bangalore & shall follow section 14A of IGST Act. Further, where such person is not located in taxable territory, he shall appoint representative to pay tax. However, if there is no representative, then he shall appoint the agent for the purpose of payment of tax.]

Clarification on Advt. services to foreign clients & data hosting

Principal-to-Principal (P2P) Model: When an Indian advertising agency provides end-to-end advertisement services to a foreign client (including media planning, content creation, space booking), it is not considered an intermediary. **Place of Supply (POS): 13(2) i.e., LOR (export subj. to conditions)**

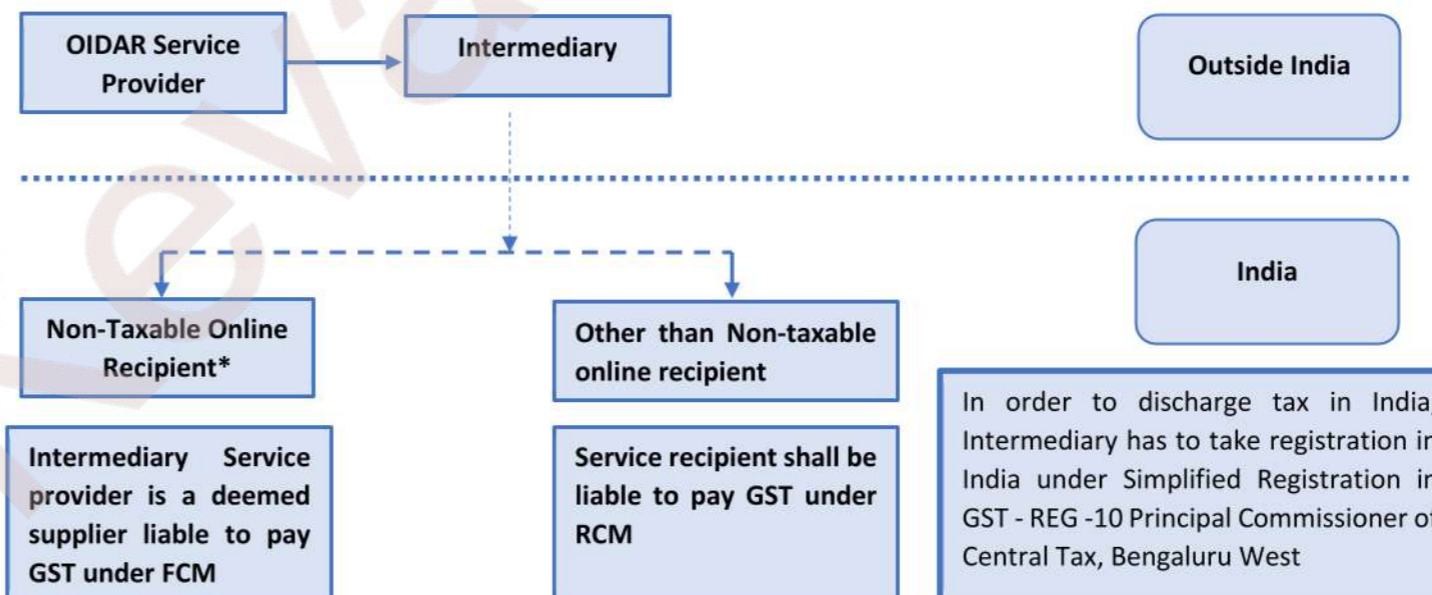
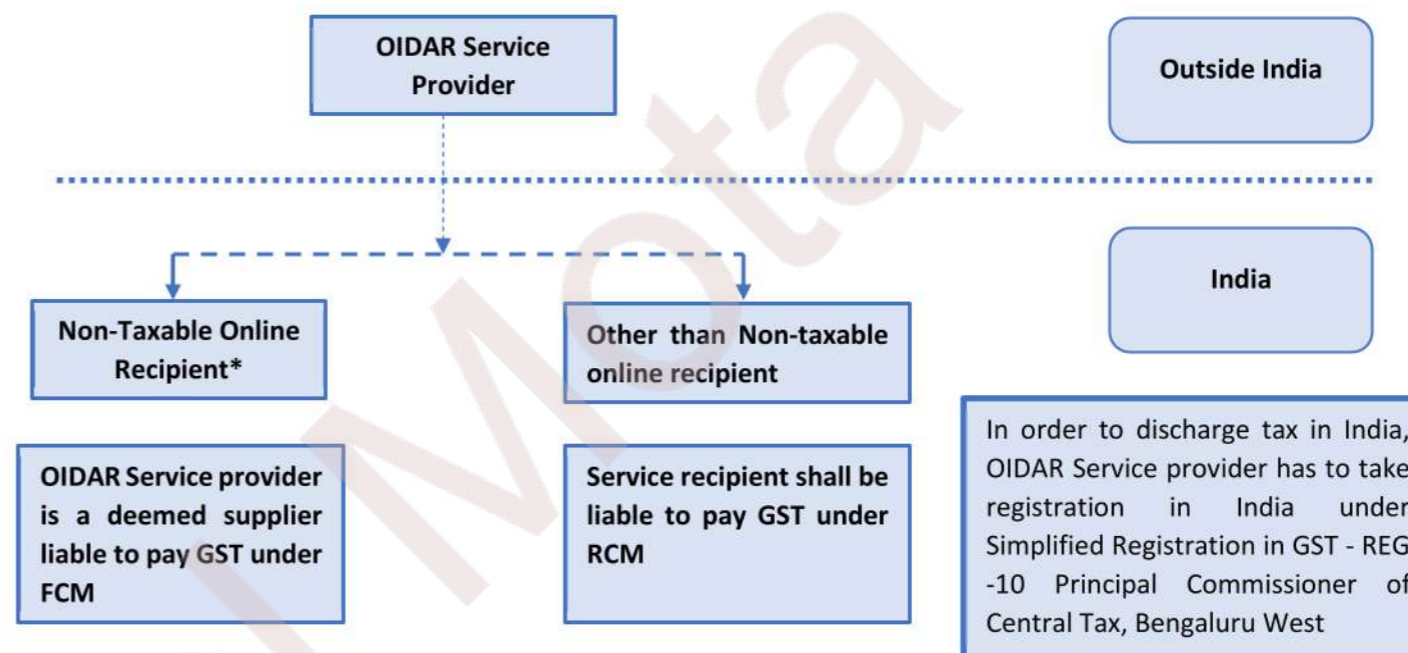
Non-Applicability of Section 13(3): These advertisement services do not fall under Section 13(3) (performance-based services), as there is no physical performance or involvement with goods within India.

Indian Audience or Representatives Irrelevant: The location of the target audience or presence of a representative in India does not affect the place of supply, which remains outside India.

Intermediary Situation (Exception): If the Indian agency only facilitates media buying and the media space is directly billed by media companies to the foreign client; the agency is treated as an intermediary. In such cases, POS becomes the location of the supplier (India), and GST is applicable.

Clarification on Data Hosting: Data hosting services are treated as services provided on the provider's own account and not as intermediary services, so Section 13(8)(b) does not apply. These services do not involve goods being physically made available to the supplier; hence Section 13(3)(a) is also not applicable. Additionally, since data hosting is a composite supply involving infrastructure, software, security, and power, it is not considered a service related to immovable property under Section 13(4). Therefore, the place of supply for data hosting services is determined as per Section 13(2), i.e., LOR

Taxability of OIDAR Services



An intermediary located in the non-taxable territory, who arranges or facilitates the supply of such services, shall be deemed to be the recipient of such services from the supplier of services in non-taxable territory and supplying such services to the non-taxable online recipient. However, if following (all) conditions are satisfied then, **INTERMEDIARY WOULD NOT BE TREATED AS SUPPLIER: -**

- The invoice or customer's bill or receipt issued or made available by such intermediary taking part in the supply clearly identifies the service in question and its supplier in non-taxable territory;
- The intermediary involved in the supply does not authorize the charge to the customer or take part in its charge which is that the intermediary neither collects or processes payment in any manner nor is responsible for the payment between the non-taxable online recipient and the supplier of such services;
- The intermediary involved in the supply does not authorize delivery; and
- The general terms and conditions of the supply are not set by the intermediary involved in the supply but by the supplier of services.

Input Tax Credit [Section 16 to 21 of CGST Act read with Rules] (1/4)

Section 16 read with Rules

CONDITIONS TO AVAIL INPUT TAX CREDIT [SECTION 16(1) & SECTION 16(2)]

Subject to payment of tax, ITC can be taken by recipient on purchase of goods or services used or intended to be used for furtherance or in course of business on fulfilment of below conditions:

- a) Recipient should have **tax invoice or debit note** or other prescribed tax paying documents
Other tax paying documents [R. 36(1) of CGST Rules]: Tax invoice or debit note, Bill of Entry, Self-Invoice, Invoice or Debit Note for ISD
- b) Recipient has **received the goods or services** or both.
Exception - Bill to Ship to Model for goods as well as services.
Circular: In case of BTST Model Third person can take ITC on invoice issued by supplier once goods are removed from supplier's place of business (irrespective of receipt to recipient). Once goods are dispatched it is deemed to be **delivered**.
Note: - If Goods are **received in lots** or instalments, ITC to be taken on **receipt of last instalment**. [Pr.1 to Section 16(2)]
- c) The **tax charged by supplier shall be paid** to the Government by such supplier
Rule 37A: In case a supplier files GSTR – 1, but has not filed GSTR 3B (i.e., taxes are not paid) by 30th September of succeeding financial year, the recipient would be liable to reverse ITC availed by him in GSTR 3B on or before 30/11/SFY. In case of non-reversal of input tax credit by recipient by 30th November, he would be liable to pay along with interest as well u/s 50.
- d) Recipient has furnished the **return** under section 39 (GSTR 3B)
 - aa) GSTR – 1 filed by supplier and **reflecting in B2B** field in GSTR 2B
 - ba) ITC in GSTR 2B shall not appear in **Restricted category**.

CONCEPT OF 180 DAYS: [PROVISO 2 TO 16(2)]

Every recipient shall pay to its supplier within 180 days from date of invoice, the INVOICE VALUE, otherwise he shall be liable to pay ITC along with interest payable u/s 50 from date of utilisation till date of reversal.

Exception to above: - (i.e., 180 days payment rule shall not be applicable in below 3 scenarios): -

- ❖ **RCM Supplies**
- ❖ **Schedule I** – Activities which are supply even if no consideration.
- ❖ Additions made in **value of supply u/s 15(2)(b) of CGST Act** – Amount incurred by buyer on behalf of supplier.

Notes: **ITC** can be taken once the invoice value is paid. Further, if proportion is outstanding beyond 180 days, ITC only to that proportion shall be reversed.

2. TIME LIMIT TO AVAIL ITC [SECTION 16(4) & 16(6)]: -

Time limit to avail ITC in case of invoices and debit notes shall be upto: -

- (a) 30th November of succeeding financial year or,
 - (b) Actual Date of filing annual return;
- whichever is earlier.

Note:

- R. 37(4) r/w Proviso 3 to Section 16(2): - If consideration is paid after 180 days, ITC can be taken on payment, irrespective of time limit.
- Self-invoice shall be issued within 30 days from receipt of service. ITC in respect of self-invoice can be taken upto 30th Nov of next year from self – invoice date (even if self – invoice is generated after it's time-limit).
- **Revocation cases ITC [S. 16(6)]:** In case of revocation of registration if ITC was not restricted as on date of cancellation, then it can be taken in 3B filed upto 30th Nov of SFY or return filed within 30 days from revocation order whichever is later.

3. CAPITALISATION OF TAX COMPONENT [SECTION 16(3)]

If tax component has been capitalised and depreciation is claimed on such tax component under Income Tax Act (S.32 of Income tax act), then ITC cannot be claimed.

ITC Availability Combined Reading of Section 17(1), 17(2), 17(3):

Purchased for making	Allowability
Exclusively exempt supplies	Not allowed
Exclusively exempt supplies (export)	Allowed (refund can be taken)
Exclusively taxable supplies	Allowed
Exclusively taxable supplies (export)	Allowed (refund can be taken)
Non business supplies	Not allowed
Partly exempt & partly taxable	Proportionately reversal as per Rule 42, Rule 43

Format with Analysis for Reversal of ITC of Rule 42:

Sr. No.	Particulars (Computation of all elements shall be done separately i.e., C, S, IGST)	Denote by
I	Total input tax involved on inputs and input services	T
II	Input tax Exclusively for the purposes other than business (Non-Business Purpose)	(T ₁)
III	Input tax Exclusively for effecting exempt supplies	(T ₂)
IV	Ineligible Credit as per 17(5)	(T ₃)
V	Amount of input tax credit credited to the electronic credit ledger (T – T₁ – T₂ – T₃)	C ₁
VI	ITC for exclusively for effecting Taxable & Zero-Rated Supplies	(T ₄)
VII	Common ITC available for apportionment (C₁ – T₄)	C ₂
VIII	Common Credit Attributable towards exempt supplies (E – Exempt T.O., F – Total T.O.) (See Notes)	(D ₁)
IX	Common Credit Attributable towards Non-Business purpose (D ₂ = 5% of C ₂)	(D ₂)
X	Common credit attributable towards effecting Taxable & Zero-Rated Supplies (C₂ – D₁ – D₂)	C ₃
XI	Total credit eligible (Exclusive + Common)	T ₄ + C ₃

❖ Calculation of “E”:

Include	Exclude
Exempt supply	Value of duty credit scripts
RCM Outward	VAT & Excise on Petroleum products
1% OF SALE VALUE (Not book value or FMV) of securities	Int. Disc. Turnover (except Banking Co., financial institutions, NBFC)
Stamp Duty value of Land & Building	
Supply of warehoused goods to any person before clearance for H.C.	

- ❖ The amount equal to aggregate of “D1” and “D2” shall be **reversed** by the registered person in FORM GSTR-3B or through FORM GST DRC-03 (Added to Output Tax Liability has been substituted with reversal in form GSTR 3B / DRC 03 [Notification No. 16/2019-CT])
- ❖ Final Calculation of D1, D2 shall be **re-computed at end of financial year** [Short reversal shall attract interest @ 18% p.a. from 1st April of Next financial year till the date of reversal. However, if excess reversal has been done, ITC can be re-availed on or before 30th November of next FY or annual return whichever is earlier.

2) Manner of Reversal of ITC of Capital Goods used for effecting taxable & exempt supplies

Capital Goods used to effect	ITC Allowability
Exclusively Taxable supplies	ITC fully allowed
Exclusively Exempt Supplies	ITC not allowed
Zero rated supplies	ITC fully allowed
Taxable as well as exempt supplies	ITC fully allowed Subject to reversal every month as per Rule 43 (refer below steps)

As per Rule 43; ITC on capital goods which are used in current tax period for **effecting taxable as well as exempt supplies and whose useful life (out of 5 yrs.) remains** shall be reversed in below manner:

Step 1:	$T_c = \sum A$ ("A" credited to the electronic credit ledger capital goods used for taxable and exempt supplies both and whose useful life remains, denoted as "Tc")
Step 2:	$T_m = T_c / 60...$ (Since life is 5 years it is taken as 60 months) [Monthly common]
Step 3:	$T_e = (E / F) \times T_m$ [Liable for reversal]
Note 1	Shift of use from exclusively exempt supply to Taxable & exempt supply: (a) Take full ITC (b) Reduce Tie = 5% per quarter (c) Take Net ITC = (a) – (b) (d) Reverse ITC as per Rule 43 by following above 3 steps. "A" = Full ITC Value
	While going from Taxable to Exempt Reversal Amount = ITC x Balance useful life in months/60 While going from Exempt to Taxable Amount of ITC = ITC (-) 5% per quarter can be taken
	In case of capital goods case, no rechecking at end of financial year for exempt and taxable turnover to be done.
Interest shall be payable every month on ITC reversed from the date of utilisation till the date of reversal.	

5. Special Provision for Banking Co. or a Financial Institution & NBFC

Option 1: -

Comply with the provisions of 17(2) of CGST Act r/w Rule 42 of CGST Rules, 2017 i.e., reversal of input tax credit attributable to exempt supplies (Pt. 2 of Chart)

(Bank provides exempt supplies by earning interest income)

Any Option to be exercised for a full FY

Option 2 – 17(4) r/w Rule 38 of CGST Rules, 2017: -

- ❖ **NOT avail** the credit of Tax paid on inputs and input services that are used for non-business purposes, and the **ineligible ITC**, in FORM GSTR-2B
- ❖ The said company or institution **SHALL AVAIL 100%** of the credit of tax paid supplies made by one registered person to **another registered person having the same Permanent Account Number.**
- ❖ **Avail the credit of 50% of eligible ITC of inputs, input services and capital goods.** The balance ITC shall lapse.

6. Ineligible Input Tax Credit (Blocked Credit) – S. 17(5) of CGST Act, 2017

Section 17(5) of CGST Act is NON-OBSTANTE clause for anything contained in 16(1) and 18(1) of CGST Act, meaning thereby even if it has been used in course or furtherance of business unless specifically provided.

Section 17(5)(a) & 17(5) (aa) & 17(5) (ab): Transactions related to MV, A/C, Vessel

Credit in respect of Motor Vehicle / Aircraft / Vessel:

S. 17(5)(a): ITC will not be eligible on **Motor vehicles** (as per MV Act) for **TRANSPORTATION OF PERSONS** (*it means transportation of goods is allowed*) which has approved seating **capacity of less than or equal to 13 persons** (including the driver). However, credit will be available when they are used for making the following taxable supplies:

- ❖ Further supply of such motor vehicles (Motor vehicle Dealers);

Clarification:

- **Authorised Dealers will be allowed to take ITC** on Demo vehicles (subj. to capitalisation) as they are used for making further supply of cars on their own account
- Marketing Agencies will **not be** allowed to take ITC on demo vehicles as they are not involved in purchasing and selling car on their own acc.

- ❖ Transportation of passengers (e.g. Maxi Cab);

- ❖ Imparting training on driving such motor vehicles (Driving Schools);

(Two-wheeler having upto 25 CC Engine capacity is not a motor vehicle)

S. 17(5) (aa): ITC will not be available on **vessels & aircrafts**; however it will be eligible if used for making the following taxable supplies, namely: -

- ❖ Further supply of such vessels or aircraft; or
- ❖ Transportation of passengers; or
- ❖ Imparting training on navigating such vessels; or
- ❖ Imparting training on flying such aircraft;
- ❖ Transportation of goods.

S. 17(5) (ab): Services in relation to MV/AC/Vessel: ITC of general insurance, servicing, repair and maintenance shall be available in so far as it relates to motor vehicle, vessels or aircraft on which credit is available or where such services are received by a taxable person engaged

(i) in the manufacture of such motor vehicles, vessels or aircraft; or

(ii) in the supply of general insurance services in respect of such motor vehicles, vessels or aircraft insured by him.

Circular:

- Insurance company receives invoice from authorised garages for indemnifying repair cost to insured. Insurance co. can take ITC of such repairing services to the extent of claim accepted, if invoice is issued in their own name

17(5)(b): - Supply of Certain Services: FOBHCL²

Food & Beverage, Outdoor Catering, Beauty Treatment, Health services, cosmetic & plastic surgery, Leasing renting hiring of motor vehicle, life insurance health insurance

3 Exceptions:

- ❖ Inward supplies for making outward supply
- ❖ Obligation for employer to provide to employee under any law for time being in force
- ❖ Inward supply for composite or mixed outward supply (ex.: Event management)

ITC on Membership of Club, health and fitness centre; and travel benefits extended to employees on vacation is not allowed:

Exception: Obligation for employer to provide to employee under any law for time being in force

Input Tax Credit [Section 16 to 21 of CGST Act read with Rules] (3/4)

Works Contract Services (WCT) 17(5)(c)

ITC is not eligible for works contract services when supplied for **CONSTRUCTION (capitalisation)** of an immovable property. However, it is available in following cases (exceptions). (Construction means capitalisation i.e., debited to fixed asset account and not charged to P & L account)

Exceptions: -

- **IMMOVABLE PLANT AND MACHINERY (even if capitalized).**
- **Further supply** of works contract service; (Sub-contracting Services)
- Construction of **other than plant & machinery** & debited to Profit & Loss Account

(Imp Note: Land & Building, Telecommunication Towers, Pipelines laid outside factory premises are not plant and machinery).

Circular: Construction of manholes and ducts for optic fibre will be treated as P&M – ITC allowed

Goods & Services used in Self Construction [S. 17(5)(d)]

ITC on goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his **own** account including when such goods or services or both are used in the course or furtherance of business is not eligible. (If debited to PNL then ITC will be allowed)

Case Law: Safari Retreats

- ❖ **Safari Retreats Pvt. Ltd. built a shopping mall for leasing/renting out premises and claimed ITC on construction inputs, amounting to over ₹34 crore.**
- ❖ **Tax authorities denied the credit under Section 17(5)(d)**
- ❖ **The Court distinguished the definition of “plant or machinery” under clause (d) from “plant and machinery” defined elsewhere in the Act.**
- ❖ **It introduced the “functionality test”: a building can qualify as a “plant” if constructed to serve specific technical requirements essential for business operations (e.g. leasing).**
- ❖ **The Court held that immovable property used for leasing may qualify as “plant” and thus not be blocked for ITC. It upheld the constitutionality of clauses (c) and (d) of Section 17(5)**

Other Cases:

- c)** Goods or Services or both on which tax has been paid under **section 10** (Composition Scheme)
- d)** Goods or services or both received by a **non-resident taxable person except** on goods **imported by him;**
- fa)** Goods or services or both received by a taxable person, which are used or are intended to be used for activities relating to obligations under the **Corporate Social Responsibility** as per Section 135 of Companies Act, 2013
- e)** Goods or services or both used for **personal consumption**
- f) Goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples:**
 - **Normal losses are allowed.**
 - Schemes such as **“Buy 1 Get 1 free”** are very common in such cases even if one item is given free, **ITC reversal is not required on such free item**
- g)** Any tax paid in accordance with the provisions of sections 74, 74A (fraud cases)

7. Availability of credit in special circumstances

(Change in nature of supply or change in nature of registered person) – Section 18 of CGST Act, 2017

Sr. No.	Supplier	Inputs / Semi Finished / Finished	Capital Goods	ITC on Stock to be considered as on day immediately preceding the
1	Liable for registration: Applies for registration within 30 days of becoming liable for registration and obtains registration – 18(1)(a)	Available	Not Available	Date from which he becomes liable to pay tax.
2	Voluntary Registration – 18(1)(b)	Available	Not Available	Date of grant of registration
3	Composition Scheme to Regular Scheme – 18(1)(c) r/w Rule 40	Available	Available after reducing 5% p.q. from Date of Invoice.	Date from which supplier is liable to pay tax under regular scheme
4	Supplies of REGISTERED Exempt supplier becomes Taxable 18(1)(d) r/w Rule 40	Available	Available after reducing 5% p.q. from Date of Invoice.	Date from which exempt supplies become taxable
5	1) Regular Scheme to Composition Scheme u/s 10 of CGST Act 2) Taxable to exempt supplies 3) Cancellation of Registration u/s 29(5) of CGST Act (Sec 18 (4) of CGST Act r/w R. 44(1) of CGST Rules) (Note 7)	-	-	Reverse (or + in output tax) amount of tax in respect of: - Stock on which ITC has been availed at the time of purchase. Capital Goods after reducing ITC proportionately on the basis of usage life in months. Balance ITC if any shall be lapsed (Rule 44 of CGST Rules)

1) Sale of Capital Goods under GST, GST to be discharged as [18(6)]: -

- (a) ITC reduced by 5% per quarter or
 - (b) Tax on Transaction Value whichever is higher.
- (Note: - For Moulds, Dies, Jigs, Tools, and fixtures Transaction Value can be taken directly)

2) Credit of Stock & Capital goods will **not be allowed after expiry of 1 year** from invoice date. [S. 18(2) of CGST]

3) If a supplier obtains regn within 30 days of becoming liable, the effective date of regn would be date on which he was liable for regn. Thus, he shall issue revised tax inv. **within 1 month from the date of issuance of certificate of registration, for the period from effective date of registration** (date on which he crossed limits) **till the date of issuance of certificate of registration** to him. [Section 31(3)(a)]

4) Declaration in Form GST ITC-01 must be filed within 30 days from the date of becoming eligible to input tax credit as **Certificate from a practicing CA/CMA** if ITC claimed exceeds Rs. 2 lakhs.

5) Where tax invoices are not available credit amount shall be reversed on **basis of market price.**

6) In respect of 18(4) (Point 5 of Table above) details to be furnished in GST ITC 03 & GSTR 10 (final return in case of cancellation of registration). Further, it should be certified by CA / CMA.

Input Tax Credit [Section 16 to 21 of CGST Act read with Rules] (4/4)

8. Input Service Distributor (S. 20 of CGST Act r/w R. 39, 54 of CGST Rules)

ISD is an office of supplier of SERVICES (not goods) i.e., ISD can distribute credit of common services only. HO takes various services for its branches and then distributes ITC to its branches by taking ISD registration. It is to be noted that ISD is mandatory w.e.f. 1st April, 2025 to all entities having multiple GSTIN. They cannot cross charge.

(A) Conditions for Distribution (S. 20 of CGST Act)

1. The **credit can be distributed** to the recipients of credit against a **ISD Invoice**.
2. The amount of the credit **distributed** shall **not exceed** the amount of credit **available for distribution**;
3. **SPECIFICALLY ATTRIBUTABLE**: SHALL BE DISTRIBUTED TO THAT RECIPIENT
4. **MORE THAN 1 RECIPIENT**: SHALL BE DISTRIBUTED IN TO OPERATIONAL UNITS IN RATIO OF THEIR PFY TURNOVER.

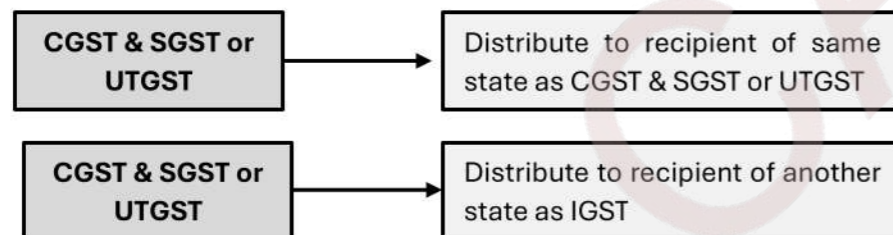
Notes: -

- (i) If **above is not available then the last quarter, previous to the month** during which credit is to be distributed for which details of such turnover of all the recipients are available,
- (ii) Turnover means taxable goods as well as goods not taxable (exempt) under this Act reduced by excise duty & VAT levied

Distributed as: $C_1 = (t_1 \div T) \times C$ where,

- (i) "C" is the amount of credit to be distributed,
- (ii) "t₁" is the turnover in state of recipient during relevant period;
- (iii) "T" is the aggregate of the turnover during relevant period for all recipients to whom credit is attributable.

(IGST to be distributed as IGST only)



Section 21 of CGST Act: Where ISD distributes excess credit in contravention of the provisions, the excess credit so distributed shall be recovered from such recipients along with interest, and the provisions of section 73, 74, 74A shall be applicable

9. Clarification on Demerger of Entity:

Issues	Clarification
(i) In case of Demerger, the ratio of value of assets demerged shall be taken state wise or PAN India wise	<p>State wise. Example:</p> <ul style="list-style-type: none"> ❖ If an entity has business in state of MH & RJ. MH has 2 units namely A, B; having assets Rs. 10 & Rs. 20 respectively. Thus, total assets in MH are Rs. 30. Further it has assets of Rs. 30 in RJ. It wishes to demerge unit A. ❖ Thus, total assets = 60 ❖ Ratio of unit A shall be 10/60 or 10/30. ❖ Answer is 10/30 (State wise)
(ii) Whether the ratio of value of assets, as prescribed under proviso to rule 41 (1) of the CGST Rules, shall be applied in respect of each of the heads of input tax credit viz. CGST/SGST/IGST/Cess	<p>The ratio may be applied on total of balance of unutilised ITC by keeping following 2 principles in mind:</p> <ul style="list-style-type: none"> (a) ITC to be apportioned shall not exceed balance available in respective tax head (b) Total ITC apportionment shall not exceed ratio on total balance of ITC.
(iii) Date of which ratio of value of assets shall be taken	Appointed date of demerger (not date of order)
(iv) The ratio of assets shall be applied on balance of ITC of which date	Date on which GST - ITC 02 is filed.

Clarification on Warranty Contracts

Manufacturer provides warranty to customer through distributor. The price of product included free warranty. Further, customer goes to distributor for replacement of part during warranty period, accordingly distributor has below options and below is taxability: -

Option	Taxability
1. Sending product to manufacturer for repairing	<ul style="list-style-type: none"> ❖ Mfg. will not charge anything as product is in warranty ❖ Replacement of part for free is not a supply (even if ITC is availed) because the original price of the product already factored in warranty cost. ❖ ITC not to be reversed as the product was not free but was already charged at the time of original supply
2. Replacing by purchasing from open market	<ul style="list-style-type: none"> ❖ Tax invoice shall be issued by distributor on mfg. ❖ Distributor can take ITC of purchase from open market ❖ ITC can be taken by mfg. on invoice from distributor
3. Replacing part from own stock purchased for selling in market	<p>Case I – Replaces and Requests Mfg. to send part</p> <ul style="list-style-type: none"> ❖ Replace the part ❖ Request the part to mfg. to send to distributor – Not a Supply as no consideration is charged (Document – Delivery Challan) ❖ ITC not to be reversed by mfg. as it is not free (price already takes into account warranty charges) <p>Case II – Replaces and Requests Mfg. to reduce payable</p> <ul style="list-style-type: none"> ❖ Replace the part ❖ Ask Mfg. to issue CN to Distributor, ITC of distributor would be reduced, and corresponding liability of mfg. will be reduced.
4. Extended Warranty	<ul style="list-style-type: none"> ❖ Purchased at the time of buying a product – Supply of Goods ❖ Purchased separately afterwards – Supply of Services

Registration under GST [Section 22 to 30 of CGST Act read with Rules] (1/4)

1. Section 22: Registration and Analysis - Threshold of Rs. 20 Lakhs/40 Lakhs

Threshold of Rs. 10 Lakhs or 20 Lakhs (General Provision):

Supplier shall be liable to be registered in state from where he makes taxable supplies if Aggregate T/O in a FY > Rs. 20 lakhs/10 lakhs in NMMT (Nagaland, Manipur, Mizoram, Tripura)

- ❖ If one state is special category state which makes **TAXABLE SUPPLY THEN OVERALL LIMIT WOULD BE 10L**
- ❖ If one state is special category state which makes **EXEMPT SUPPLY THEN OVERALL LIMIT WOULD BE 20L**
- ❖ Registration shall not be taken in the state from which supplier makes exclusively exempt supply

Threshold of Rs. 40 Lakhs (Specific Provision):

Applicable to Exclusive Supplier of Goods [only intra-state allowed]

Exceptions to person:

- a) Liable for **compulsory registration** u/s 24
- b) Engaged in making supplies of the TIPA, Fly ash bricks, Fly ash block, Fly ash aggregates, building bricks, earthen tiles, roof tiles, bricks of fossil meals or similar siliceous earths
- c) Who supplies Intra state in M³NS T²APU [Manipur, Mizoram, Meghalaya, Nagaland, Sikkim, Telangana, Tripura, Arunachal Pradesh, Puducherry, Uttarakhand]
- d) Who opts for **voluntary registration**

Explanation: Service from Interest /Discount shall be ignored for deciding exclusivity of supply of goods: If Supplier earns int. or discount income which is service income, still he would be considered as supplier of goods. (Although it would be added in T/O)

1. COMPUTATION OF AGGREGATE TURNOVER (ATO) [S. 2(6) OF CGST ACT]:

AGGREGATE TURNOVER TO INCLUDE

1. All Taxable Supplies (Excl. reverse charge inward)
2. Exempt Supplies
3. Export of goods or services
4. Inter-State supplies to distinct person

AGGREGATE TURNOVER TO EXCLUDE [SECTION 2(6)]

Tax Component – CGST, SGST, IGST, UTGST, Cess

Explanation to Section 22	Analysis
(i) Supplies made by Agent	When agent issues invoice in his own name, it shall be added in the turnover of agent.
(ii) Supply by Job – Work (JW)	Supply of goods, from a registered JW premises, to be added in aggregate T/O of principal. (Unregistered job worker's POB shall be added as APOB in principal's regn)

2. NUMBER OF REGISTRATIONS IN A STATE

Particulars	Analysis [Rule 11]
(i) Minimum Registrations per state [All Units Non SEZ]	1
(ii) Minimum Registrations per state [One Unit is SEZ]	2
(iii) Maximum Registrations per state	Number of Place of businesses

Other relevant provisions:

- ❖ When business is transferred as a going concern, transferee shall be liable to be registered w.e.f. date of such transfer or succession.
- ❖ When transfer is in nature of amalgamation or demerger pursuant to an order of High court or Tribunal, transferee shall be liable to be registered w.e.f. date on which the Registrar of company issues certificate of registration giving effect to such order of High Court or Tribunal.

