



CHAPTER 30

***MISCELLANEOUS
PROVISIONS***

**CHAPTER OVERVIEW**

SECTION	TOPIC
144	Presumption as to documents in certain cases
145	Admissibility of micro-films, facsimile copies of documents and computer printouts as documents and as evidence
146	Common Portal
147	Deemed exports
149	Goods and services tax compliance rating
151	Power to collect statistics
152	Bar on disclosure of information
153	Taking assistance from an expert
154	Power to take samples
155	Burden of proof
156	Persons deemed to be public servant
158	Disclosure of information by a public servant
159	Publication of information in respect of persons in certain cases
160	Assessment proceedings, etc., not to be invalid on certain Grounds



MISCELLANEOUS PROVISIONS

161	Rectification of errors apparent on the face of record
163	Levy of fees
164	Power of Government to make rules
165	Power to make regulations
166	Laying of rules, regulations and notifications
167	Delegation of powers
168	Power to issue instructions or directions
169	Service of notice in certain circumstances
170	Rounding off of tax, etc.
171	Anti-profiteering measure
172	Removal of difficulties

**A. DOCUMENTS****Presumption as to documents in certain cases [Section 144]**

Where any document—

- (i) is **produced** by any person under this Act or any other law; or
- (ii) has been **seized** from the custody or control of any person under this Act or any other law; or
- (iii) has been **received** from any place outside India in the course of any proceedings under this Act or any other law,

and such document is **tendered** by the prosecution in evidence against him or any other person who is tried jointly with him, the court shall—

The contents of a document must be proved by evidence and signature or handwriting of a person on the document must be proved to be of the person of whom it is alleged to be. Further, a document which is required by law to be attested shall not be used as evidence until at least one attesting witness has been called for the purpose of proving its execution, except in certain cases. **[The Evidence Act, 1872]**

Section 144 enables the court of law to make departure from the above general principles, in respect of the documents given above, and **presume**:

- (i) **truth** of the **contents** of the document
- (ii) that the **signature** which purports to be in the **handwriting** of any particular person is in that person's handwriting
- (iii) **execution or attestation** in the document has been executed or attested by the person by whom it purports to **have been so executed or attested**

This implies that in case of such documents, if the said person claims that the document is not true or not signed or handwritten by him or not attested or executed by him, **the burden of proof in respect of the same shall lie on him.**

The Stamp Act, 1899 provides that a document which is not duly stamped shall be inadmissible in evidence.

Section 144 allows the Court to depart from such general provision by providing that a document shall be admissible in evidence even if it is not duly stamped.



Admissibility of “micro films”, “facsimile copies” of documents and “computer printouts” as documents and as evidence [Section 145]

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

Certification

A certificate;

- (a) identifying the document containing the statement and describing the manner in which it was produced;
- (b) giving such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer,

shall constitute evidence of any matter stated in the certificate. It may be noted that it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

Deemed documents

- (i) A **micro film** of a document or the reproduction of the image(s) embodied in such micro film, whether enlarged or not;

Microfilms are films containing microphotographs of a document. Such images are generally provided as negatives.

- (ii) A **facsimile** copy of a document;

A facsimile is a copy or reproduction of a document that is as true to the original source as possible. An exact copy of a documents is a facsimile.

- (iii) **Statement** contained in a document and included in a printed material produced by a computer;

- (iv) **Information stored electronically** in any device or media, including any hard copies made of such information

shall be deemed to be a document for the purposes of this Act and the rules made thereunder and shall be admissible in any proceedings thereunder, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

**B. FURNISHING, COLLECTION AND PUBLICATION OF INFORMATION****Power to call for information [Section 151]**

The Commissioner or an officer authorised by him may, by an order, direct any person to furnish information relating to any matter dealt with in connection with this Act, within such time, in such form, and in such manner, as may be specified therein.

In case of failure to furnish such returns, a fine equal to ₹ 10,000 and for continuing offence a further fine equal to ₹ 100 per day during which such default continues subject to maximum of ₹ 25,000 may be levied by an order of proper officer.

