

A Practical Guide on GST Act

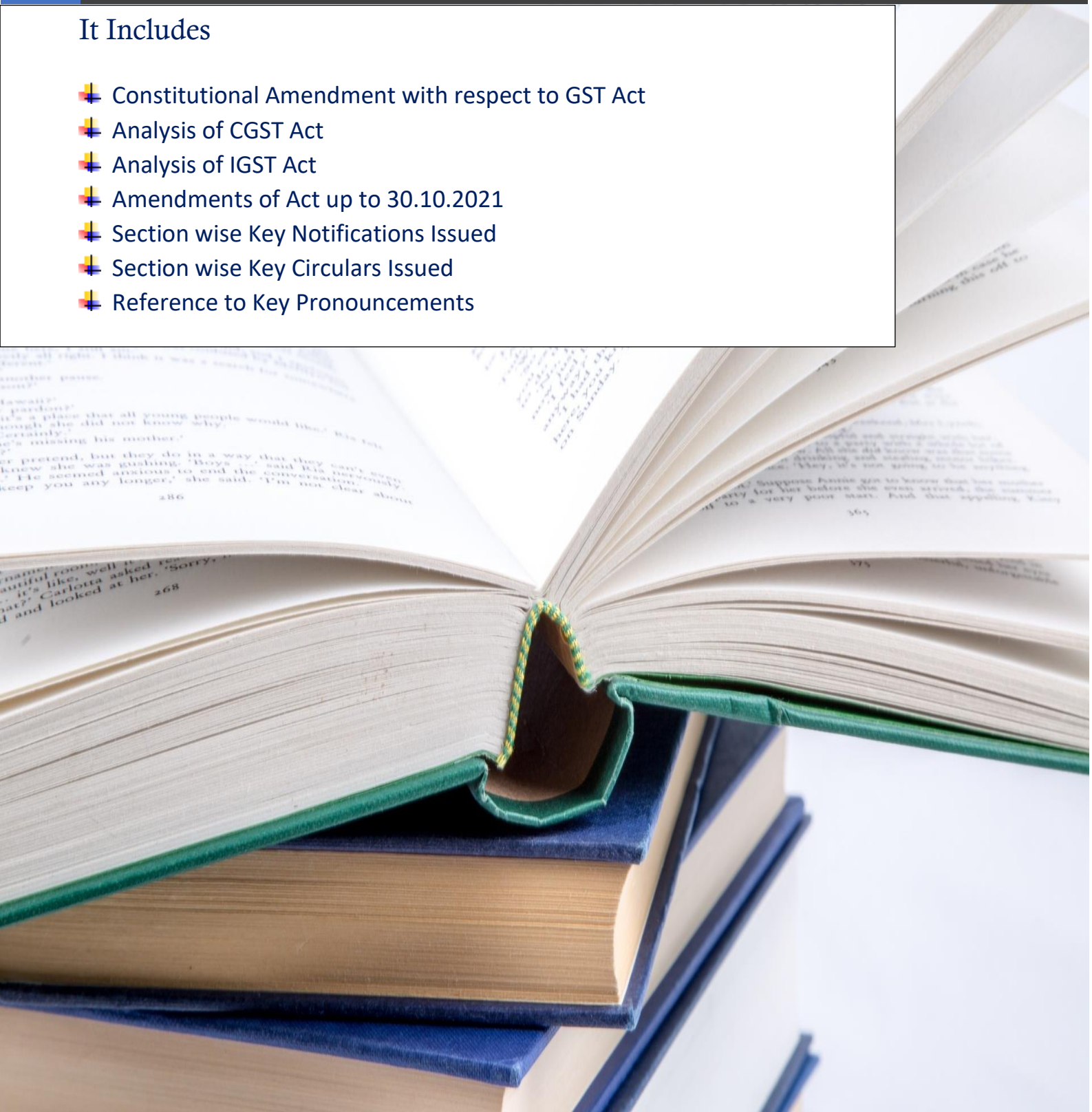
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10/30/21

It Includes

- ✚ Constitutional Amendment with respect to GST Act
- ✚ Analysis of CGST Act
- ✚ Analysis of IGST Act
- ✚ Amendments of Act up to 30.10.2021
- ✚ Section wise Key Notifications Issued
- ✚ Section wise Key Circulars Issued
- ✚ Reference to Key Pronouncements



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About Author



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About Book

- The GST Act was implemented more than Four years ago. The Roller Costar Ride of GST is with maze of numerous amendments. In these four years, taxpayers are struggling to understand various amendments made by way of Notifications, Circulars, Order along with clarification. Now, it's about to complete fifth year of GST and in these five-year one thing is constant i.e litigation.
- Thus, it's becoming difficult to understand whether GST is heading towards simplification or further complications. Thus, in this book we had covered section wise analysis of amendments, clarification, notification under GST Act along with key case laws.
- Book does not contain State Specific Act, Rate Notification, Press Release etc.
- I would like to Thank You to CA Mukesh Shah Sir whose GST database has become useful while writing this book.

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- **How to read this Book**

Books is divided in 5 parts as given below

- Overview
- Constitutional Amendment with respect to GST Act
- A brief synopsis of recent amendments made via Finance Act, 2021
- Section wise Analysis of CGST Act
- Section wise Analysis of IGST Act

We have included section wise issues and interpretation of key word of particular sections to the extent important.

Wherever possible we have shared key documents which are issued by the Government with respect to particular section till the date like notifications, clarifications, removal of difficulty order etc. This will certainly help to the reader to understand section wise and date wise amendments.

Some of the key abbreviations used are

CGST Act	Central Goods and Services Tax Act, 2017
IGST Act	Integrated Goods and Services Tax Act, 2017
ITC	Input Tax Credit
Sec.	Section
NT	Notifications
CIR	Circular

- **Overview about Indian GST**

GST has enacted from 01.07.2017 which subsumes central taxes like Central Excise Duty, Additional Duties of Customs (commonly known as CVD), Special Additional Duty of Customs (SAD), Service Tax etc and State taxes like State VAT, Central Sales Tax, Luxury Tax, Entry Tax, Taxes on advertisements etc. The key objective of enactment of GST was one nation one tax and seamless flow of credit, however after implementation question arises that really the objective of GST is achieved?

As far as one nation one tax is concern under GST law the State Authorities are empowered to have separate provisions. As per 101st Constitutional Amendment Act, Article 246A was introduced for implementation of GST. As per Article 246A of the Constitution of India, *“Notwithstanding anything contained in articles 246 and 254, Parliament, and, subject to clause (2), the Legislature of every State, have power to*

make laws with respect to goods and services tax imposed by the Union or by such State.”

Article 246A formed a unique body GST Council with Cooperative Federalism where the Centre and the State can take decision. Earlier apex court¹ had held that within the sphere allotted to them, States are supreme. Thus, even GST council is a body where decisions are taken together by Central and State it is observe that certain state has different provisions with respect to applicability, exemptions etc like threshold limit for E-way bill, exemptions etc Even recently Maharashtra State Government has issued a Trade Circular² notifying that it shall not adopt circulars issued by central instead will issue a separate GST circular. Thus, it's diluting the objective of GST 'One Nation One Tax' as future of GST in towards State Governments formulating a different law. Also, it is observed that State has a different legal interpretation instead adopting the same as laid down by the Central Government.

Constitutional Amendment

Two amendments are made in Constitution from indirect Tax Perspective 40th Constitutional Amendment and 101st Constitutional Amendment Act, 2016. Whereas

¹ S.R. Bommai v. Union of India [(1994) 2 SCR 644]

² No. 01T of 2021

in order to implement GST 101st Constitutional Amendment Act is relevant and it has made following amendment

<u>Article</u>	<u>Comment</u>
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Article 366(12A) of the Constitution	New Article 366 (12A), Article 366 (26A), Article 366 (26B) has inserted.
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[Definition of GST]	Article 366 (12A) of the Constitution defines GST as given hereunder.
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*“Goods and Services Tax” as any tax **on supply of goods, or services or both**, except for taxes on the supply of the alcoholic liquor for human consumption.*

Thus, liquor is excluded from GST.

Article 366 (26A) of the Constitution

"Services" means anything other than goods.

Article 366 (26B) of the Constitution

“State” with reference to articles 246A, 268, 269, 269A and article 279A includes a Union territory with Legislature;’.

Article 246A of the Constitution	Article 246A of the Constitution of India read as
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of India [^{Special} provision with respect to Goods and Services Tax]

1. *Notwithstanding anything contained in Article 246 and 254. Parliament, and, subject to clause – 2, the legislature of every state, have power to make laws with respect to goods and services tax imposed by the union or by such state.*
2. *Parliament has exclusive power to make laws with respect to goods and services tax where the supply of goods, or of services, or both takes place in the course of ^{inter-state} trade or commerce.*

Explanation: -

The provision of this article, shall, in respect of goods and services tax referred to in clause-5 of Article – 279A, takes effect from the date recommended by the Goods and Services tax council.

Article 246A override **Article 246** [i.e. Subject matter of laws made by parliament and laws made by legislature] and Article 254 [Inconsistency between laws made by parliament and laws made by legislature of States]. This article is inserted to vest the power to parliament as well as State/Union Legislature to make the law on GST

Article 246A(2) recognises the exclusive power of the Parliament to make laws with respect to GST where the supply of goods, or of services, or both takes place in course of inter-State trade or commerce.

Also, under Article 246A a unique body GST Council with Cooperative Federalism is formed where the Centre and the State can take decision together.

Article 269A of Article 269A of the Constitution of India read as under:

the Constitution
of India - **Levy
and Collection
of GST for Inter-
State Supply**

(1) Goods and services tax on supplies in the course of inter-State trade or commerce shall be levied and collected by the Government of India and such tax shall be apportioned between the Union and the States in the manner as may be provided by Parliament by law on the recommendations of the Goods and Services Tax Council.

Explanation.—For the purposes of this clause, supply of goods, or of services, or both in the course of import into the territory of India shall be deemed to be supply of goods, or of services, or both in the course of inter-State trade or commerce.

(2) The amount apportioned to a State under clause (1) shall not form part of the Consolidated Fund of India.

(3) Where an amount collected as tax levied under clause (1) has been used for payment of the tax levied by a State under article 246A, such amount shall not form part of the Consolidated Fund of India.

(4) Where an amount collected as tax levied by a State under article 246A has been used for payment of the tax levied under clause (1), such amount shall not form part of the Consolidated Fund of the State

(5) Parliament may, by law, formulate the principles for determining the place of supply, and when a supply of goods, or of services, or both takes place in the course of inter-State trade or commerce."

Article 269A deals with the manner of distribution of revenue from supplies between the Centre and the State. It allows the apportionment of the tax levied and collected between the Union and the States as may be provided by Parliament by law. It

recognises the authority of the Parliament by law to formulate the principles for determining the place of supply and when a supply of goods or of services or both takes place in the course of inter-State trade or commerce.

Article 279 A of Article 279A of the Constitution of India read as

the Constitution of India

(1) The President shall, within sixty days from the date of commencement of the Constitution (One Hundred and First Amendment) Act, 2016, by order, constitute a Council to be called the Goods and Services Tax Council.

▪ GST Council

(2) The Goods and Services Tax Council shall consist of the following members, namely:—

a. the Union Finance Minister.....