2. Section 23 & Section 24

Person Exempt from taking Registration [S. 23]: Notwithstanding anything contained in Section 22 or 24 of CGST Act, the following persons shall not be liable to registration, namely:

Sr. No.	Category of Exempted persons
1	Exclusively Exempt supplier
2	An agriculturist , to the extent of supply of produce out of cultivation of land
3	Suppliers exclusively engaged Outward RCM Supply [This benefit is not applicable when unregd. metal scrap supplier's turnover exceeds Rs. 10/20/40 lakhs]
4	Inter-state service provider upto Rs. 20 Lakhs / Rs. 10 Lakhs [Except Section 9(5) ECO]
5	Persons supplying inter-state supply of notified handicraft & handmade goods upto 10L/20L (Such persons shall have obtained a PAN and have generated an e-way bill)
6	Casual Taxable Persons (CTP) supplying notified handicraft & handmade goods Condition: Such persons shall have obtained a PAN and have generated an e-way bill
7	Service provider whose ATO =< Rs. 20 Lakhs (Rs. 10 Lakhs in SCS) through ECO – TCS
8	Commission Agent making supplies on behalf of agriculturist (a non-taxable person)
9	Exclusive supplier of goods having turnover not exceeding Rs. 40 lakhs

Person Liable to obtain Compulsory Registration [S. 24]

Sr. No.	Category of persons liable for compulsory registration
1	Persons making any inter-State taxable supply of goods. Inter-state service provider > 10L, 20L, compulsory registration.
2	Casual taxable persons other than Handicraft
3	RCM Recipient
4	9(5) Supplier such as Ola, Uber, Zomato etc.
5	Persons who supply goods not fulfilling conditions mentioned below. Person who supplies services having T/O > 20 lakhs/10 lakhs (SCS) through ECO
6	ECO who is required to collect tax at source under section 52 [Section 24(x)]
7	Non-resident taxable persons (NRTP) making taxable supply [Section 24(v)]
8	Tax Deductor u/s 51
9	Clearing forwarding Agents issuing invoice in their names.
10	Input Service distributors [ISD]
11	OIDAR service provider supplying to Non-taxable online recipient.
12	Person supplying online money gaming from place outside India to a person in India

Conditions to be fulfilled

- (i) such persons shall **not make any inter-State supply** of goods;
- (ii) such persons shall **not supply goods through ECO** in more than one State or Union territory;
- (iii) such persons **shall be required to have a PAN**
- (iv) **Validate** PAN and Address on Portal
- (v) Have **enrolment number** on the common portal
- (vi) Not be granted more than **one enrolment number**
- (vii) where such persons are **subsequently granted registration** under section 25 of the said Act, the enrolment number shall **cease to be valid** from the effective date of registration.

CA Keval Mota

Registration under GST [Section 22 to 30 of CGST Act read with Rules] (2/4)

3. PROCEDURE FOR APPLICATION

1. **With Aadhar** Authentication or,
2. **Without Aadhar** Authentication (on physical verification)

General Procedure: -

1. Person applies for registration on Common Portal along with PAN and with various documents such as photo, light bill, rent agreement, mobile number, email ID etc.
2. At the time of submission, he has option whether to undergo E – KYC or not.
3. Then Application is submitted.
4. If he had opted for “Yes”, then he will get an email with a link for authentication of Aadhar, on clicking it he will get an OTP after which application is said to be submitted.
5. If he had selected for “No”, then he would undergo a separate process.
6. The person has to undergo Authentication process within 15 days from Submission.
7. TDS, TCS, NRTP, OIDAR from O/s India can apply without PAN

Analysis of Date of Submission:

Case	Opted for Aadhar Authentication and Authenticated within 15 days	Opted for Aadhar Authentication and not Authenticated within 15 days	Not Opted for Aadhar Authentication
Preliminary Submission Date	12 th November	12 th November	12 th November
Opted For	Yes	Yes	No
Authenticated on	17 th November	-	-
Date of Submission	17th November	27th December	12th November

Time-limits:

Opted for Aadhar Authentication and Authenticated within 15 days and Physical Verification will not be done	Not Opted for Aadhar Authentication or, Opted but not Authenticated within 15 days or, Opted & Did but Physical Verification will be done
[30, 7, 7, 7]	[30, 30]
Apply within 30 days of Becoming Liable	Apply within 30 days of Becoming Liable
Officer will either (a) Accept within 7 days or (b) In case of query, SCN within 7 days (Deemed approval if no action taken)	Officer will grant registration within 30 days from receipt of Application. However, it shall only be given after physical verification of business premises of Assessee. (Deemed approval if no action taken)
In Case of SCN – Reply within 7 days	Physical verification shall be done atleast 5 days prior to completion of time-limit
From the receipt of Reply, officer will either (c) Accept within 7 days or, (d) Reject within 7 days (Deemed approval if no action taken)	FORM GST REG-03 shall be issued to ask for clarification or additional documents not later than 30 days from the date of submission of the application.

Persons who are not citizens of India, such as foreign nationals, Non-resident taxable persons (NRTPs), Foreign embassies and consulates, UN organizations not reqd. to do Authentication

4. PROCEDURE FOR AMENDMENT [S. 28]

Amendments means change in fields of registration like address, new partners, retirement of partners, change in mob no., Email ID

Core Fields: Trade Name, Partners, Address etc.
[15, 15, 7, 7]
Apply within 15 days of Change
Officer will either (a) Accept within 15 days or (b) In case of query, SCN within 15 days (Deemed approval if no action taken)
In Case of SCN – Reply within 7 days
From the receipt of Reply, officer will either (a) Accept within 7 days or, (b) Reject within 7 days (Deemed approval if no action taken)
In Case of Non-Core Fields – Only OTP has to be inserted

5. PROCEDURE FOR SUSPENSION [S. 29]

Meaning & Relevance of suspension of registration [S. 29 r/w R. 21A]	
Suspension is basically a period wherein a person’s GST number is neither cancelled nor active.	
Rule No.	Description of provision
Effective date of suspension	Starts FROM the date of submission of the application or the date from which the cancellation is sought, whichever is later, TILL pending the completion of proceedings for cancellation of registration under rule 22.
(i) Cancellation Application made by taxable person	<i>[Note: Proceedings would be completed either when proceedings are dropped on satisfactory reply (GST REG 20) or registration is cancelled by issuance of order (GST REG 19)]</i>
(ii) Cancellation initiated by proper officer	Starts FROM A date to be determined by him (i.e., PO) TILL pending the completion of the proceedings for cancellation of registration under rule 22 <i>[Note: Proceedings would be completed either when proceedings are dropped on satisfactory reply (GST REG 20) or registration is cancelled by issuance of order (GST REG 19)]</i>
Significant Discrepancy in returns or contravention of Rule 10A, may lead to Suspension of his registration and the said person shall be intimated in FORM GST REG-31. The explanation shall be provided by replying within 30 days as to why registration shall not be cancelled.	
No refund shall be granted during period of suspension	
Upon completion of proceedings, suspension period would be deemed to be revoked with effect from the date on which the suspension had come into effect. (PO can revoke suspension even during pendency of proceedings - Proviso)	
As per proviso 2 if registration has been suspended for non-filing of returns , the suspension shall be deemed to be revoked upon furnishing of all pending returns or suspended for non-furnishing of Bank details as per rule 10A , then suspension shall be deemed to be revoked on furnishing the details	
Revised tax invoice [S. 31(3)(a)] shall be issued for period of suspension and shall be furnished in first return as per section 40 of CGST Act	
Suspension shall be deemed to be revoked, where registration was suspended due to non-filing of return for a FY beyond 3 months from due date (in case of composition scheme), subject to the condition that registration has not been cancelled by PO under Rule 22.	

Registration under GST [Section 22 to 30 of CGST Act] (3/4)

RULE 10: ISSUE OF REGISTRATION CERTIFICATE	
Rule 10	Decoded provision
10(1)	GST Registration certificate be issued in form GST REG - 06 GSTIN Format 15 DIGIT: Two characters for the State code; Ten characters for the Permanent Account Number or the Tax Deduction and Collection Account Number; Two characters for the entity code; and one checksum character.
10(2)	If application is submitted w/i 30 days of becoming liable for registration the effective date of registration shall be the date on which the person becomes liable to registration.
10(3)	If Application is submitted after 30 days of becoming liable for registration the effective date of registration shall be the date of the grant of registration
10A	Bank Account details to be furnished within ❖ 30 days of grant of registration or ❖ Before furnishing the FORM GSTR-1 or using invoice furnishing facility whichever is earlier.
10B	If an Aadhaar number is not assigned to an existing registered person, he shall identify himself as follows. If Aadhaar number has not been assigned to the person required to undergo authentication of the Aadhaar number, such person shall furnish the following identification documents, namely: – ❖ his/ her Aadhaar Enrolment ID slip; and ❖ Bank passbook with photograph; or ❖ Voter identity card issued by the Election Commission of India; or ❖ Passport; or ❖ Driving license issued by the Licensing Authority (For Revocation & Refund Application – Aadhaar Authentication is mandatory) Once Aadhaar number is allotted he shall authenticate Aadhaar within 30 days of the allotment of the Aadhaar number. In case of failure to undergo Aadhaar authentication/furnish proof of possession of Aadhaar number/furnish alternate registration allotted to such person shall be deemed to be invalid.
GST Registration certificate & GSTIN is communicated to applicant, within 3 days after grant of registration.	

7. SPECIAL PROVISIONS FOR REGISTRATION FOR CTP AND NRTP [Section 27]	
25(1)	Application of registration shall be made atleast 5 days prior to commencement
27(1)	VALIDITY OF REGISTRATION: ❖ A period specified in the application for registration or ❖ 90 days from effective date of registration, whichever is earlier. Extension of period by 90 days possible. If the period of exhibition is likely to exceed 180 days, normal GST registration should be obtained.
27(2)	ADVANCE DEPOSIT OF TAX IN E – CASH LEDGER: An advance deposit of estimated tax liability to be paid Estimated Output Tax – Estimated Input Tax If registration is extended then deposit an additional amount of tax.
27(3)	Amount will be credited to E - Cash Ledger
❖ Refund is granted to casual taxable person or non-resident taxable person only after he files all returns.	

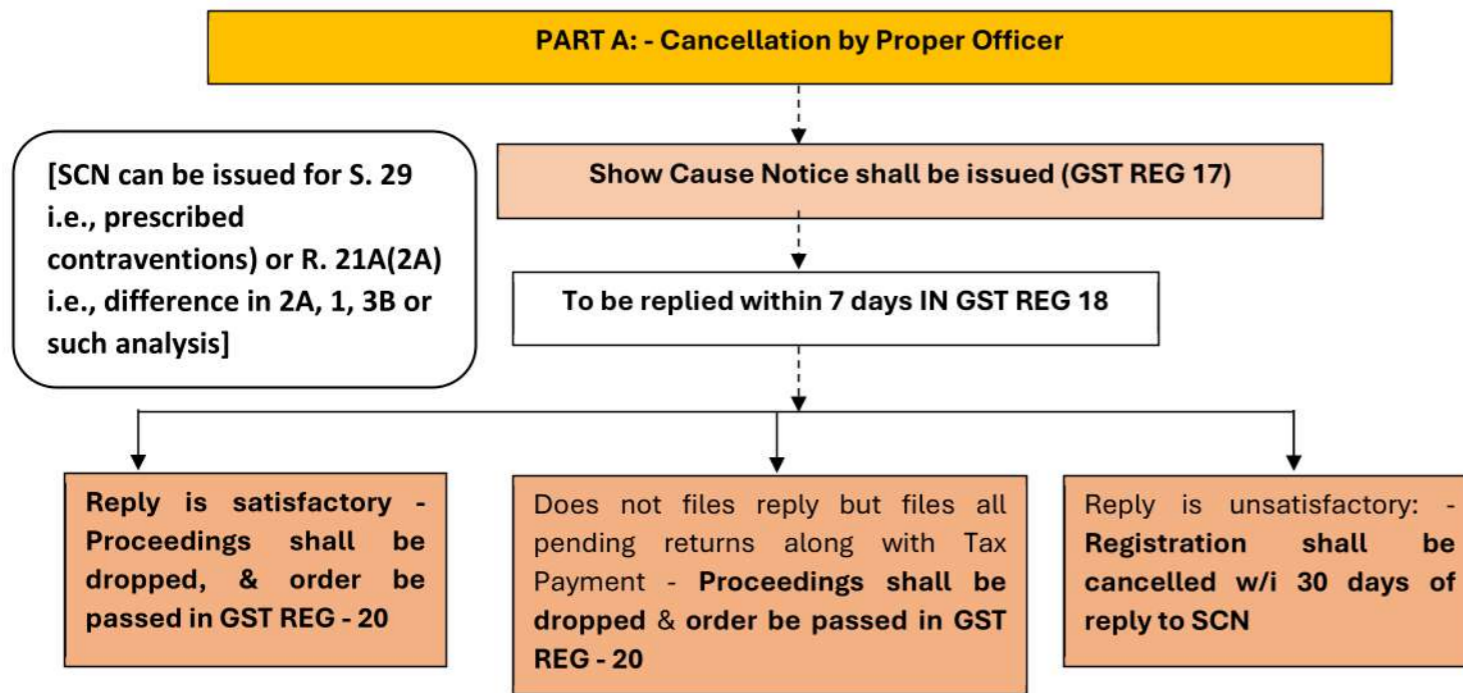
Pt.	6. CANCELLATION OF REGISTRATION [S. 29]
1	Power with PO to cancel registration on his own motion, application by reg person or by legal heirs due to 29(1)(a) Discontinuation of business, transferred fully, amalgamated, demerger, disposed 29(1)(b) Change in constitution 29(1)(c) no longer liable to be registered under section 22 or section 24, or voluntarily registered but now wishing to opt out. Note: During pendency of the proceedings relating to cancellation regn will be suspended
2	Cancellation by P.O. in certain circumstances (also can cancel retrospectively) 29(2)(a) Registered person has contravened prescribed contraventions** **Prescribed contraventions (A2, B, C, D, F2, G, 6, 6) (a) No Business from declared place of business ; or (b) Issues, invoice or bill without supply of goods or services or both ; or (c) Anti-profiteering (d) Violates the provision of rule 10A (Furnishing of Bank details) (e) Avails ITC in violation of section 16 (f) GSTR 1 + GSTR 1A > than GSTR 3B (g) Violates the provision of rule 86B (h) 3B monthly not filed for 6 months or 2 Quarters. (i) Violates the provisions of 3rd or 4th proviso to rule 23(1) of CGST Rules (filing of returns within 30 days of revocation) (b) Composition person not furnished the return for a financial year beyond three months from the due date (c) Not commenced business within six months from the date of registration; (d) Registration obtained by means of fraud, wilful misstatement or suppression (Opportunity of being heard be given, during pendency of proceeding -regn be suspended)
3	The registered person shall reverse ITC or pay output tax on such goods whichever is higher in respect of stock ; The registered person shall pay reverse ITC in terms of balance useful life in months or tax on transaction value whichever is higher in respect of capital goods or plant and machinery.

Rule 12: Special Provisions for Tax Deductors & Tax Collectors

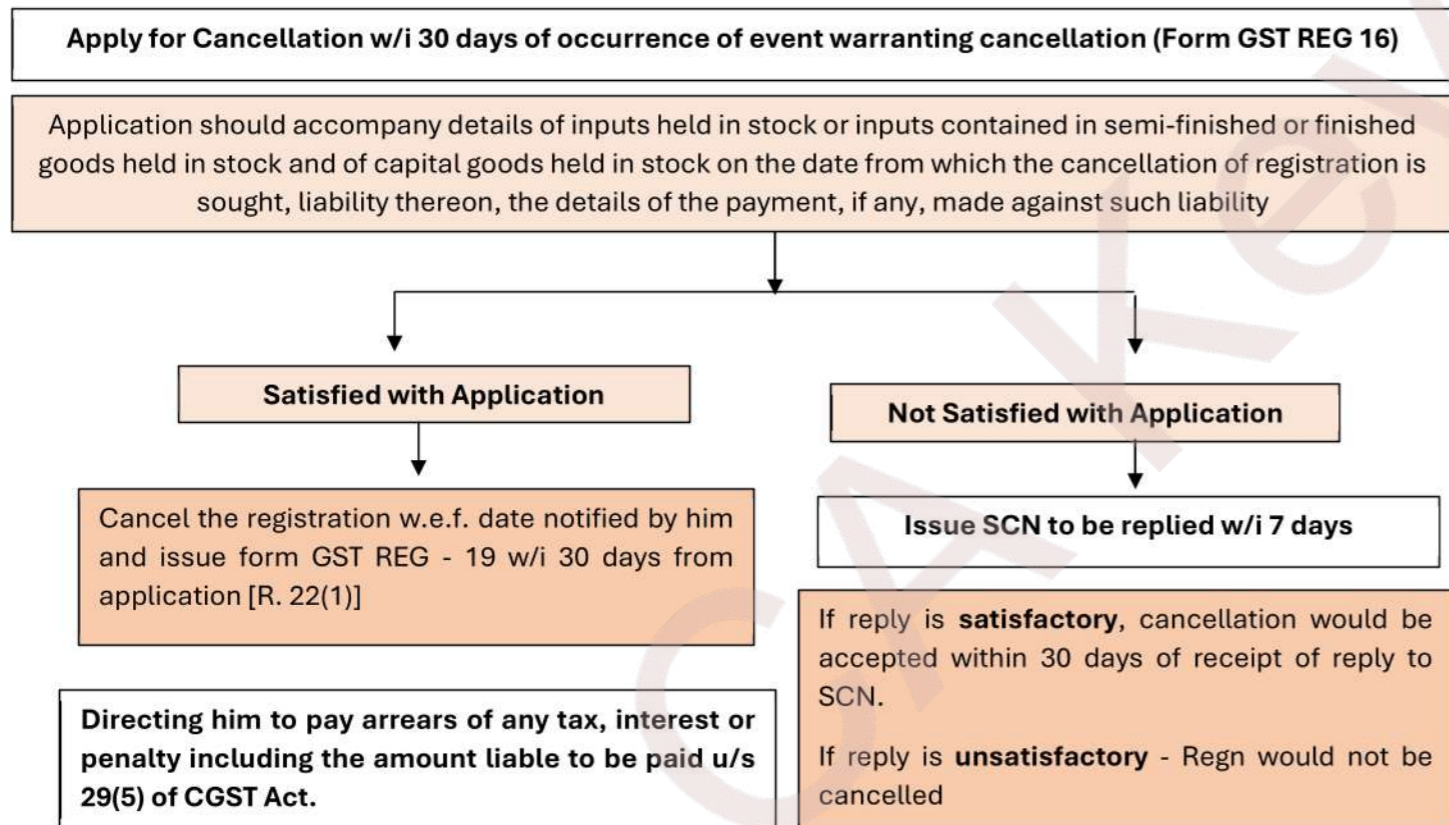
- ❖ **Grant of Registration:** An application for registration has to be submitted by such persons in a different prescribed form, and shall be granted w/i 3 working days
- ❖ **No physical Presence:** When a person is applying for registration to collect TCS or to deduct TDS in a State/UT **where he does not have a physical presence**, he shall mention name of said State/UT in Part A of prescribed application form for registration. (In Part B – Principal State of Business to be mentioned)
- ❖ **Cancellation of registration:** Officer may cancel the registration (on request made by tax deductor or collector that they are no longer liable for registration) issued and such cancellation shall be communicated to the said person electronically in prescribed form.
- ❖ **Procedure:** Proper Officer shall follow the procedure laid down for cancellation of registration prescribed under this Act and rules therein.

Registration under GST [Section 22 to 30 of CGST Act] (4/4)

8. Summarising the provisions of cancellation



PART B: - Cancellation by Registered person [R. 20 r/w R. 22(3)]



9. Revocation of Cancellation (S. 30 r/w R. 23)

Revocation means "taking back or withdrawing." Application for revocation means applying to PO to take back cancellation.

To be applied within 90 days of service of cancellation order (+180 Days extension)

Registration cancelled from date of cancellation order

Registration cancelled from retrospective date

- ❖ If registration cancelled on A/c of failure to file returns, all such returns shall be filed & dues shall be paid before application. [Proviso 1 to R. 23]
- ❖ Returns from date of cancellation order till date of order of revocation of cancellation shall be filed within 30 days from such order of revocation. [Proviso 2 to R. 23]

- ❖ Registered person shall furnish all returns relating to period from the effective date of cancellation of registration (retrospective date) till the date of order of revocation of cancellation of registration within a period of 30 days from the date of order of revocation of cancellation of registration. [Proviso 3 to R. 23]

Other rules	Description
R. 23	A registered person, whose registration is cancelled by the proper officer on his own motion, subject to the provisions of rule 10B , may submit an application for revocation of cancellation of registration, in FORM GST REG-21.
R. 23(2)(a)	(a) Satisfied with Application: Proper officer shall revoke the cancellation of registration by an order in FORM GST REG-22 within 30 days from the date of the receipt of the application
R. 23(3)	Not satisfied with Application: P.O. shall issue SCN which shall be replied (in GST REG 24) by registered person within 7 working days. (Note: Indirectly SCN shall be issued within 30 days from receipt of application)
R. 23(2)(b) r/w R. 23(4)	Unsatisfactory reply / no reply: Proper officer by an order in FORM GST REG-05, reject the application for revocation of cancellation of registration within 30 days from receipt of clarification.
R. 23(4)	Satisfactory reply: Proper officer shall revoke the cancellation of registration by an order in FORM GST REG-22 within 30 days from the date of the receipt of the clarification .
Note: There is no provision of deemed approval of revocation of cancellation	

"All progress takes place outside the comfort zone."

1. VARIOUS DOCUMENTS

Tax Invoice (S. 31 of CGST Act r/w R. 46 of CGST Rules)

1. To be issued by taxable person making **taxable supplies of goods & services.**
2. **Invoice number** – Max16 digit [unique series for each FY.]
3. **Content:** Name, address, GSTIN of supp. & recpt., Inv No., Inv Dt., on request of unregistered recipient, tax invoice to be issued if value < Rs. 50,000 containing name, add. & state code, HSN, Description, Qty, Inv value, taxable value, tax, tax rate, POS if inter-state supply, add. of delivery if diff from POS, tax payable on reverse charge (Yes/No), & Sign or DSC. Name of the state of recipient shall be deemed to be address of recipient for OIDAR & online money gaming supplier supplying from outside India
4. **HSN** - If TO is upto Rs. 5 Cr then 4-digit HSN is required for B2B supplies (Optional in case of B2C), More Than Rs. 5 Crores – 6 Digit HSN is required (B2B as well as B2C), For Import Exports 8 digits is required.
5. Movement – **Other than supply** (Job-work etc.), **delivery challan** to be issued u/r 55 of CGST Rules
6. **Tax Invoice for goods** to be issued in **triplicate** i.e., Original for recipient, duplicate for transporter, & Triplicate for supplier. Tax Invoice for **services** to be issued in **duplicate** i.e., Original for recipient, duplicate for supplier.
7. **Insurer, Banking Company, Financial Institution and NBFC** can issue **Consolidated tax invoice** for the supply of services made **during the month, at the end of the month** (*Serial No. & Address of recipient are optional particular*)
8. Banks, insurers, telecom operators etc. **may issue tax invoice for inter-branch transaction before** or at the time such supplies were recorded in books **or before expiry of quarter during which supply was made.**
9. Goods transport agency (**GTA**) transporting goods by road shall **ensure mandatory particulars** in addition to rule 46 which are **Gross weight of consignment; Name of the Consignor and Consignee; Regn. No. of Vehicle; Details of goods transported; Origin and destination; GSTIN of person liable to pay tax whether as consignor / consignee / GTA.**
10. **Passenger transport agency – Ticket** issued is deemed to be **Tax Invoice** (*Serial No. & Address of recipient are optional*)
11. Where the supply is made **on payment of IGST**: - “Supply meant for export/supply to SEZ unit or SEZ developer for authorised operations on payment of integrated tax” or; Where the supply is made **without payment of IGST**: “Supply meant for export/supply to SEZ unit or SEZ developer for authorised operations under bond or letter of undertaking without payment of integrated tax.” Further, in lieu of the State name & State code, the details of the **country of destination** would have to be provided.
12. **No Tax Invoice / Bill of supply** is required if **value is below Rs. 200** and recipient is unregistered & do not require such invoice. (However, he shall raise consolidated tax invoice at end of each day) (not applicable to cinematograph films supplier). Their electronic ticket would be deemed to be a tax invoice
13. Person who are **not required to issue e – invoice shall put the declaration** on invoice as to their aggregate turnover is not more than notified limit and E – invoice provisions are not applicable to them. [NN 14/2022 – CT dated 5th July, 2022]

Other Documents:

- ❖ **Revised tax invoice** – For the period liable for registration till date of grant of registration, to be issued w/i 1 month from grant.
- ❖ **Bill of Supply (BOS)** to be issued by composition person or exempt supplier of goods or services
- ❖ **Refund Voucher** - Refunding the money which was received in advance for service but subsequently supply was not made.
- ❖ **Receipt Voucher** - Receipt of advance for supply of services. If rate of tax not known take 18% & Inter-state supply respectively.
- ❖ **Payment Voucher** - Making payment to 9(3)/9(4) suppliers (whether or not regd.)
- ❖ **Self-Invoice** – Taking RCM services from unregistered persons **to be issued w/i 30 days from receipt of G/S** (Govt. Dept. having TDS number shall be treated as unregd. person for the purpose of self – invoice.)
- ❖ **Invoice-cum-Bill of Supply** – Supplying **taxable as well as exempted** to an **unregistered person**
- ❖ Tax Invoice / Bill of supply to accompany transport

By CA Keval Mota

Credit Notes under GST (Section 34(1) of CGST r/w R. 53)

Meaning: -

Credit note will be issued by SUPPLIER in below cases:

- ❖ Actual value of supply < than stated in the original tax invoice;
- ❖ Tax charged in the original tax > than that applicable on the supply;
- ❖ Goods supplied are returned by the recipient or are deficient.

Time-limit to declare Credit Note in Return: -

In the return for the month during which such credit note has been issued but not later than 30th November of SFY, or the date of filing annual return, whichever is earlier. **The supplier cannot reduce tax liability through a credit note if:**

- ❖ **The recipient (if registered) has not reversed the related ITC, or**
- ❖ **The tax burden has been passed on to another person.**

Manner of Issue of Credit Notes: - (3 Copies for Goods, 2 for Services): -

- ❖ Consolidated credit note can also be issued

Circular: Clarification in case of Pharma Sector (Expired Medicines)

A person returning the time expired goods may treat such returns as below: -

1. **Fresh supply:** The person giving return the goods shall be treated as supplier. The person accepting the goods can take ITC. However, manufacturer cannot avail ITC as the said goods are going to be destroyed. Thus, ITC will be ineligible.
2. **Return of Goods:** The person accepting the return of goods shall issue credit note with GST if goods are coming to him within time-limit, otherwise financial credit note to be issued. The manufacturer is liable to reverse the ITC on original purchase.

Debit Notes under GST (Section 34(3) of CGST r/w R. 53)

Meaning: -

Debit Note will be issued by SUPPLIER in below scenarios: -

- ❖ Actual value of supply > than stated in the original tax invoice;
- ❖ Tax charged in the original tax invoice < than applicable on the supply
- ❖ A debit note issued under Section 74 - supplier shall mention “INPUT TAX CREDIT NOT ADMISSIBLE” on debit note

Time limit to issue Debit Note: -

A debit note may be raised and uploaded subsequently, with no restriction as to the time period for doing so. (However, Debit Note ITC can be claimed upto 30th November of SFY in which debit note was issued or actual date of filing annual return whichever is earlier)

(Consolidated debit note can also be issued in same way like consolidated credit note is being issued)

PROCEDURE TO MOVE GOODS IN KNOCKED DOWN OR SEMI-KNOCKED DOWN CODITION

Where goods pertaining to one invoice are transported in multiple vehicles. For example, goods transported in semi-knocked down or completely knocked down condition, the e-way bill shall be generated for each of such vehicles based on the delivery challans issued for that portion of the consignment and:

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

Above methodology could be applicable in case of imports also where goods imported in the large container is transported through multiple trucks from the port to the factory.

3. E - WAY BILL UNDER GST

E – way Bill helps in monitoring and tracking movement of goods. **Section 68** of CGST Act, 2017 mandates to carry prescribed documents which states E – way Bill as per Rule 138 of CGST Rules

Documents to be carried by person in charge (i.e., Transporter): Tax Invoice / Bill of supply or delivery challan & E – way bill (subject to its applicability), in case of imported goods - bill of entry shall be carried.

Applicability:

It shall be generated by person causing movement of goods of **consignment value exceeding Rs. 50,000/-** (Consignment value means invoice val. Incl. GST but excl. exempt supplies) in relation to a **supply**; or for reasons **other than supply**; or due to **inward supply from an unregistered person** (Examples of “reasons other than supply” can be goods send to job-work.)

Other aspects: -

1. **Mandatory E - way bill irrespective of Consignment Value:**
 - (a) Inter-State transfer of goods by principal to job-worker
 - (b) Inter-State transfer of handicraft goods by a person exempted from obtaining registration (such person can opt for enrolment number and generate E – way Bill)
2. E - way bill shall be generated in **form GST-EWB 01**. There are two parts of GST EWB 01, PART A & PART B. In Part A GSTIN of supplier & recipient, Place of delivery, nature of document, HSN, etc. are to be filled
3. **Rail, Air, Vessel Do Not generate E – way Bill.** Supplier has to generate E – way bill
4. **EWB reqd. to take delivery** when goods are transported by **railways**, otherwise it will not be delivered
5. **Validity:** Valid in other states as well.
6. **1 E-way Bill reqd. in “Bill to Ship To” Model** as there is single movement of goods.
7. **Unregistered transporters:** can get enrolled and have 15-digit TRANSIN on e-waybill portal before generation
8. **Delivery Challan:** In case where movement is other than for supply, value in delivery challan shall be taken
9. **Part A filling:** Information in Part-A be furnished by the transporter or ECO or courier agency, on an authorization by RP
10. **Assignment of E-way Bill:** The who filled Part A, or the transporter, may assign the e-way bill number to another registered/enrolled transporter for updating the information in Part B. After Part B is assigned to another transporter, further assignment cannot be by person who had filled Part A
11. In Part B vehicle details are to be filled (certain exceptions are there)

Exceptions

 - (a) Distance between **consignor to transporter** is **upto 50 kms.**
 - (b) **Goods** are **transferred** from one conveyance to another and distance between **transporter** and **consignee** is **upto 50 kms.**
 - ❖ Where multiple consignments are intended to be transported in one conveyance, transporter may indicate the serial number of e-way bills generated for each invoice and can generate consolidated E – way bill in form GST EWB – 02.
 - ❖ Consolidated EWB is like a trip sheet and it contains details of different e-way bills in respect of various consignments being transported in one vehicle

(i) Validity of E – way Bill: -

E – way bill is valid for the period from generation upto below specified validity periods. As per explanation 2 to rule 138(3) of CGST Rules, validity begins when Part B is filled for first time:

Distance	Validity
Upto 200 km (20 kms in case of over-dimensional cargo** or multimodal shipment in which at least one leg involves transport by ship)	1 day from relevant date**
For every 200 km or part thereof (20 kms in case of over-dimensional cargo or transport involving ship)	1 additional day from relevant date**

***Relevant Date means mid – night of the day on which E – way bill is generated.*

(ii) **Cancellation of E - way Bill can be done within 24 hours of generation. E – way bill verified in transit cannot be cancelled.**

(iii) **Extension of E – way Bill can be done** if goods do not reach destination in validity period due to natural calamity, law and order issues, trans-shipment delay, accident of conveyance, etc., the validity can be extended. The validity of the e-way bill may be extended within 8 hours from the time of its expiry.