Bar on disclosure of information [Section 152]

- (i) No information ~~of any individual return~~ with respect to any matter given for the purpose of Sections 150 or 151 shall, without the previous consent in writing of the concerned person or his authorised agent, be published in such manner as to enable any particulars to be identified as referring to a particular person.
- (ii) No such information shall be used for the purpose of any proceedings under the Act **without giving an opportunity of being heard to the person concerned**

Exception reporting

No restriction shall apply to the **publication of any information** relating to a class of dealers or class of transactions, if in the opinion of the Commissioner, it is desirable in the public interest, to publish such information.

Disclosure of information by a public servant [Section 158]**Confidential Information and documents [Section 158(1)]**

- a) All particulars contained in any **statement made, return furnished or accounts or documents produced** in accordance with the Act, or
- b) All particulars contained in any **record of evidence given in the course of any proceedings** under the Act (other than proceeding before a Criminal Court), or
- c) All particulars contained in any **record of any proceedings** under the Act

The Court **shall not require any GST officer** to produce before it or to give evidence before it in respect of the particulars mentioned above. However, this restriction will not apply in respect of disclosures mentioned below. **[Section 158(2) overrides the provisions contained in the Indian Evidence Act, 1872]**



MISCELLANEOUS PROVISIONS

Following information may be disclosed [Non-applicability of Section 158] [Section 158(3)]

For prosecution under the Indian Penal Code / Prevention of Corruption Act, 1988, or GST law, or any other law	Any particulars in respect of any such statement, return, accounts, documents, evidence, affidavit or deposition
For carrying out the objects of the Act	Any particulars to the CG/ SG or to any person acting in the implementation of the Act
For service of notice or recovery of demand	Any particulars when such disclosure is occasioned by the lawful exercise under the Act of any process
For furnishing to Court in a proceeding where Government is a party	Any particulars to a Civil Court in any suit or proceeding, to which the Government or any authority under the Act is a party, which relates to any matter arising out of any proceeding under the Act or under any other law authorising any such authority to exercise any powers thereunder;
For audit of tax receipts or refunds	Any particulars to any officer appointed for the purpose of audit
For inquiry into the conduct of GST officer	Any particulars where such particulars are relevant to any person or persons appointed as an inquiry officer under any relevant law
For enabling levy/realisation of any tax or duty	Any such particulars to an officer of the CG/ by a public servant/ statutory authority/ SG.
By lawful exercise of powers	Any particulars, when such disclosure is occasioned by the lawful exercise by a public servant or any other statutory authority
For inquiry into a charge of misconduct by any professional	Any particulars relevant to any inquiry into a charge of misconduct in connection with any proceedings under the Act against a practicing advocate, a tax practitioner, a practising cost accountant, a practicing chartered accountant, a practising company secretary to the authority empowered to take disciplinary action against the members practising the profession of a legal practitioner, a cost accountant, a chartered accountant or a company secretary.
For data entry on automated system	Any particulars to any agency appointed for the purposes of data entry on any automated system or for the purpose of operating, upgrading or maintaining any automated system where such agency is contractually bound not to use or disclose such particulars except for the aforesaid purposes
For any other law	Any particulars to an officer of the Government as may be necessary for the purposes of any other law in force in India



In public interest	Any information relating to any class of taxpayers or class of transactions for publication, if, in the opinion of the Commissioner, it is desirable in the public interest, to publish such information
---------------------------	--

Consent based sharing of information furnished by taxable person [Section 158A]