Chairperson;

b. the Union Minister of State in charge of Revenue or Finance.....

.....Members.

c. the Minister in charge of Finance or Taxation or any other Minister nominated by each State Government.....

.....

Members.

(3) The Members of the Goods and Services Tax Council referred to in sub-clause (c) of clause (2) shall, as soon as may be, choose one amongst themselves to be the Vice-Chairperson of the Council for such period as they may decide.

(4) The Goods and Services Tax Council shall make recommendations to the Union and the States on—

- a. the taxes, cesses and surcharges levied by the Union, the States and the local bodies which may be subsumed in the goods and services tax;*
- b. the goods and services that may be subjected to, or exempted from the goods and services tax;*
- c. model Goods and Services Tax Laws, principles of levy, apportionment of Goods and Services Tax levied on supplies in the course of inter-State trade or commerce under article 269A and the principles that govern the place of supply.*
- d. the threshold limit of turnover below which goods and services may be exempted from goods and services tax;*
- e. the rates including floor rates with bands of goods and services tax;*

- f. any special rate or rates for a specified period, to raise additional resources during any natural calamity or disaster;*
- g. special provision with respect to the States of Arunachal Pradesh, Assam, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand; and*
- h. any other matter relating to the goods and services tax, as the Council may decide.*

(5) The Goods and Services Tax Council shall recommend the date on which the goods and services tax be levied on petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel.

(6) While discharging the functions conferred by this article, the Goods and Services Tax Council shall be guided by the need for a harmonised structure of goods and services tax and for the development of a harmonised national market for goods and services.

(7) One-half of the total number of Members of the Goods and Services Tax Council shall constitute the quorum at its meetings.

(8) The Goods and Services Tax Council shall determine the procedure in the performance of its functions.

(9) Every decision of the Goods and Services Tax Council shall be taken at a meeting, by a majority of not less than three-fourths of the weighted votes of the members present and voting, in accordance with the following principles, namely: —
the vote of the Central Government shall have a weightage of one third of the total votes cast, and the votes of all the State Governments taken together shall have a weightage of two-thirds of the total votes cast, in that meeting.

(10) No act or proceedings of the Goods and Services Tax Council shall be invalid merely by reason of—

- a. any vacancy in, or any defect in, the constitution of the Council; or
- b. any defect in the appointment of a person as a Member of the Council; or
- c. any procedural irregularity of the Council not affecting the merits of the case

(11) The Goods and Services Tax Council shall establish a mechanism to adjudicate any dispute —between the Government of India and one or more States; or

- a) *between the Government of India and any State or States on one side and one or more other States on the other side;*
- or*
- b) *between two or more States,*
- c) *arising out of the recommendations of the Council or implementation thereof."*

Article 279A deals with Goods and Services Tax Council. It envisages the Constitution of a Goods and Services Tax Council. It enumerates the powers and functions of such Council, the decision-making process therein and the establishment of a mechanism to adjudicate any disputes.

Article 368 of the Constitution of India - **Power of Parliament to amend the Constitution and procedure therefor**

In the Article 368 of the Constitution of India is amended

Notwithstanding anything in this Constitution, Parliament may in exercise of its constituent power amend by way of addition, variation or repeal any provision of this Constitution in accordance with the procedure laid down in this article

(2) An amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of that House present and

voting, it shall be presented to the President who shall give his assent to the Bill and thereupon the Constitution shall stand amended in accordance with the terms of the Bill: Provided that if such amendment seeks to make any change in

(a) Article 54, Article 55, Article 73, Article 162 or Article 241, or article 279A3

(b) Chapter IV of Part V, Chapter V of Part VI, or Chapter I of Part XI, or

(c) any of the Lists in the Seventh Schedule, or

(d) the representation of States in Parliament, or

(e) the provisions of this article, the amendment shall also require to be ratified by the Legislature of not less than one half of the States by resolution to that effect passed by those Legislatures before the Bill making provision for such amendment is presented to the President for assent

3 for the words and figures “article 162 or article 241”, the words, figures and letter “article 162, article 241 or article 279A” shall be substituted by The Constitution (One Hundred And First Amendment) Act, 2016

(3) Nothing in Article 13 shall apply to any amendment made under this article

(4) No amendment of this Constitution (including the provisions of Part III) made or purporting to have been made under this article whether before or after the commencement of Section 55 of the Constitution (Forty second Amendment) Act, 1976 shall be called in question in any court on any ground

(5) For the removal of doubts, it is hereby declared that there shall be no limitation whatever on the constituent power of Parliament to amend by way of addition, variation or repeal the provisions of this Constitution under this article PART XXI
TEMPORARY, TRANSITIONAL AND SPECIAL PROVISIONS

Additionally, the amendments given below are made in schedules

Amendment of Sixth Schedule **Amendment of Sixth Schedule.** — In the Sixth Schedule to the Constitution, in paragraph 8, in sub-paragraph (3), —

(i) in clause (c), the word “and” occurring at the end shall be omitted;

(ii) in clause (d), the word “and” shall be inserted at the end;

(iii) after clause (d), the following clause shall be inserted, namely-

“(e) taxes on entertainment and amusements

Amendment of In the Seventh Schedule to the Constitution, -
Seventh
Schedule.

(a) in List I - Union List, -

(i) for entry 84, the following entry shall be substituted, namely :-

“84. Duties of excise on the following goods manufactured or produced in India, namely :-

(a) petroleum crude;

(b) high speed diesel;

(c) motor spirit (commonly known as petrol);

(d) natural gas;

(e) aviation turbine fuel; and

(f) tobacco and tobacco products.”;

(ii) entries 92 and 92C shall be omitted;

(b) in List II - State List, -

(i) entry 52 shall be omitted;

(ii) for entry 54, the following entry shall be substituted,

namely :-

“54. Taxes on the sale of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption, but not including sale in the course of inter-State trade or commerce or sale in the course of international trade or commerce of such goods.”;

(iii) entry 55 shall be omitted;

(iv) for entry 62, the following entry shall be substituted,

namely :-

“62. Taxes on entertainments and amusements to the extent levied and collected by a Panchayat or a Municipality or a Regional Council or a District Council

Compensation to States for loss of revenue on account of introduction of goods and services tax. —

Parliament shall, by law, on the recommendation of the Goods and Services Tax Council, provide for compensation to the States for loss of revenue arising on account of implementation of the goods and services tax for a period of five years.

Transitional provisions. —

Notwithstanding anything in this Act, any provision of any law relating to tax on goods or services or on both in force in any State immediately before the commencement of this Act, which is inconsistent with the provisions of the Constitution as amended by this Act shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until expiration of one year from such commencement, whichever is earlier.

Power of President to remove difficulties. —

(1) If any difficulty arises in giving effect to the provisions of the Constitution as amended by this Act (including any difficulty in relation to the transition from the provisions of the Constitution as they stood immediately before the date of assent of the President to this Act to the provisions of the Constitution as amended by this Act), the President may, by order, make such provisions, including any adaptation or modification

of any provision of the Constitution as amended by this Act or law, as appear to the President to be necessary or expedient for the purpose of removing the difficulty :

Provided that no such order shall be made after the expiry of three years from the date of such assent.

(2) Every order made under sub-section (1) shall, as soon as may be after it is made, be laid before each House of Parliament.

Deliberation of Economic Survey 2020-21 from GST Perspective!

Year 2020-21 was with full of challenges for everyone. Almost all planning, prediction, visions etc changed rapidly as COVID-19 developed. Likewise, even from tax perspective changes are made keeping in mind pandemic situation of India.

The initial stringent lockdown was critical for all business, however as per Economic Survey 2020-21 (ES 2021) the V-shaped economic recovery has demonstrated in GDP. The shortfall in indirect taxes during April to November 2020 was led by shortfall in customs and GST collections for the Centre.

As per ES 2021, the recovery from GST perspective has started from November 20 and revenue for the month of December 20 stood at 1.15 lakh crore. Additionally, ES highlighted that this has been the highest monthly GST collection since introduction of GST and has been due to the combined effect of

- The rapid economic recovery of business post pandemic and
- The nation-wide drive against GST evaders and fake bills
- Many systemic changes introduced recently which have led to improved compliance. This change includes E-way bill blocking, Implementation of E-invoicing etc.

ES 2021 further highlighted certain Notifications which were issued in order to provide relief to taxpayers due to COVID-19 Like increased time limit for filing of appeal, furnishing of return, or any other compliance under the GST Act etc

As per ES 2021, improved compliance is one of the reasons for GST Collection. To mitigate the risk of fake invoicing and fake firm it is necessary that compliance should be streamlined. However, while strengthening the compliance an eye on genuine taxpayer is most important. Many of such taxpayers are getting affected on account of provisions or restrictions announced under GST. To save such genuine taxpayer it is essential to provide compliance rating as prescribed u/s 149 of the CGST Act, 2017 which is applicable mutatis mutandis under IGST, UTGST Act and SGST laws. Thus, every registered person shall be assigned a

compliance rating based on the record of compliance and as per said rating action like blocking of E-way bill, cancellation of GST registration etc which negatively affect the smooth functioning of business operations can be taken.

Budget 2021 - The Finance Bill 2021

In the Budget Speech FM has discussed shortly about GST as given hereunder

174. Before I come to my Indirect Tax proposals, I would like to appraise the House on GST. The GST is now four years old, and we have taken several measures to further simplify it. Some of the measures include:

- i. nil return through SMS,*
- ii. quarterly return and monthly payment for small taxpayers,*
- iii. electronic invoice system,*
- iv. validated input tax statement,*
- v. pre-filled editable GST return, and*
- vi. staggering of returns filing.*

The capacity of GSTN system has also been enhanced. We have also deployed deep analytics and Artificial Intelligence to identify tax evaders and fake billers and launched special drives against them.

175. The results speak for themselves. We have made record collections. in the last few months.

176. The GST Council has painstakingly thrashed out thorny issues. As Chairperson of the Council, I want to assure the House that we shall take every possible measure to smoothen the GST further, and remove anomalies such as the inverted duty structure

Thus, Budget Speech of Hon'ble FM is only about 3 paras with respect to GST. However fine print issued was shocking for all and covering almost 15 amendments with respect to GST Act. We hereby analysed each amendment along with rational wherever possible and our view thereon.

Section Wise Amendments made in Budget 2021.

The Finance Bill 2021 (FB Bill, 2021) has proposed to amend Fifteen sections of the GST Act and one section of IGST Act. The brief analysis of the same is as under

1. Section 7 • Scope of supply.	2. Section 16 • Eligibility and conditions for taking input tax credit.	3. Section 35 • Accounts and other records
4. Substitution of new section for section 44 • Annual return.	5. Section 50 • Interest on delayed payment of tax.	6. Section 74 • Determination of tax not paid or short paid etc
7. Section 75 • General provisions relating to determination of tax	8. Section 83 • Provisional attachment to protect revenue in certain cases.	9. Section 107 • Appeals to Appellate Authority.
10. Section 129 • Detention, seizure and release of goods and conveyances in transit.	11. Section 130 • Confiscation of goods or conveyances and levy of penalty	12. Substitution of new section for section 151 • Power to collect statistics.
13. Section 152 • Bar on disclosure of information	14. Section 168 • Power to issue instructions or directions.	15. Amendment of Schedule II • Classification in to Goods and Services

Thus, the Finance Bill 2021 (FB Bill, 2021) has proposed to amend Fifteen sections of the GST Act and one section of IGST Act. Amongst those certain amendments are yet to notify.