(iv) **Recipient** have to **communicate their acceptance or rejection within 72 hours of the generation or the time of delivery of goods whichever is earlier, otherwise** deemed acc.

(v) Blocking of E - way Bill [R. 138E]:

E – way bill (Part A) cannot be generated if:

- ❖ Composition person / presumptive person failed to file CMP 08 for 2 consecutive quarters;
- ❖ Other than composition / presumptive person has not filed returns for 2 consecutive months, tax periods;
- ❖ Other than composition / presumptive person not furnished the statement of outward supplies for any two months or quarters
- ❖ Whose registration has been suspended under the R. 21A

Note: However, e-way bill generation facility is blocked only in respect of any “outward” movement of goods of the registered person who is not eligible for e-way bill generation as per rule 138E. E-way bills can be generated in respect of inward supplies of said registered person.

No Reqmt. Of E-way bill if goods transported by non-motorised vehicle.

- (a) **Supply of goods from DTA unit to SEZ is defined as Inter State Supply.** However, if such supply is in same state, e way bill is not required if such movement has been exempted by SGST Rules
- (b) Where each invoice value is upto Rs. 50,000/-, but if aggregated then its exceeding Rs. 50,000/- and are being supplied **in a single conveyance to single recipient**, then E-way bill would be required to be generated.
- (c) Non-issuance of e-way bill may result in the following consequences:
 - ❖ Imposition of penalty of Rs. 10,000/- or tax sought to be evaded (wherever applicable), whichever is higher
 - ❖ Detention and seizure
 - ❖ Confiscation of goods and the conveyance

Documentation & E - way Bill [Section 31 to 34 r/w S. 68 and Rule 46 - 55 & R. 138, 138A/B/C/D/E] (3/4)

OTHER RULES RELATING TO E – WAY BILL

Rule	Documents and devices to be carried by a person-in-charge of a conveyance
138A	
(1)	The person in charge of a conveyance shall carry a) the invoice or bill of supply or delivery challan, as the case may be; and, b) a copy of the e-way bill in physical form or the e-way bill number in electronic form (other than rail, air or vessel) In case of imported goods, the person in charge of a conveyance shall also carry a copy of the bill of entry filed by the importer and furnish such details in PART A
(2)	E - Invoice may not be physically carried
(3)	Auto Population of Part A Details if E Invoice is made
(4)	a class of transporters has to obtain RFID embedded on conveyance
(5)	The Commissioner may require the person-in-charge of the conveyance to carry the tax invoice or bill of supply or bill of entry or delivery challan instead of E - way Bill.
138B	
(1)	Commissioner may authorise P.O to intercept
(2)	Installation of RFID by Commissioner
(3)	Commissioner may authorise P.O to physically verify
Proviso to (3)	Any officer can carry out physical verification with commissioner's approval, on receipt of specific information on evasion of tax
138C	
(1)	Summary report shall be uploaded online by PO w/i 24 hours from Midnight in PART A, & final report in PART B, w/i 3 days of inspection (+3 days extension possible)
(2)	Physical Verification can be done only once during transit
(3)	Hard Copies of Notices to be shown to another tax authority if intercepted
138D	
(1)	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.
138E	
(1)	Already covered (Blocking of E - way bill)

DEPARTMENTAL CLARIFICATION

Recipient taxpayer shall also maintain accounts and records as required under rules 56 and 57 [as discussed earlier]. Furthermore, as per rule 56(7), books of accounts in relation to goods stored at the transporter's godown (i.e., the recipient taxpayer's APoB) by the recipient taxpayer may be maintained by him at his PPOB. Thus, the facility of declaring APoB by the recipient taxpayer is in no way putting any additional compliance requirement on the transporters. [Circular No. 61/35 /2018 GST dated 04.09.2018].

MANDATORY & OPTIONAL FIELDS ON TAX INVOICES ISSUED BY VARIOUS PERSONS

Sr. No.	Class of supplier	Document	Optional	Mandatory
1.	Insurer, Banking, Company, Financial Institution and NBFC*- Rule 54(2)	Consolidated Tax Invoice or any other similar document at the end of the month for services supplies during the month.	a) Serial no. b) Address of the recipient of services	All particulars as specified in Rule 46 other than that specified in 'Optional' column. [Signature or digital signature of supplier or his auth. Representative not required.]
2.	Goods transport agency (GTA) Transporting goods by road- Rule 54(3)	Tax Invoice or any other similar document	N.A.	In addition to those cited in Rule 46; a. Gross weight of consignment; b. Name of the Consignor and Consignee; c. Regn. No. of Vehicle; d. Details of goods transported; e. Details of place of Origin and destination; f. GSTIN of person liable to pay tax whether as consignor / consignee /GTA.
3.	Passenger transport -Rule 54(4)	Tax invoice or ticket	a. Serial no. b. Address of the recipient of services	All particulars as specified in Rule 46 other than that specified in Optional column [Signature or digital signature of supplier or his authorised representative not required].
4.	Exhibitor of cinematographic films in multiplex screens- Rule 54(4A)]	Electronic Ticket	Details of the recipient of service	All particulars as specified in Rule 46 other than that specified in 'Optional' column Issue of electronic ticket optional for Supplier of such service in a screen other than multiplex screen
5.	OIDAR supplier or supplies through ECO to Unregd. person			Name, Address and PIN code to be prescribed

5. E – INVOICING PROVISIONS UNDER GST

INTRODUCTION:

E-invoicing is not generation of invoice by a governments' portal. Taxpayers will continue to create their GST invoices on their own Accounting/Billing/ERP Systems as per e-invoice schema. These invoices will then be reported to 'Invoice Registration Portal (IRP).' On such reporting, IRP will generate a unique 'Invoice Reference Number (IRN).'

ADVANTAGES OF E-INVOICING:

- (i) Auto-reporting of invoices into **GST return**.
- (ii) Auto-generation of **e-way bill**.
- (iii) Substantial **reduction in transcription errors**
- (iv) **Standardization** and inter-operability.
- (v) Complete **trail of B2B invoices** is available with the **Department**.
- (vi) Eliminate the **fake invoices claiming fictitious input tax credit** (ITC) by raising fake invoices.

A registered person (except specified class of persons), whose **aggregate turnover in any preceding financial year from 2017-18 onwards exceeds Rs. 5 crores** have been notified as class of persons who shall prepare e-invoice in respect of

- ❖ **B2B supplies (supply of goods or services or both to a registered person) or,**
- ❖ **Exports of goods or services or both**

FOLLOWING ENTITIES ARE EXEMPT FROM THE MANDATORY REQUIREMENT OF E-INVOICING:

- (i) SEZ units (excluding SEZ unit developers)
- (ii) Insurer or banking company or financial institution including NBFC
- (iii) GTA
- (iv) Passenger transportation service supplier
- (v) Cinematographic Film
- (vi) Government Department and a local authority.

Amendment of invoices is **not possible through** the IRP (**e-invoice portal**). **Cancellation cannot be done after 24 hours of generation.**

Note: Govt. department registered for deducting TDS would be treated as B2B. Thus, person supplying goods/services to such govt. departments would be required to generate E – invoice (if applicable)

Imp Area: If above persons are recipient then E – invoice is required

6. DYNAMIC QR CODE IN GST

APPLICABILITY OF QR CODE PROVISIONS:

All B2C invoices (supply of goods or services or both to an unregistered person) (except exports & some specified supplies) issued by a registered person whose **aggregate turnover in any preceding financial year from 2017-18 onwards exceeds Rs. 500 crores** will have a Dynamic QR code on their tax invoices.

BELOW SUPPLIERS ARE EXEMPT FROM QR CODE REQUIREMENT

- (i) Insurer or banking company or financial institution including NBFC
- (ii) GTA
- (iii) passenger transportation service supplier
- (iv) Cinematographic Film
- (v) OIDAR Supplier

Details are required to be captured in the Quick Response (QR) Code [Circular 146]

[QR Code should be such that it can be scanned for making payment, whether or not actually payment is done or not]

- (i) **Supplier GSTIN number**
- (ii) **Supplier UPI ID**
- (iii) **Payee's Bank A/C number and IFSC**
- (iv) **Invoice number & invoice date,**
- (v) **Total Invoice Value and**
- (vi) **GST amount along with breakup i.e., CGST, SGST, IGST, CESS, etc**

Wherever an **invoice is issued** to a:

- ❖ Recipient **located outside India**, for supply of services, for which the **POS is in India**, and
- ❖ **Payment is received** by the supplier in **foreign currency**, or through **RBI approved mediums** and,

Then, **Dynamic QR Code not required**, as such dynamic QR code cannot be used by the recipient located outside India for making payment to the supplier.

Accounts & Records [Section 35 & 36 r/w Rules 56 - 58] (1/1)

Chapter VIII – Accounts and Records [Sections 35 and 36] of the CGST Act enumerates the accounts and records required to be maintained by a taxpayer and the period for which such accounts and records are required to be preserved.

What to maintain as regards to Books of Accounts – Section 35(1) of CGST r/w R. 56)

Records as per S. 35 of CGST Act: -

- 1) **Input:** - Inward Supplies, ITC
- 2) **Process:** - Production
- 3) **Storage** – Stock of goods
- 4) **Output** – Outward Supplies & Tax

(Input, Process, Storage, Output is the key to remember the provision)

Records as per R. 56 of CGST Rules, 2017

- 1) **Import & Export** of G/S
- 2) Tax paid under **RCM**
- 3) **Advance** received & adjusted
- 4) Commodity wise **stock details** (Opening Balance, receipt, issue, goods lost, stolen, destroyed, written off, given as free samples, etc.)
- 5) Details of **tax payable** & ITC
- 6) **Name & address of supplier & recipient**
- 7) Storage premise **address**
- 8) **Register** of Documents

Composition person not to maintain following two details: -

- 1) Commodity wise Stock Details
- 2) Tax Details

Where to Maintain? [S. 35(1)]

- Principal place of business & Additional Place of Businesses.
- Unless otherwise proved, documents or any books of accounts found at any other place are deemed to be books of accounts of registered person

Agents [R. 56(11)]

- a) **Authorisation** received from Principal;
- b) Description, value and quantity (wherever applicable) of **goods or services received or supplied** on behalf of every principal;
- c) Details of **accounts furnished** to every **principal**; and
- d) **Tax paid** on receipts or on supply of goods or services effected on behalf of every principal.

Clearing, Forwarding Agent [R. 56(17)]

Maintain true and correct records in respect of such **goods handled by him on behalf of such registered person** and shall produce the details thereof as and when required by the proper officer.

Manufacturers [R. 56(12)]

- a) Monthly **production accounts** showing quantitative details of raw **materials or services used in the manufacture** and quantitative details of the goods so manufactured including the waste and by products thereof.

Service Provider to maintain (R. 56(13)): - Accounts showing quantitative details of goods used in the provision of

Works Contractor [R. 56(14)]

- The **name and addresses** contractee;
- **Description, value and quantity** (wherever applicable) of **goods or services received & utilised**.
- The details of **payment received** in respect of each works contract; and
- The names and addresses of **suppliers** from whom he received goods or services.

Accounts to be maintained by Specific Persons

Owner or Operator of Warehouses & Transporter whether or Regd. or not

- a) **Goods transported, delivered** and goods **stored** in transit by him, along with GSTIN
- b) **Owner or operator** of a warehouse or godown shall maintain BOA with respect to the period for which particular **goods remain in the warehouse**, including the particulars relating to **dispatch, movement, receipt and disposal** of such goods.
- c) **Item-wise and owner-wise** identifiable and shall facilitate any physical verification or inspection by the proper officer
- d) URP owner & operator of warehouse & transporter shall obtain a unique enrollment number by applying electronically.

Manner of Maintenance (R. 56 & 57) & Period of Maintenance (S. 36)

- 1) Electronic Form – Authenticated by DSC [R. 56(15)]
- 2) Accounts shall be maintained at all Place of Businesses [R. 56(7)]
- 3) Not to be erased or overwritten
- 4) Records may be maintained manually & each volume of BOA serially numbered.
- 5) Adequate Backup be taken
- 6) Audit Trial shall be produced when PO demands [R. 57]

Period of Maintenance (S. 36)

(A) A/cs not a subject Matter of Appeal

72 months from due date of annual return to which that accounts & records relate.

(B) A/cs subject matter of Appeal or any proceedings

72 months from due date of annual return
Or
1 year after final disposal of proceeding whichever is **later**.

Audit of Books of Accounts (S. 35(5), S. 44(2) of CGST Act, 2017, R. 80(3) of CGST Rules, 2017

Departmental Clarifications:

- 1) The persons involved in auction either as a **principal or auctioneer shall declare warehouse or other places as additional place of business in case such places are meant for storage of goods.**
- 2) **If faced difficulties in maintaining the books of accounts at such additional place of business upon intimating the jurisdictional officer in writing can maintain at PPOB.**
- 3) If goods are **stored in godown of transporter**, then the transporter's **godown** has to be declared as an **APOB by the recipient.**
- 4) The **transporter having place of business in more than one State or Union Territory** and **all** such places of business are **registered** under the provisions of the GST law, shall **obtain** the unique **common enrolment number** for generating E – Way bills

The PO shall determine the amt of tax payable on goods or services that are not accounted for, as if such goods / services had been supplied by such person & provisions of Sec 74A

Returns under GST [Section 37 to Section 48] (1/3)

Form No.	Description	Due Date	Form No.	Description	Due Date
GSTR – 1: Outward Supplies [S. 37(1) of CGST Act, 2017 r/w R. 59(1) of CGST Rules, 2017] Monthly / Quarterly (If a registered person does not carry out any activity of outward supplies in a particular month - Nil Return to be filed which can be filed through SMS)	Details of Outward supplies, (including debit notes, credit notes) made by registered person INCLUDING Casual Taxable person EXCLUDING (TONIC) <ul style="list-style-type: none"> ❖ TDS, ❖ TCS, ❖ OIDAR from O/S India ❖ NRTP, ❖ ISD, ❖ Composition Person, 	Aggregate Turnover in preceding financial year exceeding Rs. 5 Crore – 11th of Next Month. Registered persons opting for QRMP scheme: 13th of month subsequent to the quarter. (Those whose GSTR 1 is quarterly may file IFF for 1 st two months of Quarter in respect of B2B supplies - refer below) Below persons shall not be allowed to file GSTR 1 (R. 59 of CGST Rules) <ul style="list-style-type: none"> ❖ GSTR 3B not filed for preceding month or ❖ GSTR 3B not filed for preceding quarter or, ❖ Not complied with rule 10A or, ❖ Non-compliance with R. 88C, 88D 	GSTR 3B: Summary Return for Payment of Taxes [Section 39(1) read with rule 61 (Monthly 3B) & 61A (Quarterly 3B) of the CGST Rules]	A monthly / quarterly return (subject to conditions) for every registered person, other than an ISD, NRTP, Composition Person, TDS, TCS, OIDAR from O/S India	Within such time, as may be prescribed subject to conditions and restrictions Standard date: In case of Monthly 3B: On or before 20 th of Next Month. In case of Quarterly 3B: On or before 22 nd or 24 th of month succeeding quarter for which return is furnished Due date to pay tax - Monthly filers: On or before filing of return QRMP Scheme: 25 th of next month (1 st 2 months, for last month it is with 3B)
Other Aspects of GSTR 1: <ul style="list-style-type: none"> ❖ Consolidated & Inv Wise: Interstate B2C Supplies (i.e., Supplies to unregistered persons) – Invoice wise if invoice value exceeds Rs. 1,00,000/- . B2B Supplies to be shown invoice wise. B2C Intra-state and B2C Inter-state upto 1,00,000/- to be shown consolidated. ❖ Time for filing: GSTR 1 cannot be filed before end of tax period except in case of CTP or person whose registration is being cancelled. ❖ Amendments in GSTR 1 & Time limit: Rectification possible till 30th November following the end of the financial year or actual annual return whichever is earlier. ❖ Invoice Furnishing Facility (IFF) <ul style="list-style-type: none"> - The Invoice Furnishing Facility (IFF) is an optional tool for QRMP scheme taxpayers to upload B2B invoices monthly even though GSTR-1 is filed quarterly. It enables buyers to claim Input Tax Credit (ITC) monthly, avoiding delays. IFF can be used from the 1st to 13th of the following month, with a cap of ₹50 lakh per month. Only B2B invoices and credit/debit notes are allowed. The data uploaded via IFF is auto-filled in GSTR-1, avoiding duplication. 			Other Aspects of GSTR 3B: <ul style="list-style-type: none"> ❖ Nil Returns to be filed ❖ GSTR 3B cannot be furnished if GSTR 1 of current tax period is yet to be filed. ❖ Rectification of errors/omissions is permissible upto 30th Nov of SFY or Actual date of Annual return w.e.i.e. 		
GSTR 2A: Auto-populated Details of Inward supplies [Section 38 read with Rule 60]			Form GSTR-2A is a system generated read only statement of inward supplies for a recipient. This statement is updated on a real time basis. No Due date [GSTR – 2B is generated on 14th of Next Month, if a supplier files his GSTR – 1 within due date then it will be reflected in GSTR 2B of same month, otherwise it will be reflected in next month. However, GSTR 2A is updated on basis of GSTR – 1 of supplier’s month (not return filing cut-off date)]		
<ul style="list-style-type: none"> ❖ Details in 2A are auto-populated on basis of suppliers’ filing their own GSTR 1. ❖ GSTR-2B Taxpayers have to use GSTR-2B to reconcile ITC before filing GSTR-3B. It is a static return ❖ Details of the integrated tax paid on the import of goods or goods brought in DTA from SEZ unit/developer on a bill of entry are also made available in Form GSTR-2A ❖ Details in GSTR – 1: B2B including UIN holders, B2C inter-State supplies where invoice value Rs. 1 lakh, Consolidated details of other B2C supplies, zero rated and, deemed exports, Debit/ Credit notes issued, Nil rated/ Exempted/ Non- GST, Amendments for prior period, Advances received/advances adjusted. ❖ GSTR-1A is a supplementary return that allows taxpayers to add or amend invoice-wise outward supply details after filing GSTR-1 but before filing GSTR-3B. It helps correct or add B2B invoices, credit/debit notes, etc., for a particular tax period. However, GSTIN of the recipient cannot be changed. Corrections must go through GSTR-1A or future returns. Only one submission per tax period is allowed. If invoice is added in 1A then it is reflected in next month’s GSTR 2B 			GSTR 4: Annual Return for persons registered to pay tax u/s 10 of CGST Act [Section 39(2) read with rule 62 of the CGST Rules]		
<ul style="list-style-type: none"> ❖ Nil Returns shall be filed if no taxable supplies are made during the period. [S. 39(8)] 			Composition regd. person is required to file an annual return in Form GSTR-4. Due date to file return (Annual) [GSTR 4] Within such time as may be prescribed. [Prescribed time limit: 30 th June of Succeeding Financial Year] Due date of payment of tax (Quarterly) [GST CMP 08] On or before 18 th Day of month subsequent to quarte		
GSTR 5: Return for Non-Resident Taxable Persons [39(5) read with rule 63 of the CGST Rules]			A simplified monthly tax return for NRTP (Outward and Inward) Due date to file return: - <ul style="list-style-type: none"> ❖ Within 13 days from the end of the calendar month or ❖ Within 7 days after the last day of the period of registration, whichever is earlier. 		
GSTR 5A:			OIDAR Service provider, Person & Online Money Gaming 20 th of Next Month		
GSTR-6 – Return for Input Service Distributor			Input Service Distributor (for distributing credits) Due date to file return: - On or before 13 th day of the succeeding month It can be filed between 10th & 13th.		
GSTR 7 (Tax Deductors): By 10th of Next Month. Payment of TDS also by same date. A TDS certificate be issued within 5 days of crediting the amount					
GSTR 8 (Tax Collectors): By 10th of Next Month: 10 th of Next Month [Tax collected shall also be paid by such date along with return.] The rectification is allowed upto 30 th November following the end of the financial year					
GSTR-11 is the return to be filed by the persons who have been issued a Unique Identity Number (A specialized agency of the United Nations Organization), Consulate or Embassy of foreign countries – Due date 28 th of the next month in which inward supply is received by the UIN holders					

Form No.	Description	Due Date
GSTR - 9 (Annual Return) [Sections 44 read with rule 80 of the CGST Rules]	<ul style="list-style-type: none"> ❖ Applicable to all except ISD, NRTP, Composition Person, TDS, TCS, OIDAR from O/S India, CTP ❖ Where Turnover is more than 2 crores in a FY 	31st December of the next financial year. Late filing fees: <ul style="list-style-type: none"> ❖ Upto 5 crores: Lower of 50/day or 0.04% of T.O.I.S. ❖ >5 crores – 20 Cr.: Lower of 100/day or 0.04% of T.O.I.S. ❖ >20 crores: Lower of 200/day or 0.5% of T.O.I.S. (T.O.I.S. = Turnover in State)
GSTR - 9A (Annual Return for Composition person)	Annual return for composition person	31 st December of SFY
GSTR - 9C (Reconciliation Statement)	Self-certified (certified by taxpayer) reconciliation statement whose turnover is more than Rs. 5 crore	31 st December of SFY
<p>GSTR-9 is an annual summary return filed by regular taxpayers under GST, detailing all outward and inward supplies, taxes paid, and ITC claimed. GSTR-9C is a reconciliation statement comparing the figures in GSTR-9 with the taxpayer's audited financial statements, used to ensure accuracy and compliance.</p> <p>Late Fees Clarification: If only GSTR-9 is filed on time while GSTR-9C is delayed, the annual return is considered incomplete, and the late fee is calculated from the original due date until the complete return is furnished. However, the late fee is not imposed separately for GSTR-9 and GSTR-9C but as a combined penalty for the delay in submitting the full annual return.</p>		
GSTR - 10 - Final Return	Every registered person who is required to furnish return u/s 39(1) and whose registration has been surrendered or cancelled is required to file a final return [Thus, ISD, NRTP, Composition person, tax deductor and collector are not required to file final return]	The final return has to be filed within 3 months of the: <ul style="list-style-type: none"> (i) Date of cancellation or (ii) Date of order of cancellation whichever is later.

Section 40: First Return	
Section 40	When a person becomes liable to registration after his turnover crosses the threshold limit, he may apply for registration within 30 days of so becoming liable. Thus, there might be a time lag between a person becoming liable to registration and grant of registration certificate. During the intervening period, such person might have made the outward supplies, i.e. after becoming liable to registration but before grant of the certificate of registration.

Section 47: Late Fees for delay in filing returns	
Late fee is applicable for delay in furnishing of return / details of outward supply as per the provision of section 47 of the CGST Act.	
Delay in filing any of the following by their respective due dates, attracts late fee:	
(A)	Statement of Outward Supplies [Section 37]
(B)	Returns (including returns under QRMP Scheme) [Section 39]
(C)	Final Return [Section 45]

GST PRACTITIONER	
Particulars	Provision
Meaning of GSTP	A registered person may authorise an approved GSTP to furnish information, on his behalf, to the Government.
Manner of Working	GSTN provides separate user ID and Password to GSTP to enable him to work on behalf of his clients without asking for their user ID and passwords.
Eligibility Criteria	<ul style="list-style-type: none"> ❖ Citizen of India ❖ Sound mind. ❖ Not be adjudged as an insolvent. ❖ Not be convicted of an offense with imprisonment of ≥ 2 years
Activities done by GST Practitioner	<p>A Goods and Services Tax (GST) practitioner can undertake any or all of the following activities on behalf of a registered person:</p> <ul style="list-style-type: none"> ❖ Furnish details of outward supplies (GSTR 1) ❖ Furnish monthly, quarterly, annual or final return (GSTR 3B, 4 and GSTR 9) ❖ Make deposit for credit into the electronic cash ledger; ❖ File a claim for refund; ❖ File an application for amendment or cancellation of registration; ❖ Generate e-way bill after furnishing information on the portal; ❖ Fill details of challan in GST ITC – 04; ❖ File an application intimating the tax authorities regarding payment of tax under composition scheme or withdrawal from the said scheme. <p>However, it has been provided that a confirmation from registered person is sought where an application relating to a claim for refund or an application for amendment or cancellation of registration has been submitted by the Goods and Services Tax Practitioner.</p>

CGST Late Fees

Class of persons	Late Fees per day (Subject to Maximum late fee per return)	Maximum Late fees per return	Notifications
Registered person who has Nil GSTR 3B / 1 / 4	Rs. 10 CGST, Rs. 10 SGST	Rs. 250 CGST, Rs. 250 SGST	19, 20, 21 /2021 - CT
GSTR 3B / 1 /4- Registered person having ATO upto 1.5 crores (other than nil returns)	Rs. 25 CGST Rs. 25 SGST	Rs. 1,000 CGST, Rs. 1,000 SGST	19, 20, 21 /2021-CT
GSTR 3B / 1 - Registered person having ATO > 1.5 crores (other than nil returns)	Rs. 25 CGST Rs. 25 SGST	Rs. 2,500 CGST, Rs. 2,500 SGST	19, 20/2021-CT
GSTR 7	Rs. 25 each	Rs. 1000 each	22/2021 – CT
Nil GSTR 7	Nil	Nil	23/2024 – CT

Quarterly Return Monthly Payment Scheme [QRMP] - Circular No. 143/13/2020- GST

- 1. Applicability: GSTR 3B can be filed quarterly** if turnover of preceding financial year is upto 5 crores.
- If turnover exceeds 5 crore in any quarter, the person shall opt out in next quarter.
- “OPT IN” for any quarter from 1st day of second month of preceding quarter to the last day of the first month of the quarter.
- QRMP Scheme - GSTIN wise not PAN wise

Returns under GST [Section 37 to Section 48] (3/3)

Quarterly Return Monthly Payment Scheme [QRMP] (Cont.)

EXPLANATIONS

PAYMENT MONTHLY AS PER

FIXED INSTALMENT METHOD: -

1. If previous quarter 3B was quarterly:

In 1st 2 months of current quarter, pay 35% of the tax paid in cash in the preceding quarter

2. If previous quarter 3B was monthly:

In 1st 2 months of current quarter, pay 100% of the tax paid in cash in the last month of preceding quarter

Monthly tax payment through this method would not be available to those registered persons who have not furnished the return for a complete tax period preceding such month. A complete tax period means a tax period in which the person is registered from the first day of the tax period till the last day of the tax period.

INTEREST CALCULATION FOR DELAYED PAYMENT UNDER FIXED INSTALMENT: -

- ❖ Interest would not be levied for shortfall (difference between actual liability & fixed sum determined) in the first two months provided that he discharges his entire liability for the quarter in the form GSTR -3B of the quarter by the due date.
- ❖ However, interest would be levied on shortfall (difference between actual liability & fixed sum determined) in the first two months from due date of quarterly GSTR 3B to actual filing of return if he does not discharge his entire liability for the quarter in the form GSTR 3B of the quarter by the due date.

Self-assessment method: -

- ❖ In this case actual net liability is to be paid, i.e., output (-) input tax
- ❖ Such registered persons would be required to furnish form GSTR – 3B, for each quarter, on or before 22nd or 24th day of the month succeeding such quarter.

Interest calculation for delayed payment under self-assessment method: -

Interest amount would be payable as per the provision of section 50 of the CGST act for tax or any part thereof (net of ITC) which remains unpaid / paid beyond the due date for the first two months of the quarter. Interest payable, if any, shall be paid through form GSTR 3B.

If cash balance is sufficient in E – cash ledger then no need to pay in 1st month. In second month if cash ledger has sufficient balance to discharge 2 months liability, then no need to pay.

Note: Payment in QRMP scheme has to be made by 25th of month succeeding month in which liability arose

Taxpayers will not be allowed to furnish or below GST returns after the expiry of 3 years from due date of filing such respective returns, i.e., GSTR 1 under section 37(5); GSTR 3B under section 39(11); GSTR 9 under section 44(2); GSTR 8 under section 52 (15)

Information Return [Section 150 of CGST Act] (NOT IMP)

AUTHORITY RESPONSIBLE TO FURNISH INFORMATION RETURN [S. 150(1)]:

Information return is based on the idea of verifying the compliance levels of registered persons through information procured from independent third-party sources.

Prescribed persons: Taxable person, State Government's authority responsible for the collection of VAT/sales tax/ State excise duty or Central Government's authority responsible for the collection of excise duty or customs duty, Income tax authority etc.

DEFECTIVE INFORMATION RETURN [SECTION 150(2)]:

In case of defective information return, the commissioner or officer shall intimate the defect to person who has submitted such information.

Opportunity of rectifying the defect within a period of 30 days from the date of such intimation or within such further period which, may be provided.

However, if the defect is not rectified within the said period of 30 days, it will be deemed that it has not been furnished

ISSUANCE OF NOTICE FOR FAILURE TO FURNISH THE INFORMATION RETURN WITHIN STIPULATED TIME [SECTION 150(3)]

If failed to furnish information return within specified time, then, a notice requiring furnishing of such information return **WITHIN A PERIOD NOT EXCEEDING 90 DAYS FROM THE DATE OF SERVICE OF THE NOTICE** and such person shall furnish the information return.

Penalty for not furnishing information within stipulated time [S. 123]: Rs. 100 CGST & Rs. 100 SGST for each day of the period during which the failure to furnish such return continues or Rs. 5,000/- (CGST); Rs. 5,000/- (SGST) whichever is lower.

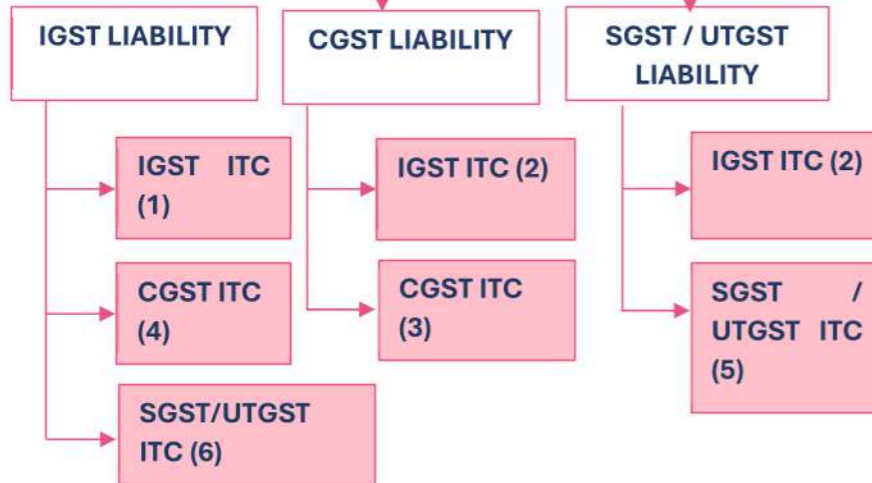
Payment of Tax, TDS, TCS [Section 49 to 53 r/w Rule 85 – 88, 88A, B, C, D] (1/4)

1. Payment of Taxes (GST) can be done through utilising ITC availed or through Cash (Bank).

Payment of Taxes through Input Tax Credit (Section 49B r/w Rule 88A) inserted vide CGST Amendment Act, 2018. Electronic Credit Ledger (ECL) (Rule 86)

All Liability like tax, interest, penalty etc. appears in electronic liability register.

Registered person may pay SGST / UTGST Liability prior to CGST Liability or vice versa (any order)



Payment of Tax through Electronic Cash Ledger [S. 49(1) r/w R. 87]

- Any amount paid (by certain modes see point 4) by the taxpayer, TDS, TCS claimed will be reflected in the electronic cash ledger.
- Registered person first utilises its ITC to pay of tax liability, balance liability can be paid off through cash ledger.

Major Heads	Minor Heads
IGST	Tax
CGST	Interest
SGST / UTGST	Penalty
Cess	Fees & Others

- Cash ledger Balance can be transferred from any major head's minor head to any other major head's minor head by filing PMT 09 [R. 87(13)].
 - IGST Cash or CGST cash ledger of a distinct person, can be transferred to distinct person. However, no such transfer can be done if liability is outstanding [R. 87(14)].
- Interest, Penalty & Late fee can be paid only through E – cash ledger.
 - Challan to be generated online (Manual is not allowed) in PMT 06 which will be valid for 15 DAYS:
 - Internet banking (authorized banks only)
 - Credit or debit card (authorized banks only), NEFT, RTGS, UPI, IMPS
 - Over-the-counter (OTC) payment (authorized banks only) for DEPOSITS UP TO RS. 10,000/- PER CHALLAN
 - Person supplying OIDAR services can deposit through international money transfer
 - Unregistered person has to make payment on the basis of TRN generated

- CGST & SGST paid in different state is not available as ITC.
- RCM Liability to be discharge in Cash
- When a person claims refund of UNUTILISED ITC (NOT WITH PAYMENT OF TAX), electronic credit ledger is debited.