- (1) Notwithstanding anything contained in sections 133, 152 and 158, the following details furnished by a registered person may, subject to the provisions of sub-section (2), and on the recommendations of the Council, be shared by the common portal with such other systems as may be notified by the Government, in such manner and subject to such conditions as may be prescribed, namely:—
- (a) particulars furnished in the application for registration under section 25 or in the return filed under section 39 or under section 44;
 - (b) the particulars uploaded on the common portal for preparation of invoice, the details of outward supplies furnished under section 37 and the particulars uploaded on the common portal for generation of documents under section 68;
 - (c) such other details as may be prescribed.
- (2) For the purposes of sharing details under sub-section (1), the consent shall be obtained, of—
- (a) the supplier, in respect of details furnished under clauses (a), (b) and (c) of sub-section (1); and
 - (b) the recipient, in respect of details furnished under clause (b) of sub-section (1), and under clause (c) of sub-section (1) only where such details include identity information of the recipient, in such form and manner as may be prescribed.
- (3) Notwithstanding anything contained in any law for the time being in force, no action shall lie against the Government or the common portal with respect to any liability arising consequent to information shared under this section and there shall be no impact on the liability to pay tax on the relevant supply or as per the relevant return."

Consent based sharing of information [Rule 163]

- (1) Where a registered person opts to share the information furnished in—
- (a) FORM GST REG-01 as amended from time to time;
 - (b) return in FORM GSTR-3B for certain tax periods;
 - (c) FORM GSTR-1 for certain tax periods, pertaining to invoices, debit notes and credit notes issued by him, as amended from time to time,

with a system referred to in sub-section (1) of section 158A (hereinafter referred to as "requesting system"), the requesting system shall obtain the consent of the said registered person for sharing of such information and shall communicate the consent along with the details of the tax periods, where applicable, to the common portal.



MISCELLANEOUS PROVISIONS

(2) The registered person shall give his consent for sharing of information under clause (c) of sub-rule (1) only after he has obtained the consent of all the recipients, to whom he has issued the invoice, credit notes and debit notes during the said tax periods, for sharing such information with the requesting system and where he provides his consent, the consent of such recipients shall be deemed to have been obtained.

(3) The common portal shall communicate the information referred to in sub-rule (1) with the requesting system on receipt from the said system-

- (a) the consent of the said registered person, and
- (b) the details of the tax periods or the recipients, as the case may be, in respect of which the information is required.

The Central Government has notified “**Account Aggregator**” as the systems with which information may be shared by the common portal based on consent under section 158A.

“**Account Aggregator**” means an NBFC which undertakes the business of an Account Aggregator in accordance with the policy directions issued by the RBI and defined as such in the NBFC- Account Aggregator (Reserve Bank) Directions, 2016.

Publication of information in respect of persons in certain cases [Section 159]

- a) The Commissioner, or any other officer authorised by him in this behalf
- b) may publish in the manner the name of any person and any other particulars
- c) relating to any proceedings or prosecutions under the Act
- d) in respect of such person, as he thinks fit,
- e) if he is of the opinion that it is necessary or expedient in the public interest to do so.

Is there any additional information that which can be published?

Names of the partners of the firm, directors, managing agents, secretaries and treasures or managers of the company, or the members of the association, as the case may be may also be published if in the opinion of the Commissioner/authorised officer, circumstances of the case justify it.

Limitation on publication of information relating to penalty

No publication shall be made in relation to **any penalty** imposed under the Act:

- until the time for presenting an appeal to the Appellate Authority u/s 107 has expired (3 months extendable to further 1 month) without an appeal having been presented; or
- the appeal, if presented, has been disposed of.



C. REMOVAL OF DIFFICULTIES

Taking assistance from an expert [Section 153]

An officer, not below the rank of Assistant commissioner, to take assistance of any expert **at any stage of scrutiny, inquiry, investigation or any other proceedings before him.**

It may be noted that such decision shall be taken having regard to the nature and complexity of the case and the interest of revenue.

Example: A computer expert's assistance may be sought where the officer is of the view that information pertaining to a taxable person stored on a computer system does not reveal correct details.

Assessment proceedings, etc. not to be invalid on certain grounds [Section 160]

Sometimes, proceedings are challenged for their validity merely for reasons of mistakes etc. This provision aims at saving the proceedings from such challenges.