The brief analysis of the same is as under

Clause of FB, Section of GST Act Amendment Proposed
2021

Proposed to be applicable retrospective from 1st July 2017

Clause 99	Section 7 of the CGST Act – Amended	Amended so that to ensure GST on supply by society to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration. Accordingly, amendments are also proposed in Schedule II.
Clause 103	Section 50 of the CGST Act – Amended	Proposed to be amended so as to charge interest on net cash liability with effect from the 1st July, 2017
Clause 113	Schedule -II of CGST Act	Amended in consent with amendment proposed u/s 7 of the CGST Act

Applicable from the date to be Notified

Clause 100	Section 16 of the CGST Act– Amended	Proposed to be amended so that to allow Input tax credit (ITC) on invoice or debit note only when
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		the details of such invoice or debit note have been furnished by the supplier in their GSTR-1
Clause 101	Section 35 of CSGT	Proposed to be amended so that
Clause 102	Act -- Amended	annual accounts audited, and
	Section 44 of CGST	reconciliation statement can be
	Act -Substituted	self-certified instead by professional.
Clause 104	Section 74 of the	Seizure and Confiscation of goods
	CGST Act –	and conveyances in transit is
	Amended	proposed to be separated from recovery of tax.
Clause 105	Section 75 of the	Section 75 is proposed to amend
	CGST Act –	so that “self-assessed tax” shall
	Amended	include the tax payable in respect of difference between GSTR-1 and GSTR-3B.
Clause 106	Section 83 of the	Proposed amendment empower
	CGST Act –	the officer to attach bank or
	Amended	property in case of proceeding

under any sections of Chapter XII, Chapter XIV or Chapter XV.

Clause 107	Section 107 of the CGST Act – Amended	Amount equal to 25% of the penalty has required to be paid by the appellant for filing of appeal against an order made under sub-section (3) of section 129[detention/seizure]
Clause 108	Section 129 of the CGST Act – Amended	Delink the proceedings under that section relating to detention, seizure and release of goods and conveyances in transit, from section 130 relating to confiscation of goods or conveyances and levy of penalty.
Clause 109	Section 130 of the CGST Act – Amended	Delink the proceedings under that section relating to confiscation of goods or conveyances and levy of penalty from the proceedings under section 129 relating to

detention, seizure and release of goods and conveyances in transit

Clause 110 Section 151 of the Empower the jurisdictional
CGST Act – commissioner to call for
Amended information from any person
relating to any matters dealt with
in connection with the Act.

Not. No. 29/2021-CT dated 30th
July 2021 provisions of this section
has come into force from
1.08.2021

Clause 111 Section 152 of the Information obtained under
CGST Act – sections 150 and 151 shall not be
Amended used for the purposes of any
proceedings under the Act
without giving an opportunity of
being heard.

Not. No. 29/2021-CT dated 30th
July 2021 provisions of this section
has come into force from
1.08.2021

Clause 112	Section 168 of the CGST Act – Amended	Enable the jurisdictional commissioner to exercise powers under section 151 to call for information
Clause 114	Section 16 of IGST Act	<p>Only specified persons or goods or services will be able to claim refund of IGST paid in case of export with payment of GST.</p> <p>Realisation of fund within prescribed period will be mandatory else refund received will be liable to be pay to Government Exchequer with interest as applicable;</p>

Section Wise Analysis of CGST Act

THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 NO. 12 OF 2017

[12th April, 2017.]

An Act to make a provision for levy and collection of tax on intra-State supply of goods or services or both by the Central Government and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Sixty-eighth Year of the Republic of India as follows:—

CHAPTER I PRELIMINARY

1. Short title, extent and commencement

(1) This Act may be called the Central Goods and Services Tax Act, 2017.

(2) It extends to the whole of India ~~except the State of Jammu and Kashmir~~⁴.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Author Comment

Section 1 to Section 3 of the CGST Act relates to enacting provisions. Up to 08.07.

2017, the CGST Act was not extended to State of Jammu and Kashmir.

⁴ Omitted —except the State of Jammu and Kashmir by The Central Goods and Services Tax (Extension to Jammu and Kashmir) Act, 2017 (No. 26 of 2017) – Brought into force w.e.f. 8th July, 2017.

2. Definitions.—

In this Act, unless the context otherwise requires, —

- (1) *actionable claim shall have the same meaning as assigned to it in section 3 of the Transfer of Property Act, 1882;*

Author Comment

Circular No.06/06/2017-CGST one of the relevant circulars which is issued related to classification and GST rate on lottery tickets. As per said circular it is clarified that the classification for lottery in respective CGST, IGST, UTGST and SGST notifications shall be '**Any Chapter' of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975)** and tax on lottery should be **paid accordingly at prescribed rates, 12% or 28%, as the case may be.**

- (2) *address of delivery means the address of the recipient of goods or services or both indicated on the tax invoice issued by a registered person for delivery of such goods or services or both;*
- (3) *address on record means the address of the recipient as available in the records of the supplier;*
- (4) *adjudicating authority means any authority, appointed or authorised to pass any order or decision under this Act, but does not include the [Central Board of Indirect Taxes and Customs]⁵, the Revisional Authority, the Authority for Advance Ruling,*

⁵ Substituted for —Central Board of Excise and Customs|| by The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018) – Brought into force w.e.f. 01st February, 2019.

the Appellate Authority for Advance Ruling, [the Appellate Authority, the Appellate Tribunal and the Authority referred to in sub-section (2) of section 171]⁶;

- (5) *agent means a person, including a factor, broker, commission agent, arhatia, del credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services or both on behalf of another;*

Author Comment

CIR-57/31/2018-GST prescribes Scope of Principal-agent relationship in the context of Schedule I of the CGST Act. This circular refers to the definition of Section 182 of the Indian Contract Act, 1872 as given hereunder,

an “agent” is a person employed to do any act for another, or to represent another in dealings with third person. The person for whom such act is done, or who is so represented, is called the “principal”. As delineated in the definition, an agent can be appointed for performing any act on behalf of the principal which may or may not have the potential for representation on behalf of the principal.

⁶ Substituted for —the Appellate Authority and the Appellate Tribunal by The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018) – Brought into force w.e.f. 01st February, 2019.

So, the crucial element here is the representative character of the agent which enables him to carry out activities on behalf of the principal.

Accordingly, following two key elements emerge from the above definition of agent:

a) the term “agent” is defined in terms of the various activities being carried out by the person concerned in the principal-agent relationship; and

b) the supply or receipt of goods or services has to be undertaken by the agent on behalf of the principal.

- (6) *Aggregate Turnover means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, exports of goods or services or both and inter-State supplies of persons having the same Permanent Account Number, to be computed on all India basis but excludes central tax, State tax, Union territory tax, integrated tax and cess;*

Author Comment

Aggregate turnover to include Non-executive Director’s salary, value of deposits, loans, residential property rent. AAR in the case of Anil Kumar Agarwal [TS-269-AAR-2020-NT] observes that below incomes received are included

- (i) Salary as a Non-executive Director

- (ii) Renting of Commercial property and Residential property and
- (iii) the values of amounts extended as deposits/ loans/ advances

Further holds that “any income to be included in the aggregate turnover need to be related to any transaction that amounts to supply” u/s 7(1)(a);;

However, income earned out of shares, amount received upon maturity of insurance policies and salary received as partner from applicant’s partnership firm is not required to be included in aggregate turnover for registration;

Stating that salary received by Executive Director is not subject to GST,

Further, clarifies that since Aggregate supplies also includes value of exempted supplies, thus income from rent of residential property is also includible in the aggregate turnover.

- (7) *agriculturist means an individual or a Hindu Undivided Family who undertakes cultivation of land—*
- (a) *by own labour, or*
 - (b) *by the labour of family, or*
 - (c) *by servants on wages payable in cash or kind or by hired labour under personal supervision or the personal supervision of any member of the family;*

- (8) *Appellate Authority means an authority appointed or authorised to hear appeals as referred to in section 107;*
- (9) *Appellate Tribunal means the Goods and Services Tax Appellate Tribunal constituted under section 109;*
- (10) *appointed day means the date on which the provisions of this Act shall come into force;*
- (11) *assessment means determination of tax liability under this Act and includes self-assessment, re-assessment, provisional assessment, summary assessment and best judgment assessment;*
- (12) *associated enterprises shall have the same meaning as assigned to it in section 92A of the Income-tax Act, 1961;*
- (13) *audit means the examination of records, returns and other documents maintained or furnished by the registered person under this Act or the rules made thereunder or under any other law for the time being in force to verify the correctness of turnover declared, taxes paid, refund claimed and input tax credit availed, and to assess his compliance with the provisions of this Act or the rules made thereunder;*

(14) *authorised bank shall mean a bank or a branch of a bank authorised by the Government to collect the tax or any other amount payable under this Act;*

(15) *authorised representative means the representative as referred to in section 116;*

(16) *Board means the [Central Board of Indirect Taxes and Customs]⁷ constituted under the Central Boards of Revenue Act, 1963;*

(17) *business includes —*

(a) *any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;*

(b) *any activity or transaction in connection with or incidental or ancillary to sub-clause (a);*

(c) *any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;*

⁷ Substituted for —Central Board of Excise and Customs by The Finance Act, 2018 (No. 13 of 2018) – Brought into force w.e.f. 29th March, 2018.

- (d) *supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;*
- (e) *provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;*
- (f) *admission, for a consideration, of persons to any premises;*
- (g) *services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;*
- (h) *[activities of a race club including by way of totalisator or a license to book maker or activities of a licensed book maker in such club; and]*⁸
- (i) *any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities;*

Author Comment

Last four years of GTS one of the issues discussed is whether certain activity undertaken by charitable trust can be treated as an activity in relation to

⁸ Substituted for —(h) services provided by a race club by way of totalisator or a licence to book maker in such club; and.]] by The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018) – Brought into force w.e.f. 01st February, 2019.

business. In this regard, reference to para given below of Circular No.

116/35/2019-GST can also be relevant.

*It may be noticed that there is no reference or mention of **any business activity of the donor** which otherwise would have got advertised. Thus, where all the three conditions are satisfied namely **the gift or donation is made to a charitable organization, the payment has the character of gift or donation and the purpose is philanthropic (i.e. it leads to no commercial gain) and not advertisement, GST is not leviable.***

Alternatively, it can be said that reference or mention of any business activity of donor or advertisement thereof can liable to GST.

However, before concluding levy of GST in case of trust it most relevant to construe whether trust is carrying out activity in relation to business or Trust can be treated as an 'Business Entity'. Erstwhile, in the case of Sai Publication Fund [2002 4 SCC 7 (SC)] it was held that where the main activity is not business, then any incidental or ancillary transaction, unless established by the Revenue Department to be an independent business transaction, will also be considered as charitable only and not business. Additionally, the Hon'ble Supreme Court observed that if the main and dominant activity of the assessee trust in that case was to spread message of Sai Baba, then bringing out publications and sale thereof by the assessee trust to its devotee at cost price did not amount to business.