RULES FOR PAYMENT OF TAX THROUGH INPUT TAX CREDIT:

- IGST ITC shall be used to discharge IGST liability
- Balance IGST ITC can be used to pay CGST Liability & SGST liability in any proportion.
- CGST ITC cannot be utilised to pay SGST liability & SGST ITC cannot be used to pay CGST liability.
- In case where, after paying IGST Liability through IGST ITC, IGST liability remains unpaid, then CGST ITC can be used for paying IGST Liability **BUT ONLY AFTER** CGST Liability is paid. Further, if still IGST liability is pending, then SGST ITC can be used for paying IGST Liability **BUT ONLY AFTER** SGST Liability is paid.

Imp Notes:

- RCM liability shall be paid only in cash, thus, to be added at the end.
- ITC shall be added (if eligible) in respect of RCM, in the same month, which can be used to pay output tax liability (FCM)

2. About Electronic Liability Ledger [GST PMT – 01]

It is ledger on GST Portal, showing liabilities of taxpayer such as 3B liability, Liability determined by officer.

(i) Order of discharge of tax and other dues

As per Section 49(8) of CGST Act, following shall be the order of discharge of dues:

- Past period Self-assessed tax and other dues
- Current period Self-assessed tax and other dues
- Amount payable under section 73 or section 74, 74A

(ii) What is Debited in Electronic liability ledger?

- The E-Liability register of a person shall be debited by
 - Amt payable towards tax, interest & fees as per return furnished by him,
 - tax, interest, penalty or late fees determined by PO and
 - Amt of interest that may accrue from time to time

3. Disallowance of ITC if availed fraudulently [R. 86A]

Officer **NOT BELOW THE RANK OF AN ASSISTANT COMMISSIONER** can restrict Utilisation of ITC from E – credit ledger if it is fraudulent ITC*.

*Fraudulent ITC means: -

- ITC passed on by person who has not conducted business from regd. POB
- ITC in respect of which GST not paid by Tax payer
- ITC availed by person who has not conducted business from Regd. POB
- No possession of tax invoice or debit note.

Other points: -

- If commissioner is satisfied that above conditions does not exist then he may allow such debit [R. 86A (2)]
- Restriction period – 1 year

4. Payment of Interest on Delayed Payment of Tax [Section 50 of CGST Act r/w 88B]

Interest on Late Payment of "Net Tax" Liability

- If GST is not paid within due date, then it shall be paid along with interest @ 18% from 1st day after due date till the date of payment on **Net Cash Liability [i.e., O/P Liab (-) ITC]**
- If a certain month's liability is discharged in further month's ITC in GSTR 3B, then interest will be levied on **Gross Liability**.
- If return is filed after officer has issued order u/s 74A, interest shall be levied on gross GST liability.

Interest on Availment and utilisation of incorrect ITC:

- If recipient avails **AND** utilises incorrect ITC, int shall be levied @ 18% on incorrect ITC availed and utilised from **date of utilisation of ITC** till the date of reversal of ITC.

Date of utilisation of ITC would be as below:

If Tax is paid through return (3B): Due date to file 3B or actual filing date whichever is earlier.

If Tax is paid through other means (DRC 03): the date of debit in the electronic credit ledger (PMT 02) when the balance in the electronic credit ledger. **(Refer example on next page)**

If return is filed after officer has issued order u/s 74A, interest shall be levied on gross GST liability.

Proviso: If Tax is deposited in E – Cash Ledger on or before due date but used for paying liability in 3B after due date then interest shall not be calculated on such portion

Payment of Tax, TDS, TCS [Section 49 to 53 r/w Rule 85 - 88] (2/4)

Month	Opening Balance	Eligible ITC	Incorrect ITC	Total ITC	O/P Tax liability	Closing Balance	Amount on which Interest is applicable
April	-	3,60,000	40,000	4,00,000	3,50,000	50,000	0 [As closing balance is more than incorrect availment]
May	50,000	2,50,000	-	3,00,000	2,80,000	20,000	20,000 [Electronic credit ledger balance i.e., 20,000 falls below Incorrect ITC 40,000 by Rs. 20,000. Thus, 20,000 is deemed to be utilised]
June	20,000	1,80,000	-	2,00,000	1,95,000	5,000	15,000 [Balance incorrect ITC was Rs. 20,000; however, electronic credit ledger balance was Rs. 5,000, Thus, interest would be levied on 15,000]
July	5,000	1,90,000	-	195,000	2,10,000	-	5,000 [Since credit ledger balance is 0, entire ITC has been utilised for payment of tax, thus, balance incorrect ITC would be liable to interest]

Note: Closing balance shall be compared of the head for which such ITC is usable. For example: If IGST ITC is wrongly availed and utilised, compare the same with sum total of closing balance of IGST, CGST, SGST.

Rule 86B: Turnover > 50 Lakhs per month - ITC shall be used to the extent of 99% of Gross Output Tax Liability (Subject to conditions)

As per rule 86B, if supplier's turnover in a particular month exceeds Rs. 50 lakh, then at least 1% liability shall be paid through E – cash ledger.

T/O: Exempt supply and zero-rated supply not to be considered

Example: If rate of Tax on certain product is 18%, & a firm is supplying taxable goods & services amounting to Rs. 60,00,000. The amount of Rs. 10,800 [Rs. 60,00,000 x 18% x 1%] shall be payable in Cash.

Meaning of liability: RCM liability shall not be taken into consideration over here.

Exceptions [In below cases, a regd. person can use full Input tax credit for making payment of output tax]:

- (i) The said person or the proprietor or karta or the managing director or any of its two partners, whole-time Directors, Members of Managing Committee of Associations or Board of Trustees, have paid > Rs. 1 lakh as Income tax in each of the last two financial years of ITR Filed.
- (ii) Obtained refund of Unutilised ITC > 1 Lakh for export of goods or services or supply to SEZ
- (iii) Cumulative Payment in Cash > 1% applied cumulatively: Every month (including current month) supplier shall check [Liability discharged in cash divide by total liability]. If it is more than 1%, then no need to pay GST in cash in current month.
- (iv) The registered person is Government Department; or a Public Sector Undertaking; or a local authority; or a statutory body.

IMP TERMS:

1. **Common Portal Identification Number (CPIN) – 14 DIGIT**

2. **CIN or Challan Identification Number – 18 digits number (14 digits CPIN + 4 digits Bank Code).**

Upon successful credit to authorized bank A/c, a Challan Identification No is generated and on the basis of this CIN, E-cash is credited.

3. **Bank Reference Number (BRN)**

4. **E – FPB (Authorised bank branches to collect GST, For NEFT/RTGS Transactions, RBI will act as E-FPB.)**

Rule 88C: Difference in liability reported in statement of outward supplies and that reported in 3B

If tax payable by supplier shown in GSTR 1 > GSTR 3B, then registered person shall be intimated of such difference by e-mailing, highlighting the said difference and directing him to:

- ❖ **Pay** the differential tax liability, along with interest under section 50,
- ❖ **Explain** the aforesaid difference in tax payable within a period of **7 days**.

The **registered person shall, either:** -

- ❖ **Pay** the amount of the differential tax liability, along with interest under section 50, or
- ❖ **Furnish a reply** electronically incorporating reasons

Where supplier does not pay or does not reply **within 7 days** then proper officer, can recover in accordance with the provisions of section 79 (**recovery proceedings**)

Tax Deduction at Source (S. 51)

WHO HAS TO DEDUCT TDS?

- a) A CG department or establishment
- b) Local authority,
- c) Governmental agencies,
- d) An authority or a board or any other body, -
 - ❖ Set up by an Act of Parliament or a State Legislature; or
 - ❖ Established by any Government; with 51% or more equity control;
- e) Society established by the CG / SG / LA under the Societies Registration Act, 1860
- f) PSU
- g) Regd. Metal Scrap Dealer

WHEN TO DEDUCT TDS? [Analysis of Whole provision]

- ❖ **Contract value exceeds Rs. 2,50,000 (excluding Taxes & Cess)**
- ❖ **Supplier shall be registered person** (incl. Composition) and the supplies shall be **taxable supplies**.
- ❖ TDS shall be **deducted only at the time of payment** (incl. Advances)
- ❖ "Taxable" proportion of contract shall be seen for determining applicability. [Example: If a contract is of Rs. 9,00,000 (excl. GST), out of which Rs. 2,20,000 is taxable supply & 6,80,000 (exempt supply), TDS will not be applicable]

RATE OF TDS: 1% CGST, 1% SGST (In case of IGST 2%)

WHEN NOT TO DEDUCT?

- ❖ When LOS = POS which is other than LOR, then not to be deducted. (whenever LOR is other than POS then not to be deducted)
- ❖ Further if supplier and recipient both are from (a) to (f) then not to deduct.

Other Points:

- ❖ Late payment attracts interest @ 18% p.a. from due date of payment till the date of actual payment.
- ❖ TDS credited in E – Cash ledger. TDS certificate (form GSTR – 7A) shall be given by dedr to dedee within 5d from credit.
- ❖ Tax Deductor has to obtain compulsory registration u/s 24 of CGST Act & return to be filed in Form GSTR 7
- ❖ **Any regd. person supplying metal scrap to another regd. person shall be liable to deduct Tax at source @ 2%. Same provisions will be applicable.**

Payment of Tax, TDS, TCS [Section 49 to 53 r/w Rule 85 - 88] (3/4)

6. TAX COLLECTION AT SOURCE [SECTION 52]

Tax Collection at Source (S. 52 of CGST Act)

Are you an E – commerce operator?

Yes

Whether Supplier makes taxable supplies through ECO [other than 9(5) of CGST / 5(5) of

Yes

Whether Consideration is collected by ECO?

Yes

Liable to Collect Tax (from Supplier) @ 0.5% of Net Value of Taxable supplies made during the relevant month. (0.25% CGST, 0.25% SGST/UTGST; 0.5% IGST)

Notes & interlinking of various chapters: -

- (i) **Net Value** of taxable supplies = **Total Supplies (-) Returns**
- (ii) TCS to be **deposited upto 10th of next month**
- (iii) E – statement in **GSTR - 8 to be filed upto 10th of Next month**
- (iv) **Annual statement by 31/12 of succeeding financial year (Not yet notified)**
- (v) **Time-limit to rectify mistake** in monthly statement –
 - ❖ **30TH November of succeeding financial year or,**
 - ❖ **Actual date of furnishing Annual statement**
 whichever is earlier
- (vi) An officer not below the rank of Deputy Commissioner can issue notice to an operator, asking him to furnish details. The ECO shall furnish w/i 15 working days. If not submitted penalty u/s 122 (Rs. 25k)
- (vii) TCS is not collected on Services provided by ECO u/s 9(5) of CGST Act.

Rule 88D: Rule Inserted to deal with difference in ITC reflecting in GSTR 2B & Claimed in GSTR 3B

If ITC availed by recipient in GSTR 3B > GSTR 2B in excess of notified %, then registered person shall be intimated of such difference by e-mailing, highlighting the said difference and directing him to:

- ❖ Pay the differential tax liability, along with interest under section 50,
- ❖ Explain the aforesaid difference in tax payable within a period of 7 days.

The registered person shall, either: -

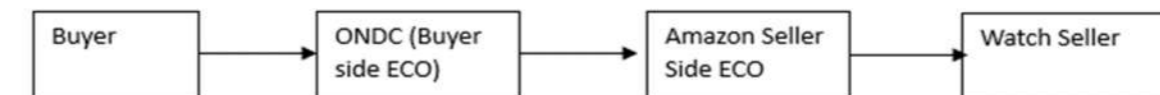
- ❖ Pay the amount of the differential tax liability, along with interest under section 50, or
- ❖ Furnish a reply electronically incorporating reasons

Where supplier does not pay or does not reply within 7 days then proper officer, can determine the liability as per section 73 or 74 as the case may be.

Clarification on TCS liability under Sec 52 of the CGST Act, 2017 in case of multiple E-commerce Operators in one transaction. [Circular No. 194/06/2023-GST dtd. 17th July, 2023]

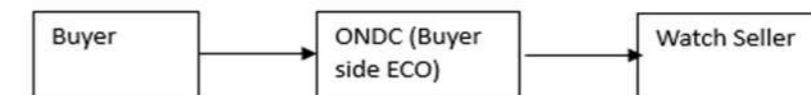
This circular discusses the liability to collect TCS in cases where there is involvement of more than one E-commerce operator. Government launched ONDC Network is a classic example of aggregators of E – commerce operators. ONDC is an app through which you can compare pricing of a certain product instantly on different ECO. For example, you want to buy watch you can check the comparative current pricing of watch together on Amazon, Flipkart, Watch suppliers' website etc. The said circular clarifies TCS liability aspects. Below example would help in explaining the provision much better:

Example 1:



In this case, ONDC collects payment through buyer and remits it to Amazon, in this case Amazon shall be liable to deduct TCS while paying to Watch seller.

Example 2:



In this case, ONDC collects payment through buyer and remits it to Watch seller, thus, ONDC shall be liable to deduct TCS.

Payment of Tax, TDS, TCS [Section 49 to 53 r/w Rule 85 - 88] (4/4)

Case I: [Excess IGST ITC distributed Equally]

Particulars	IGST	CGST	SGST
Output Tax Liability	1,80,000	75,000	75,000
Input Tax Credit	2,00,000	62,500	62,500

Solution: -

Particulars	IGST	CGST	SGST
Output Tax Liability	1,80,000	75,000	75,000
Input Tax Credit			
IGST ITC	(1,80,000)	(10,000)	(10,000)
CGST ITC	-	(62,500)	
SGST ITC	-		(62,500)
Net Liability	-	2,500	2,500

Notes: -

- ❖ IGST ITC of Rs. 2,00,000 will be first utilised to pay IGST Liability (to the extent required), here we require only Rs. 1,80,000/-
- ❖ Balance IGST ITC will be utilised in equal proportion to pay CGST SGST liability, thus, Rs. 10,000 of IGST ITC would be allocated to pay CGST Liability & Rs. 10,000 of IGST ITC would be allocated to pay SGST Liability.
- ❖ Net liability of Rs. 2,500 CGST & 2,500 SGST shall be paid in Cash

Case II: [Short IGST ITC]

Particulars	IGST	CGST	SGST
Output Tax Liability	1,80,000	75,000	75,000
Input Tax Credit	1,60,000	95,000	95,000

Solution: -

Particulars	IGST	CGST	SGST
Output Tax Liability	1,80,000	75,000	75,000
Input Tax Credit			
IGST ITC	(1,60,000)	-	-
CGST ITC	(20,000)	(75,000)	
SGST ITC	-		(75,000)
Net Liability	-	-	-
Balance c/f	-	-	20,000

Notes: -

- ❖ IGST ITC of Rs. 1,60,000 will be first utilised to pay IGST Liability. Thus, fully it shall be utilised.
- ❖ Balance IGST ITC shall be utilised to pay CGST SGST liability. However, in this case, excess IGST ITC is not there, thus no CGST & SGST liability can be paid.
- ❖ IGST liability can be paid through CGST Credit, however, only after CGST liability ITC is paid. Accordingly, Rs. 75,000 (CGST credit) shall be used to pay CGST liability balance 20,000 would be used to pay IGST liability.
- ❖ It is to be noted that in next month SGST balance would be higher than that of CGST Balance by Rs. 20,000/-

Case III: [Excess IGST ITC distributed Unequally]

Particulars	IGST	CGST	SGST
Output Tax Liability	1,80,000	75,000	75,000
Input Tax Credit	2,10,000	62,500	82,500

Solution: -

Particulars	IGST	CGST	SGST
Output Tax Liability	1,80,000	75,000	75,000
Input Tax Credit			
IGST ITC (WN)	(1,80,000)	(25,000)	(5,000)
CGST ITC		(50,000)	
SGST ITC			(70,000)
Net Liability	0	0	0
Balance c/f	0	12,500	12,500
		(62,500-50,000)	(82,500-70,000)

WN to Distribute ITC: -

Particulars	CGST	SGST
	62,500	82,500
Balancing Figure [IGST ITC of 20,000 from Rs. 180,000 shall be first given to pay CGST liability]	*20,000	
	62,500	82,500
Balance IGST ITC (shall be distributed equally)	5,000	5,000
Total IGST Distribution	25,000	5,000

Steps:

- First write down CGST & SGST ITC balances
- Write higher total on both the sides
- Write balancing figure on shorter side (represents the amount of IGST to be distributed to pay particular liability)
- Then once equated it can be distributed equally

Notes: -

- ❖ IGST ITC of Rs. 2,10,000 will be first utilised to pay IGST Liability (to the extent required), here we require only Rs. 1,80,000/-
- ❖ Balance IGST ITC (Rs. 30,000) will be utilised in proportion (as determined above) to pay CGST & SGST liability.
- ❖ Net liability is 0

Case IV: [Excess IGST ITC distributed Unequally]

Particulars	IGST	CGST	SGST
Output Tax Liability	1,80,000	75,000	75,000
Input Tax Credit	2,10,000	70,000	70,000

RCM liability = Rs. 2,500 CGST & 2,500 SGST (ITC is eligible)

Solution: -

Particulars	IGST	CGST	SGST
Output Tax Liability	1,80,000	75,000	75,000
Input Tax Credit			
IGST ITC (WN)	(1,80,000)	(15,000)	(15,000)
CGST ITC (incl. RCM)		(60,000)	
SGST ITC (incl. RCM)			(60,000)
Net Liability	0	0	0
RCM Liability		2,500	2,500
Balance c/f	0	12,500	12,500
		(70-60+2.5)	(70-60+2.5)

RCM liability is to be discharged in cash; therefore, it will be added in net liability and ITC.

Refunds under GST [Section 54 to 58 r/w Rule 89 - 97] (1/4)

(I) BASIC TIME-LIMIT TO FILE REFUND APPLICATION:

As per Section 54(1) r/w Rule 89, refund shall be claimed by a registered person **SUBJECT TO RULE 10B (Aadhar Authentication)** within **2 YEARS FROM THE RELEVANT DATE (except Cash ledger refund)**.

(ii) Refund Scenarios: It shall be noted that refund can be arising on account of: -

PART (A) Zero rated supplies with & without payment of tax, inverted duty structure, deemed exports, merchant exports

PART (B) Other circumstances (such as refund of wrong tax, refund to CTP, NRTP etc.)

(A) ZERO RATED SUPPLIES WITH & WITHOUT PAYMENT OF TAX

Supply of goods or services **TO SEZ FOR AUTHORISED OPERATIONS & Export of goods or services is zero rated supply**. If it is done under LUT then refund can be claimed under below rule 89(4).

(i) Formula to Compute Refund

$$\text{Refund Amount} = \text{Net ITC} \times \frac{\text{Turnover of ZRS of Goods \& Services}}{\text{Adjusted Total Turnover (iii)}}$$

Analysis of Formula

(i) Refund Amount [Para 37 of Circular 125]	Refund amount shall be lower of (a), (b) or (c) as below: a) Total as per Formula: b) Balance at end of Tax period (after covering said tax period) c) Balance in Credit Ledger at the time of filing refund:
(ii) Net ITC	Net ITC here means Input Tax credit on Inputs & Input Services (Not Capital Goods)
(iii) Turnover of Zero-Rated supply of Goods	(a) Lower of ❖ the Free on Board (FOB) as per Shipping Bill or Bill of Export or ❖ Invoice Value, OR, (b) 1.5 times of domestic price of same product Other points: ❖ As per Rule 96B, if proceeds from EXPORT OF GOODS WITH OR WITHOUT PAYMENT OF TAX are not realised within FEMA time limit, then refund granted would be recovered. ❖ If amount is realised thereafter, exporter has to intimate the department within 3 months from realisation of proceeds, then refund would be sanctioned accordingly.
Others	➤ Exporter shall realise export proceeds within time-limit as per FEMA, however, if it fails to do so, he shall be liable to pay back the refund granted to him within 30 days from expiry of time-limit to repatriate the proceeds along with interest u/s 50 of CGST Act. ➤ A registered person exporting without pmt. of tax is required to furnish Letter of Undertaking (LUT), prior to export, binding himself to pay the tax due along with applicable interest within a period of: ❖ Expiry of 3 months 15d , from the invoice date for export, if the goods are not exported or; ❖ Expiry of 1-year 15d from the invoice date for export, if the payment is not received. In context to above below clarifications are given by CBIC: ❖ SUBSEQUENT TO EXPORT of the goods or realization of payment in case of export of services, exporter would be ENTITLED TO CLAIM REFUND ❖ No interest on refund would be given ❖ Refund can be filed in "EXCESS PAYMENT OF TAX" OR "ANY OTHER" on portal

Analysis (Contd.)

(iv) T/O of Zero-Rated supply of Services	Zero-Rated Supply of Service = It shall be part of turnover in the month of Consideration received or Invoice raised whichever is later [Thus, advance recd. Will form part of turnover only when invoice is raised] (<i>Amount recd. in Spl. Vostro A/c shall be treated as received in forex</i>)					
(v) Adjusted Total Turnover (Denominator) [R. 89(4) of CGST Rules]	Adjusted Total Turnover shall include					
	<table border="1" style="width: 100%;"> <thead> <tr> <th style="width: 50%;">Include (+)</th> <th style="width: 50%;">(-) or exclude</th> </tr> </thead> <tbody> <tr> <td>Taxable T/O of Goods or Services</td> <td>➤ GST & Cess</td> </tr> <tr> <td>Zero rated services as added in (iv) above</td> <td>➤ Exempt Supplies other than zero rated supplies of exempt supplies</td> </tr> </tbody> </table>	Include (+)	(-) or exclude	Taxable T/O of Goods or Services	➤ GST & Cess	Zero rated services as added in (iv) above
Include (+)	(-) or exclude					
Taxable T/O of Goods or Services	➤ GST & Cess					
Zero rated services as added in (iv) above	➤ Exempt Supplies other than zero rated supplies of exempt supplies					
Relevant Period	Relevant period means the period for which the claim has been filed.					
Documentation	Drawback & Export Duty declaration, LUT, Statement 3A (Invoice and shipping bill details), Copy of 2B, Annexure B (ITC bifurcation of 3B), BRC, FIRC, Endorsement that supply done to SEZ.					

Inverted Duty Structure [S. 54(3) r/w R. 89(5)]

Inverted Duty Structure	INPUT TAX RATE HIGHER THAN OUTPUT TAX IS CALLED AS INVERTED DUTY. If output tax rate is Nil it is exempt supply, it would NOT constitute inverted duty structure
Formula	$\frac{\text{Turnover of Inverted supply of goods \& services}}{\text{Adjusted Total Turnover}} \times \text{Net ITC} \text{ (-)}$ Tax payable on such inverted rated supply of goods and services x Net ITC / ITC availed on inputs and input services
(i) Net ITC	Net ITC shall mean input tax credit availed ON "INPUTS" for the relevant period.
(iii) Adjusted Total Turnover	Adjusted Total Turnover & Relevant period definitions are same as discussed in (1) above
Department Clarifications	(a) Manufacturer supplier to merchant exporter shall claim refund u/Rule 89(5) (b) In case of reduction of rate refund NOT ALLOWED on account of reduction in GST Rate (c) Purchased on normal rate, but sold under concessional rate, refund can be claimed. (d) In case of works contract services, inverted duty structure refund cannot be claimed.
Documentation (NOT RELEVANT)	Drawback & Export Duty declaration, Declaration that not engaged in exempt supply, Statement 1, 1A (Invoice details and purchase details), Sec 16(2)(c) declaration, Copy of 2B, Annexure B (ITC bifurcation of 3B), BRC, FIRC, Endorsement that supply done to SEZ, self-declaration/CA Certificate.

Refund of IGST on account of upward revision of price [Rule 89(1B)]

- ❖ Exporters who paid additional IGST (on payment of tax) due to upward price revision after export can claim refund in FORM GST RFD-01 electronically.
- ❖ Refund must be applied before two years from the relevant date (shipment/dispatch date).
- ❖ Application requires export invoices and shipping bills with copies.
- ❖ Must provide Bank Realisation Certificate/foreign inward remittance details, refund sanctioned earlier, and supplementary invoices/debit notes.
- ❖ Proof of payment of additional IGST with interest, and a CA/Cost Accountant certificate confirming additional foreign exchange remittance is needed.
- ❖ A reconciliation statement with supporting BRC/FIRC from AD-I Bank must also be furnished.

Refunds under GST [Section 54 to 58 r/w Rule 89 - 97] (2/4)

DEEMED EXPORTS

Meaning of Deemed Export & Logic behind the concept:

Notified Deemed Exports: As per Section 147 of CGST Act r/w NN 48/2017 - CT dtd. 18.10.2017 following would be treated as deemed exports.

- (i) Supply of goods by a RP **AGAINST ADVANCE AUTHORISATION**
- (ii) Supply of capital goods by a RP **AGAINST EXPORT PROMOTION CAPITAL GOODS AUTHORISATION (EPCG)**
- (iii) Supply of goods by a registered person **TO AN EXPORT ORIENTED UNIT (EOU)**, Electronic Hardware Technology Park Unit (EHTP) or Software Technology Park Unit (STP) or Bio-Technology Park Unit (BTP).
- (iv) Supply of gold by Bank or Public Sector Undertaking against AA

In case of Deemed exports, refund can be claimed by supplier. Thus, it is to be noted that supplier cannot collect GST to recipient, but has to pay GST through his ITC, and has to claim refund of Output Tax.

PART A(4). MERCHANT EXPORTS - NN 40/2017 - CTR OR 41/2017 - ITR

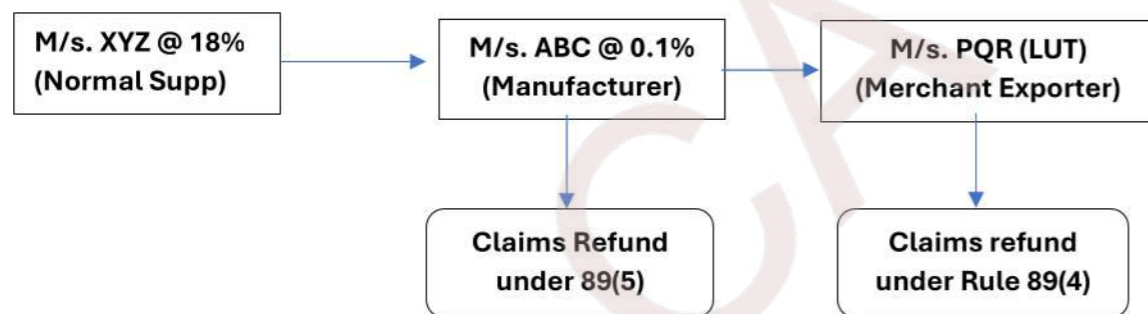
Under Notification Nos. 40/2017 (CGST Rate) and 41/2017 (IGST Rate), dated 23 October 2017:

1. On Satisfaction of certain conditions, a mfg. can supply to merchant exporter at 0.1% GST Rate.
2. **Conditions:**
 - Merchant Exporter – must be GST-registered + registered with EPC/Commodity Board.
 - Export Timeline – goods must be exported within 90 days of supplier's invoice.
 - Movement – goods to go directly to port/ICD/airport/LCS or registered warehouse.
 - Invoice Details – shipping bill/export docs must carry supplier's GSTIN + invoice no.
 - Payment – through banking channels only (no cash).
 - Proof – exporter must keep evidence of export (endorsements, shipping bill).
 - Default – if not exported in 90 days → full GST + interest payable.

Important Note:

If a merchant exporter does not have LUT, he **cannot procure goods at concessional rates**. If supplier

Diagram:



Refund claim by Unregd. Person

Description
<p>Section under which refund is allowed</p> <ul style="list-style-type: none"> ❖ Refund can be claimed by unregd. person when ❖ At the time of cancellation of contract ❖ Time-limit to issue CN with GST is expired for supplier and tax incidence is not passed
<p>Manner</p> <ul style="list-style-type: none"> ❖ Take temporary registration ❖ Aadhar Authentication and ❖ Provide bank details, and apply for refund under the 'Refund for Unregistered person.'
<p>Statement:</p> <p>Where the refund is claimed by an unregistered person where the agreement or contract for supply of service has been cancelled or terminated: -</p> <p>When refund is claimed by unregd. recipient: Rule 89(2) (ka): -</p> <ul style="list-style-type: none"> ❖ A statement containing the details of invoices & copies viz. number, date, value, tax paid and ❖ Details of payment along with proof, copy of agreement or registered agreement or contract, The letter issued by the supplier for cancellation, Details of payment received from the supplier against cancellation or termination of such agreement along with proof thereof. ❖ When refund is claimed by supplier: Rule 89(2) (kb): A certificate issued by the supplier that he has paid tax in respect of the invoices on which refund is being claimed by the applicant; that he has not adjusted the tax amount involved in these invoices against his tax liability by issuing credit note; and also, that he has not claimed and will not claim refund of the amount of tax involved in respect of these invoices.
<p>Time period for issuance of CN is not yet expired</p> <p>Where the time period for issuance of credit note under section 34 of the CGST Act has not expired supplier shall reduce output tax liability and shall repay back to the unregistered buyer.</p>
<p>Relevant date for filing of refund</p> <p>Date of issuance of letter of cancellation of the contract/ agreement for supply by the supplier will be considered as the date of receipt of the services by the applicant.</p>
<p>No refund shall be claimed if the amount is less than one thousand rupees.</p>
<p>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.</p>

Refund to Canteen Stores Department (New Rule 95B)

- (i) Canteen Stores Department (CSD) is a Govt. of India enterprise under the Ministry of Defence with depots at major military bases.
- (ii) Eligible for 50% refund of central tax paid on inward supplies of goods supplied to URCs (Unit Run Canteens) or authorised customers.
- (iii) Refund must be applied quarterly in FORM GST RFD-10A on the common portal.
- (iv) Applications are processed similar to FORM GST RFD-01 under Rule 89.
- (v) Refund available only if:
 - Goods received from registered suppliers with valid tax invoices.
 - Supplier has reported the supply in GSTR-1 & GSTR-3B.
 - CSD's GSTIN & name mentioned on invoice.
 - Goods are received for supply to URCs or authorised customers only.