1. Which proceedings are covered under this provision?

The below mentioned proceedings done, accepted, made, issued, initiated, or purported to have been done, accepted, made, issued, initiated in pursuance of any provisions of the Act are covered:

Assessment; Re-assessment; Adjudication; Review; Revision; Appeal; Rectification; Notice; Summons and other proceedings.

2. On which grounds, will such proceedings be not held as invalid?

Such proceedings shall not be held invalid for mere reason of:

- Mistake
- Defect
- Omission

if such proceedings are in substance and effect in conformity with or according to the intents, purposes and requirements of the Act or any earlier law.

3. When will the service of any notice, order, or communication be not called in question?

The service of **any notice, order, communication** shall **not** be called in question if:

- notice, order or communication has already been acted upon by the person to whom it is issued **or**
- where such service has not been called in question at or in the earliest proceedings commenced, continued or finalised pursuant to such notice, communication or order.



Rectification of errors apparent on the face of record [Section 161]

1. Who can rectify the errors apparent on the face of record?

Any authority who has passed or issued any decision or order or notice or certificate or any other document may rectify any error which is apparent on the face of record in such documents.

2. What type of mistakes or errors can be rectified?

Errors or mistakes which are **apparent on the face of record** may be rectified. Rectification can only be of error apparent from record. It is a settled law that a decision on a debatable point of law is not a mistake apparent from the record.

3. When does the Authority rectify the mistakes/errors?

The authority may rectify the mistake/error:

- suo moto
- when such error or mistake is brought to its notice by a **GST officer**
- when such error or mistake is brought to notice by the **affected person** within **3 months**

from the date of issue of such decision or order or notice or certificate or any other document.

4. Time limit for rectification

No rectification can be done after **6 months** from date of issue of such decision /order/notice/certificate/ any other document.

However, such time limit **does not apply** in cases where the rectification is purely in the **nature of correction of a clerical or arithmetical error or mistake, arising from any accidental slip or omission.**

Note: Principles of natural justice should be followed by the authority carrying out such rectification, if such rectification adversely affects any person

Rounding off of tax etc. [Section 170]

Tax, interest, penalty, fine, any other sum payable/ due under the provisions of the Act or refund shall be rounded off to **nearest rupee** (if such part is fifty paise or more). Ignore part if it is less than fifty paise.

Removal of difficulties [Section 172]

The Central Government may, on the recommendations of the GST Council, by **general or special order** published in the Gazette, make such provisions (in case of any difficulty in giving effect to any provision of the Act) not inconsistent with the provisions of the Act or the rules or regulations made thereunder, as may be necessary or expedient for the purpose of removing the said difficulty. The time limit for making such



order shall be **5 years** from the **date of commencement of the Act**. Every order so made shall be laid, as soon as may be, after it is made, before the Parliament. [Similar provision u/s 25 of IGST Act]

D. DELEGATION OF POWERS

Power of government to make rules & regulations [Sections 164 & 165]

Section 164 empowers the Government to make rules on the recommendations of the GST Council for carrying out the provisions of the Act.

- (i) The Government may make rules for all or any of the matters which by the Act are required to be, or may be, prescribed or in respect of which provisions are to be or may be made by rules.
- (ii) The rules **may also be issued with retrospective effect** but not from a date earlier than the date on which the provisions of the Act have come into force.
- (iii) The rules may provide for a penalty not exceeding ₹ **10,000** for committing breach of **any rule**.

Section 165 empowers the Board to make regulations consistent with the Act and the rules made thereunder to carry out the provisions of the Act. The rule making power lies with the Government, the regulation making power has been delegated to the CBIC (Board).

Laying of rules, regulations and notifications [Section 166]

The following delegated legislation under the Act shall be laid before each house of the Parliament, while it is in session, for **30 days** which may be comprised in **one session, or in two or more successive sessions**

- Every **rule** made by the Government
- Every **regulation** made by the Board
- Every **notification** issued by the Government

If both the Houses agree that:

- Any modification be made in the rule / regulation / notification; or
- Rule or regulation or notification should not be made,

the rule or regulation or notification shall thereafter have effect only in such modified form or be of no effect. However, any such modification or annulment shall be **without prejudice** to the validity of anything **previously done under that rule or regulation or notification**.