Similarly, the observation of courts in the case like Gujarat Maritime Board [2007 14 SCC 704 (SC)], Cutchi Dasha Oswal Mahajan Udyog Committee [36 STC 1 (BOM-HC)] etc would also be required to be taken in to consideration before concluding that certain transaction of trust is in the course of business.

(18) ~~918) “**business vertical**” means a distinguishable component of an enterprise that is engaged in the supply of individual goods or services or a group of related goods or services which is subject to risks and returns that are different from those of the other business verticals.~~

~~Explanation.—For the purposes of this clause, factors that should be considered in determining whether goods or services are related include—~~

- ~~(a) the nature of the goods or services;~~
- ~~(b) the nature of the production processes;~~
- ~~(c) the type or class of customers for the goods or services;~~
- ~~(d) the methods used to distribute the goods or supply of services; and~~
- ~~(e) the nature of regulatory environment (wherever applicable), including banking, insurance, or public utilities;~~

(19) *capital goods means goods, the value of which is capitalised in the books of account of the person claiming the input tax credit and which are used or intended to be used in the course or furtherance of business;*

9 Omitted by Amendment Act 2018

(20) *Casual taxable person means a person who occasionally undertakes transactions involving supply of goods or services or both in the course or furtherance of business, whether as principal, agent or in any other capacity, in a State or a Union territory where he has no fixed place of business;*

(21) *central tax means the central goods and services tax levied under section 9;*

Author Comment

What is the rationale behind not allowing ITC with respect to central tax paid in case of Intra-State Supply. Is there any legal provision for the same.

In this regard, observations of the AAAR in the case of Cognitive Technology P Ltd [AAAR TS-644-AAAR-2019-NT-IMF] are that ITC of Central GST or Central Tax would be available to a person registered in Rajasthan if the location of the supplier and place of supply of the services are in Rajasthan; Perusing Section 16(10) & 2(62), opines that the 'input tax' inter alia is 'Central Tax' charged on inward supply of a registered person, while 'Central Tax' as per Section 2(21) of the CGST Act, means the Central Goods and Services Tax (Central GST) levied under Section 9; Explains that if ITC of State GST is not admissible, ITC of Central GST should also not be admissible as both go hand in hand.

However, the question arises can ITC of central GST can only be disallowed as State GST is not available. Thus, this question is required to tested in the Court of Law.

- (22) *Cess shall have the same meaning as assigned to it in the Goods and Services Tax (Compensation to States) Act;*
- (23) *chartered accountant means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949;*
- (24) *Commissioner means the Commissioner of central tax and includes the Principal Commissioner of central tax appointed under section 3 and the Commissioner of integrated tax appointed under the Integrated Goods and Services Tax Act;*
- (25) *Commissioner in the Board means the Commissioner referred to in section 168;*
- (26) *common portal means the common goods and services tax electronic portal referred to in section 146;*
- (27) *common working days in respect of a State or Union territory shall mean such days in succession which are not declared as gazetted holidays by the Central Government or the concerned State or Union territory Government;*

(28) *company secretary means a company secretary as defined in clause (c) of subsection (1) of section 2 of the Company Secretaries Act, 1980;*

(29) *competent authority* means such authority as may be notified by the Government;

(30) *composite supply means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply;*

Illustration.— Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply;

Author Comment

From implementation of GST itself many litigations launched on account of the Concept of Composite Supply.

Recently in Circular No. 163/19/2021-GST it is clarified that UPS/ inverter would attract GST rate of 18% under heading 8504, while external batteries would attract the GST rate as applicable to it under heading 8507 (28% for all batteries

except lithium-ion battery). Thus, this constitutes supply of two distinctly identifiable items even one invoice is issued.

This issue aroused as AAR in the case of Switching AVO Electro Power Ltd [TS-121-AAR-2018-NT] observed that the supply of UPS and Battery is to be considered as Mixed Supply within the meaning of Section 2(74) of the GST Act, as they are supplied under a single contract at a combined single price.

However, circular does not prescribe rational behind not to treat as composite supply or mixed supply.

Additionally, having two separate supply is not an essential ingredient of the definition. However, below are the essential ingredients of the definition of composite supply

- Supply should constitute two or more taxable supplies of goods or services or both, or any combination thereof,
- Both supplies are naturally bundled and supplied in conjunction with each other in the ordinary course of business
- One of which is a principal supply;

Alternatively, in the case of west Bengal AAR-TS-206-AAR-2018-NT AAR holds that services of transportation, in-transit insurance and loading / unloading in relation to separate contract for supply of materials at ex-factory price, shall be liable to GST at rate applicable to supply of goods; Notes that supply of goods under First Contract cannot be executed independent of Second Contract providing for transportation for the former does not include the provision and

cost of transportation and delivery; **Moreover, the two contracts are linked by a cross fall breach clause that specifies that breach of one contract will be deemed to be a breach of other contract, and thereby turn them into a single source responsibility contract;** Resultantly, observes that the two promises – supply of goods and their transportation to contractee’s site – **are not separately enforceable**, the supplies of goods and services are naturally bundled; Accordingly, states, “...supplies as that of applicant’s should be construed as specifically mentioned under the GST Act as Composite Supply with supply of goods as the principal supply and services like transportation, in-transit insurance etc ancillary or incidental to the principal supply.

The Complexity can be counted with the example of Solar Industry where some of AR given below can be referred

<u>Case</u>	<u>Observation</u>
Karnataka AAR [TS-203-ACAR-2018-NT]	Turnkey EPC contract for solar plant construction not 'composite supply', absent natural bundling
RFE Solar Pvt Ltd [[TS-425-AAR-2018-NT]	EPC contract for 'solar power plant' not a 'composite supply', taxable as 'Works Contract'. Such transaction for EPC contract for solar power plant is a 'works contract' taxable at 18% (IGST/CGST+SGST) as supply

	<p>of service, hence question of principal supply does not arise</p>
<p>Giriraj Renewables Private Limited [AAAR TS-461-AAAR-2018-NT-Girira]</p>	<p>AAAR hold that turnkey EPC contract for 'solar power plant' erection constitutes 'composite' 'works contract' supply.</p> <p>EPC contract for supply of 'solar power plant' involving engineering, design, procurement, supply, development, testing and commissioning is a 'composite supply' u/s 2(30) of CGST Act, 2017, classifiable as a "works contract" u/s 2(119) of CGST Act; Observes that, "in the business of contracts for the Solar Power Generating System, it is a practice to provide a Plant as a whole along with the supply of services" and that entire contract comprises of supply of goods and services, both of which are naturally bundled; Rejects appellant's submission that contract is not a 'works contract' inasmuch as 'solar power generating system' does not constitute 'immovable property', and that principle supply is 'solar power generating system', liable to GST at 5% (CGST+SGST) in terms of Sr. No. 234 of Notification No. 1/2017;</p>

<p>Shree Construction [TS-444-AAR-2018]</p>	<p>AAR observed that that sub-contractor providing services of "composite supply" of works contract in respect of original work of Railways, as in the present case, would be entitled to concessional GST rate of 12% under Sr. no. 3 of Notification no. 11/2017 as amended; Rejects Revenue's plea for 18% levy on the ground that amended Notification No. 1/2018 classified all other WCS relating to constructions services under the Head (xii):</p>
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Even, for Solar Industry difficulty doesn't end here. Recently Circular No. 163/19/2021-GST it is clarified that GST on specified Renewable Energy Projects can be paid in terms of the 70:30 ratio for goods and services, respectively, for the period of 1.07.2017 to 31.12.2018, in the same manner as has been prescribed for the period on or after 1.01 2019, as per the explanation in the Noti. No.24/2018. However, below aspects are seems to be ignored while issuing said Circular

- What if opted for actual proportion to determine Goods and Services for Prior Period [i.e before 01.01.2019]?
- What if treated as Composite supply before clarification?
- What if Refund has been claimed under inverted duty structure?

- What if GST less paid up to 01.01.2019 in the absence of specific clarification.

Thus, similar to Solar Industry for many industries the term ‘Composite Supply’ may lead to Litigation

(31) consideration in relation to the supply of goods or services or both includes–

- (a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;*
- (b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government:*

Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply;

Author Comment

Circular given below are issued with respect to Consideration

<u>Circular No.</u>	<u>Relevant Content</u>

Circular No. 115/34/2019-GST

2.4 Section 2(31) of the CGST Act states that “consideration” in relation to the supply of goods or services or both includes any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person. Thus, PSF and UDF charged by airport operators are consideration for providing services to passengers.

2.5 Thus, services provided by an airport operator to passengers against consideration in the form of UDF and PSF are liable to GST. UDF was also liable to service tax. It is also clear from notification of Director General of Civil Aviation AIC Sl. No. 5 /2010 dated 13.09.2010, which states that UDF approved by MoCA, GoI is inclusive of service tax. It is also seen from the Air India website that the UDF is inclusive of service tax. Further in order No. AIC S. Nos. 3/2018 and 4/2018, both dated 27.2.2018, it has been laid down that GST is applicable on the charges of UDF and PSF.

	<p><i>2.10 The collection charges paid by airport operator to airlines are a consideration for the services provided by the airlines to the airport operator (AAI, DAIL, MAIL etc) and airlines shall be liable to pay GST on the same under forward charge. ITC of the same will be available with the airport operator</i></p>
<p>CIR-119/38/2019-GST</p>	<p><i>4.3 The lender temporarily lends the securities held by him to a borrower and charges lending fee for the same from the borrower. The borrower of securities can further sell or buy these securities and is required to return the lended securities after stipulated period of time. The lending fee charged from the borrowers of securities has the character of consideration and this activity is taxable in GST since 01.07.2017.</i></p>

- (32) *continuous supply of goods means a supply of goods which is provided, or agreed to be provided, continuously or on recurrent basis, under a contract, whether or not by means of a wire, cable, pipeline or other conduit, and for which the supplier invoices the recipient on a regular or periodic basis and includes supply of such goods as the Government may, subject to such conditions, as it may, by notification, specify;*

- (33) *continuous supply of services means a supply of services which is provided, or agreed to be provided, continuously or on recurrent basis, under a contract, for a period exceeding three months with periodic payment obligations and includes supply of such services as the Government may, subject to such conditions, as it may, by notification, specify;*
- (34) *conveyance includes a vessel, an aircraft and a vehicle;*
- (35) *cost accountant means a cost accountant as defined in [clause (b)]¹⁰ of subsection (1) of section 2 of the Cost and Works Accountants Act, 1959;*
- (36) Council means the Goods and Services Tax Council established under article 279A of the Constitution;
- (37) credit note means a document issued by a registered person under subsection (1) of section 34;
- (38) debit note means a document issued by a registered person under subsection (3) of section 34;

¹⁰ Substituted for —clause (c) by The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018) –Brought into force w.e.f. 01st February, 2019.