Refunds under GST [Section 54 to 58 r/w Rule 89 - 97] (3/4)

PART B: OTHER CIRCUMSTANCES OF REFUND

- (a) **Refund Voucher**
- (b) **Refund of Wrong Tax paid**
- (c) **Refund to CTP/NRTP: Can be claimed after last return is filed**
- (d) **Refund of Balance in Electronic Cash Ledger**
- (e) **On consequence of any judgement, order or direction of Higher Authority**
- (f) **On finalization of provisional assessment**
- (g) **Refund of Tax paid on purchase made by UN bodies or embassies.** (Such persons have to claim refund once in every quarter but before expiry of **2 years** from last day of quarter.) They can also claim refund of IGST paid on Import of Goods

Notes:

(i) **Declaration that Tax Incidence have not passed is not reqd.** when refund is upto **Rs. 2,00,000/-**. In case refund claim **exceeds Rs. 2,00,000/-** then **CA Certificate would be required to be attached.** However, in below 5 cases, CA /CMA certificate in Annexure 2 of RFD -01/ self-declaration is also **NOT required. [R. 89(2)(m)].**

However, in below cases, such declaration is not required:

- ❖ Export of goods or services on payment of IGST [S. 54(8)(a)]
- ❖ Refund of Unutilised input tax credit [S. 54(8)(b)]
- ❖ Refund voucher [S. 54(8)(c)]
- ❖ Refund of Wrong Tax Paid [S. 54(8)(d)]
- ❖ Notified Applicants [S. 54(8)(f)]
- ❖ Refund on account of E – cash ledger (Circular No. 166/22/2021-GST)

Note: As per section 54(8), **except these 6 cases** and where refund is on account of the tax and interest, if any, or any other amount paid by the applicant, if he had not passed on the incidence of such tax and interest to any other person; **the refund shall be credited to consumer welfare fund**

Concept of Relevant Date

Sr. No.	Case	Relevant Date is date of/on which
1.	Goods are exported by sea or air	Goods leave India (LEO)
2.	Goods are exported by land	Goods pass the frontier.
3.	Goods are exported by post	Despatch of goods by the Post
4.	Deemed Exports	Return 3B is furnished (by supplier).
5.	Export of services	Receipt of Cons. Or Inv Whichever is Later.
6.	Refundable as per higher authority order	Communication of such judgment/direction
7.	Inverted duty structure	Due date for furnishing 3B
8.	Provisional Assessment Order > Final Assessment order	Of adjustment of tax after the final assessment
9.	A person, other than the supplier	Receipt of goods or services
10.	Other case	Payment of tax
11.	Refund of wrong tax paid	Payment of Correct Tax
12.	Supply to SEZ/SEZ on Payment of tax	Due date for furnishing 3B

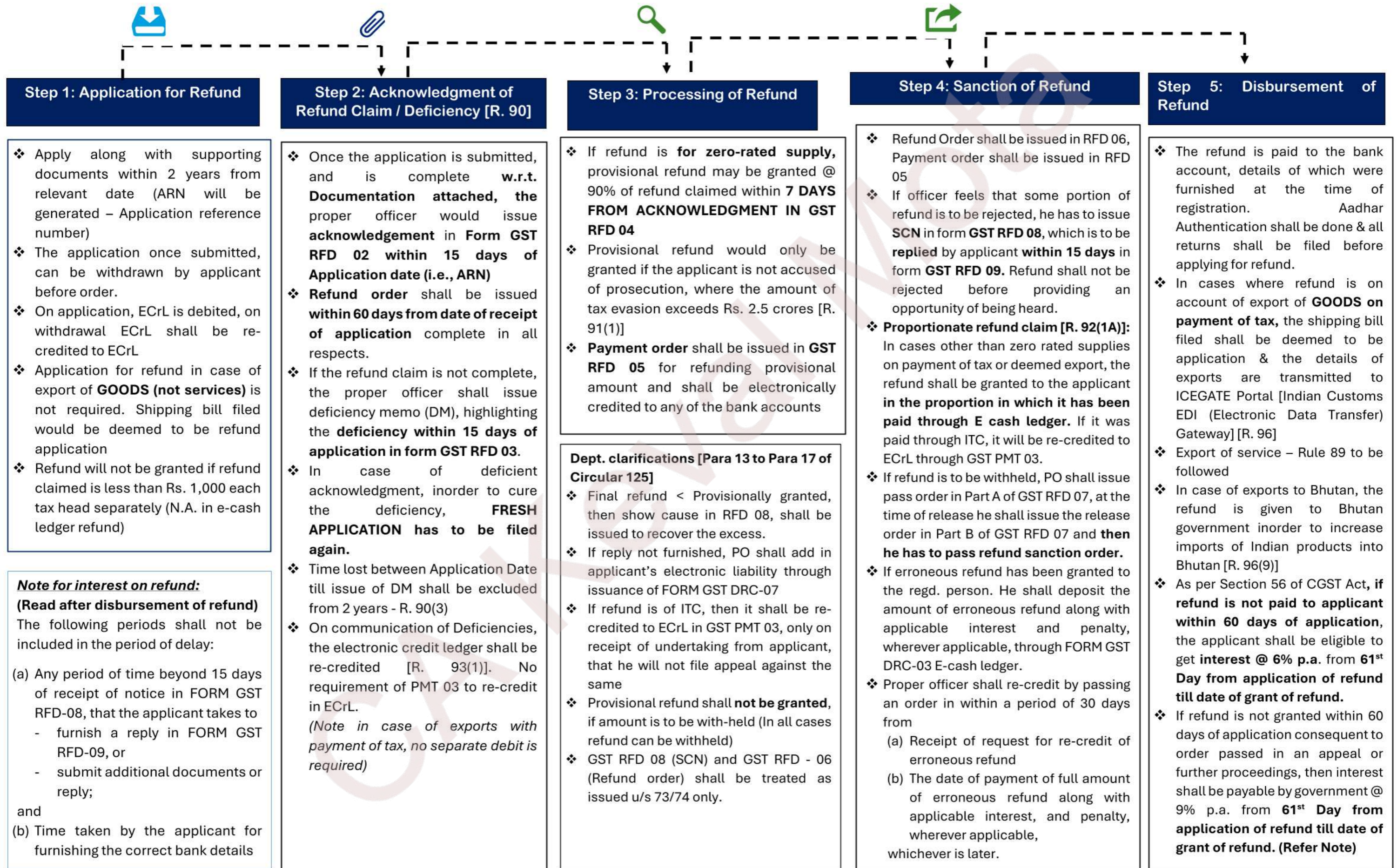
Procedure for taking goods outside India for Exhibition purpose [Circular]

Aspect	Analysis
Supply	<ul style="list-style-type: none"> ❖ Since there is no consideration and does not fall in Schedule I, it is <u>not</u> a supply. ❖ Thus, it is not zero-rated “supply”. Thus, goods can be sent even without LUT & question of refund does not arise at the time of sending goods.
Documentation (Tax Invoice & Delivery Challan) to be kept by taxable person.	<ul style="list-style-type: none"> ❖ Delivery challan under Rule 55 ❖ If the goods are not brought back within 6 months from date of removal, it shall be deemed to be supplied on expiry of 6 months. ❖ Thus, treated as supply & tax invoice (R. 46) shall be raised on expiry of 6 months.
Accounts & Records	R.P. shall maintain a record such as Description, removal date, quantity, value, shipping bill No., details of goods not bought back etc.
Refund of Tax for goods sent out of India.	<p>When it is treated as supply it would be a Zero – rated supply & refund of tax is permissible.</p> <p>It will be treated as supply: -</p> <ul style="list-style-type: none"> (i) Not sold Not bought back: On the date of expiry of six months from removal, or (ii) Sold within Six Months: On the date of sale <p>Even if goods are treated as supply in case (i) & (ii) as above, the refund u/s 89(4) can only be claimed in respect of (ii) only i.e., goods actually sold abroad within 6 months.</p>

Clarification in respect of Advances | Refund Voucher | GSTR 3B aspects [Circular No. 137/07/2020-GST]

Sr. No.	Case	Clarification
1	<p>CASE 1:</p> <ul style="list-style-type: none"> ❖ An advance is received ❖ Contract cancelled. ❖ Tax Invoice was issued <p>OR;</p> <p>CASE 2:</p> <ul style="list-style-type: none"> ❖ Goods supplied under tax invoice are returned 	<p>Whether he can claim refund of tax paid or is he required to adjust his tax liability in his returns?</p> <p>Supplier - to issue a “credit note” in terms of section 34 of the CGST Act.</p> <p>No need to file a separate refund claim in such a case.</p> <p>In cases where there is no output liability against which a credit note can be adjusted, registered persons can claim refund under “Excess payment of tax, if any” through FORM GST RFD-01.</p>
2	<p>CASE 3:</p> <ul style="list-style-type: none"> ❖ An advance is received ❖ Contract cancelled. ❖ Receipt voucher was issued 	The taxpayer can apply for refund of GST paid on such advances by filing FORM GST RFD-01 under the category “Refund of excess payment of tax”.

Procedural Aspects in respect of Refund Filing [S. 54 r/w Rule 90 to 97] (4/4)



Assessment & Audit [Section 59 to 66 of CGST Act r/w R. 98 to R. 102] (1/2)

In terms of Section 2(11) of the Act, "assessment" means determination of tax liability under this Act and includes self-assessment, re-assessment, provisional assessment, summary assessment and best judgement assessment.

1. Self-Assessment [S. 59]

Every registered person shall **self-assess the taxes** payable under this Act and furnish a return (GSTR 3B) for each tax period as specified under **section 39**.

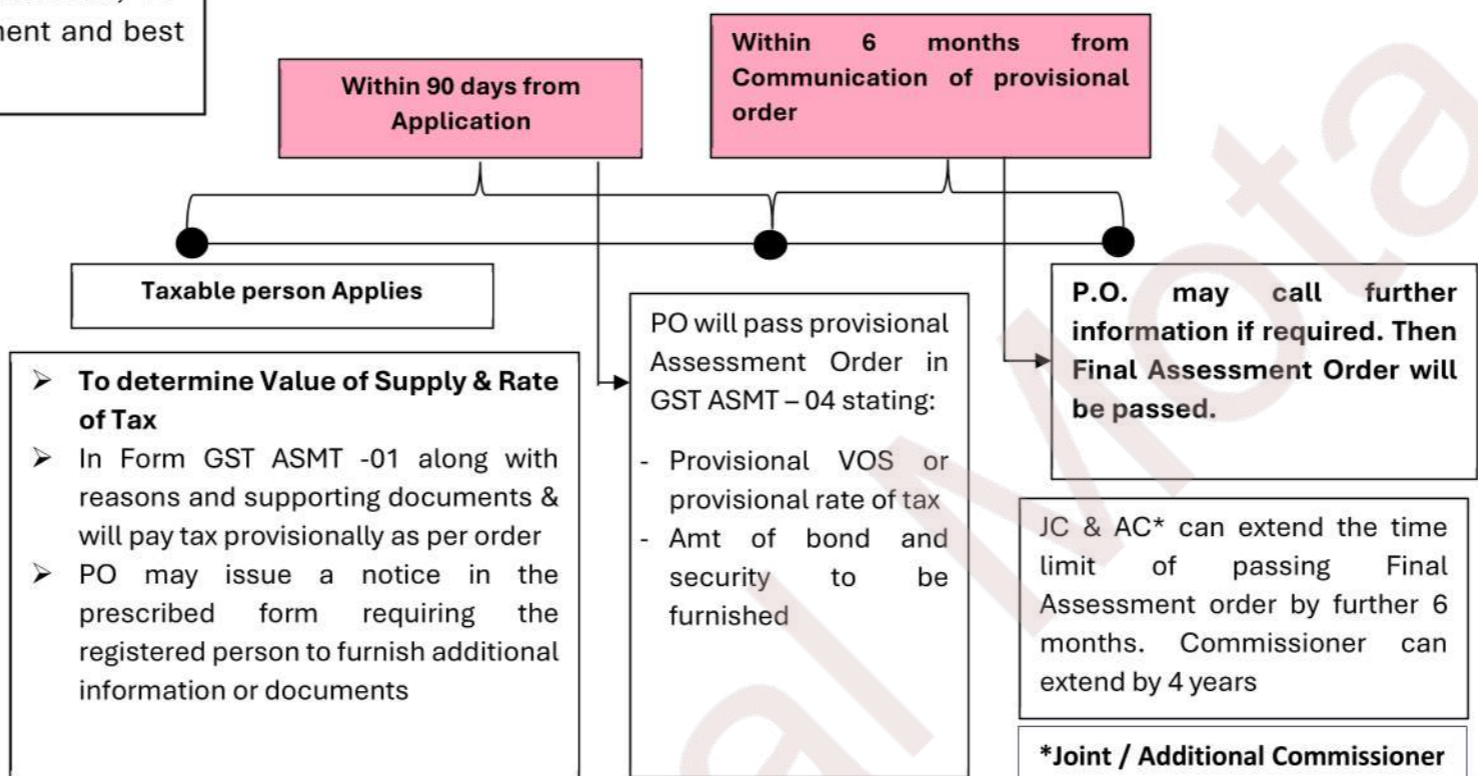
Analysis:

- (i) **Correction of errors & omissions** can be done upto 30th November of Succeeding financial year or the actual date of annual return, whichever is earlier.
- (ii) **Departmental Clarification**
GSTR 3B does not contain separate tables for amendment, thus amendment can be done in current month for past periods so long as the amount is not negative. In case of negative liability, refund can be claimed

Hierarchy of Officers

Bottom to Top (Lowest to Highest)	
	↑
Principle chief commissioner of tax	
Chief commissioner of central tax	
Principal commissioner of central tax	
Commissioner of Central Tax	
Additional Commissioner	
Joint Commissioner	
Deputy Commissioner	
Assistant Commissioner	
Superintendent	

2. Provisional Assessment & Final Assessment [S. 60]



Interest Table (Interest on Tax Difference between provisional assessment & final Assessment Order)

Final Tax is: -	Interest Period		Rate of Interest p.a.
	From	To	
Payable by Assessee (i.e., Final Assmt Liab > Prov. Liab [S. 60(4) of CGST Act]	First day after the due date of payment of tax in respect of the said supply of goods or services	Date on which tax was actually paid	18% [S. 50(1)]
Refundable to Assessee [S. 60(5) of CGST Act] (i.e., Prov. Assmt Liab > Final Liab)	61 st Day from date of application for refund (not from final assessment order)	Date on which tax was actually refunded.	6% [S. 56]

- Analysis:**
- Payment of Tax under provisional assessment only allowed on Bond & BG:** Provisional order would indicate the amount of bond. Bank guarantee (in form of security) shall be furnished - not exceeding 25% of the bond 'amount' which shall include GST & GST Cess payable on transaction.
 - Release of security on finalisation of assessment:** On conclusion of the **final assessment order (in GST ASMT 07)** the applicant can file an application under Rule 98(6) in FORM GST ASMT- 08 for release of security furnished. Security shall be released (by passing release order in GST ASMT - 09) within 7 working days from application date.
 - Relevant Date for Refund Application:** Refund application shall be filed within 2 years **from adjustment of tax in final assessment order** for claiming refund of difference between provisionally paid tax & final tax liability (i.e., final tax is lesser than provisionally paid tax).
 - Final Assessment Order is Appealable** before appellate authority u/s 107.

3. Scrutiny of Returns [S. 61]

- ❖ PO scrutinises the returns furnished to verify correctness of returns filed by regd. Person & informs the discrepancies if any by issuing notice u/r 99 of CGST Rules **SEEKING EXPLANATION I.E., REPLY WITHIN 30 DAYS FROM SERVICE OF NOTICE [GST ASMT 10]**.
- ❖ If explanations provided by taxable persons are not acceptable then PO may resort to
 - Audits u/s 65,
 - Direct for a special audit u/s 66 or,
 - Inspection, search & seizure proceedings, or,
 - Initiation of determination of tax & other dues u/s 74A
- ❖ PO shall wherever possible, quantifying the amt of tax, interest & any other amt payable in relation to such discrepancy.

4. Assessment of Non-filers [S. 62]

- ❖ When a registered person does not file its 3B or final return u/s 45 on cancellation of registration, proper officer will issue a **NOTICE** to regd. Person **u/s 46 of CGST Act** requiring him to **file returns within 15 days of issuance of such notice**.
(Notice u/s 46 will be issued when a person does not files return within 5 days from such due date.)
- ❖ If a person **does not file return even after 15 days from issuance of notice u/s 46**, then proper officer will **PASS ASSESSMENT ORDER u/s 62 of CGST Act, 2017** & may do best judgment assessment and issue a best judgment assmt. order
- ❖ **BJAO shall be issued within 5 years** from due date filing of annual return (i.e. 31st December of succeeding FY) to which such non-filing/payment relates.
- ❖ If, however, a registered person **furnishes a 'valid return' within 60 days of the service** (+60 days extension possible on payment of Rs. 100 per day late fee beyond first 60 days) of assessment order, **the said assessment order shall be deemed to be withdrawn**. (Interest u/s 50 and late fees u/s 47 would be levied for late Payment of tax)

Assessment & Audit [Section 59 to 66 of CGST Act r/w R. 98 to R. 102] (2/2)

5. Assessment of Unregistered persons [S. 63]

Applicability: As per Section 63 of CGST Act, where a person who is liable to pay tax but has:

- ❖ Liable to obtain regn, fails to obtain regn, or
- ❖ Whose registration has been cancelled u/s 29(2)

Then, as per Rule 100 of CGST Rules, a notice (FORM GST ASMT-14) will be issued to defaulter seeking reply within 15 days.

Assessment order (FORM GST ASMT-15) shall be passed within 5 years from due date applicable for filing annual return for the financial year to which default relates.

Opportunity of being heard shall be given before passing order. (Proviso 1 to section 63)

Analysis: Assessment order can be passed u/s 63 on account of cancellation by proper officer u/s 29(2). It would mean that, on one hand proper officer can cancel the registration and would take up the matter u/s 63

6. Summary Assessment [S. 64]

Summary assessments can be initiated to protect the interest of revenue with the previous permission of Additional Commissioner/Joint Commissioner when:

- ❖ The proper officer has **evidence** (NOT JUST REASON TO BELIEVE) that a taxable person has incurred a liability to pay tax under the Act, and
- ❖ The proper officer has sufficient grounds to believe that delay in passing an assessment order may adversely affect the interest of revenue.

When a Taxable person is unascertainable then person in charge would be deemed to be taxable person (Proviso to section 64(1))

The Summary Assessment Order may be withdrawn by Additional Commissioner/Joint Commissioner, –

- (a) On an **application filed by taxable person** for withdrawal of the summary assessment order **within 30 days from the date of receipt of order; or**
- (b) On his **own motion**, where he **finds** such order to be **erroneous** and may instead **follow** the procedures laid down in **section 74A**

7. Audits under GST (Provisions mentioned below)

“Audit” **MEANS THE EXAMINATION OF RECORDS, RETURNS AND OTHER DOCUMENTS** maintained or furnished **BY THE REGISTERED PERSON** (thus, *Audit cannot be of unregistered persons*) under this Act or the rules to verify the correctness of turnover declared, taxes paid, refund claimed and input tax credit availed, and to assess his compliance. [S. 2(13) of CGST Act].

Particulars	Audit by Tax Authorities	Special Audits
Sections	S. 65 of CGST Act r/w R. 101 of CGST Rules	S. 66 of CGST Act r/w 102 of CGST Rules
Significance / Meaning of Audits	Conducted by department i.e. COMMISSIONER or any officer as authorised by him at such frequency as may be prescribed. The audit may be conducted at place of business of regd. person	At any stage of scrutiny, investigation or enquiry, special audit may be ordered by officer NOT BELOW ASSISTANT COMMISSIONER , directing registered person to get his books audited by CA/CMA nominated by commissioner having regard to nature & complexity of case. <i>(Approval of Commissioner is need before directing special audit)</i>
Who is the Auditor	Commissioner or any officer authorised by him	CA/CMA Nominated by Commissioner
Outcome	If Tax is found payable or erroneous refund being granted then, adjudication would be done u/s 74A of CGST Act	If Tax is found payable or erroneous refund being granted then, adjudication would be done u/s 74A of CGST Act
Time-limit to complete Audit	3 months from commencement of Audit (6 months extension possible) (15 days prior notice to be given to assessee) Commencement of Audit shall mean the ❖ Date on which the documents are made available or ❖ The actual institution of audit at the place of business, whichever is later.	90 days from commencement of Audit. (90 days extension is possible)
Other Points	❖ Findings of Audit, (after considering reply submitted by registered person), shall be informed to taxable person within 30 days of conclusion of audit. ❖ Where the Audit results into Tax not paid, or short paid, or erroneously refunded, officer may initiate action under 74A	❖ Expenses incurred for examination accounts & records shall be borne & paid by department. Commissioner (may not be Commissioner or Joint secretary in board) can decide expenses/remuneration ❖ Where the Audit results into Tax not paid, or short paid, or erroneously refunded, officer may initiate action under section 74A

Inspection, Search & Seizure [Section 67, 69, 70, 71, 72 r/w Rules] (1/3)

1. Inspection [S. 67(1) of CGST]

What is Inspection: -

It is a softer provision than search which enable officers to access any place of business of a taxable person and also any place of business of a person engaged in transporting goods or who is an owner or an operator of a warehouse or godown.

A proper officer **not below the rank of Joint Commissioner (JC)**, may issue an authorisation to any other officer subordinate to him to carry out an inspection, if such proper officer **'has reasons to believe'** that the

1. Any TAXABLE person has:

- ❖ **Suppressed** any transaction relating to **supply of goods or services** or both or the **stock** of goods in hand or,
- ❖ Has claimed excess credit,
- ❖ Contravened any provisions of act with an intent to evade taxes;

2. ANY PERSON engaged in the business of transporting goods or an owner or operator of a warehouse or a godown or any other place:

- ❖ has kept goods which have escaped payment of tax; or
- ❖ has kept his accounts or goods in such a manner as is likely to cause evasion of tax payable

Analysis:

(i) Meaning of reason to believe:

- ❖ **"Reason to believe"** is to have knowledge of facts which, although not amounting to direct knowledge, would cause a reasonable person, knowing the same facts, to reasonably conclude the same thing.

(ii) Reason to believe is more than mere suspicion

2. Search & Seizure [S. 67(2) to S. 67(12)]

"Search" - 'Search' involves an attempt to find something. Search, in tax/legal parlance, is an action of a government official (a tax officer or a police officer, depending on the case) to go and look through or examine carefully a place, person, object etc. in order to find something concealed or to discover evidence of a crime. The search can only be done under the proper and valid authority of law.

"Seizure" - The term 'seizure' has not been specifically defined in the GST Act. In Law Lexicon Dictionary, 'seizure' is defined as the act of taking physical custody (actual or constructive) of property by an officer under legal process. It means taking custody **"forcibly"** contrary to the wishes of the owner of the property. Not only inputs and capital goods may be seized but all offending property (movable and immovable), books and records, computer and database and everything that assists in the protection of Government revenue can be seized.

Search & Seizure: -

"Search" means **finding something concealed**. Whereas **Seizure** means taking possession of property **forcibly** by an officer under legal process.

A proper officer **not below the rank of JC**, may authorise search and seize any goods / documents / books / things which in his opinion would be useful for / relevant to proceedings under the GST Law, when he has reason to believe that: -

- ❖ **Goods** liable for confiscation are **secreted**.
- ❖ **Books of accounts/ Documents** liable to be seized are secreted. [S. 67(2)] (*Seized books of accounts/ documents shall be returned within 30 days of issue of notice for search only if not relied upon*) [S. 67(3)]

Powers & Duties of Officer during Search / Seizure: -

1. PO can **seize goods**, books of accounts or documents. Goods can be **detained** if seizure is not possible (E.g. Heavy machinery) (*PO shall prepare inventory of goods seized or detained*) [S. 67(2) r/w 67(9)]
2. If books **are relied upon**, they can be retained upto **completion of inquiry** or proceedings under Act. [S. 67(3) r/w 67(11)]
3. Proper officer shall have the **power to seal, break or open the door of any premises** or to break open any almirah, electronic devices, box where any goods or documents are suspected to be concealed. [S. 67(4)]
4. **Person** from whom books of accounts or documents are seized may **take photocopy or extract of such documents in presence of any authorized officer at a place and time indicated by the PO**.

5. **Provisional release of goods seized is possible** upon execution of **Bond** in Form GST INS -04 **for the value of the goods and furnishing of security in form of Bank Guarantee equal to amount of applicable tax (incl. SGST / UTGST / IGST / Cess) + Interest + Penalty**. [S. 67(6) r/w R. 140]
6. Provisionally released goods shall be mandatorily taken by person within 1 month, failing which PO has power to dispose-off the same.
7. **Surprise Checks by Authorised officer:** The Commissioner or an authorised officer may purchase any goods or services or both or by any person authorised by him from the business premises of any taxable person, to check the issue of tax invoices or bills of supply by such taxable person. Money paid by officer shall be refunded
8. **Seized goods shall be returned if no notice** has been issued by PO **within 6 months** (or extended period of further 6 months) [S. 67(7)]
9. **Perishable / Hazardous** natured goods **can be disposed-off by PO after seizure**. However, if lower of tax amount or market value of such perishable goods is paid, then goods shall be released. [S. 67(8)]
10. Provisions of Code of Criminal Procedure shall be applicable. The word "Magistrate" should be read as "Commissioner" for the purpose of GST. Instead of sending copies of any record made in course of search to the nearest Magistrate empowered to take cognizance of the offence, it has to be sent to the Principal Commissioner/ Commissioner of Central Tax.

CODE OF CONDUCT

- ❖ Search operations should only be conducted with the help of a **search warrant**.
- ❖ The searching squad must always include a **lady officer**.
- ❖ On arrival, the proper officers must identify themselves with an **identity card**.
- ❖ Before starting the search, **signatures** must be obtained from the people in-charge of the premise, as well as the signature of **two witnesses**.

- ❖ The **two witnesses mentioned above must observe the search**. The witnesses must belong to the locality. If none of the people in the locality agree to witness, the inhabitants of another locality must be brought in to witness. The Witnesses must be briefed on the purpose of the search.
- ❖ The **officers in-charge of the search** and witness must offer themselves to **be personally searched** both before and after the operation. Maintain register of records of search warrant

- ❖ Details of the search should be mentioned in what is called as a **Panchama** be signed by the witnesses, as well as the person in-charge of the premises.
- ❖ A **Copy of the Panchama** be given to the person in-charge of the premises.
- ❖ **Search warrant must be returned to the officer who ordered the search**, holds the responsibility of **maintaining register of records of the search warrant**.

Inspection, Search & Seizure [Section 67, 69, 70, 71, 72 r/w Rules] (2/3)

3. Powers to Arrest [Section 69]

Arrest means “the taking into custody of a person under some lawful command or authority”. In other words, a person is said to be arrested when he is taken and restrained of his liberty by power or colour of lawful warrant. The arrests under GST Act can be made only under authorization from the Commissioner.

Safeguards for a person placed under Arrest [S. 69(2) & S. 69(3)]

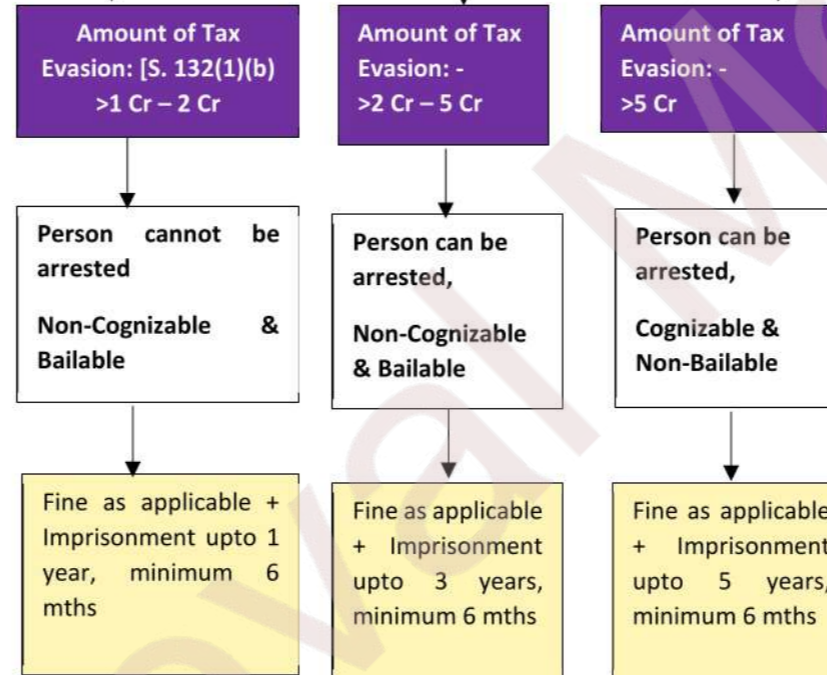
There are certain safeguards provided under section 69 for a person who is placed under arrest. These are:

- ❖ If a person is arrested for a cognizable offence, he must be informed in writing of the grounds of arrest and he must be produced before a magistrate within 24 hours of his arrest;
- ❖ If a person is arrested for a non-cognizable and bailable offence, the Deputy/ Assistant Commissioner can release him on bail and he will be subject to the same provisions as an officer in-charge of a police station under section 436 of the Code of Criminal Procedure, 1973;
- ❖ All arrest must be in accordance with the provisions of the Code of Criminal Procedure, 1973 relating to arrest.

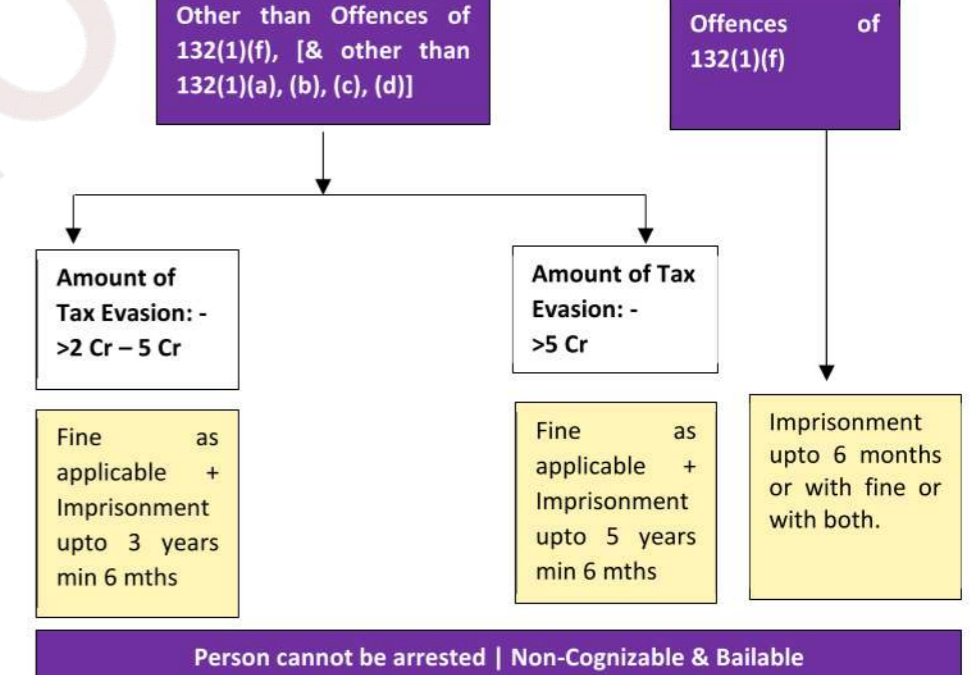
Section 132 of the Act also prescribes which types of offences are cognizable and non-bailable and which types of offences are non-cognizable and bailable.

4. Analysis of Offences under GST & arrest provisions inter-linking

(1) Offences of the kind specified in Section 132(1) (a), (b), (c) and (d) of CGST Act



(2) Offences – 132(1)(e) to 132(1)(l) of CGST Act



(2) Subsequent conviction for any offence under Section 132 [not just 132(1) (a), (b), (c) and (d)] he shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend to five years and with fine. (Without Any Monetary Limit)

As per Section 132(1) the person who commits, or CAUSES TO COMMIT AND RETAIN THE BENEFITS arising out of, any of the following offences shall be punishable: -

- Supplies without issue of any invoice with the intention to evade tax;
- Issues any invoice or bill without supply leading to wrongful availment or utilisation of input tax credit or refund of tax;
- Avails input tax credit using the invoice or bill referred to in clause (b) or fraudulently avails input tax credit without any invoice or bill.
- Collects any amount as tax but fails to pay the same to the Government beyond a period of 3 months from the date on which such payment becomes due. [S. 132(1)(d)].
- Evades tax or fraudulently obtains refund and where such offence is not covered under clauses (a) to (d);
- Falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information with an intention to evade payment of tax due under this Act;
- ~~Deleted~~
- Acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with, any goods which he knows or has reasons to believe are liable to confiscation
- Receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reasons to believe are in contravention of any provisions of this Act or the rules made thereunder;
- ~~Deleted~~
- ~~Deleted~~
- Attempts to commit, or abets the commission of any of the offences mentioned in clauses (a) to (k) of this section,

The term tax shall include the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or refund wrongly taken under GST Law

5. Power to Summons

The proper officer under this Act shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry in the same manner, as provided in the case of a civil court.

Analysis:

- ❖ Recording statement on oath is not the conclusion of investigation but to further the investigation that the evidence or document obtained in summons proceedings will help in supporting charges against a person.
- ❖ A person who is issued summon is legally bound to attend either in person or by an authorized representative
- ❖ The proceeding before the official who has issued summons is deemed to be a judicial proceeding. If a person does not appear on the date when summoned without any reasonable justification, he can be prosecuted under section 174 of the Indian Penal Code (IPC).
- ❖ In case he gives false evidence, he can be prosecuted under section 193 of the IPC (discussed below). In addition, if a person does not appear before a CGST/SGST officer who has issued the summon, he is liable to a penalty upto Rs. 25,000 under section 122(3)(d) of the Act.

6. Access to Business Premises [Section 71 of CGST Act]

During the course of any proceeding under this Act, the duly empowered officer can have access to any business premises, which may be required for the purpose of such enquiry. During such access, the officers can inspect the books of accounts, documents, computers, computer programs, computer software and such other things as may be required.

The following records are covered by this provision and are to be produced, if called for.

- (i) the records prepared and maintained by the registered person and declared to the proper officer in the prescribed manner.
- (ii) trial balance or its equivalent.
- (iii) statements of annual financial accounts, duly audited.
- (iv) cost audit report, if any.
- (v) the income - tax audit report, if any.
- (vi) any other relevant record.