MISCELLANEOUS PROVISIONS

Delegation of powers [Section 167]

Section 167 prescribes that the powers conferred on any authority/officer can also be exercised by another authority/officer, if the Commissioner so directs by way of notification, subject to such conditions as may be specified in the notification.

Power to issue instructions or directions [Section 168]

Section 167 empowers CBIC to issue orders, instructions or directions to the CGST officers for the purpose of uniformity in the implementation of the Act. All officers and all other persons employed in the implementation of the Act shall observe and follow such orders, instructions or directions.

The binding nature of such orders, instructions and directions has been a matter of debate and scrutiny. **The general understanding that prevails now is that a circular is binding on the officers, but not on the assessee. However, in case such circular states something contrary to the law, the law shall prevail over the circular.**

Note: The Commissioner for the purposes of prescribed provisions is Commissioner or Joint Secretary posted in the Board and such Commissioner or Joint Secretary shall exercise the powers specified in these said sections with the approval of the Board:

E. OMISSION, REPEAL AND SAVING

Omission and Repeal of Earlier Laws [Sections 173 and 174]

Amendment of Act 32 of 1994 [Section 173]

Chapter V of the Finance Act, 1994 laid down the provisions for service tax. Since service tax has been subsumed in GST, such provisions are no more required and hence have been omitted, and are not in force.

Repeal and saving [Section 174]

The following legislations shall stand repealed from July 1, 2017 i.e., the date of commencement of the CGST Act:

- The Central Excise Act, 1944 laid (except in respect of goods included in Entry 84 of Union List – petroleum crude, high speed diesel, motor spirit, natural gas, aviation turbine fuel, tobacco and tobacco products)
- The Medicinal and Toilet Preparations (Excise Duties) Act, 1955
- The Additional Duties of Excise (Goods of Special Importance) Act, 1957
- The Additional Duties of Excise (Textiles and Textile Articles) Act, 1978
- The Central Excise Tariff Act, 1985



F. OTHER PROVISIONS

Common Portal [Section 146]

The Government may, on the recommendations of the Council, notify the Common GST Electronic Portal (www.gst.gov.in) for facilitating registration, payment of tax, furnishing of returns, computation and settlement of integrated tax, electronic way bill and for carrying out such other functions and for such purposes as may be prescribed.

Deemed Exports [Section 147]

The Government may, on the recommendations of the Council, notify certain **supplies of goods** as **deemed exports**, where

- goods supplied **do not leave India**, and
- **payment** for such supplies is received either **in Indian rupees** or in **convertible foreign exchange**,
- if such goods are **manufactured in India**.

In exercise of powers conferred u/s 147 of the CGST Act, the Central Government has issued **N/No. 48/2017-Central Tax dated 18.10.2017** wherein the following categories of supply of goods has been declared as Deemed Exports:

- a) Supply of goods by a registered person against **Advance Authorisation**
- b) Supply of **capital goods** by a registered person against **Export Promotion Capital Goods Authorisation**
- c) Supply of goods by a registered person **to Export Oriented Unit**
- d) Supply of **gold** by a bank /Public Sector Undertaking specified in the notification No. 50/2017-Customs, dated 30th June, 2017 (as amended) against **Advance Authorisation**.

“Advance Authorisation” means an authorisation issued by the Director General of Foreign Trade under Chapter 4 of the Foreign Trade Policy 2015-20 for **import or domestic procurement of inputs on pre-import basis for physical exports**.

Goods and services tax compliance rating [Section 149]

Every registered person may be assigned a goods and services tax compliance rating score by the Government based on his record of compliance with the provisions of this Act. The GST compliance rating score may be determined on the basis of such parameters as may be prescribed.

The GST compliance rating score may be updated at periodic intervals and intimated to the registered person and also placed in the public domain in such manner as may be prescribed.