- (39) deemed exports means such supplies of goods as may be notified under section 147;
- (40) designated authority means such authority as may be notified by the Board;
- (41) document includes written or printed record of any sort and electronic record as defined in clause (t) of section 2 of the Information Technology Act, 2000;
- (42) drawback in relation to any goods manufactured in India and exported, means the rebate of duty, tax or cess chargeable on any imported inputs or on any domestic inputs or input services used in the manufacture of such goods.
- (43) electronic cash ledger means the electronic cash ledger referred to in sub-section (1) of section 49;
- (44) electronic commerce means the supply of goods or services or both, including digital products over digital or electronic network;
- (45) electronic commerce operator|| means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce;
- (46) electronic credit ledger means the electronic credit ledger referred to in sub-section (2) of section 49;
- (47) exempt supply means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11, or under section 6 of the Integrated Goods and Services Tax Act, and includes non taxable supply;

(48) existing law means any law, notification, order, rule or regulation relating to levy and collection of duty or tax on goods or services or both passed or made before the commencement of this Act by Parliament or any Authority or person having the power to make such law, notification, order, rule or regulation

- (49) family means,
- i. the spouse and children of the person, and
 - ii. the parents, grand-parents, brothers and sisters of the person if they are wholly or mainly dependent on the said person;
- (50) fixed establishment means a place (other than the registered place of business) which is characterised by a sufficient degree of permanence and suitable structure in terms of human and technical resources to supply services, or to receive and use services for its own needs;
- (51) Fund means the Consumer Welfare Fund established under section 57;
- (52) goods means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply;
- (53) Government means the Central Government;

- (54) Goods and Services Tax (Compensation to States) Act|| means the Goods and Services Tax (Compensation to States) Act, 2017;
- (55) goods and services tax practitioner|| means any person who has been approved under section 48 to act as such practitioner;
- (56) India means the territory of India as referred to in article 1 of the Constitution, its territorial waters, seabed and sub-soil underlying such waters, continental shelf, exclusive economic zone or any other maritime zone as referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, and the air space above its territory and territorial waters;
- (57) Integrated Goods and Services Tax Act|| means the Integrated Goods and Services Tax Act, 2017;
- (58) integrated tax means the integrated goods and services tax levied under the Integrated Goods and Services Tax Act;

- (59) input means any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business;
- (60) input service means any service used or intended to be used by a supplier in the course or furtherance of business;
- (61) Input Service Distributor means an office of the supplier of goods or services or both which receives tax invoices issued under section 31 towards the receipt of input services and issues a prescribed document for the purposes of distributing the credit of central tax, State tax, integrated tax or Union territory tax paid on the said services to a supplier of taxable goods or services or both having the same Permanent Account Number as that of the said office;
- (62) Input tax in relation to a registered person, means the central tax, State tax, integrated tax or Union territory tax charged on any supply of goods or services or both made to him and includes
- (a) the integrated goods and services tax charged on import of goods;
 - (b) the tax payable under the provisions of sub-sections (3) and (4) of section 9;

- (c) the tax payable under the provisions of sub-sections (3) and (4) of section 5 of the Integrated Goods and Services Tax Act;
- (d) the tax payable under the provisions of sub-sections (3) and (4) of section 9 of the respective State Goods and Services Tax Act; or
- (e) the tax payable under the provisions of sub-sections (3) and (4) of section 7 of the Union Territory Goods and Services Tax Act, but does not include the tax paid under the composition levy;

(63) Input tax credit means the credit of input tax;

(64) Intra-State supply of goods shall have the same meaning as assigned to it in section 8 of the Integrated Goods and Services Tax Act;

(65) Intra-State supply of services shall have the same meaning as assigned to it in section 8 of the Integrated Goods and Services Tax Act;

(66) invoice or tax invoice means the tax invoice referred to in section 31;

(67) inward supply in relation to a person, shall mean receipt of goods or services or both whether by purchase, acquisition or any other means with or without consideration;

(68) Job work means any treatment or process undertaken by a person on goods belonging to another registered person and the expression —job worker|| shall be construed accordingly;

Author Comment

Circular given below are issued with respect to Job work to clarify certain aspect

<u>Circular</u>	<u>Observation</u>
CIR-19/19/2017 - GST	<i>GST rate on services by way of job work in relation to all food and food products falling under Chapters 1 to 22 has been reduced from 18% to 5% vide Notification No. 31/2017-CT(R) [Notification No. 11/2017-CT (Rate) dated 28-6-2017, S.No. 26 refers].</i>

	<p><i>Therefore, it is hereby clarified that milling of paddy into rice on job work basis, is liable to GST at the rate of 5%, on the processing charges (and not on the entire value of rice).</i></p>
CIR 38/12/2018 - GST	<p>This Circular issued to clarify certain aspects regarding Job Work in certain scenario like</p> <ul style="list-style-type: none"> - Where goods are sent by principal to only one job worker - Where goods are sent from one job worker to another job worker - Where the goods are returned to the principal by the job worker - Where the goods are sent directly by the supplier to the job worker etc.
CIR-88/07/2019 - GST	<p>This circular issued to amends certain circulars in conformity with Amendment Act 2018. Accrodinly, it includes certain amendments with respect to Circular No. 38/12/2018 dated 26.03.2018</p>
CIR 126/45/2019 -GST	<p><i>It may be seen that there is a clear demarcation between scope of the entries at item (id) and item (iv) under</i></p>

	<p><i>heading 9988 of Notification No. 11/2017-Central Tax (Rate) dated 28-06-2017. Entry at item (id) covers only job work services as defined in section 2 (68) of CGST Act, 2017, that is, services by way of treatment or processing undertaken by a person on goods belonging to another registered person. On the other hand, the entry at item (iv) specifically excludes the services covered by entry at item (id), and therefore, covers only such services which are carried out on physical inputs (goods) which are owned by persons other than those registered under the CGST Act.</i></p>
CIR 164/19/2021-GST	<p><i>services by way of job work in relation to manufacture of alcoholic liquor for human consumption are not eligible for the GST rate of 5% prescribed under the said entry. GST Council recommended that such job work would attract GST at the rate of 18%.</i></p>

(69) local authority means—

- (a) a Panchayat as defined in clause (d) of article 243 of the Constitution;
- (b) a Municipality as defined in clause (e) of article 243P of the Constitution;

- (c) a Municipal Committee, a Zilla Parishad, a District Board, and any other authority legally entitled to, or entrusted by the Central Government or any State Government with the control or management of a municipal or local fund;
 - (d) a Cantonment Board as defined in section 3 of the Cantonments Act, 2006;
 - (e) a Regional Council or a District Council constituted under the Sixth Schedule to the Constitution;
 - (f) a Development Board constituted under article 371[and article 371J]¹¹ of the Constitution; or
 - (g) a Regional Council constituted under article 371A of the Constitution;
- (70) location of the recipient of services means,—
- (a) where a supply is received at a place of business for which the registration has been obtained, the location of such place of business;

¹¹ Inserted by The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018) – Brought into force w.e.f. 01st February, 2019.

- (b) where a supply is received at a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;
- (c) where a supply is received at more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the receipt of the supply;
and
- (d) in absence of such places, the location of the usual place of residence of the recipient;

(71) location of the supplier of services means,—

- (a) where a supply is made from a place of business for which the registration has been obtained, the location of such place of business;
- (b) where a supply is made from a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;
- (c) where a supply is made from more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the provisions of the supply; and

(d) in absence of such places, the location of the usual place of residence of the supplier;

(72) Manufacture means processing of raw material or inputs in any manner that results in emergence of a new product having a distinct name, character and use and the term manufacturer shall be construed accordingly;

(73) market value shall mean the full amount which a recipient of a supply is required to pay in order to obtain the goods or services or both of like kind and quality at or about the same time and at the same commercial level where the recipient and the supplier are not related;

(74) mixed supply means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply.

Illustration. — A supply of a package consisting of canned foods, sweets, chocolates, cakes, dry fruits, aerated drinks and fruit juices when supplied for a single price is a mixed supply. Each of these items can be supplied separately and is not dependent on any other. It shall not be a mixed supply if these items are supplied separately;

(75) money means the Indian legal tender or any foreign currency, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveller cheque, money order, postal or electronic remittance or any other instrument recognised by the Reserve Bank of India when used as a consideration to settle an obligation or exchange with Indian legal tender of another denomination but shall not include any currency that is held for its numismatic value;

Author Comment

Understating of term 'Money' is important as goods defined u/s 52 of the CGST Act excludes Money. However, services include activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination.

In this regard, in Maharashtra AAAR [TS-380-AAAR-2018-NT] observed that, "Since the cash carry vehicles are **deployed to carry cash and bullion** for other than numismatic purposes, the cash carried by them is to be construed as money and not goods"; Additionally, it states that Press Note dated 21.07.2018 pursuant to GST Council's 28th meeting that contained proposed amendments to GST law, recommends allowing ITC even in respect of motor vehicles used for transportation of money for or by a banking company or financial institution; Explains, fact that GST Council "has felt the need for widening the scope of ITC .

clearly shows that the intention of the legislature was earlier not to treat 'money' as 'goods', as defined u/s 2(52)"; Finds reference to Motor Vehicle Act, 1988 misplaced, while stating that exclusion of 'money' from scope of e-Way Bill preparation has no bearing on definition of "goods" as same cannot prevail over provisions laid down in Act:

- (76) motor vehicle shall have the same meaning as assigned to it in clause (28) of section 2 of the Motor Vehicles Act, 1988;

- (77) non-resident taxable person means any person who occasionally undertakes transactions involving supply of goods or services or both, whether as principal or agent or in any other capacity, but who has no fixed place of business or residence in India;

- (78) non-taxable supply means a supply of goods or services or both which is not leviable to tax under this Act or under the Integrated Goods and Services Tax Act;

- (79) non-taxable territory means the territory which is outside the taxable territory;

(80) notification means a notification published in the Official Gazette and the expressions notify and notified shall be construed accordingly;

(81) other territory includes territories other than those comprising in a State and those referred to in sub-clauses (a) to (e) of clause (114) ;

(82) output tax in relation to a taxable person, means the tax chargeable under this Act on taxable supply of goods or services or both made by him or by his agent but excludes tax payable by him on reverse charge basis;

(83) outward supply in relation to a taxable person, means supply of goods or services or both, whether by sale, transfer, barter, exchange, licence, rental, lease or disposal or any other mode, made or agreed to be made by such person in the course or furtherance of business;

(84) person includes

(a) an individual;

(b) a Hindu Undivided Family;

- (c) a company;
- (d) a firm;
- (e) a Limited Liability Partnership;
- (f) an association of persons or a body of individuals, whether incorporated or not, in India or outside India;
- (g) any corporation established by or under any Central Act, State Act or Provincial Act or a Government company as defined in clause (45) of section 2 of the Companies Act, 2013;
- (h) any body corporate incorporated by or under the laws of a country outside India;
- (i) a co-operative society registered under any law relating to co-operative societies;
- (j) a local authority;
- (k) Central Government or a State Government;
- (l) society as defined under the Societies Registration Act, 1860;
- (m) trust; and
- (n) every artificial juridical person, not falling within any of the above;

(85) Place of business includes—

- (a) a place from where the business is ordinarily carried on, and includes a warehouse, a godown or any other place where a taxable person stores his goods, supplies or receives goods or services or both; or
 - (b) a place where a taxable person maintains his books of account; or
 - (c) a place where a taxable person is engaged in business through an agent, by whatever name called;
- (86) Place of supply means the place of supply as referred to in Chapter V of the Integrated Goods and Services Tax Act;
- (87) Prescribed means prescribed by rules made under this Act on the recommendations of the Council;
- (88) Principal means a person on whose behalf an agent carries on the business of supply or receipt of goods or services or both;
- (89) Principal place of business means the place of business specified as the principal place of business in the certificate of registration;