Powers under section 71 may be contrasted with powers under section 67 to inspect premises. It may be noted that circumstances when each of these sections are applicable are not similar. Section 71 is more general in its scope and extent, whereas section 67 is applicable in specific instances and applies to specific persons/places.

It is the duty of person in charge of such premises to furnish the required documents within 15 working days from the day when such demand is made.

7. Officers to assist proper officers [Section 72 of CGST Act]

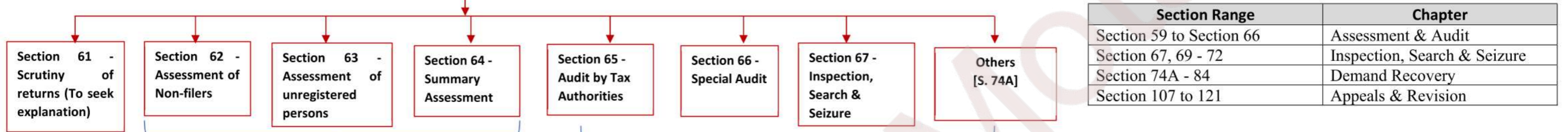
The provision of section 72 of CGST Act, requires all officers of Police, Railways, Customs and those officers engaged in the collection of land revenue including village officers, Third line - officers of State / UT / Central Govt engaged in collection of tax, officers of state and union territory tax to assist the proper officers in the implementation of this Act.

Demand & Recovery under GST [Section 74A to Section 84 of CGST Act read with Rules] (1/4)

Before moving on to discuss provisions of this chapter let us interlink all procedural chapters

1. Interplay of Assessment & Audit | Inspection Search & Seizure | Demand Recovery | Appeals & Revisions

Flow & Connectivity of Procedural Chapters



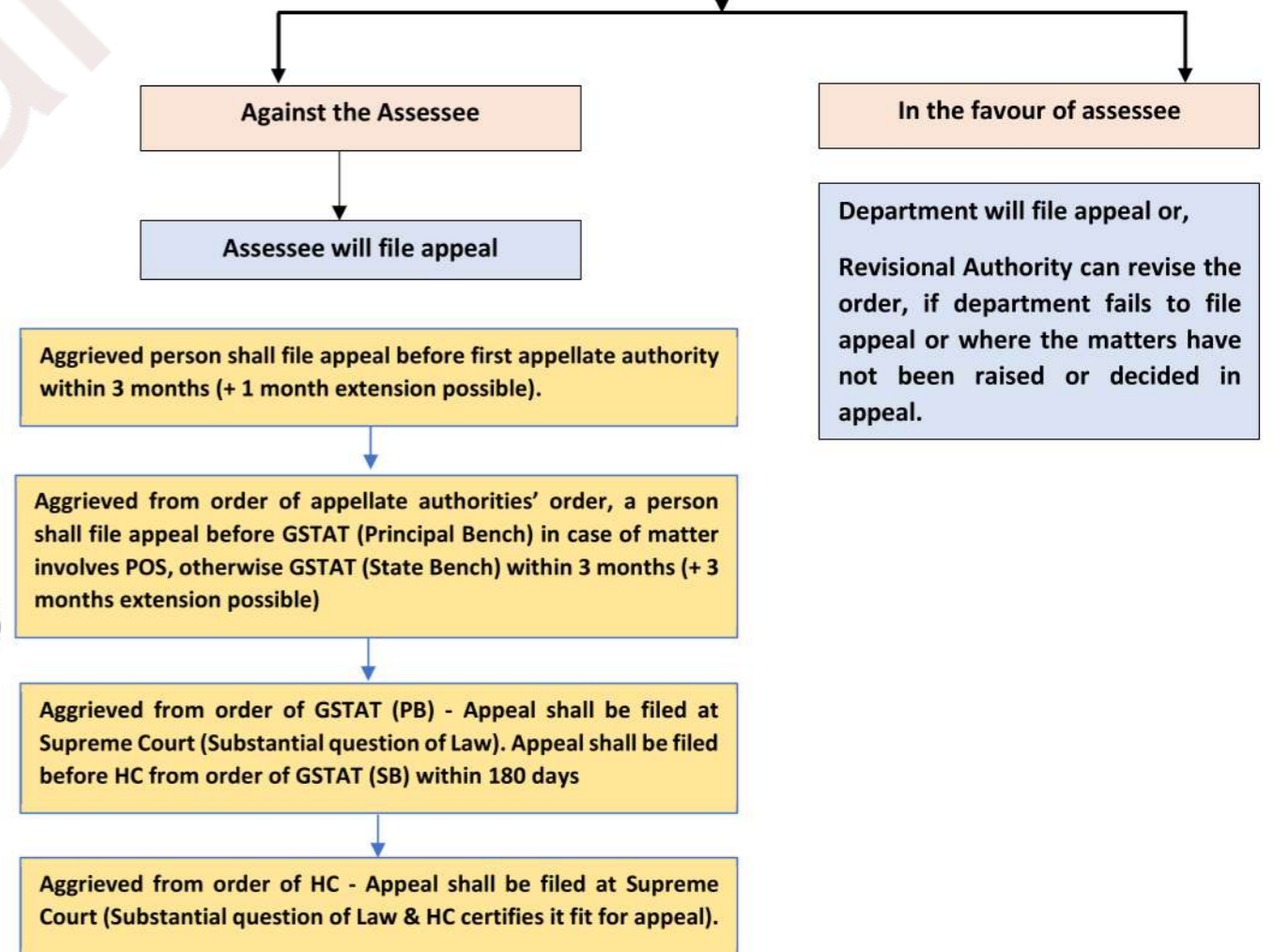
Section Range	Chapter
Section 59 to Section 66	Assessment & Audit
Section 67, 69 - 72	Inspection, Search & Seizure
Section 74A - 84	Demand Recovery
Section 107 to 121	Appeals & Revision

- [1] The outcome of Assessments done by proper officers under these sections is passing of **“assessment order” (including best judgement)** [For Section 61 Assessment order and SCN is passed in Section 74A]
- [2] Proper procedures laid down under these sections shall be followed and then an Assessment order shall be passed
- [3] Opportunity of being heard is given wherever applicable.

- [1] Section 74A covers cases **OTHER THAN** as mentioned in section 62, 63 & 64
- [2] In such cases, proper officer on his own if finds short payment of tax or excess claim of credit etc. or on findings by tax audit authorities u/s 65 or findings or inspection, search, seizure etc. shall issue show cause notice as to why tax shall not be payable.
- [3] Person replies to show cause notice.
- [4] After personal hearing, and discussions, the adjudication order is passed. Popularly known as Order in Original (OIO)

Time - limit to complete adjudication
Both cases: 12 months from date of SCN (6 months extension is possible)

Nature of Assessment order / Adjudication Authorities' order



Recovery proceedings would initiate if dues not paid within 3 months of order

By CA Keval Mota

Demand & Recovery under GST [Section 74A to Section 84 of CGST Act read with Rules] (2/4)

2. PRE-REQUISITES BEFORE LEARNING THIS CHAPTER:

(i) Understanding of Adjudicating Authority:

“Adjudicating authority” means any authority, appointed or authorised to pass any order or decision under this Act, but does **NOT INCLUDE** CBIC, Revisional Authority, AAR, AAAR, National Appellate AAR, Appellate Authority, Appellate Tribunal and The Antiprofitteering Authority u/s 171(2) of CGST Act.

(ii) Significance of Adjudicating Authority:

- (a) It issues SCN, takes reply and passes order under various sections including 74A.
- (b) SCN is issued by officer to seek reply from assessee as to why tax shall not be recovered from him.

Officer to issue Show cause Notice	CGST evaded u/s 74A (Rs.)	IGST evaded u/s 74A (Rs.)	(CGST + IGST) evaded u/s 74A
Superintendent of Central Tax	Upto Rs. 10 lakhs	Upto Rs. 20 lakhs	Upto Rs. 20 lakhs
Deputy / Assistant Commissioner of Central Tax	>Rs. 10 lakhs upto Rs. 1 crore	>Rs. 20 lakhs upto Rs. 2 crores	>Rs. 20 lakhs upto Rs. 2 crores
Additional or Joint Commissioner of Central Tax	>Rs. 1 crore	>Rs. 2 crores	>Rs. 2 crores

(c) Based on Adjudicating Authority, the Revisional Authorities & Appellate Authorities are decided

If Adjudicating Authority is	Revisional Authority is	Appellate Authority is
Superintendent of Central Tax, Deputy / Assistant Commissioner of Central Tax	Additional or Joint Commissioner of Central Tax	Additional or Joint Commissioner, of Central Tax (Appeals)
Additional or Joint Commissioner of Central Tax	The Principal Commissioner or Commissioner of Central Tax	Commissioner of Central Tax (Appeals)

[3 & 4] Section 74A: Adjudication in Non-fraud cases & Fraud Cases

Particulars	Section 74A																		
1. TYPES OF CASES COVERED	Non-payment/ Short payment/ erroneous refund/ wrong availment/ utilisation of ITC																		
	Analysis: - <ul style="list-style-type: none"> ❖ Nature of SCN: The SCN should specify the amount of tax, interest payable u/s sec 50 (@18% p.a.) & penalty. It should state the grounds based on which such demand is raised, ❖ If interest (not penalty) payable is not specified in notice, then also shall be payable [Section 75]. However, if penalty is not mentioned in show cause notice, it cannot be demanded in final order. ❖ Intimation (before SCN): Amount payable (i.e. Tax, interest, penalty) shall be specified by proper officer even before issuance of SCN by uploading the same in DRC - 01A (also called as Intimation). This is made so that, tax payer can claim benefit of penalty waiver if tax amount is paid before issuance of show cause notice. ❖ Meaning of Suppression: The expression “suppression” shall mean non - declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer. (Explanation 2 to section 74A) ❖ No notice if demand is less than Rs. 1000 																		
2. TIME LIMIT TO ISSUE SHOW CAUSE NOTICE	<ul style="list-style-type: none"> ❖ 42 Months from due date to furnish annual return. ❖ 42 months from the date of erroneous refund 																		
3. TIME LIMIT TO COMPLETE ADJUDICATION I.E. TO PASS ASSESSMENT ORDER	12 months from date of issuance of SCN (not communication)																		
4. SERVING OF STATEMENTS FOR FURTHER PERIODS	Where notice has been issued for prior period, PO may serve statement for further period which would be deemed to be SCN u/s 74A. Instead of issuing a detailed notice, a mere statement containing the details of tax not paid, etc. can be issued. The service of such statement shall be deemed to be service of SCN, as long as the grounds relied upon for tax periods mentioned in the statement are same as mentioned in the SCN.																		
5. PENALTIES	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center;">Status of Tax Payment Specified</th> <th style="text-align: center;">Penalty under section 74A</th> <th style="text-align: center;">Penalty under section 74</th> <th style="text-align: center;">Status of proceedings (Except Section 132)</th> </tr> </thead> <tbody> <tr> <td>Before issuance of SCN (<i>No SCN can be issued if person pays entire dues</i>) [Intimation is issued before issuing show cause notice, if a person pays tax on issuance of Intimation no penalty u/s 74A]</td> <td style="text-align: center;">0</td> <td style="text-align: center;">15% of Tax</td> <td rowspan="3">In all cases where entire tax is paid at stage as mentioned in 1st column, the proceedings (except Section 132) would be deemed to be concluded. However, if part payment is done before SCN, then SCN can only be issued for balance amount.</td> </tr> <tr> <td>Within 60 days of SCN</td> <td></td> <td style="text-align: center;">25% of Tax</td> </tr> <tr> <td>Within 60 days of Order</td> <td style="text-align: center;">Higher of 10% of Tax or, Rs. 10,000</td> <td style="text-align: center;">50% of Tax</td> </tr> <tr> <td>After 60 days of Order</td> <td></td> <td style="text-align: center;">100% of Tax</td> <td></td> </tr> </tbody> </table>	Status of Tax Payment Specified	Penalty under section 74A	Penalty under section 74	Status of proceedings (Except Section 132)	Before issuance of SCN (<i>No SCN can be issued if person pays entire dues</i>) [Intimation is issued before issuing show cause notice, if a person pays tax on issuance of Intimation no penalty u/s 74A]	0	15% of Tax	In all cases where entire tax is paid at stage as mentioned in 1 st column, the proceedings (except Section 132) would be deemed to be concluded. However, if part payment is done before SCN, then SCN can only be issued for balance amount.	Within 60 days of SCN		25% of Tax	Within 60 days of Order	Higher of 10% of Tax or, Rs. 10,000	50% of Tax	After 60 days of Order		100% of Tax	
Status of Tax Payment Specified	Penalty under section 74A	Penalty under section 74	Status of proceedings (Except Section 132)																
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Within 60 days of SCN		25% of Tax																	
Within 60 days of Order	Higher of 10% of Tax or, Rs. 10,000	50% of Tax																	
After 60 days of Order		100% of Tax																	
6. NON - PAYMENT OF SELF ASSESSED TAX	As per section 74A (11) of CGST Act, if the self-assessed tax is not paid within 30 days of the due date of payment of such tax, then penalty shall be payable irrespective of payment before SCN or within 30 days of SCN. Meaning of Self-Assessed Tax [S. 75]: "Self-assessed tax" means tax shown in GSTR 1 but not paid in 3B (filed). Delayed filing of 3B does not attract this section.																		
Explanation to Section 74A	Where the notice under the same proceedings is issued to the main person liable and some other persons, and such proceedings against the main person have been concluded under section 74A, the proceedings against all the persons liable to pay penalty under sections 122, 125 are deemed to be concluded																		

Demand & Recovery under GST [Section 74A to Section 84 of CGST Act read with Rules] (3/4)

5. Section 75: General Provisions for Determination of Tax

1. **Exclusion of stay period:** Period of Stay Shall be Excluded while computing period adjudication period. (i.e., 12 months)
2. **Time to pass order on direction of higher authority:** Order shall be issued within 2 years from the date of communication of the said direction if it is required to be issued in pursuance of the direction of the Appellate Authority or Appellate Tribunal or a court.
3. **Opportunity of being heard** shall be given
4. **Adjournment** for hearing can also be given on sufficient cause, but not more than 3 adjournments.
5. **Order cannot surpass SCN:** Amount of tax, interest and penalty demanded in the order shall not be in excess of what demanded in SCN
6. **Interest – Mandatory in nature:** Interest (NOT PENALTY) shall be payable even if not mentioned in SCN. In case of modification of tax by Appellate Authority/Tribunal/Court, penalty & interest shall stand modified accordingly.
7. **Deeming provision:** Proceedings deemed to be concluded if adjudication order is not passed w/l time-limit
8. **Exclusion in time limit to complete Adjudication:** An Issue on which decision is given prejudicial to the interest of revenue and appeal has been filed (by dept.) before higher authority, the period spent between date of decision of lower authority & date of decision of higher authority shall be excluded for calculating time-limit to complete adjudication u/s 74A.

Lower Authority	Higher Authority
Appellate Authority	Appellate Tribunal
Appellate Tribunal	High Court
High Court	Supreme Court

9. **No penalty under diff section (if 74A invoked):** Where any penalty is imposed under section 74A, no penalty for the same act or omission shall be imposed on the same person under any other provision of this Act.

6. Tax Collected but Not paid to Government (S. 76 of CGST Act, 2017)

1. Person who has collected any amount representing “tax under this Act,” shall pay the said amount **FORTHWITH to govt.** irrespective of whether supplies were taxable or exempt.
2. If the amount is not deposited then, notice may be issued by PO along with summary in Form GST DRC-01 requiring to show cause & opportunity of being heard shall be given. **(NO TIME LIMIT TO ISSUE SCN UNDER THIS SEC)**
3. Final Speaking Order shall be passed by PO within 1 year from the date of issue of notice.
4. Tax shall be payable along with Interest u/s 50 from the date of collection till the date of deposit.
5. The person who has borne the incidence of the amount, may apply for the refund u/s 54.

7. Wrong Tax Collected & paid to Government (S. 77 of CGST r/w S. 19 of IGST)

- ❖ Refund of Wrong Tax paid i.e. CGST & SGST / UTGST is available (S. 54 of CGST Act)
 - ❖ No Interest would be charged on late payment of IGST (S. 19 of IGST Act)
 - ❖ Refund of Wrong Tax paid i.e. IGST is available (S. 20(xiii) of IGST Act r/w S. 54 of CGST Act)
 - ❖ No Interest would be charged on late payment of CGST & SGST/UTGST (S. 77 of CGST Act)
- (If intra-state supply is considered as inter-state supply and vice versa these provisions are applicable) – Refer refund chapter**

8. Recovery Proceedings under GST (S. 78, S. 79 of CGST Act)

(A) Power of Recovery (S. 78 of CGST)

Any amount payable by a taxable person in pursuance of an order passed under this Act shall be paid within **3 months** from the date of service order otherwise, recovery proceedings shall be initiated.

However, If PO considers it expedient in the interest of revenue, he may, for reasons to be recorded in writing, require the said taxable person to make such payment within period less than 3 months.

(B) Summary of Modes of Recovery (S. 79 of CGST Act r/w Rules)

- ❖ **Deduction out of any money owing to defaulter**
- ❖ **Detaining and selling the goods belonging to defaulter under control of PO**
- ❖ **Recovery from any other person who owes money to defaulter (Garnishee Proceedings)** – Garnishee is such a person from whom money is due to defaulter. Garnishee will be deemed to be discharged [S. 79(1)(c) of CGST]
- ❖ **Collection by detention of any movable or immovable property** – Person shall pay dues within 30 days of distraint of property otherwise department will sell off the same & apply towards default in this order: - (1) Administrative Cost; (2) Recovery of Penalty, Interest & Tax Amount (3) Balance amount will be refunded to person.
- ❖ **Recovery as arrears of Land Revenue**
- ❖ **Recovery as fine imposed by Magistrate**
- ❖ **Recovery through execution of a decree**
- ❖ **Recovery through surety (for amount due by defaulter), Recovery from company in liquidation (i.e. recovery from liquidator)**

9. Payment of Tax in Installments S. 80 of CGST r/w R. 158 of CGST Rules

This section permits a taxable person to make payment of an amount due (demand raised) on instalment basis (not exceeding 24 instalments). Commissioner has the power to grant permission to avail instalment payment scheme.

Non-Applicability of Instalments Payment in below cases: -

- Self-assessed tax shown in Return (S. 80 of CGST Act)
- Already a defaulter under GST Act or person against whom recovery proceedings are initiated. (R. 158 of CGST Rules)
- Application for payment of tax has been rejected in PFY (R. 158 of CGST Rules)
- Amount payable is less than Rs. 25,000/- (R. 158 of CGST Rules)

Notes: -

- 1) The taxable person shall be liable to pay interest u/s 50 of CGST on the amount due from the first day such tax was due to be payable till the date tax is paid.
- 2) If default occurs in payment of any one instalment the taxable person would be required to pay the whole outstanding balance payable on such date of default itself without further notice.

Demand & Recovery under GST [Section 74A to Section 84 of CGST Act read with Rules] (4/5)

10. Transfer of property shall be void in certain circumstances [Section 81]

Where a person **AFTER any amount has been due** from him, creates a charge on or parts with the property belonging to him or in his possession by way of sale, mortgage, exchange, or any other mode of **transfer** whatsoever of any of his properties **in favour of any other person** with the intention of defrauding the Government revenue, **such charge or transfer shall be void** as against any claim in respect of any tax or any other sum payable by the said person **unless such transfer is made for adequate consideration, in good faith and without notice of pendency of such proceedings or without notice of such tax payable**

11. Tax to be first charge on property [Section 82]

Notwithstanding anything to the contrary contained in any law for the time being in force, save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, any amount payable by a taxable person or any other person on account of tax, interest or penalty which he is liable to pay to the Government shall be a first charge on the property of such taxable person or such person.

12. Provisional Attachment [Section 83]

- ❖ Where, after the initiation of any proceeding under Chapter XII (S. 59 to S. 64), Chapter XIV (S. 67 to S. 72) or Chapter XV (S. 74A to 84), the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue it is necessary so to do, he may, by order in writing, attach provisionally, any property, including bank account, belonging to the taxable person or any person specified in section 122(1A), in such manner as may be prescribed (Section 115 of Finance Act, 2021 Notified vide NN 39/2021)
- ❖ Provisional attachment shall cease to have effect after 1 year from date of provisional attachment order or on written instructions from commissioner whichever is earlier.
- ❖ Objection can be filed within 7 days of attachment (R. 159(5) of CGST Rules)
- ❖ Perishable / hazardous property shall be released forthwith if market price of such property or the amount that is or may become payable by the taxable person, whichever is lower is paid by taxable person. (R. 159(3) of CGST Rule)
- ❖ Goods shall be disposed of if failed to make payment of specified amount.
- ❖ Provisional attachment can also be done of property, debts & shares, property in custody of courts or Public Officer, interest in partnership (Note - Provisional Attachment can be done during pendency of proceedings, however recovery proceedings can be initiated once demand is made)

13. Continuation & Validation of certain recovery proceedings [Section 84]

New notice for enhanced dues: Where notice of demand for dues is served upon a person and where appeal is filed against such order and dues are enhanced in appeal, revision, or other proceedings (*such as Insolvency Bankruptcy Code*) then proper officer shall serve another notice of demand in respect of such enhanced dues.

Enhanced dues continuation of proceedings as stood before appeal disposal: It is to be noted that in respect of enhanced dues the proceedings may without of service of fresh notice of demand, be continued from the stage at which such proceedings stood immediately before such disposal.

Reduction of Dues: In case, where such Government dues are reduced in such appeal, revision or in other proceedings it shall not be necessary for the Commissioner to serve upon the taxable person a fresh notice of demand.

Intimation be given by Commissioner: The Commissioner shall give intimation of such reduction to him and to the appropriate authority with whom recovery proceedings is pending.

Continuation of proceedings for reduced dues: Any recovery proceedings initiated on the basis of the demand served upon him prior to the disposal of such appeal, revision or other proceedings may be continued in relation to the amount so reduced from the stage at which such proceedings stood immediately before such disposal.

CIRCULAR NO. 171/03/2022-GST

Transaction	Penal consequences
<p>"A" issued invoice on "B" without supply of goods</p>	<p>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."</p> <p>Accordingly,</p> <ul style="list-style-type: none"> ❖ No demand and recovery against 'A' under the provisions of S. 74A of CGST Act in respect of the same. ❖ No penal action under the provisions of section 74A is required to be taken against 'A' in respect of the said transaction. <p>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.</p>
<p>"B" avails and utilises ITC passed on by "A"</p>	<ul style="list-style-type: none"> ❖ 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 74A of the CGST Act with interest u/s 50. ❖ No penalty u/s 122 (as penalty can be levied in any one of the sections)
<p>"B" avails and utilised ITC passed on by "A" and issues invoice on "C" without supply of goods.</p>	<ul style="list-style-type: none"> ❖ 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

R. 142B: As per section 75 or as per rule 88C or 88D etc., any amount of tax or interest has become recoverable under section 79 and the same has remained unpaid; officer shall intimate said amount in DR-01D (this would be deemed to be notice), directing the person in default to pay the said amount, along with applicable interest, or, as the case may be the amount of interest, within seven days of the date of the said intimation and the said amount shall be posted in Part-II of Electronic Liability Register in FORM GST PMT-01. If this is unpaid, he can recover the amt.

Liability in Special Cases [Section 85 to 94]

Type of Liability	Person Responsible
1) Transfer of Business Transfer of business (in whole or in part) (e.g. Sale, Gift, Lease, Leave and license, Hire etc.)	<p>Liability arising prior to transfer (Liability relating to prior period): -</p> <ul style="list-style-type: none"> ❖ Transferor and transferee – Jointly and severally* liable for payment of taxes, interest or penalty due upto the time of transfer of business. <p>Liability arising after transfer: -</p> <ul style="list-style-type: none"> ❖ Transferee shall be liable
2) Liability of agent & principal (S. 86 of CGST Act)	Jointly & severally
3) Tax Liability on Inter - company sales made during the period of effective date of amalgamation & date of order (S. 87 of CGST Act)	As per section 87(1), if the goods or services are supplied BETWEEN SUCH AMALGAMATING COMPANIES , it shall be added in their respective turnovers and tax shall be discharged by respective entities. The amalgamating companies shall be treated as distinct companies for the period up to the date of the said order & the registration certificates of the said companies can cancel w.e.f. date of the said order.
4) Company in Liquidation (S. 88 of CGST Act)	<ul style="list-style-type: none"> ❖ Receiver / liquidator to give intimation of his appointment to the Commissioner within 30 days of his appointment. ❖ Within 3 months from the date of such intimation, the Commissioner will notify the liquidator the amount to be set aside for dues by co. ❖ When a private company is not able to clear its dues, then every director at any time during the period, for which tax is due, would be liable jointly and severally to pay the dues unless director proves that non recovery is not due to his gross neglect, misfeasance or breach of duty, the liability would not arise in the hands of such director.
5) Liability of directors of private companies (when unable to discharge tax, interest or penalty) (S. 89 of CGST Act)	<ul style="list-style-type: none"> ❖ Director of such private company during such period will be liable to pay such dues. The liability of the Director will be relaxed only when he proves that such non-recovery of dues is not because of his gross negligence, misfeasance or breach of duty in relation to the affairs of the company. ❖ However, when a private company is converted to public company, then no such recovery of old dues can be made from the person(s) who were directors of the private limited company before such conversion. [Personal penalty imposed on such director would be levied]
6) Liability of Partners of firm (including LLP) to pay tax (S. 90 of CGST Act)	<ul style="list-style-type: none"> ❖ Partners of the firm shall jointly and severally, be liable for such payment. <p>In case of retirement of partner Intimation of retirement to be given to commissioner within one month of retirement. If Intimation given within one month: - Retiring partner shall be liable upto the date of his retirement If Intimation not given within one month: - Retiring partner shall be liable upto the date on which intimation is received by commissioner</p> <p>In case of Dissolution of Firm (incl. LLP) (S. 93(3) of CGST Act) Every person who was a partner upto the time of dissolution is jointly and severally liable to pay the tax, interest or penalty (whether determined or not till dissolution).</p>

Type of Liability	Person Responsible
7. Liability of Guardians, trustees or agents of a minor or any other incapacitated person (S. 91 of CGST Act)	Guardian, trustee or agents of such persons
8. Liability of Court of Ward (Administrator General, Official Trustee or any receiver or manager, who controls the estate) (S. 92 of CGST Act)	Any receiver or manager shall be liable to pay tax, interest or penalty.
9. Liability in case of Death of Individual, Partition of HUF/AOP, Dissolution of Firm, Termination of Guardianship or Trusteeship (S. 93 of CGST Act r/w S. 53 of Insolvency Bankruptcy Code, 2016)	<p>1) Death of Proprietor (S. 93(1) of CGST Act): - Business is continued: - Legal heir / any other person shall be fully liable Business is discontinued: - Legal heir liable to the extent of estate inherited The legal representative shall be liable to pay, out of estate of the deceased, to the extent to which estate is capable of meeting the charge.</p> <p>2) Partition of HUF or AOP (S. 93(2) of CGST Act): - Each member or group of members shall, jointly and severally upto the time of the partition (whether determined or not till partition)</p> <p>3) Dissolution of firm (S. 93(3) of CGST Act): - Discussed in Point (6) above</p> <p>4) Termination of Guardianship (S. 93(4) of CGST Act): - In case the guardian is carrying on the business on behalf of a ward or the trustee who carries the business under the trust on behalf of beneficiary, then on the termination of guardianship or trusteeship, the ward or the beneficiary is liable to pay tax, interest or penalty upto the time of such termination. (whether determined or not till partition)</p>
10. Liability in other cases [Section 94]	<p>Where a taxable person is a firm or an association of persons or a Hindu Undivided Family and such firm, association or family has discontinued business</p> <p>(a) Liability of Business on discontinuance / dissolution / partition: May be determined as if no such discontinuance had taken place</p> <p>(b) Liability of Partner / Member / other Person: Every person who, at the time of such discontinuance, was a partner of such firm, or a member of such association or family, shall, jointly and severally, be liable</p> <p>(c) Change in Constitution: Where a change has occurred in the constitution of a firm or an association of persons, the partners of the firm or members of association, as it existed before and as it exists after the reconstitution, shall jointly and severally, be liable to pay tax, interest or penalty due from such firm or association for any period before its reconstitution.</p>

Advance Ruling [S. 95 to S. 106 of CGST Act] [1/2]

1. UNDERSTANDING OF ADVANCE RULING & BASIC POINTS

An advance ruling helps the applicant in planning his activities and bringing certainty which are liable for payment of GST, well in advance. The ruling given by the Authority for Advance Ruling is binding on the applicant **who has obtained such ruling (not on everyone)** as well as concerned and jurisdiction officer.

Important points: -

- (i) **Applicability of Advance ruling:** The advance ruling is binding on the applicant only & governmental authorities,
- (ii) **Appeal by Proper officer:** If the view of advance ruling authority is **unacceptable by proper officer** (known as concerned officer or jurisdictional officer), **he shall file appeal before appellate authority for advance ruling (AAAR)**, not normal appellate authorities.
- (iii) **Deeming Fiction If Appeal Not filed:** If he fails to appeal, then it is deemed that in respect of said applicant, concerned / jurisdictional officer has accepted the ruling pronounced.
- (iv) **Applicant can File Appeal:** If an applicant is aggrieved with the advance ruling, then he can appeal before appellate authority for advance ruling (AAAR) not normal appellate authorities.
- (v) **Validity of Advance ruling:** Advance ruling will hold valid **till the law is unchanged**, once law is changed in respect to such matter, then the advance ruling shall not be applicable w.e.f. change in law.
- (vi) **Advance Ruling State Wise:** The AAR shall be located in each State/Union Territory. The Government shall appoint officers not below the rank of Joint Commissioner as member of the Authority for Advance Ruling. Thus, if a person has 2 units in 2 different states, then one advance ruling cannot be applied to both the state in which the assessee is registered. (Section 96)

2. IMPORTANT DEFINITIONS [Section 95]

1. Advance Ruling:

Advance ruling means a decision provided by the Authority (hereinafter AAR) or the Appellate Authority (AAAR) to an applicant on matters or on questions specified in section 97(2) of CGST Act or section 100(1) of CGST Act, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant; [Section 95(a)].

Analysis: Whenever a transaction is underway, the application for advance ruling can be submitted, however once the transaction of supply has been taken place, advance ruling cannot be sought for.

2. Appellate Authority

Appellate Authority means the Appellate Authority for Advance Ruling referred to in section 99. [Section 95(b)]

3. Applicant

Applicant means any person registered or desirous of obtaining registration under this Act; [Section 95(c)]

3. QUESTIONS ON WHICH ADVANCE RULING CAN BE SOUGHT

Advance Ruling can be sought for the following questions:-

Question No.	Question
1	Classification of any goods or services or both Analysis: ❖ Time of supply, place of supply, rate of tax etc. depends upon classification of G/S.
2	Applicability of a notification issued under the provisions of CGST Act Analysis: ❖ Circular are binding only the departmental officers. They have to act based on the circulars. But they are not binding on tax payer.
3	Determination of time and value of supply of goods or services or both Analysis: ❖ For POS issue, advance ruling cannot be sought for.
4	Admissibility of input tax credit of tax paid or deemed to have been paid
5	Determination of the liability to pay tax on any goods or services or both
6	Whether applicant is required to be registered
7	Whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.

IMPORTANT NOTE: In respect of, Question which are already pending in any proceedings in the case of applicant & Question already decided in any proceedings in the case of an applicant, advance ruling cannot be sought. The application for advance ruling will be rejected in this case.

Advance Ruling [S. 95 to S. 106 of CGST Act] [2/2]

4. PROCEDURE FOR APPLICATION TO ADVANCE RULING AUTHORITY (AAR) [S. 98]

Particulars	Provision
1. Fees for Application	Fees for applying for seeking advance ruling shall be Rs. 10,000/- [Rs. 5,000/- as per CGST Act, Rs. 5,000/- as per SGST Act]
2. Application shall be forwarded to officer - to check whether proceedings are pending or completed	<ul style="list-style-type: none"> ❖ AAR shall send a copy of application to the concerned officer and call for all relevant records from the concerned officer. ❖ If question raised in application is decided or pending before any authority then Application will be rejected.
3. Speaking order	Speaking order shall be passed on rejection.
4. Time limit to pronounce the ruling by AAR	If the application is admitted, AAR shall pronounce its ruling within 90 days of receipt of application (Before giving the ruling, AAR must hear the applicant/his authorised representative/ jurisdictional officer)
5. Difference of Opinion	Refer the point or points on which they differ to the AAAR for hearing the issue. If the members of AAAR are also unable to come to a common conclusion in regard to the point(s) referred to them by AAR, then it shall be deemed that no advance ruling can be given
6. Final Copy of Advance Ruling	A copy of the advance ruling duly signed by members and certified in prescribed manner shall be sent to the applicant, the concerned officer and the jurisdictional officer.