MISCELLANEOUS PROVISIONS

Working of compliance rating:

According to section 149(3) of the CGST Act, 2017, the compliance rating score in GST shall be updated periodically. The same shall be intimated to the taxable person and also placed in the public domain, in the prescribed manner. However, the parameters, criteria and methodology have not been notified yet, but it is expected that compliance rating scores may be based on following:

- (i) timely payment of taxes,
- (ii) timely e-filing of monthly/quarterly returns,
- (iii) matching of transactions,
- (iv) adherence to various time limits,
- (v) co-operation in dealing with tax Department etc.
- (vi) filing of regular and annual returns timely and correctly
- (vii) correct utilization of input tax credit and its disclosure
- (viii) correct deduction of TDS/TCS, wherever applicable
- (ix) findings in scrutiny of returns/audit findings
- (x) refund claims etc.

Major benefits / objectives of compliance rating:

- (i) **Efficient input tax credit mechanism:** A person can claim an input tax credit in GSTR-2 (return with purchase details for the month) only when the seller also files his GSTR-1 (return with monthly sales details), and the details on both these forms reconcile or match with each other. This was not so earlier.

The rating of a taxable person would be relevant to determine the eligibility of input tax credit in respect of inward supplies, selection for scrutiny and other administrative/monitoring purposes. The rating would be based on tax payer's record of compliance with the provisions of CGST, SGST and IGST. The details of parameters and methodology for rating would be prescribed.

- (ii) **Preferred supplier chosen by buyers / Increase customer base:** As compliance rating increases, so is customer base, in accordance with rating and reputation. The buyer will prefer to choose those suppliers whose rating is good in the market.
- (iii) **Will ensure healthy competition and enhanced compliances:** The objective of this concept of tax administration is to make people fully GST compliant and on time with the uploading of invoices and other necessary documents, which will ensure healthy competition in the market.
- (iv) **Lower or poor rating may attract stricter scrutiny and surveillance:** If rules and regulations are regularly followed, then the chances of business coming under the spotlight or scrutiny of the GST authorities are significantly reduced, as the need to audit accounts will be nil.



Power to take samples [Section 154]

The Commissioner or an officer authorised by him may take samples of goods from the possession of any taxable person, where he considers it necessary, and provide a receipt for any samples so taken.

Burden of proof [Section 155]

Where any person claims that he is eligible for **input tax credit** under this Act, **the burden of proving such claim shall lie on such person**. In other words, this provision empowers the officer to presume that a person is not eligible to claim input tax credit and it shall be the onus of the person to rebut the Department's contention.

Persons deemed to be public servants [Section 156]

All persons discharging functions under this Act shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code. This means that all officers shall be governed by the provisions of Indian Penal Code, whenever so applicable.

Protection of action taken under this Act [Section 157]

- a) No suit, prosecution or other legal proceedings shall lie against the **President, State President, Members, officers or other employees of the Appellate Tribunal** or any other person authorised by the said Appellate Tribunal for anything **which is in good faith done or intended to be done under this Act** or the rules made thereunder
- b) No suit, prosecution or other legal proceedings shall lie against any **officer appointed or authorised under this Act** for anything which is done or intended to be done in good faith under this Act or the rules made thereunder.

Levy of fee [Section 163]

Wherever a copy of any order or document is to be provided to any person on an application made by him for that purpose, there shall be paid such fee as may be prescribed.



Service of notice in certain circumstances [Section 169]

Any decision, order, summons, notice or other communication under this Act or the rules made thereunder shall be served by any one of the following methods. [Section 169(1)]

- a) **Giving or tendering it directly:** By giving or tendering it directly or by a messenger including a courier to the addressee or the taxable person or to his manager or authorised representative or an advocate or a tax practitioner holding authority to appear in the proceedings on behalf of the taxable person or to a person regularly employed by him in connection with the business, or to any adult member of family residing with the taxable person; or
- b) **Registered post or speed post or courier:** By registered post or speed post or courier with acknowledgement due, to the person for whom it is intended or his authorised representative, if any, at his last known place of business or residence; or
- c) **Email:** by sending a communication to his e-mail address provided at the time of registration or as amended from time to time; or
- d) **Common Portal:** by making it available on the common portal; or
- e) **Publication in newspaper:** by publication in a newspaper circulating in the locality in which the taxable person or the person to whom it is issued is last known to have resided, carried on business or personally worked for gain; or
- f) **Affixing at his place of business etc.:** If none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence and if such mode is not practicable for any reason, then by affixing a copy thereof on the notice board of the office of the concerned officer or authority who or which passed such decision or order or issued such summons or notice.