- (90) Principal supply means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary;
- (91) Proper officer in relation to any function to be performed under this Act, means the Commissioner or the officer of the central tax who is assigned that function by the Commissioner in the Board;

Author Comment

Circular given below can be relevant to decide proper Officer

- Circular No -1/1/2017-GST
- Circular No -3/3/2017-GST
- Circular No -9/9/2017

In this regard, Orrisa HC of in the case of Vedanta Ltd. Observed that deny of refund of Rs. 34 Cr (approx.) towards Compensation Cess paid on inputs used for making zero-rated supplies is improper. Asst. Commissioner is not a 'proper officer' and assignment of powers by CBEC to such person vide Circular No. 3/3/2017-GST dated July 5, 2017 is contrary to provisions of Section 2(91) r/w Sections 54(6) and 168 of CGST Act; Moreover, petitioner has also sought writ of mandamus to release 90% of refund amount (on provisional basis) in view of

non-obstante clause contained in Section 54(6); HC observes that assignment of powers to a person to act as 'proper officer' could have been done either by the Commissioner or Jt. Secretary with prior approval of CBEC; Relies on SC decision in Marathwada University vs. Seshrao Balwant Rao Chavan while granting stay,

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

(93) recipient of supply of goods or services or both, means—

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

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

(c) where no consideration is payable for the supply of a service, the person to whom the service is rendered, and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied;

- (94) registered person means a person who is registered under section 25 but does not include a person having a Unique Identity Number;
- (95) regulations means the regulations made by the Board under this Act on the recommendations of the Council;
- (96) removal“ in relation to goods, means—
- (a) despatch of the goods for delivery by the supplier thereof or by any other person acting on behalf of such supplier; or
 - (b) collection of the goods by the recipient thereof or by any other person acting on behalf of such recipient;
- (97) return means any return prescribed or otherwise required to be furnished by or under this Act or the rules made thereunder;
- (98) reverse charge means the liability to pay tax by the recipient of supply of goods or services or both instead of the supplier of such goods or services or both under sub-section (3) or sub-section (4) of section 9, or under sub-section (3) or sub-section (4) of section 5 of the Integrated Goods and Services Tax Act;
- (99) Revisional Authority means an authority appointed or authorised for revision of decision or orders as referred to in section 108;

(100) Schedule means a Schedule appended to this Act;

(101) Securities shall have the same meaning as assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956;

Author Comment

In this regard, as per Section 2(h) of the Securities Contracts (Regulation) Act, 1956

“securities” include—

(i) shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;

(ia) derivative

(ib) units or any other instrument issued by any collective investment scheme to the investors in such schemes;

(ic) security receipt as defined in clause (zg) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;]

(id) units or any other such instrument issued to the investors under any mutual fund scheme;]

(ii) Government securities;

(iia) such other instruments as may be declared by the Central Government to be securities; and

(iii) rights or interest in securities;

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

[Explanation.— For the removal of doubts, it is hereby clarified that the expression — services includes facilitating or arranging transactions in securities;]¹²

(103) State includes a Union territory with Legislature;

(104) State tax means the tax levied under any State Goods and Services Tax Act;

(105) supplier in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as

¹² Inserted by The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018) – Brought into force w.e.f. 01st February, 2019.

such on behalf of such supplier in relation to the goods or services or both supplied;

- (106) *tax period means the period for which the return is required to be furnished;*
- (107) *taxable person means a person who is registered or liable to be registered under section 22 or section 24;*
- (108) *taxable supply means a supply of goods or services or both which is leviable to tax under this Act;*
- (109) *taxable territory means the territory to which the provisions of this Act apply;*
- (110) *telecommunication service means service of any description (including electronic mail, voice mail, data services, audio text services, video text services, radio paging and cellular mobile telephone services) which is made available to users by means of any transmission or reception of signs, signals, writing, images and sounds or intelligence of any nature, by wire, radio, visual or other electromagnetic means;*
- (111) *the State Goods and Services Tax Act means the respective State Goods and Services Tax Act, 2017;*
- (112) *turnover in State or turnover in Union territory|| means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis) and exempt supplies made within a State or Union territory by a taxable person, exports of goods or services or both and inter-State supplies of goods or services or both made from the State or Union territory by the said taxable person but excludes central tax, State tax, Union territory tax, integrated tax and cess;*
 - (113) *usual place of residence means—*
 - (a) *in case of an individual, the place where he ordinarily resides;*
 - (b) *in other cases, the place where the person is incorporated or otherwise legally constituted;*
- (114) *Union territory means the territory of—*
 - (a) *the Andaman and Nicobar Islands;*
 - (b) *Lakshadweep;*

- (c) *[Dadra and Nagar Haveli and Daman and Diu;]*¹³
- (d) *[Ladakh;]*¹¹
- (e) *Chandigarh; and*
- (f) *Other territory*||.

Explanation. —For the purposes of this Act, each of the territories specified in subclauses (a) to (f) shall be considered to be a separate Union territory;

- (115) *Union territory tax means the Union territory goods and services tax levied under the Union Territory Goods and Services Tax Act;*
- (116) *Union Territory Goods and Services Tax Act means the Union Territory Goods and Services Tax Act, 2017;*
- (117) *“valid return” means a return furnished under sub-section (1) of section 39 on which self-assessed tax has been paid in full;*
- (118) *voucher means an instrument where there is an obligation to accept it as consideration or part consideration for a supply of goods or services or both and where the goods or services or both to be supplied or the identities of their potential suppliers are either indicated on the instrument itself or in related documentation, including the terms and conditions of use of such instrument;*
- (119) *Works contract means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract;*
- (120) *words and expressions used and not defined in this Act but defined in the Integrated Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act shall have the same meaning as assigned to them in those Acts;*

¹³ Substituted for —(c) Dadra and Nagar Haveli; (d) Daman and Diu;|| by The Finance Act, 2020 (No. 12 of 2020)—Brought into force w.e.f 30.06.2020.

(121) *Any reference in this Act to a law which is not in force in the State of Jammu and Kashmir, shall, in relation to that State be construed as a reference to the corresponding law, if any, in force in that State.*

3. Officers under this Act.—

The Government shall, by notification, appoint the following classes of officers for the purposes of this Act, namely:—

- (a) *Principal Chief Commissioners of Central Tax or Principal Directors General of Central Tax,*
- (b) *Chief Commissioners of Central Tax or Directors General of Central Tax,*
- (c) *Principal Commissioners of Central Tax or Principal Additional Directors General of Central Tax,*
- (d) *Commissioners of Central Tax or Additional Directors General of Central Tax,*
- (e) *Additional Commissioners of Central Tax or Additional Directors of Central Tax,*
- (f) *Joint Commissioners of Central Tax or Joint Directors of Central Tax,*
- (g) *Deputy Commissioners of Central Tax or Deputy Directors of Central Tax,*
- (h) *Assistant Commissioners of Central Tax or Assistant Directors of Central Tax, and*
- (i) *any other class of officers as it may deem fit:*

Provided that the officers appointed under the Central Excise Act, 1944 shall be deemed to be the officers appointed under the provisions of this Act.

Author Comment

This section Authorise Government officers to appoint certain classes of officers for the purposes of GST Act. Under this section notifications given below are issued till the date

- i. NT-02/2017-CT- appointment of officers (read with section 5)
- ii. NT-14/2017-CT- Notifies powers to be exercised by the officers.
- iii. NT-04/2019-CT-Joint Commissioner (Appeals)
- iv. NT-51/2019-CT-UT of Jammu and Kashmir / UT of Ladakh
- v. NT-02/2021-CT-Amends NT-02/2017-CT - Appointment of Commissioner
Appeals - Delhi & Mumbai

Additionally, in the case of Sri Ravi Agarwal [TS-1060-HC-2019(CHAT)-NT] Hon'ble High Court dismisses writ petitions challenging constitutional validity of CBIC Circular dated July 05, 2017, assigning functions of 'Proper Officer' under CGST Act, 2017 and Notification No. 14/2017-Central Tax dated July 01, 2017;

In this regard, summons were issued to Petitioners by Senior Intelligence Officer (Directorate General of Goods and Service Tax Intelligence, Regional Unit), Jamshedpur, in connection with the alleged 'circular trading' resulting in losses to Government Exchequer to tune of Rs. 101 Crores (approximately) despite the fact that place of registration of Petitioners was within the State of Chhattisgarh;

HC notes Petitioner's plea that, since no Gazette notification was issued appointing 'Proper Officers' and Notification was issued only by "Board" as defined u/s 2(16) of CGST Act and not by 'Government' as defined u/s 2(53) of CGST Act, it was not a valid notification to confer power upon the officers mentioned therein, in terms of Section 3 of CGST Act; However, referring to 'corrigendum notification' dated July 29, 2019 published in the official gazette, observes that inadvertent mistake in Notification

dated July 01, 2017 and the previous notification dated June 19, 2017 showing issuing authority as 'Board' stands corrected to the effect that these notifications stand issued by "Government"; Observing that the above notification was already been published in the official gazette and was issued by the 'Government',

HC holds that the notification dated July 5, 2017 was issued by Board assigning the functions of proper officers; Thus, finds that the challenge raised against the notification with reference to the competence of the issuing authority and the manner of issuance "does not hold any water at all", also observes that Petitioner has not raised any challenge against the 'Corrigendum Notification' dated July 29, 2019 nor have raised any challenge with regard to any statutory provisions

Accordingly, proper officer is relevant to construe in case of any assessment and/or adjudication under GST Act.

4. Appointment of Officers.

- (1) The Board may, in addition to the officers as may be notified by the Government under section 3, appoint such persons as it may think fit to be the officers under this Act.
- (2) Without prejudice to the provisions of sub-section (1), the Board may, by order, authorise any officer referred to in clauses (a) to (h) of section 3 to appoint officers of central tax below the rank of Assistant Commissioner of central tax for the administration of this Act.

5. Powers of officers under GST.—

- (1) Subject to such conditions and limitations as the Board may impose, an officer of central tax may exercise the powers and discharge the duties conferred or imposed on him under this Act.
- (2) An officer of central tax may exercise the powers and discharge the duties conferred or imposed under this Act on any other officer of central tax who is subordinate to him.
- (3) The Commissioner may, subject to such conditions and limitations as may be specified in this behalf by him, delegate his powers to any other officer who is subordinate to him.
- (4) Notwithstanding anything contained in this section, an Appellate Authority shall not exercise the powers and discharge the duties conferred or imposed on any other officer of central tax.

6. Authorisation of officers of State tax or Union territory tax as proper officer in certain circumstances. —

(1) *Without prejudice to the provisions of this Act, the officers appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act are authorised to be the proper officers for the purposes of this Act, subject to such conditions as the Government shall, on the recommendations of the Council, by notification, specify.*

(2) *Subject to the conditions specified in the notification issued under subsection (1),—*

(a) *where any proper officer issues an order under this Act, he shall also issue an order under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as authorised by the State Goods and Services Tax Act or the Union Territory Goods and*

Services Tax Act, as the case may be, under intimation to the jurisdictional officer of State tax or Union territory tax;

- (b) *where a proper officer under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act has initiated any proceedings on a subject matter, no proceedings shall be initiated by the proper officer under this Act on the same subject matter.*
- (3) *Any proceedings for rectification, appeal and revision, wherever applicable, of any order passed by an officer appointed under this Act shall not lie before an officer appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act.*

Author Comment

Further, it is observed that both state and central investigate in certain cases. Thus, question arises whether simultaneous investigations by different GST Officers into separate matters without overlap is allowed.