5. APPEAL AGAINST ORDERS OF AAR BEFORE APPELLATE AUTHORITY FOR ADVANCE RULING [S. 99, 100 & 101]

Particulars	Provision
1. Who can file appeal, time-limit and fees AAAR: Appellate Authority for Advance Ruling	Appeal by Applicant: If the applicant is aggrieved with AAR, he can file an appeal before AAAR within 30 days (+30 days condonation possible on sufficient cause) from the date on which the AAR has communicated its ruling , with fees of Rs. 20,000/- (Rs. 10,000 CGST; Rs. 10,000 SGST). Appeal by CGST / SGST officer: Similarly, if the concerned or jurisdictional officer of CGST/SGST does not agree with the finding of AAR, he can also file an appeal with AAAR 30 days (+30 days condonation possible on sufficient cause) . No fees required to be paid for filing appeal by officers.
2. Time-limit with AAAR to dispose appeal	The Appellate Authority must pass an order after hearing the parties to the appeal within a period of 90 days of the filing of an appeal.
3. AAAR members differ on certain point - No AR be pronounced	If members of AAAR differ on any point referred to in appeal, it shall be deemed that no advance ruling is issued in respect of the question under appeal. The said authority can either confirm or modify the ruling appealed against or referred to by the AAR in case of difference of opinion.
4. Final Copy of Advance Ruling of Appellate Authority	A copy of the advance ruling pronounced by the Appellate Authority should be signed by the members, certified in the prescribed manner, and communicated to the applicant, the concerned officer, the jurisdictional officers and to the Authority.

6. Other Points:

1. **Rectification of Mistake:** Can rectify any mistake apparent from the record within a period of 6 months from the date of the order. If a rectification has the effect of enhancing the tax liability or reducing the quantum of input tax credit, the applicant must be heard before the order is passed. [Section 102]
2. **Binding only on Taxable person who has applied for it:** An advance ruling pronounced by AAR or AAAR shall be binding only on the applicant and on the concerned officer or the jurisdictional officer in respect of the applicant. This clearly means that an advance ruling is not applicable to similarly placed other taxable persons in the State.
3. Advance ruling shall be **binding till** the period when the **law, facts or circumstances** supporting the original advance ruling **have not changed**
4. **Advance ruling shall be void-ab-initio in below when it is found that** it is obtained by fraud or suppression of material facts or misrepresentation of facts. Order declaring it void shall be passed after hearing assessee [S. 104].
5. Speaking **Order shall state the reasons for rejection & opportunity of being heard** shall be given before passing such order. A copy of the order so made shall be sent to the applicant, the concerned officers and the jurisdictional officer.
6. AAR to examine the application along with the records called for & after hearing the applicant or his authorized representative will pass an order either admitting or rejecting the application.

"Two roads diverged in a wood and I took the one less travelled by, and that made all the difference."

Appeals & Revision [Section 107 to 121 read with Rules] (1/4)

Taxpayer may not agree with the "adjudication order" so passed by the tax officer. It is equally possible that the Department may itself not be in agreement with the adjudication order in some cases. It is for this reason that the statute provides further channels of appeal, to both sides.

1. Overview of Adjudication Procedure & Interlinking

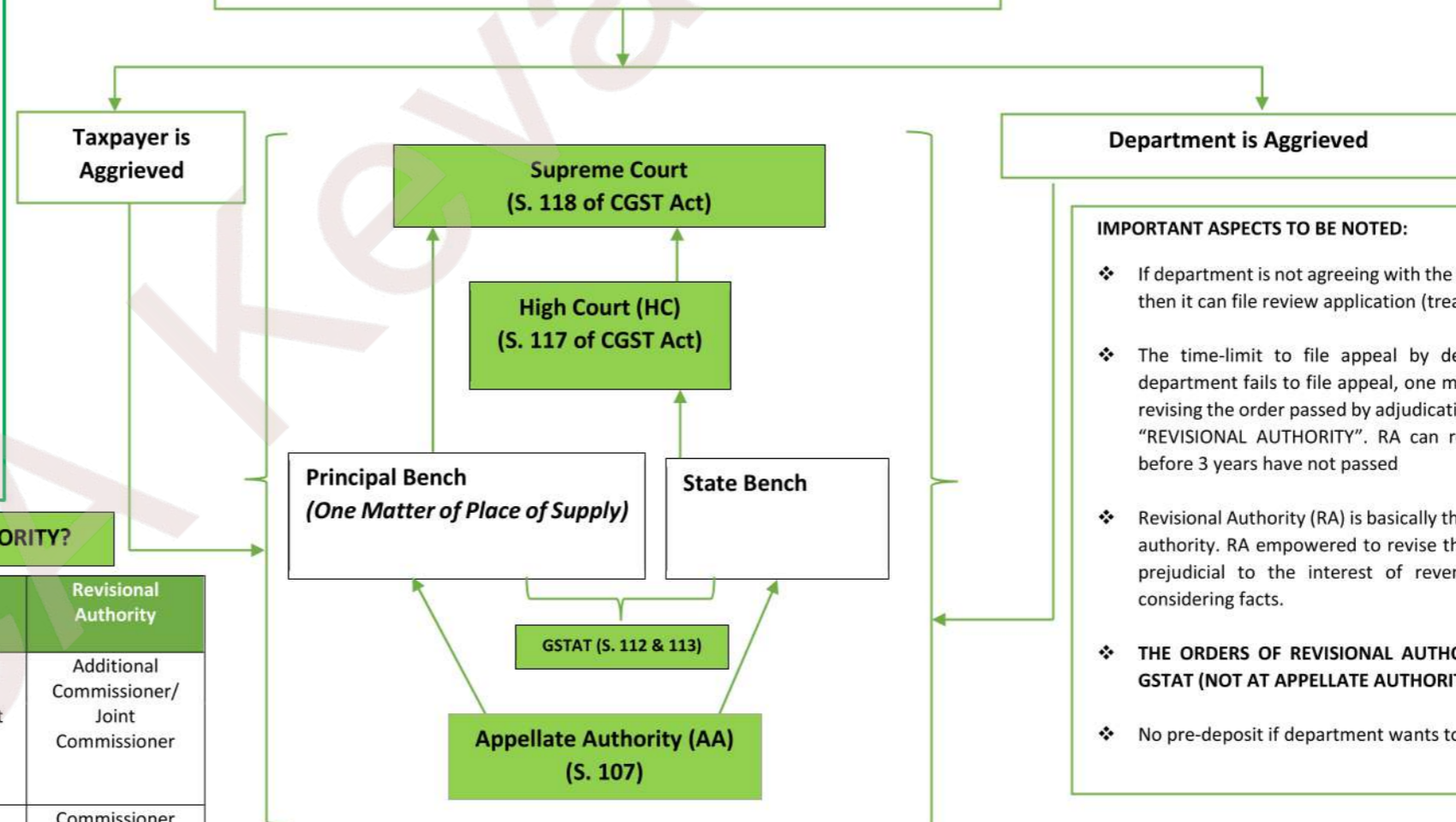
BY CA KEVAL MOTA

Section 61	Section 62	Section 63	Section 64	Section 65	Section 66	Section 67	Section 68, 129, 130	Section 74A
Notice in case of discrepancy (Start of proceedings)	Notice u/s 46 (Start of proceedings)	Opportunity of being heard (Start of proceedings)	Summary Assessment (Start of proceedings)	Audit by Tax Authorities	Special Audit	Inspection, search & seizure	E - way Bill, Detention & confiscation	Tax not paid/short paid/ ITC excess claimed/refund erroneously claimed
If a person does not provide reply or reply is not satisfactory then Assessment order is passed u/s 74A (Outcome of proceedings)	Non-compliance leads to passing of Best Judgement Assessment order u/s 62 (Outcome of proceedings)	Best Judgment Assessment order u/s 63 (Outcome of proceedings)	Assessment order is passed u/s 64 (Outcome of proceedings)	In case of audit findings not accepted / liability not paid by assessee, SCN shall be issued u/s 74A, order shall be passed u/s 74A after considering reply.	In case of special audit findings not accepted / liability not paid by assessee, SCN shall be issued u/s 74A, order shall be passed u/s 74A after considering reply.	If any demand is to be made SCN shall be issued u/s 74A, order shall be passed u/s 74A after considering reply.	Officer who has intercepted vehicle has to pass an order in form MOV - 11 which is an order of confiscation of goods and conveyance and demand of tax, fine and penalty	In above cases, and previous sections viz. 61, 65, 66, 67; the assessment order is issued u/s 74A
Generally Aggrieved person is assessee. However, Department (Commissioner) can also be aggrieved person if adjudicating authority passes an order in favour of assessee after satisfying themselves with reply furnished.	Aggrieved person - Assessee	Aggrieved person - Assessee	Aggrieved person - Assessee	Generally Aggrieved person is assessee. However, Department (Commissioner) can also be aggrieved person if adjudicating authority passes an order in favour of assessee after satisfying themselves with reply furnished.	Generally Aggrieved person is assessee. However, Department (Commissioner) can also be aggrieved person if adjudicating authority passes an order in favour of assessee after satisfying themselves with reply furnished.	Generally Aggrieved person is assessee. However, Department (Commissioner) can also be aggrieved person if adjudicating authority passes an order in favour of assessee after satisfying themselves with reply furnished.	Generally Aggrieved person is assessee. However, Department (Commissioner) can also be aggrieved person if adjudicating authority passes an order in favour of assessee after satisfying themselves with reply furnished.	Generally Aggrieved person is assessee. However, Department (Commissioner) can also be aggrieved person if adjudicating authority passes an order in favour of assessee after satisfying themselves with reply furnished.

IMPORTANT ASPECTS TO BE NOTED:

- ❖ If Assessee is aggrieved person, then he can follow appeal procedure as per this hierarchy. The orders as per above table shall be first appealed at appellate authority, thereafter if he is still an aggrieved person, he can knock the door of higher appellate forum.
- ❖ GSTAT is final fact-finding authority. However, if appeal involves substantial question of law, then it can be appealed before high court (against orders of SB - GSTAT). It can be further appealed at SC if HC certifies.
- ❖ Matters of Place of supply are appealed before Principal Bench of GSTAT. The orders of PB are appealable before Supreme court (not high court) as high courts are having state jurisdiction thus may be biased w.r.t. POS issue.
- ❖ Appeal shall be filed in specific form with pre-deposit. Pre-deposit can be paid by debiting Electronic Credit Ledger. (Some high courts have opined to pay through cash ledger). Pre-deposit is not required for appeal against denial of refunds.
- ❖ Pre-deposit is kept to restrict frivolous appeal.
- ❖ Adjudicating Authorities are executive organ of Indian Judiciary, whereas appellate forums including courts and tribunals are judiciary organ of Indian Law. Thus, adjudicating authorities and appellate authorities are altogether different.

AGGRIEVED PERSON CAN FILE APPEAL BEFORE APPELLATE AUTHORITY



IMPORTANT ASPECTS TO BE NOTED:

- ❖ If department is not agreeing with the order passed by adjudicating authority, then it can file review application (treated as appeal) as per hierarchy.
- ❖ The time-limit to file appeal by department is 6 months. However, if department fails to file appeal, one more remedy is available with them i.e., revising the order passed by adjudicating authority. The authority is named as "REVISIONAL AUTHORITY". RA can revise order only after 6 months and before 3 years have not passed
- ❖ Revisional Authority (RA) is basically the next rank of appropriate adjudicating authority. RA empowered to revise the orders passed by subordinate if it is prejudicial to the interest of revenue and have been passed without considering facts.
- ❖ **THE ORDERS OF REVISIONAL AUTHORITY ARE DIRECTLY APPEALABLE AT GSTAT (NOT AT APPELLATE AUTHORITY)** (For Logic refer below)
- ❖ No pre-deposit if department wants to file appeal. (to be discussed in detail)

WHO IS ADJUDICATING AUTHORITY | APPELLATE & REVISIONAL AUTHORITY?

Adjudicating Authority	CGST evaded u/s 74A (Rs.)	IGST evaded u/s 74A (Rs.)	(CGST + IGST) evaded u/s 74A (Rs.)	Appellate Authority [R. 109A]	Revisional Authority
Superintendent of Central Tax	Upto Rs. 10 lakhs	Upto Rs. 20 lakhs	Upto Rs. 20 lakhs	Additional Commissioner (Appeals)/Joint Commissioner (Appeals)	Additional Commissioner/ Joint Commissioner
Deputy Assistant Commissioner of Central Tax	>Rs. 10 lakhs upto Rs. 1 crore	>Rs. 20 lakhs upto Rs. 2 crores	>Rs. 20 lakhs upto Rs. 2 crores	Commissioner (Appeals)	Commissioner
Additional or Joint Commissioner of Central Tax	>Rs. 1 crore	>Rs. 2 crores	>Rs. 2 crores		

Since RA have the ranking equal to Appellate Authority (although different authorities), the orders passed by RA, are directly appealable at GSTAT.

Appeals & Revision [Section 107 to 121 read with Rules] (2/4)

APPEAL FILING PROCEDURE

Sr. No.	Particulars	2. Appeal before Appellate Authority [S. 107]	3. Appeal before GSTAT (GST Appellate Tribunal) [S. 112 & 113]	4. Appeal before High court [S. 117]	5. Appeal before supreme court
1	Orders appealable (i.e., orders against which appeal can be filed)	Aggrieved persons from orders of Adjudicating Authority (Department can also file appeal , i.e., The Commissioner may, on his own motion, or upon request from the SGST/UTGST Commissioner, examine the record of any proceedings in which an adjudicating authority has passed any decision/order under the CGST Act or SGST Act/UTGST Act to satisfy himself about the legality or propriety of such decision/order)	Aggrieved person from: (i) Orders passed by Appellate Authority. ❖ Having Place of Supply issue: Appeal to be filed before Principal Benches ❖ Other than place of Supply issue: Appeal to be filed before State Bench (ii) Orders by revisional Authority	Aggrieved person from: Orders passed by STATE BENCH of GSTAT provided it involves SUBSTANTIAL QUESTION OF LAW. <i>(The HC may determine any issue which has not been determined by the GSTAT (SB) or has been wrongly determined by the SB, by reason of a decision on such question of law.)</i>	Aggrieved person from: Orders passed by (i) High court, where high court certifies the case fit to be appealed before supreme court (ii) Principal Bench of GSTAT (POS Issue)
2	Time Limit to file appeal by ASSESSEE	3 months (+1-month condonation) from communication of order passed by adj. authority <i>(Provisional acknowledgement is issued immediately. The date of issue of provisional acknowledgement shall be considered as the date of filing of appeal.)</i>	3 months (+3 months condonation on sufficient cause) from date of communication of decision or order passed by appellate authority or revisional authority [S. 112(1), (6)]	180 days from communication of order passed by STATE BENCH (HC has the power to condone the delay on being satisfied of sufficient cause for the same.) [S. 117(2)]	Governed as per code of civil procedure (Not in syllabus) (Not in syllabus)
3	Time Limit to file appeal by DEPARTMENT	6 months (+1-month condonation) from the date of communication order passed by adj. authority	6 months (+3 months condonation on sufficient cause) from the date of communication of decision or order passed by appellate authority/RA [S. 112(3), (6)]		ALL DUES as per order of GSTAT (i.e. PB) or HC shall be paid before preferring appeal to SC. [S. 119]
4	Form in which appeal is to be filed	By Assessee: GST APL - 01 By Department: GST APL 03 <i>Acknowledgment would be received in GST APL - 02</i>	By Assessee: GST APL – 05 By Department: GST APL - 07 Memorandum of cross objection shall be filed by respondent within 45 days of the receipt of notice that appeal has been preferred (45 days extension is possible on sufficient cause) [MoCO shall be treated as appeal filed by respondent] [S. 112(5)]	GST APL 08	
5	Pre-deposit to be paid Notes on pre-deposits: ❖ There is no requirement of pre-deposit at any stage if the appeal is for the purpose of refund eligibility. ❖ As per section 115 (Period), if the decision is ordered in favour of assessee, he shall get refund of pre-deposit paid along with interest @ 9% p.a. (Section 56) from date of payment of pre-deposit till the date of grant of refund.	PRE-DEPOSIT WHEN APPEAL IS FILED BY TAXPAYER [S. 107(6)]: (a) 100% of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and (b) 10% of the DISPUTED AMOUNT OF TAX (NOT DISPUTED INTEREST & PENALTY) subject to Rs. 20 crores CGST & Rs. 20 crores SGST, IGST - Rs. 40 cr. <i>(Note: Only (b) is subject to upper cap)</i> No pre-deposit to be paid where appeal is filed by dept. Appeal shall be filed against an order under section 129(3) on payment of Pre-deposit of 10% of Penalty paid by appellant. (Inserted vide Section 116 of FA, 2021 notified by NN 39/2021) (On pmt. Of pre-deposit recovery proceedings are stayed)	Fees for filing of appeal or restoration of appeal shall be Rs. 1,000 for every Rs. 1,00,000 of tax or ITC involved or the difference in tax or ITC involved against. However, the fee shall not exceed Rs. 25,000. [S. 112(8) r/w S. 112(10)] There shall be no fee for application made before the Appellate Tribunal for rectification of errors. PRE-DEPOSIT WHEN APPEAL IS FILED BY TAXPAYER [S. 112(8)]: (a) 100% of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and (b) 10% of the DISPUTED AMOUNT OF TAX (NOT DISPUTED INTEREST & PENALTY) subject to Rs. 20 crores CGST & Rs. 20 crores SGST, In case of IGST - Rs. 40 crores [Only (b) is subject to upper cap] [Penalty appeal = 10% of penalty] No pre-deposit to be paid where appeal is filed by dept.	Pre-deposit of ALL TAX DUES is required to be made; otherwise, the inherent powers of the High Court have to be invoked for obtaining a stay pending disposal of the appeal.	
6	ADVISORY Time-limit to dispose appeal	TIMELIMIT - Within 1 year from date of filing of appeal, appellate authority shall pass a speaking order [107(13)]	TIMELIMIT - Within 1 year from date of filing of appeal, appellate tribunal shall pass a speaking order [S. 113(4)]	Governed as per CPC	
7	Other points	<ul style="list-style-type: none"> ❖ AA can allow on sufficient cause to add ground of appeal not specified in appeal ❖ AA cannot remand case back to Adjudicating Authority ❖ Cannot give more than 3 adjournments ❖ AA can rectify mistake apparent from record u/s 161 within 3 months from date of order ❖ SCN u/s 74A to be given for enhancing tax liability of appellant [S. 107(11)] ❖ Appellant can file application for withdrawal of the said appeal by filing an application in Form APL-01/03W. (if ack. is issued withdrawal is subject to approval by authority within 7 days of filing) 	<ul style="list-style-type: none"> ❖ The Appellate Tribunal may, in its discretion, refuse to admit any such appeal where <ul style="list-style-type: none"> (a) The tax or input tax credit involved or (b) The difference in tax or input tax credit involved or the amount of fine, fee or penalty determined by such order, does not exceed Rs. 50,000/-. ❖ GSTAT has the power to remand case back to AA, Adjudicating Authority or revisional authority ❖ Cannot give more than 3 adjournments ❖ The Tribunal can correct its own order for any apparent mistakes, within 3 months from date of order but it has no power of review. (S. 113) ❖ Where ack is issued, w/d of appeal can be done w/i 15 days of filing 	-	

Appeals & Revision [Section 107 to 121 read with Rules] (3/4)

Constitution of Principle Bench	President	Judicial Member	Technical Member (Centre)	Technical Member (State)
Constitution of State Benches	Judicial Member	Judicial Member	Technical Member (Centre)	Technical Member (State)

Appeals involving ₹50 lakh or less and no question of law are heard by a **Single Member** of the Appellate Tribunal, while all other matters are heard by a bench consisting of **one Judicial Member and one Technical Member**. If these two Members differ in their views, they must record the specific points of difference, and the **President** will refer those points to another appropriate Member either from the **same State Bench**, or if unavailable, from a **State Bench in another State**, or in the case of the **Principal Bench**, to another Principal Bench Member or any State Bench Member if none is available. The matter is then decided based on the **majority opinion**, including that of the original Members. Further, **any vacancy or defect** in the constitution of the Appellate Tribunal **does not invalidate** its proceedings.

6. REVISIONAL AUTHORITY [S. 108]

ORDERS THAT CAN BE REVISED:

Those decisions or orders passed by any officer subordinate to him is erroneous in so far as it is prejudicial to the interest of the revenue or illegal or improper or has not taken into account certain material facts.

ORDERS THAT CANNOT BE REVISED: [S. 108(2)]

(i) **Non-appealable** orders u/s 121 of CGST Act – In these below mentioned cases appeals cannot be filed by Assessee.

[S. 108(1), this point is arrived by reading “Subject to S. 121....”]

Following are non-appealable orders u/s 121 (ASSEESSEE cannot file appeal in these cases): -

- ❖ Transfer of proceeding from one officer to another officer;
- ❖ Seizure or retention of books of account, register and other documents;
- ❖ Order sanctioning prosecution under the Act
- ❖ Order passed U/s.80 related to payment of tax & other amount in instalments.

(ii) An order against which an **appeal is filed** before Appellate Authority u/s 107, Appellate Tribunal u/s 112, High Court u/s 117, Supreme Court u/s 118.

As per proviso to section 108(2), the Revisional Authority may pass an order on any point which has NOT been RAISED AND DECIDED in an appeal either before the Appellate Authority, Appellate Tribunal, High Court or Supreme Court

(iii) **Period of 6 months** (i.e. time-limit for department to file appeal before appellate authority or Appellate Tribunal) has **not expired** or more than **3 years have expired** after passing the decision or order sought to be revised.

(iv) The order has **already been taken for revision** at an earlier stage

(v) The **order sought to be revised is a revisional order** in the first place

TIME LIMIT TO PASS THE REVISED THE ORDER [Proviso to S. 108(2)]

Time-limit to revise the order: The revisional authority can revise the adjudicating authority's order

- ❖ Before the expiry of a period of 1 year from the date of the order in such appeal [Appellate authorities order] or
- ❖ Before the expiry of a period of 3 years from adjudication authorities' order*

Whichever is later.

*The time span lost between

- ❖ The date of decision of the Appellate Tribunal and the date of decision of the High Court or
- ❖ The date of decision of the High Court and the date of decision of Supreme Court

Shall be excluded in 3 years as per proviso to 108(2). Even the period of stay order is excluded in computing the period of limitation of three years.

7. ADDITIONAL EVIDENCE [RULE 112]

Rule 112 of the CGST Rules lays down that the appellant shall not be allowed to produce before the AA or the Tribunal any evidence, whether oral or documentary, other than the evidence produced by him during the course of the proceedings before the (lower authority) adjudicating authority or, as the case may be, the AA.

Exceptions

1. Where the adjudicating authority or, as the case may be, the AA has (lower authority) refused to admit evidence which ought to have been admitted
2. Where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the adjudicating authority or, as the case may be, the AA; or
3. Where the appellant was prevented by sufficient cause from producing before the adjudicating authority or, as the case may be, the AA any evidence which is relevant to any ground of appeal; or
4. Where the adjudicating authority or, as the case may be, the AA (lower authority) has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.
 - ❖ While taking evidences, reasons for its admission shall be recorded in writing
 - ❖ Reasonable opportunity shall be given by AA or GSTAT to adjudicating authority or AA to cross examine the evidence/witness, or produce any evidence in rebuttal of the additional evidence produced
 - ❖ The provisions of this rule shall not affect the power of the AA or the Appellate Tribunal to direct the production of any document, or the examination of any witness, to enable it to dispose of the appeal.

8. AUTHORISED REPRESENTATIVE [S. 116]

Authorised representative can be a relative, a regular employee, an advocate, a chartered accountant, a cost accountant, a company secretary, or a GST Practitioner. It is also provided that specified indirect tax gazetted officers having served for atleast 2 years, can appear as authorised representative after one year from the date of their retirement/resignation

DISQUALIFICATIONS:

The GST law also provides some disqualifications for an authorised representative. Section 116(3) lays down that below shall be disqualified to represent:

- (a) who has been dismissed or removed from Government service; or
- (b) who is convicted of an offence connected with any proceedings under the CGST Act/ SGST Act/ UTGST Act/IGST Act or under the earlier law or under any of the Acts passed by a State Legislature dealing with the imposition of taxes on sale of goods or supply of goods and/or services; or
- (c) who is found guilty of misconduct by the prescribed authority;
- (d) who has been adjudged as an insolvent

(Note: Permanently disqualified in case of persons referred to in clauses (a), (b) and (c); and Disqualified for the period during which the insolvency continues in the case of a person referred to in clause (d).)

Appeals & Revision [Section 107 to 121 read with Rules] (4/4)

9. Appeal not to be filed in certain cases (S. 120 of CGST Act, 2017)

(Difference between Section 120 & 121 is that, in case of Section 120 – CGST / SGST, UTGST officer cannot prefer appeal in certain cases, whereas in case of Section 121 i.e. non-appealable orders, assessee cannot file appeal in certain cases)

1. This section provides for non-filing of appeal by CGST & SGST / UTGST Officer if it is below Monetary Limits specified by CBIC.
2. This provision shall not preclude such CGST & SGST / UTGST Officer from filing appeal or application in any other case involving the same or similar issues or questions of law.
3. No person, being a party in appeal or application shall contend that the officer of central tax has acquiesced in the decision on the disputed issue by not filing an appeal or application (on account of monetary limits).
4. The Tribunal or Court hearing such appeal or application shall have regard to circumstances for non-filing of appeal or application by CGST officer on account of monetary limits fixed by Board.

Example: Supposingly, government fixed the monetary limits that if Tax involved is upto Rs. 10 lakhs, department shall not file appeal. There was a case that, whether market survey services provided to recipient located outside India, fall under the purview of intermediary services or export of services. There are 2 assesses providing these services, viz., Mr. A & Mr. B.

Mr. A's tax liability is Rs. 3,00,000 if it is treated as intermediary services. However, adjudicating authority, passed order in favour of Mr. A granting it as exports. However, now department cannot file appeal, as the matter is below Rs. 10 lakhs.

In next year Mr. B entered into same transaction, and tax involved in this case was Rs. 15,00,000 (> 10 lakhs), here also, adjudicating authority passed order in the favour of Mr. B, however, here, department can file appeal as matter is more than Rs. 10 lakhs. Mr. B cannot claim that since, department did not file the appeal in case of Mr. A, it has accepted the position. It is so because, department did not file appeal due to monetary restrictions.

Withdrawal of Appeal [Rule 109C]

The appellant may, at any time before issuance of show cause notice under sub-section (11) of section 107 or before issuance of the order under the said sub-section, whichever is earlier, in respect of any appeal filed in FORM GST APL-01 or FORM GST APL-03, file an application for withdrawal of the said appeal by filing an application in FORM GST APL-01/03W.

However, where the final acknowledgment in FORM GST APL-02 has been issued, the withdrawal of the said appeal would be subject to the approval of the appellate authority and such application for withdrawal of the appeal shall be decided by the appellate authority within seven days of filing of such Application.

Further, that any fresh appeal filed by the appellant pursuant to such withdrawal shall be filed within the time limit specified in section 107(1) /107(2), as the case may be.

Other points w.r.t. GSTAT

1. The President of the Appellate Tribunal shall hold office for a term of 4 years from the date on which he enters upon his office, or until he attains the age of 67 years, whichever is earlier and shall be eligible for re-appointment for a period not exceeding two years.
2. The Judicial Member, Technical Member (Centre) or Technical Member (State) of the Appellate Tribunal shall hold office for a term of 4 years from the date on which he enters upon his office, or until he attains the age of 65 years, whichever is earlier and shall be eligible for re-appointment for a period not exceeding two years.
3. The President or any Member may, by notice in writing under his hand addressed to the Government, resign from his office:

However, the President or Member shall continue to hold office until the expiry of three months from the date of receipt of such notice by the Government or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

The Government may, on the recommendations of the Search-cum-Selection Committee, remove from the office President or a Member, who

- (a) has been adjudged an insolvent; or
- (b) has been convicted of an offence which involves moral turpitude; or
- (c) has become physically or mentally incapable of acting as such President or Member; or
- (d) has acquired such financial or other interest as is likely to affect prejudicially his functions as such President or Member; or
- (e) has so abused his position as to render his continuance in office prejudicial to the public interest:

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

"The reason most people never reach their goals is that they don't define them, or ever seriously consider them as believable or achievable. Winners can tell you where they are going, what they plan to do along the way, and who will be sharing the adventure with them."

Appeals & Revision [Section 107 to 121 read with Rules] (5/5)

MONETARY LIMITS FOR FILING APPEAL BY DEPARTMENT

The Board, on the recommendations of the GST Council, **fixes the following monetary limits below** which appeal or application or Special Leave Petition, as the case may be, **shall not be filed by the Central Tax officers before Goods and Service Tax Appellate Tribunal (GSTAT), High Court and Supreme Court** under the provisions of CGST Act, **subject to the exclusions mentioned:**

Appellate Forum	Monetary Limit involved in Rs.
GSTAT	20 Lakhs
High Court	1 Crore
Supreme Court	2 Crore

Imp Points for deciding Monetary Limits:

- Where the dispute pertains to demand of tax / erroneous refund (with or without penalty and/or interest – Amt of Tax / erroneous refund to be considered
- Where the dispute pertains to demand of Interest – Amt of Interest to be considered
- Where the dispute pertains to demand of Penalty – Amt of Penalty to be considered
- Where the dispute pertains to demand of Late fees – Amt of Late fees to be considered
- Where the dispute pertains to demand of Interest, Penalty & L.F. – Total Amt shall be considered
- 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.

Appeal can be filed in below cases by department without checking monetary limit:

- ❖ Provision held to be *ultra vires* to the Constitution of India
- ❖ Notification / Rules held ultra vires to parent act
- ❖ Matter relating to VOS, POS, Classification, Refund, any other issue involving interpretation of law
- ❖ Strictures/adverse comments have been passed and/or cost has been imposed against the Government/Department or their officers

Offences & Penalties [Section 122 to 138 read with Rules] [1/4]

Penalty for Certain offences - Section 122

1. Section 122(1): Penalty for offences committed by "TAXABLE PERSONS"

Penalty for Below Offences made by Taxable Person: -

➤ **Rs. 10,000/- or Amount Equal to Tax evasion whichever is higher.**

(i.e. Rs. 10,000 or tax evaded or the tax not deducted under section 51 or short deducted or deducted but not paid to the Government or tax not collected under section 52 or short collected or collected but not paid to the Government or input tax credit availed of or passed on or distributed irregularly, or the refund claimed fraudulently, whichever is higher)

Offences: -

(A) Outward Supply & Transportation: -

- i) **Supplies without issue of any invoice or issues an incorrect or false invoice with regard to any such supply OR, issues invoice or bill of supply without supply [S. 122(1)(i) & (ii)] (Note 1)**
- ii) Transports any taxable goods without the cover of documents as may be specified in this behalf; [S. 122(1)(xiv)] – (E-way Bill, Delivery Challan / Tax Invoice / Bill of supply are specified documents)
- iii) Supplies, transports or stores any goods which are liable to confiscation [S. 122(1)(xviii)]
- iv) Disposes off or tampers with any goods that have been detained, seized, or attached [S. 122(1)(xxi)];
- v) Suppresses his turnover leading to Tax evasion [S. 122(1)(xv)];

(B) Registration related: -

- i) A person liable to be registered but fails to obtain registration [S. 122(1)(xi)];
(S. 22 & 24 shall be referred to understand liability of person to take registration)
- ii) Issues any invoice or document by using the registration number of another registered person [S. 122(1)(xix)];
- iii) Furnishes any false information with regard to registration particulars, either at the time of applying for registration, or subsequently [S. 122(1)(xii)]

(E) Tax-Related & Officers' Duty related: -

- i) Collects any amount as tax (whether or not in contravention of provisions) but fails to pay the same to the Government beyond a period of **3 months** from the date on which such payment becomes due [S. 122(1)(iii) & (iv)];
- ii) Fails to deduct tax u/s 51, or deducts lesser than tax deductible, or where he fails to pay tax deducted to Govt. [S. 122(1)(v)];
- iii) Fails to collect Tax u/s 52, or collects lesser than tax collectible, or where he fails to pay collected tax to Govt. [S. 122(1)(vi)];
- iv) Obstructs or prevents any officer in discharge of his duties under this Act [S. 122(1)(xiii)];

(C) Purchase & Refunds: -

- i) **Takes or utilizes input tax credit without actual receipt of goods or services or both either fully or partially, in contravention of the provisions of this Act or the rules made thereunder [S. 122(1)(vii)];**
- ii) Fraudulently obtains refund of tax under this Act [S. 122(1)(viii)];
- iii) **Takes or distributes input tax credit in contravention of section 20, or the rules made thereunder; [S. 122(1)(ix)] (Note 1)**

(D) Accounts, Records & Documentation: -

- i) Falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information or return with an intention to evade payment of tax due under this Act [S. 122(1)(x)];
- ii) Fails to keep, maintain or retain books of account and other documents in accordance provisions [S. 122(1)(xvi)];
- iii) Fails to furnish information or documents called for by an officer in accordance with the provisions of this Act or the rules made thereunder or furnishes false information or documents during any proceedings under this Act [S. 122(1)(xvii)]
- iv) Tampers with, or destroys any material evidence or document; [S. 122(1)(xx)]

Note 1: - In case of such offences, as per Section 122(1A) inserted vide Finance Act, 2020 [Ins. w.e.f. 01-01-2021 (vide NN 92/2020, dt. 22-12-2020) by the Finance Act, 2020 (12 of 2020) (s.126) dt. 27-03-2020] **a person who retains the benefit** of the above transaction and at whose **instance such transaction is conducted** shall be liable to penalty of an amount equivalent to the tax evaded or input tax credit availed of or passed on. The purpose of the above amendment is to penalize the person who is the ultimate beneficiary of the fraud transactions and the person at whose direction the fraud transaction has been conducted.