Deemed date of serving [Section 169(2)]

Every decision, order, summons, notice or any communication shall be deemed to have been served on the date on which it is tendered or published or a copy thereof is affixed.

Deemed date of receipt [Section 169(3)]

When such decision, order, summons, notice or any communication is sent by registered post or speed post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by such post in transit unless the contrary is proved.



G. ANTI-PROFITEERING MEASURE [SECTION 171]

- (a) 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**.
- (b) The Central Government may, on recommendations of the Council, by notification, constitute an **Authority**, or empower an existing Authority constituted under any law for the time being in force,
- to examine whether input tax credits availed by any registered person or
 - the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.
- (c) The Authority shall exercise such powers and discharge such functions as may be prescribed.
- (d) Where the Authority, after holding examination as required comes to the conclusion that any registered person has profiteered above, such person shall be liable to pay **penalty** equivalent to **10% of the amount so profiteered**.

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.

The “**profiteered**” shall mean the amount determined on account of not passing the benefit of reduction in rate of tax on supply of goods or services or both or the benefit of input tax credit to the recipient by way of commensurate reduction in the price of the goods or services or both.

The Authority means The Competition Commission of India (CCI) established u/s 7(1) of Competition Act, 2002

Functions of Authority [Rule 127]

- (i) To **determine** whether any reduction in the rate of tax on any supply of goods or services or the benefit of input tax credit has been passed on to the recipient by way of commensurate reduction in prices;
- (ii) To **identify** the registered person who has not passed on the benefit of reduction in the rate of tax on supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices;
- (iii) To **order**,
- (a) reduction in prices;
 - (b) return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest @ 18% from the date of collection of the higher amount till the date of the return of such amount or recovery of the amount not returned, as the case may be, in case the eligible person does not claim return of the amount or is not identifiable, and depositing the same in the Fund referred to in section 57;
 - (c) imposition of penalty as specified in the Act; and



MISCELLANEOUS PROVISIONS

- (d) cancellation of registration under the Act.
- (iv) To furnish a **performance report** to the Council by the **10th day** of the close of **each quarter**.

Application to the Authority [Rule 128]

- (a) All applications to be examined by the Standing Committee within 2 months from date of receipt of written application or within such extended period not exceeding a further period of 1 month for reasons to be recorded in writing as may be allowed by the Authority from an interested party or Commissioner.
- (b) All applications from interested parties on issues of local nature or those forwarded by the Standing Committee shall first be examined by the State level Screening Committee and the Screening Committee within 2 months from date of receipt of written application or within such extended period not exceeding a further period of 1 month for reasons to be recorded in writing as may be allowed by the Authority, forward the application to Standing Committee.
- (c) The Screening Committee on being satisfied that the supplier has not passed on the reduction in rate of tax on any supply of goods or services or the benefit of input tax credit on to the recipient by way of commensurate reduction in prices, will forward the application with its recommendations to the Standing Committee on Anti-profiteering, which shall consist of such officers of the State Government and Central Government as may be nominated by the GST council, for further action.
- (d) If the Standing Committee is satisfied that there is a prima-facie evidence to show that the supplier has not passed on the benefit of reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices, it shall refer the matter to the Director General of Anti-Profiteering for a detailed investigation.