In this regard, Punjab & Haryana HC [TS-56-HC(P&H)-2021-GST] dismisses assessee's writ petition seeking to quash investigation initiated by DGCI, Ludhiana subsequent to investigation already undertaken by Commissioner, CGST Dept. in fake ITC availment case and Holds that where different Officers appointed under Sections 3 & 6 of CGST Act, 2017 are independently investigating **altogether different matters involving contraventions of prima**

facie cognizable & punitive offences in CGST, without any overlapping, such investigation is not barred by Section 6(2)(b);

Further, it is observed that fake ITC availment case was first initiated by Commissioner, GST Dept. which was then followed by another investigation by DGGI Ludhiana at assessee's business & residential place. Also, information received by the Department that assessee had passed on fraudulent ITC to its sister concern ESA Rolling Mills which is owned by his wife, is being investigated by DGGI Ludhiana while the investigation conducted by Commissioner, GST Dept. is limited to information provided by DGGI, Lucknow, CGST Agra and DGGI Ghaziabad about fake availment of ITC by assessee's proprietorship from certain bogus firms; Referring to section 6(2)(b) clarifies that, it is manifest that **different Officers are independently investigating altogether different matters without overlapping and hence there is no reason to interfere with the aforesaid investigations:**

It is pertinent to note that, as per Section 6(2)(b) of the CGST Act, if proceedings initiated by a proper officer under any Act (CGST Act or SGST Act) on a any subject matter, then the no proceedings can be initiated by other proper officer under this Act on the same subject matter.

Thus, before replying to any assessment or proceeding it is critical to revisit the proper officer along with subject matter of proceedings.

7. Scope of supply.—

(1) For the purposes of this Act, the expression —supply includes—

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

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

Explanation. —For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another.¹⁴

¹⁴ Yet to notify

(b) import of services for a consideration whether or not in the course or furtherance of business;[and]¹⁵

(c) the activities specified in Schedule I, made or agreed to be made without a consideration;~~and~~¹⁶

(d) ~~the activities to be treated as supply of goods or supply of services as referred to in Schedule II.~~¹⁷

[(1A) where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II.]¹⁸

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

(a) activities or transactions specified in Schedule III; or

¹⁵ Inserted w.e.f 01st July, 2017 by The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018) – Brought into force on 01st February, 2019.

¹⁶ Omitted —and~~l~~ w.e.f 01st July, 2017 by The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018) – Brought into force on 01st February, 2019.

¹⁷ Omitted —(d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II. w.e.f. 01st July, 2017 by The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018) – Brought into force on 01st February, 2019.

¹⁸ Inserted w.e.f. 01st July, 2017 by The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018) – Brought into force on 01st February, 2019.

(b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, shall be treated neither as a supply of goods nor a supply of services.

(3) Subject to the provisions of [sub-sections (1), (1A) and (2)]¹⁹, the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as—

- (a) a supply of goods and not as a supply of services; or
- (b) a supply of services and not as a supply of goods.

Author Comment

As per Section 9 of the CGST Act, GST is levied on all **intra-State supplies of goods or services or both**. Thus, levy is on Supplies and Section 7 of the CGST Act specify Scope of Supply.

Key ingredients of supply

¹⁹ Substituted for —sub-sections (1) and (2) w.e.f. 01st July, 2017 by The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018) – Brought into force on 01st February, 2019.

Thus, under GST law taxable event is supply and includes all forms of supply such as transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration. Section 7 uses the term 'such as' which indicates that whatever mentioned thereafter (i.e transfer, barter, exchange, licence, rental, lease or disposal made etc) are illustrative and not exhaustive. Further, the term such as preceded by term all forms of supply could be construed that all the terms used after that (i.e transfer, barter, exchange, licence, rental, lease or disposal made etc) are illustrative and do not restrict the meaning of term 'Supply'.

Thus, it can be said that there are 5 key ingredients of supply are

1. Supply includes all forms of supply of goods or services or both

Supply includes all forms of supply of goods or services or both. In this regard, the term Goods is defined in Section 2(52) of CGST Act and Service is defined as Section 2(102) of CGST Act. The Securities and Money are excluded from the definition of Goods as well as services. However, Service includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged;

Further, certain activities or transactions constitute a supply in accordance with the schedule -II includes the list of transaction which can be classified either service or goods irrespective of supply of both.

Further Schedule -III has list of transaction which shall be treated as neither supply of goods nor supply of services.

As discussed, aforesaid supply includes all forms of supply of **goods or services or both**. Thus, anything other than goods and/or service is not supply. Thus, in this context it is essential to constitute certain supplies such as development rights which are specifically notified for the purpose of levy of GST is liable to GST or not. In the common parlance, development rights mean right that permits developer to undertake additional construction. Even in the past, various authorities had decided that development rights are in the nature of immovable property. In this regard, the following judicial precedents wherein it has been held that development rights (associated with land) are immovable in nature can be referred

<u>No.</u>	<u>Case Law</u>	<u>Decision</u>
1.	<i>Sadoday Builders Private Limited vs. Joint Charity Commissioner</i>	The issue in this case was whether permissions required as per the provisions of the Bombay Public Trusts Act, 1950 for sale of immovable property are applicable to sale of TDR as well. The Court held that

	<i>[WP No 4543/2010, delivered on 23 June 2011]</i>	development rights being 'immovable property' would require permission as per the statutory provisions.
2.	<i>Chheda Housing Development Corporation vs. Bibijan Shaikh [2007 (3) MhLJ 402]</i>	<i>It was held that transferable development rights are benefits arising from land and hence should be treated as an immovable property.</i>
3.	<i>State of Orissa v. Titaghur Paper Mills Co. Ltd.[1985 (3) TMI 226 - SUPREME COURT OF INDIA]</i>	<i>1.1 It was held that bamboo contract was neither a contract for the sale of goods or lease or the grant of an easement. Rather it conferred upon the company a benefit to arise out of land, namely, the right to cut and remove bamboos which would grow from the soil coupled with ancillary rights and was thus a grant of a profit a prendre which is a benefit arising out of land.</i>
4.	<i>Shakti Insulated Wires Limited v. JCIT</i>	<i>1.1 It was held that the developmental rights are embedded in the ownership of land only. These were valuable rights inherent in the ownership of land and therefore shall be considered immovable in nature.</i>
5.	<i>Anand Behera v. State of Orissa (1955) 2 SCR 919</i>	<i>Lake is an immovable property and therefore the petitioner's right to enter in that estate, which he does not own and take away fish from the lake is a 'Profit a Prendre' and in India it is regarded as a benefit to arise out</i>

		<i>of the land and hence it is immovable property</i>
6.	<i>Shantabai V. State of Bombay AIR 1958 SC 532.</i>	<i>Right to enter upon land and cut trees is a benefit arising out of land</i>

Thus, essential to construe the term supply accordingly.

2. Such as sale, transfer, barter, exchange, licence, rental, lease or disposal

Supply includes even barter transaction. In this regard, erstwhile H'ble SC in case of Gagnon Dunkerley (1959) SCR 379 and Motors and General Stores (1967) 3 SCR 876, held that the presence of money consideration is an essential element in a transaction of sale; if the consideration is not money, but some other valuable consideration, it may be an exchange or barter but not a sale.

However, now barter transaction is specifically included in the scope of supply.

3. made or agreed to be made for a consideration by a person

Consideration is essential ingredient unless specifically excluded [Section 7(1)(a) of the CGST Act]. Section 2(32) of the CGST Act defines

Consideration as given hereunder

31) *“consideration” in relation to the supply of goods or services or both includes—*

(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

(b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government:

Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply;

As per aforesaid definition consideration may be paid by recipient or any other person. Thus, it is irrelevant that who is paying consideration.

Further, the definition uses the term *‘in respect of, in response to, or for the inducement of, the supply of goods or services or both’*. Accordingly, consideration should be in respect of supply or directly related to supply.

Key aspect is that consideration should be paid for good or services supplied.

However, as per Section 7(1) (C) of the CGST Act, certain activities listed in Schedule -II amounts to Supply even without consideration.

4. In the course or furtherance of business;

Thus, supply made should be in the course or furtherance of business. The term business has been defined as per Section 2(17) of the CGST Act.

Thus, GST is levied only on commercial transactions. Thus, supply made by an individual in his personal capacity is not liable to GST.

However, exception to this condition is 'Import of Services for Consideration'. As per section 7(1)(b) of the CGST Act the term supply includes import of services for a consideration whether or not in the course or furtherance of business. It means import of service even for personal purpose will attract GST unless exempted or excluded.

Key Amendments with respect to supply

Section 7 of the CGST Act, amended twice via Finance Act 2018 and Finance Act 2019.

Finance Act 2018, amends to include (1A), omits (1)(d) retrospectively and other amendment with respect to same. The supply listed in schedule -II earlier forms part of subclause (d) of section 7 of the CGST Act. Which can

be construed that even the transaction not an supply if covered under schedule -II then liable for GST (like works contract without consideration). Thus to remove said ambiguity said subclause omitted and included as section 1(A) which means certain activities or transactions constitute a supply first in accordance with the provisions of sub-section (1) of section 7 of the CGST Act and then only it is treated either as supply of goods or supply of services as referred to in Schedule II. However, even after said amendment as per alternate view some of the transaction which are not supply may not be liable to GST even though covered under Schedule -II and can be challenged in the court of law. [like agreeing to the obligation to refrain from an act, or to tolerate an act]

Further, Finance Act, 2021 inserts subclause (aa) and explanation to Section 7(1) so that to levy GST on activities or transactions involving supply of goods or services by any person, other than an individual, to its members or constituents or vice-versa. As per 'Notes on Clauses' of the FB 2021' the amendment is explained as given hereunder,

Clause 99 of the Bill seeks to amend section 7 of the Central Goods and Services Tax Act, 2017, with retrospective effect from the 1st July, 2017, by inserting a new clause (aa) in sub-section (1) thereof, so as to ensure levy of tax on activities or transactions involving supply of goods or services by any person, other than

an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration.

It is also proposed to insert an Explanation therein, to clarify that the person or its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one person to another.

Given the aforesaid it seems that amendment has been proposed so that to end the dispute/litigation with respect to levy of GST in case of Society and Members.

Earlier, GST said to be payable on all supply made for consideration. Further, the term business is defined u/s 2 (17) which specifically includes provision by association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members. Thus, as per one school of thought amounts charged to members or society contribution can be said to be liable to GST.

However, there was Chaos on applicability of GST because, in erstwhile regime in the case of Matunga Gymkhana Tahnee Heights Co-op Hou Soc Ltd [2015-TIOL-108-CESTAT-MUM, CESTAT] held that services to members of club or cooperative housing society is not service by one to another thus not chargeable

to service tax. Additionally, reference to Calcutta Club (2019-TIOL-449-SC-ST-LB) can be taken wherein Apex Court has confirmed the concept of mutuality. Thus, as per another school of thought, it can be construed that GST is not applicable on basis of principle of mutuality.