2. Section 122(2): Penalty for offences by "REGISTERED" persons

Registered person who supplies any goods or services or both on which any tax has not been paid or short-paid or erroneously refunded, or where the input tax credit has been wrongly availed or utilised: -

Reasons other than fraud, wilful misstatement & suppression of facts: -

Rs. 10,000/- or,
10% of Tax Due whichever is higher.

Reasons of fraud, wilful misstatement & suppression of facts: -

Rs. 10,000/- or,
100% of Tax Due whichever is higher.

Offences & Penalties [Section 122 to 138 read with Rules] [2/4]

3. Section 122 (3) of CGST Act, 2017

Penalty may extend to Rs. 25,000 if **any person** (Thus includes unregistered persons)

- (a) aids or abets any of the offences specified in Section 122(1) i.e. Part (1) of this chapter.
- (b) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with any goods which are liable to confiscation.
- (c) Receives / Deals with any supply of services which he knows or has reasons to believe are in contravention of any provisions;
- (d) Fails to appear before the officer of central tax, when issued with a summon for appearance to give evidence or produce a document in an inquiry;
- (e) Fails to issue invoice in accordance with the provisions or fails to account for an invoice in his books of account,

4. Section 123: Discussed in returns chapter

5. Section 124: Failure to furnish information return

If any person required to furnish any information or return under section 151,

- ❖ Fails to furnish such information or return as may be required under that section without reasonable cause; or
- ❖ willfully 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 **Rs. 10,000/-** and in case of a **continuing offence** to a further fine which may extend to **Rs. 100 each day after the first day during which the offence continues** subject to a **maximum limit of Rs. 25,000/-**

6. 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 **Rs. 25,000/- (CGST)**

(Same penalty u/s SGST Act, thus effectively total general penalty is Rs. 50,000/-)

For example: There is no penalty prescribed in law for late furnishing of GSTR 9C (Not 9), thus it will be leviable to penalty under this section

7. Section 126 - General Disciplines for levy of penalty

No penalty shall be imposed for **“minor breaches”** of tax regulations or procedural requirements and in particular, any omission or mistake in documentation which is easily rectifiable and made without fraudulent intent or gross negligence. Minor Breach means breach which has amount of tax involved less than Rs. 5,000/- i.e. **“5000 is NOT A Minor Breach”**

8. Section 127: Power to impose penalty in certain cases

Where the proper officer is of the view that a person is liable to a penalty and the same is not covered under any proceedings under section 62 or section 63 or section 64 or section 73 or section 74 or section 129 or section 130, he may issue an order levying such penalty after giving a reasonable opportunity of being heard to such person.

9. Section 128: Power to waive off penalty

The Government may, by notification, waive in part or full, any penalty referred to in section 122 or section 123 or section 125 or any late fee referred to in section 47 for such class of taxpayers and under such mitigating circumstances as may be specified therein on the recommendations of the Council.

10. Section 129: Detention, seizure and release of goods and conveyances in transit.

Sec	Description
129(1)	(Non-obstante clause) Where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act or the rules made thereunder, goods and conveyance and documents relating to such goods and conveyance shall be liable to detention or seizure and after detention or seizure:
129(1)(a)	Shall be released if Owner of the goods comes forward for payment of penalty
	In case of Taxable Goods:
	On payment of penalty equal to 200% of the tax payable on such goods
	For example: If the taxable goods valued at Rs. 100,000/- (tax rate 12%) is being transported without documents and subject to detention, then if the owner of goods comes forward to pay penalty, the amount payable would be equal to: Penalty Rs. 24,000/- . Please note that the taxes paid under this provision would not be eligible to be claimed as input taxes by the recipient – refer section 17(5).
	In case of Exempt Goods:
	On payment of penalty of an amount equal to 2% of the VALUE OF GOODS or Rs. 25,000/-, whichever is less.
	For example: If the exempt goods valued at Rs. 1,00,000/- is being transported without documents and subject to detention, then if the owner of goods comes forward to pay the penalty the amount payable would be equal to: Rs. 2,000/- or Rs. 25,000/- whichever is lower, in this case it is Rs. 2,000.
129(1)(b)	Shall be released if owner of the goods does not come forward for payment of:
	In case of taxable Goods:
	Penalty equal to the 50% of the value of the goods or 200% of Tax payable whichever is higher
	For example: If the taxable goods valued at Rs. 1,00,000/- (tax rate IGST 12%) are being transported without documents and subject to detention, then owner of goods does not come forward then penalty would be Rs. 50,000/- [i.e. 50% of value of goods] or Rs. 24,000 [i.e. 200% of tax payable] whichever is higher. Thus, Rs. 50,000/- .
	In case of Exempt Goods:
	On payment of penalty of 5% of the value of goods or Rs. 25,000 whichever is less (Note: 10% of Value of goods or Rs. 50,000/- whichever is less, in case of exempt inter-state)
129(1)(c)	Shall be released upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) in such form and manner as may be prescribed
	No such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods

Offences & Penalties [Section 122 to 138 read with Rules] [3/4]

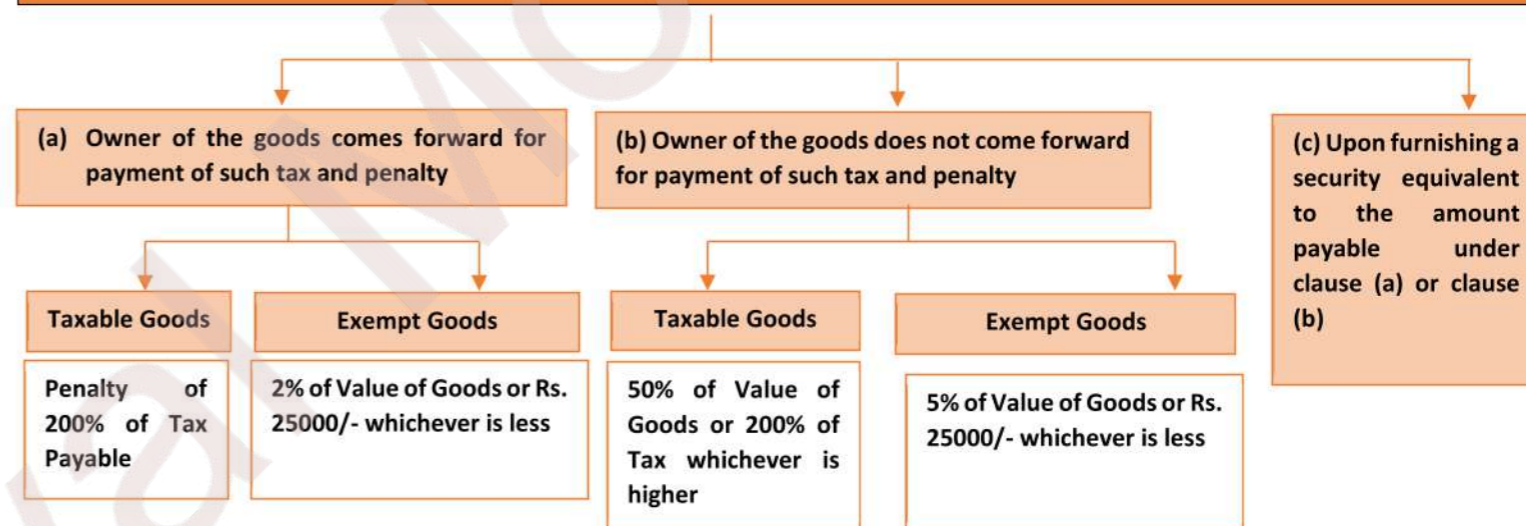
11. Section 129: Detention, seizure and release of goods and conveyances in transit.

Sec	Description
129(3)	Notice Order: The proper officer detaining or seizing goods or conveyances shall issue a notice within 7 days specifying the tax and penalty payable and thereafter within 7 days from date of SCN, pass an order for payment of tax and penalty under clause (a) or clause (b) or clause (c) Notes: - ❖ Appeal shall be filed against an order under sub-section 129(3) on payment of Pre-deposit of 10% of Penalty paid by appellant. (Inserted vide Section 116 of FA, 2021 notified by NN 39/2021). On filing appeal, the proceedings for recovery of penalty by sale of goods or conveyance detained or seized in transit shall be deemed to be stayed. (Inserted in Rules vide NN 40/2021 CT)
129(4)	Opportunity of Being Heard: No penalty shall be determined under section 129(3) without giving the person concerned an opportunity of being heard
129(5)	Deemed Conclusion: On payment of amount referred in sub-section (1), all proceedings in respect of the notice specified section 129(3) shall be deemed to be concluded
129(6)	Where the person transporting any goods or the owner of such goods fails to pay the amount of penalty under 129(1) within 15 days from the date of receipt of the copy of the order passed u/s 129(3), the goods or conveyance so detained or seized shall be liable to be sold or disposed of otherwise, in manner and within such time prescribed, to recover the penalty payable under 129(3). However, conveyance shall be released on payment by the transporter of penalty u/s 129(3) or Rs. 1 lakh, whichever is less. Further, where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of 15 days may be reduced by the proper officer.

12. Section 130: Confiscation of goods or conveyances and levy of penalty (Continued)

Sec	Description
130(4)	Opportunity of being heard shall be given before passing any order
130(5)	Once Confiscated, the title of such goods or conveyance shall vest in favour of the Government
130(6)	P.O. shall have possession of confiscated things; every officer of Police (if required) shall assist P.O.
130(7)	P.O. on satisfaction that the confiscated goods or conveyance are not required in any other proceedings under this Act, can give reasonable time to person not exceeding 3 months to pay fine in lieu of confiscation, otherwise can sell off such goods.

QUICK FIRE SUMMARY OF AMOUNT PAYABLE FOR RELEASE OF GOODS U/S 129 OF CGST Act



12. Section 130: Confiscation of goods or conveyances and levy of penalty

Sec	Description
130(1)	Where any person: (i) Supplies or receives any goods (not services) in contravention of any of the provisions with intent to evade payment of tax; (ii) Supplies any goods liable to tax under this Act without having applied for registration ; or (iii) Does not account for any goods on which he is liable to pay tax under this Act; (iv) Contravenes any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax ; or (v) Uses any conveyance as a means of transport for carriage of goods in contravention of the provisions of this Act or rules made thereunder unless the owner of the conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance. Then, all such goods or conveyances shall be liable to confiscation AND the person shall be liable to penalty under section 122.
130(2)	MAXIMUM fine for redemption (release) of Confiscated Goods [S. 130(2) of CGST] (a) Market value of the confiscated goods (-) Tax chargeable thereon or [Proviso 1 to section 130(2)], (b) Penalty equal to 100% of the tax payable on such goods [Proviso 2 to section 130(2)] (Amended vide S. 118 of FA, 2021 r/w NN 39/2021 – CT) whichever is higher
	MAXIMUM fine for redemption (release) of Confiscated Conveyance [Proviso 3 to S. 130(2) of CGST] Tax payable on the goods being transported.

Section 122(1B)

As per section 122(1B) of CGST Act, Any electronic commerce operator who:

- (i) allows a supply of goods or services or both through it by an unregistered person other than a person exempted from registration by a notification issued under this Act to make such supply;
- (ii) allows an inter-State supply of goods or services or both through it by a person who is not eligible to make such inter-State supply; or
- (iii) fails to furnish the correct details in the statement to be furnished under sub-section (4) of section 52 of any outward supply of goods effected through it by a person exempted from obtaining registration under this Act,

shall be liable to pay a penalty of ten thousand rupees, or an amount equivalent to the amount of tax involved had such supply been made by a registered person other than a person paying tax under section 10, whichever is higher.

This section 148A read with Section 122B states notified person must follow a track and trace system.

Such persons must:

- ❖ Affix a unique identification mark (UID) on each product or package,
- ❖ Maintain electronic records of manufacture, movement, and sale,
- ❖ Use machines or systems as specified, and
- ❖ Pay prescribed fees for the track and trace mechanism.

Any person who fails to comply with the prescribed requirements (like affixing a unique identification mark or maintaining records) will be liable to a penalty of ₹1,00,000 or 10% of the tax payable on such goods, whichever is higher.

Offences & Penalties [Section 122 to 138 read with Rules] [4/4]

13. OTHER SECTIONS [HIGHLY NOT IMPORTANT] [S. 131, 133, 134, 135, 136, 137]

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: Discussed with chapter "Inspection, Search, Seizure"

Section 133: Liability of officers and certain other persons

An officer is not required to disclose any information to any one which is obtained u/s 150 or u/s 151 (Information return) except as his duty or where required under law.

However, if discloses then he shall be punishable with imprisonment for a term which may extend to **SIX MONTHS OR WITH FINE WHICH MAY EXTEND TO RS. 25,000/-, OR WITH BOTH**

A Person shall be prosecuted for any offence under this section –

- ❖ In case of Government Servant – With the previous sanction of Government only;
- ❖ In case of person other than Government Servant - With the previous sanction of Commissioner only.

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 as to 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.

As per Explanation (i) to Section 135, the expression "culpable mental state" includes **intention, motive, knowledge of a fact, and belief in, or reason to believe, a fact.**

It shall, however, be a defense for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution. As per Explanation (ii) to Section 135, a fact is said to be proved only when the court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

Section 136: Relevancy of statements under certain circumstances (Not relevant to learn)

Section 137: Offences by Companies

OFFENCE COMMITTED BY COMPANY (body corporate and includes a firm or other association of individuals): In case where offence is committed by company under this act, the person who was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable.

If it is proved that the offence has been committed due to consent or negligence of director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty.

OFFENCE COMMITTED BY PSHIP FIRM, LLP, HUF OR TRUST: the partner or karta or managing trustee shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

If the above persons proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence, they shall not be liable to punishment.

"I don't want to get to the end of my life and find that I lived just the length of it. I want to have lived the width of it as well."

14. COMPOUNDING OF OFFENCES [SECTION 138 read with Rule 162 of CGST Rules]

Meaning of Compounding:

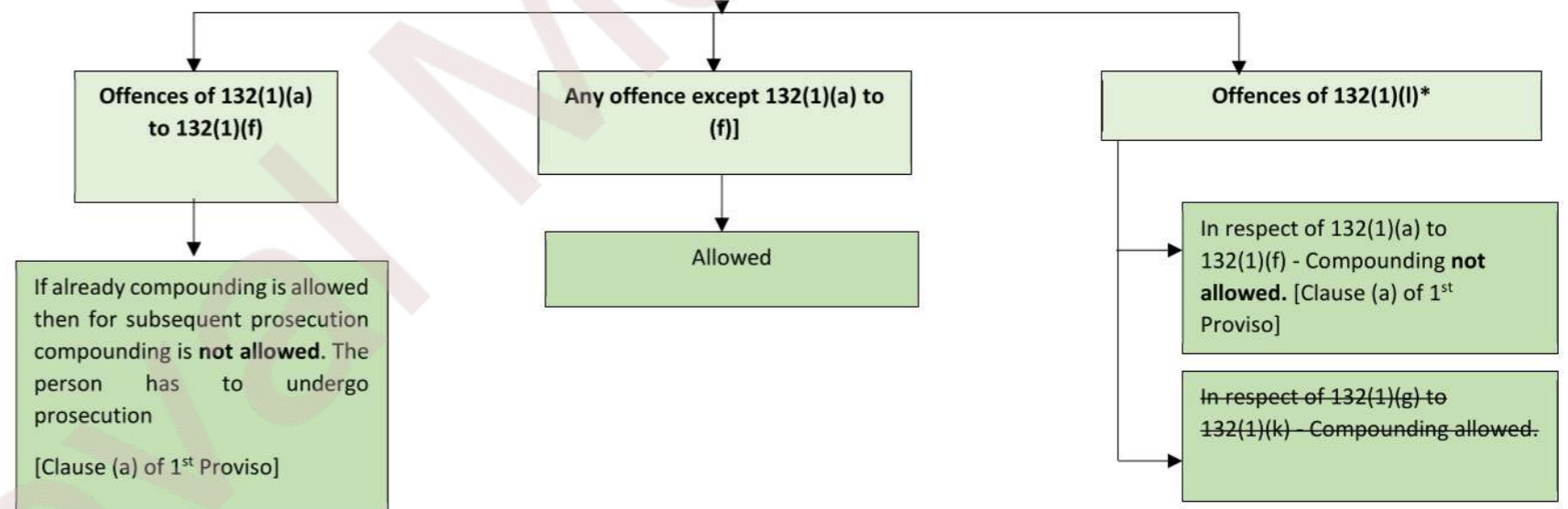
Compounding of an offence means payment of a sum of money in monetary terms instead of undergoing prosecution. Application for compounding of an offence can be either before or after institution of the prosecution proceedings.

Procedure:

A person who wants to do compounding shall make an application. On receipt of the application from the applicant, the commissioner shall call for a report from the concerned officer, if it is found that applicant has co-operated in proceedings then, he may accept the application and allow compounding. (Before rejecting - Opportunity of being heard shall be provided)

Commissioner may, by order, allow the application indicating the compounding amount and grant him immunity from prosecution or reject such application within **90 DAYS OF THE RECEIPT OF THE APPLICATION.**

Availability of Compounding in below cases:



*132(1)(l) is an offence for attempt to commit, or abets the commission of any of the offences mentioned in clauses (a) to (k) of this section

Other cases where compounding is not allowed

A person who has been accused of committing an offence under section 132(1)(b) of CGST Act [Clause (c) of 1st Proviso]

A person who has been convicted for an offence under this Act by a court [Clause (d) of 1st Proviso]

Any other class of persons or offences as may be prescribed [Clause (f) of 1st Proviso]

Other Important Points

- ❖ Any compounding allowed under the provisions of this section shall not affect the proceedings, if any, instituted under any other law
- ❖ Compounding shall be allowed only after making payment of tax, interest and penalty involved in such offences

Limit for Compounding:

As may be prescribed subj. to minimum 25% of the tax involved and the maximum amount not being more than one hundred per cent. of the tax involved.

If person allowed to compound an offence, he shall pay dues within 30 days of order allowing to pay. The Commissioner shall determine the compounding amount under sub-rule (3) as per the Table below

Sr. No.	Offences	Compounding amount if offence is more than 5 crores	Compounding amount if offence is more than 2 cr. upto 5 crores
1	u/s 132(1)(a)	Up to 75% of the amount of tax evaded subject to minimum of 50% of such amount of tax evaded	Up to 60% of the amount of tax evaded subject to minimum of 40% of such amount of tax evaded
2	u/s 132(1)(c)		
3	u/s 132(1)(d)		
4	u/s 132(1)(e)		
5	u/s 132(1)(f)	25% of tax evaded	25% of tax evaded
6	u/s 132(1)(h)	25% of tax evaded	25% of tax evaded
7	u/s 132(1)(i)		
8	Attempt to commit the offences or abets the commission of offences mentioned in clause (a), (c) to (f) and clauses (h) (i)		

Job-work means any treatment or process undertaken by a person on goods belonging to another registered person [Section 2(68) of CGST Act, 2017]. We will understand each & every aspect of Job-work in detail.

1) Analysis of All provisions of Job-work (S. 19 & S. 143 of CGST Act, 2017 r/w Rule 45 & 55 of CGST Rules & various circulars)

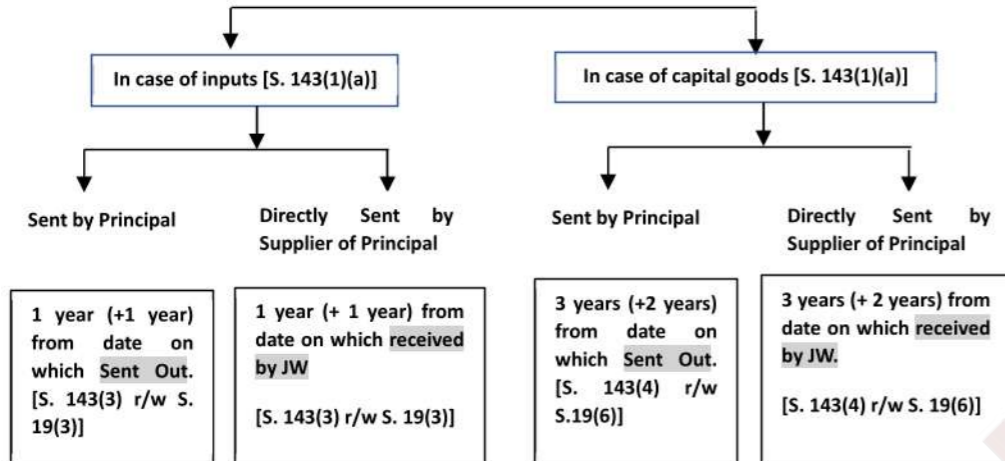
1) Analysis of Definition – S. 2(68) of CGST Act: -

Job-working creates the functionality of an article but repair or maintenance restores or improves the functionality already created and possessed by that article or thing. As per literal reading of definition, we understand that goods shall belong to registered principal. However, **job-worker can add his own goods as well in providing his services.**

2) Goods sent to Job-worker – Not a supply but ITC can be availed by Supplier: -

If principal purchases the goods and gets delivery by supplier at job worker's place of business, ITC can be availed by principal.

Time-limit for return of goods from Job – worker (JW) (other than moulds and dies, jigs and fixtures, or tools) Below Sections r/w CGST Amendment Act, 2018. Commissioner. If Goods are not returned within time period, then it would be treated as supply and GST shall be paid



3) Direct Supply from Place of business of Job-worker [S. 143(1)(b) r/w Proviso to S. 143]: -

A registered person may supply goods directly from registered job-worker's place of business (PoB). However, if JW is unregistered, Principal shall add his POB as APOB. LUT shall be executed by Principal.

4) E – way Bill Provisions in relation to Job-work [3rd Proviso to Rule 138]: - Where goods are sent by a principal to a job worker E – way bill is mandatory irrespective of consignment value.

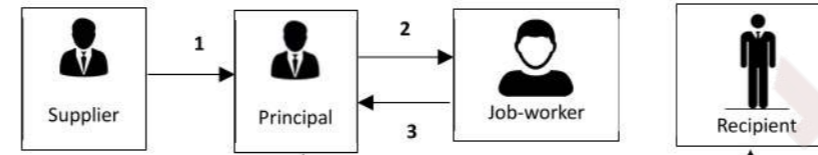
5) Treatment of Waste & Scrap [S. 143(5)]: - Any waste and scrap generated during the job work may be supplied by the job worker directly from his place of business on payment of tax, if such job worker is registered, or by the principal, if the job worker is not registered.

6) Time limit to file GST ITC – 04: ATO > 5 crore in PFY: Half yearly by 25th of end of half year i.e., 25th October & 25th April; ATO =< 5 crores: Annually - 25th April of Next FY)

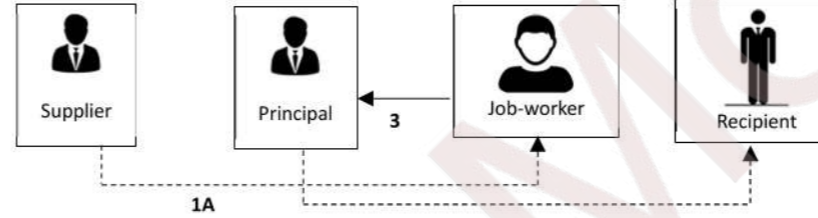
Job Work & Misc. (1/2)

7) Supply of Goods between Supplier, Principal, Job-worker & Customer of Principal –Circular No.38/12/2018 & r/w Circular 88/07/2019: - (Direction to Read – Refer Numbers simultaneously with Chart below Diagram)

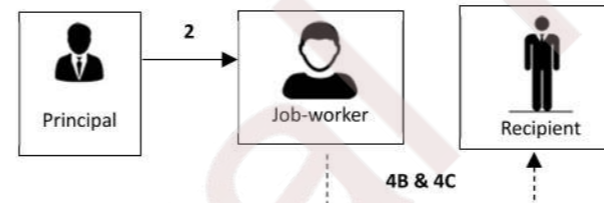
8) Case (1): - Normal Supply of Goods / Capital Goods: -



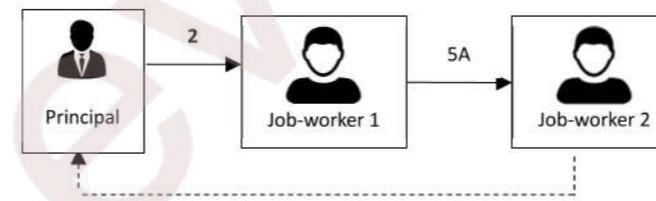
Case (2): - Supply directly to Job-worker: -



Case (3): - Supply of Goods Directly from Job-worker's Place of Business: -



Case (4): - Supply of Goods from Job-worker to another Job-worker & then sent to principal or sold from place of business of job-worker



If goods are sent in piecemeal quantities by a job worker to another job worker or to the principal, the challan issued originally by the principal cannot be endorsed and a fresh challan is required to be issued by the job worker.

Transaction Code	Documentation thereof
1	Supplier will supply goods along tax invoice (R. 46 r/w S. 31) / bill of supply (R. 49 r/w S. 31) and E-way bill (if req.)
2	Principal will send goods to Job worker under cover of delivery challan (2 copies) u/r 45 r/w R. 55 of CGST Rules. Mandatory E – way Bill + GST ITC 04 as per applicability
3	The job worker should send one copy of the delivery challan along with the goods, while returning them to the principal along with an E – way bill (if JW is regd. under GST). Further, if JW is Unregd., principal shall generate E – way bill as “Inward from Unregistered.” Job-worker shall issue tax invoice u/s 31 for Job-work charges.
1A	Supplier when sends goods directly to JW of principal, supplier prepares invoice by following bill to ship to model i.e. bill to principal & ship to Job-worker.
4B	A registered person may supply goods directly from job-worker's place of business (PoB) to recipient in India, if such POB is shown as additional PoB. It shall be deemed that principal has supplied such goods & discharged by supplier itself. [S. 143(1)(b) of CGST Act]
4C	A registered person may supply goods directly from job-worker's place of business (PoB) to recipient in outside India, if such POB is shown as additional PoB. It shall be deemed that principal has exported such goods and LUT shall be executed by principal. [S. 143(1)(b) of CGST Act]
5A	The challan issued by the principal may be endorsed by the job worker sending the goods to another job worker, indicating therein the quantity and description of goods being sent. The same process may be repeated for subsequent movement of the goods to other job workers.

1) **S. 144 – Rebuttable Presumptions: -**

Where any document is produced by any person, or any documents are seized from any person, or document has been received from any place outside India in the course of any proceedings, it shall be deemed that such person has signed, attested, executed the same. Further anything written on same is handwriting of that person.

2) S. 145 – Microfilms, facsimile copies of documents and computer printouts as documents are admissible as evidence.

3) **S. 159 – Publishing Name & Particulars under GST Act: -**

If the Commissioner, or any other officer authorised by him in this behalf, is of the opinion that it is necessary or expedient in the public interest to **publish the name of any person and any other particulars relating to any proceedings or prosecution under this Act in respect of such person, it may cause to be published.**

No publication under this section shall be made in relation to any penalty imposed under this Act until the time for presenting an appeal to the Appellate Authority under section 107 has expired without an appeal having been presented or the appeal, if presented, has been disposed of.

4) **S. 160 – No Proceedings Invalid for reason of Mistake: -**

No assessment, re-assessment, adjudication, review, revision, appeal, rectification, notice, summons or other **proceedings** done, accepted, made, issued, initiated, or purported under this Act **shall be invalid** or deemed to be invalid **merely by reason of any mistake, defect or omission** therein, if such proceedings are in substance and effect in conformity with requirements of this Act or any erstwhile law. *(CA. Final Old Syllabus Exam Question)*

5) **S. 161 – Rectification of Errors apparent from records: -**

Any authority, who has passed or issued any decision or order or notice or certificate or any other document, **may rectify any error which is apparent on the face of record on its own motion or** where such **error is brought to its notice by any officer** appointed under GST Act **or by the affected person within 3 months** from the date of issue of such order or decision etc.

No such rectification shall be done after 6 months from the date of issue of such order or decision etc.

The period of 6 months shall not apply in such cases where the rectification is purely in the nature of correction of a clerical or arithmetical error, arising from any accidental slip or omission.

Where such rectification adversely affects any person, opportunity of being heard shall be given.

6) **S. 171 – Anti-profiteering**

Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices.

As per section 171(3A) where the anti-profiteering authority, after holding examination as required comes to the conclusion that any registered person has profiteered under sub-section (1), such person shall be liable to pay penalty equivalent to ten per cent. of the amount so profiteered.

However, no penalty shall be leviable if the profiteered amount is deposited within 30 days of the date of passing of the order by the Authority.

7) As per section 25 of IGST Act / Section 172 of CGST Act, if any difficulty arises in giving effect to any provision of this Act, the Government may, on the recommendations of the Council, by a general or a special order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act or the rules or regulations made thereunder, as may be necessary or expedient for the purpose of removing the said difficulty:

Provided that no such order shall be made after the expiry of a period of five years from the date of commencement of this Act.

MEET THE AUTHOR



CA. Keval Mota is a member of the Institute of Chartered Accountants of India (ICAI) based out of Mumbai, India. He is a GST enthusiast and an excellent orator. He has vast experience in teaching Indirect Taxes to the Students of the ICAI, ICAI, ICAI, ICAI.

In his career, along with teaching he has addressed various seminars for corporate entities and has independently carried out SAP implementation and Impact Analysis in 2016 for large corporations during the inception of GST Law in the Indian economy. Due to his forte in Indirect Taxation, he has also worked for International Indirect Tax Implementation on UAE VAT at Dubai & Abu Dhabi in January, 2018.

He is a regular contributor of insightful articles on professional website "TaxGuru.in" and has good number of published articles to his credit. His expertise lies in critically analysing the concepts, transaction advisory and consulting including litigation and representation services for taxpayers including Giant Corporates and Multi-national Companies.

He has also been a speaker at WIRC for GST and has delivered many lectures on various topics of GST for students and professionals. The Author is also a speaker on GST burning issues and regular amendments in law at All India Federation of Tax Practitioners association. He is the Author of the book named "GST Concept Book", which is very exhaustive and covers all the provisions of GST with practical approach, interlinking and In-depth analysis.

He has handcrafted GST Charts which he very strongly believes that "Anyone can definitely clear toughest of the paper of Indirect Taxes, with the help of his Charts which gives 100% coverage with analysis of all the provisions"

He has deliberated in-depth revision lectures on his YouTube Channel on GST, Customs & FTP which covers entire syllabus in 60 odd hours. Further, he has also recorded audios for all the chapters which in turn works as saviour for Indirect Taxes on last day of exams as well as for quicker revision and refreshing concepts.

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