Investigation [Rule 129]

- (i) The Director General of Anti-Profiteering shall conduct investigation and collect evidence necessary to determine undue profiteering and before initiation of the investigation, issue a notice to the interested parties (and to such other persons as deemed fit for a fair enquiry into the matter) containing, inter alia, information on the following, namely: -
 - (a) the description of the goods or services in respect of which the proceedings have been initiated;
 - (b) summary of the statement of facts on which the allegations are based; and
 - (c) the time limit allowed to the interested parties and other persons who may have information related to the proceedings for furnishing their reply.
- (ii) The Director General of Anti-Profiteering will complete the investigation within **6 months** or within such extended period not exceeding a further period of **3 months** for reasons to be recorded in writing as allowed by the Standing Committee and, upon completion of the investigation, furnish to the Authority, a report of its findings along with the relevant records.



Confidentiality of information [Rule 130]

The evidence or information presented to the Director General of Anti-Profitteering by one interested party can be made available to the other interested parties, participating in the proceedings. The evidence provided will be kept confidential and the provisions of section 11 of the Right to Information Act, 2005 (22 of 2005), shall apply mutatis mutandis to the disclosure of any information which is provided on a confidential basis.

Cooperation with other agencies or statutory authorities [Rule 131]

The Director General of Anti-Profitteering can seek opinion of any other agency or statutory authorities in the discharge of his duties.

Power to summon persons to give evidence and produce documents [Rule 132]

The Authority, Director General of Anti-Profitteering, or an officer authorised by him will have the power to summon any person necessary either to give evidence or to produce a document or any other thing. He will also have same powers as that of a civil court and every such inquiry will be deemed to be a judicial proceeding.

Order of the Authority [Rule 133]

The Authority shall, within **6 months** from the date of the receipt of the **report** from the **Director General of Anti-profitteering** determine whether a registered person has passed on the benefit of the reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices.

The Authority may seek the clarification, if any, from the Director General of Anti Profitteering on the report submitted under Rule 129(6) during the process of determination under sub-rule (1).”;

Where the Authority determines that a registered person has not passed on the benefit of the reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices, **the Authority may order-**

- (a) reduction in prices;
- (b) return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest @ 18% p.a. from the date of collection of the higher amount till the date of the return of such amount or recovery of the amount including interest not returned, as the case may be;
- (c) the deposit of **50%** of the amount determined under the above clause along with interest @ 18% from the date of collection of the higher amount till the date of deposit of such amount in the **Fund** constituted u/s 57 and the remaining 50% of amount in the Fund constituted u/s 57 of the Goods and Services Tax Act, 2017 of the **“concerned State”**, where the eligible person does not claim return of the amount or is not identifiable;



MISCELLANEOUS PROVISIONS

- (d) imposition of penalty as specified under the Act; and
- (e) cancellation of registration under the Act.

Explanation: For the purpose of this sub-rule, the expression, “concerned State” means the State or the UT in respect of which the Authority passes an order.

If the report of the Director General of Anti-profiteering recommends that there is contravention or even non-contravention of the provisions of section 171 or these rules, but the Authority is of the opinion that further investigation or inquiry is called for in the matter, it may, for reasons to be recorded in writing, refer the matter to the Director General of Anti-profiteering to cause further investigation or inquiry in accordance with the provisions of the Act and these rules.

Notwithstanding anything contained above, where upon receipt of the report of the Director General of Anti-profiteering referred to in Rule 129(6), the Authority has reasons to believe that there has been contravention of the provisions of section 171 in respect of goods or services or both ***other than those covered in the said report***, it may, for reasons to be recorded in writing, within 6 months, direct the Director General of Anti-profiteering to cause investigation or inquiry with regard to such other goods or services or both, in accordance with the provisions of the Act and these rules.

The investigation or enquiry mentioned above shall be deemed to be a new investigation or enquiry and all the provisions of rule 129 shall mutatis mutandis apply to such investigation or enquiry.

Any order passed by the Authority under shall be immediately complied with by the registered person. If the said order is not complied with, action shall be initiated in accordance with the provisions of the law.

[Rule 135]

The Authority may require any authority of central tax, State tax or Union territory tax to monitor the implementation of the order passed by it. **[Rule 136]**