Even, the taxpayers had approached to Advance Ruling Authority to get clarification. Accordingly, in one of the cases²⁰ of Appellate Advance Ruling authorities has confirmed the decision of advance ruling authority that GST is applicable on the monthly subscription/contribution charged by the society from its members and concept of mutuality is not applicable.

Given the aforesaid, now amendment seems to be proposed to specifically include levy of GST in case of member and society by deeming them as separate persons.

Consequent to this amendment of section 7, paragraph 7 of Schedule II as given under has also been proposed to be omitted retrospectively, w.e.f. July 1, 2017.

7. Supply of Goods- The following shall be treated as supply of goods, namely:—

²⁰ Apsara Co-Operative Housing Society Ltd [2020-TIOL-65-AAAR-GST]

Supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.

Further, this amendment is proposed to be applicable, with retrospective effect from the 1st of July, 2017. Now the question remains same about validity of retrospective amendment where could result in to additional liability.

Key Documents issued

Notifications issued given below are with respect to term Supply

NT-14/2017-CTR

- Services by way of any activity in relation to a function entrusted to Panchayat under Article 243G of Constitution not a supply under Section 7(2) of CGST Act

NT-16/2018-CTR

- amends NT-14/2017-CTR

NT-25/2019-CTR

- Liquor license activity neither supply of goods nor service

Circular issued given below could be relevant from the perspective of Supply

CIR-1/1/2017-IGST

- The inter-state movement of goods between distinct persons may not be treated as supply

CIR-21/21/2017 -GST

- Circular with respect to rigs, tools and spares

CIR-46/2017 -GST

- sale / transfer etc. of the warehoused goods between the importer and any other person falls within the scope of "supply"

CIR-35/9/2018 -GST

- Supply of services by an unincorporated AOP to a member thereof for consideration shall be treated as supply of services.

CIR-92/11/2019-GST

- Treatment of sales promotion

CIR-108/27/2019-GST

- Goods sent/taken out of India for exhibition

CIR-116/35/2019-GST

- GST in case of charitable org

CIR-119/38/2019-GST

- supply of securities under Securities

CIR-121/40/2019-GST

- Grant of alcoholic liquor licence, against consideration in the form of licence fee by State Government as neither a supply of goods nor a supply of servic.

8. Tax liability on composite and mixed supplies.—

The tax liability on a composite or a mixed supply shall be determined in the following manner, namely:—

- (a) a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply; and
- (b) a mixed supply comprising two or more supplies shall be treated as a supply of that particular supply which attracts the highest rate of tax.

Author Comment

Section 8 of the CGST Act, gives the methodology for payment of GST liability in case of

- Composite supply
- Mixed Supply

In this regard, Composite Supply defined u/s 2(30) of the CGST Act as given below

(30) “composite supply” means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply.

Whereas term mixed supply is defined Section 2(74) of the CGST Act read as

(74) “mixed supply” means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply:

As per Section 8 of the CGST Act a composite supply comprising two or more supplies, the it is treated as a supply of principal supply. Alternatively, GST is to be levied as applicable to principal supply. Whereas, a mixed supply comprising two or more supplies shall be treated as a supply which attracts the highest rate of tax and GST is levied accordingly.

Both of these concepts may lead to litigation and thus essential to construe case to case based on facts and circumstance. In the case Torrent Power Ltd [2019-TIOL-349-SC-GST] Gujarat High Court had held that (a) of Section 8 of the CGST Act would not be applicable where **the principal supply is exempt from levy of service tax**. What the section says is that the tax liability of a composite or a mixed supply shall be determined in the manner provided thereunder. In a given case, the tax liability may be nil, but that would not take such service out of the purview of Section 8 of the Act, which would be attracted if the supply is either composite or mixed in nature, notwithstanding that the end result may be nil tax liability.

The Gujarat High Court in its impugned order had struck down the C.B.I. & C. Circular No. 34/8/2018-GST being ultra vires Serial No. 25 of Notification No. 12/2017-C.T. (Rate) and Section 8 of. Vide paragraph 4(1) of the aforesaid Circular the charges collected by DISCOM from consumers such as application fee for raising electricity connection, rental charges against metering equipment, testing fee for meters/transformers, capacitors, etc., labour charges for shifting of meters or service lines and the charges for duplicate bill, are liable to GST. Now the appeal is pending at Apex Court.

9. Levy and collection.—

- (1) Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.
- (2) The central tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council.

- (3) The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.
- (4) [The Government may, on the recommendations of the Council, by notification, specify a class of registered persons who shall, in respect of supply of specified categories of goods or services or both received from an unregistered supplier, pay the tax on reverse charge basis as the recipient of such supply of goods or services or both, and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to such supply of goods or services or both.]²¹
- (5) The Government may, on the recommendations of the Council, by notification, specify categories of services the tax on intra-State supplies of which shall be paid by the electronic commerce operator if such services are supplied through it, and all the provisions of this Act shall apply to such

²¹ Substituted for —(4) The central tax in respect of the supply of taxable goods or services or both by a supplier, who is not registered, to a registered person shall be paid by such person on reverse charge basis as the recipient and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.¶ by The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018) – Brought into force w.e.f. 01st February, 2019.

electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services:

Provided that where an electronic commerce operator does not have a physical presence in the taxable territory, any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax:

Provided further that where an electronic commerce operator does not have a physical presence in the taxable territory and also he does not have a representative in the said territory, such electronic commerce operator shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax.

Author Comment

As per Article 265 of the Constitution of India provides that *"no tax shall be levied or collected except by the authority of law"*.

Thus, levy is critical and charging section prescribes the levy.

Section 9 of the CGST Act is charging section. As per this section CGST is levied on

- all **intra-State supplies** of goods or services or both,
- except on the **supply of alcoholic liquor** for human consumption,
- **on the value** determined under section 15 and

- at such rates, not exceeding **twenty per cent.**,
- collected in such manner as may be prescribed and
- shall be paid by the taxable person.

Aforesaid are key ingredients of charging section. GST is levied on Supplies and Scope of Supply is prescribed u/s 7 of the CGST Act.

Further, up to 13th October 2017, Sub-section 9(4) of the CGST Act fastened GST liability under RCM, on any registered person, who receives supplies from supplier who is not registered. This provision under GST law at initial days increased chaos about the computation as deciding the rate of GST for goods and services itself was tedious task.

Afterwards, this provision has been amended by the CGST (Amendment) Act 2018 ('Amendment Act'). Also, exemption prescribed has continued from 13 October 2017 till the amendment was notified. But now the amended provisions of Section 9(4) of the CGST Act have been made effected w.e.f 01.02.2019 and notified the specified persons and goods. The journey of amendments is as given below.



Key Documents issued

More than 100 notifications issued are u/s 9 of the CGST Act. Amongst that some of key notifications are given below.

NT-65/2017-CT

- Exemption from Registration

NT-1/2017-CTR

- Rate notified for Goods

NT-04/2017-CTR

- notifies RCM on goods applicable under 9(3)

NT-08/2017-CTR

- Exemption of INR 5000/- with respect to URD Exp

NT-09/2017-CTR

- Exemption to intra-state supplies received by a TDS deductor

NT-10/2017-CTR

- Exemption to second hand goods

NT-11/2017-CTR-

- Rates for Services

NT-13/2017-CTR-

- notifies RCM on services applicable under 9(3)

NT-17/2017-CTR

- Notifies categories of services the tax on intra-state supplies

NT-37/2017-CTR

- Rate of tax for leased motor vehicle

NT-39/2017-CTR

- free distribution of food preparations to weaker section

NT-40/2017-CTR-

- Merchant Exporter

NT-45/2-17-ITR

- exempts supply of goods levy above 2.5%

NT-15/2018-CTR-

- RCM on Banks for Direct selling agent

NT-21/2018-CTR

- Exemption to Intra-state supply of handicraft

NT-03/2019-CTR

- Revised Rate for real estate sectoe

NT-05/2019-CTR

- RCM on TDR

NT-07/2019-CTR

- URD procurment by promoter

10. Composition levy.—

- (1) Notwithstanding anything to the contrary contained in this Act but subject to the provisions of sub-sections (3) and (4) of section 9, a registered person, whose aggregate turnover in the preceding financial year did not exceed fifty lakh rupees, may opt to pay, [in lieu of the tax payable by him under sub-section (1) of section 9, an amount calculated at such rate]²² as may be prescribed, but not exceeding,—
- (a) one per cent. of the turnover in State or turnover in Union territory in case of a manufacturer,
 - (b) two and a half per cent. of the turnover in State or turnover in Union territory in case of persons engaged in making supplies referred to in clause (b) of paragraph 6 of Schedule II, and
 - (c) half per cent. of the turnover in State or turnover in Union territory in case of other suppliers, subject to such conditions and restrictions as may be prescribed:

²² Substituted for —in lieu of the tax payable by him, an amount calculated at such rate], by The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018) – Brought into force w.e.f. 01st February, 2019.

Provided that the Government may, by notification, increase the said limit of fifty lakh rupees to such higher amount, not exceeding [one crore and fifty lakh rupees]²³, as may be recommended by the Council:

[Provided further that a person who opts to pay tax under clause (a) or clause (b) or clause (c) may supply services (other than those referred to in clause (b) of paragraph 6 of Schedule II), of value not exceeding ten per cent. of turnover in a State or Union territory in the preceding financial year or five lakh rupees, whichever is higher]²⁴.

*[Explanation.—*For the purposes of second proviso, the value of exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount shall not be taken into account for determining the value of turnover in a State or Union territory]²⁵.

²³ Substituted for —one crore rupees| by The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018) – Brought into force w.e.f. 01st February, 2019.

²⁴ Inserted by The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018) – Brought into force w.e.f. 01st February, 2019.

²⁵ Inserted by The Finance (No. 2) Act, 2019 (No. 23 of 2019) – Brought into force w.e.f. 01st January, 2020.

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

[save as provided in sub-section (1), he is not engaged in the supply of services;]²⁶

(b) he is not engaged in making any supply of goods [or services]²³ which are not leviable to tax under this Act;

(c) he is not engaged in making any inter-State outward supplies of goods [or services]²⁴;

(d) he is not engaged in making any supply of goods [or services]²⁷ through an electronic commerce operator who is required to collect tax at source under section 52; and²⁸

²⁶ Substituted for —(a) he is not engaged in the supply of services other than supplies referred to in clause (b) of paragraph 6 of Schedule II save as provided in sub-section (1), he is not engaged in the supply of services. by The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018) – Brought into

²⁷ Inserted by The Finance Act, 2020 (No. 12 of 2020) – Brought into force w.e.f. 01st January, 2021.

²⁸ Omitted —and by The Finance (No. 2) Act, 2019 (No. 23 of 2019) – Brought into force w.e.f. 01st January, 2020.

(e) he is not a manufacturer of such goods as may be notified by the Government on the recommendations of the [Council ;and]29

(f) [he is neither a casual taxable person nor a non-resident taxable person:]30

Provided that where more than one registered persons are having the same Permanent Account Number (issued under the Income-tax Act, 1961), the registered person shall not be eligible to opt for the scheme under sub-section (1) unless all such registered persons opt to pay tax under that sub-section.

[(2A) Notwithstanding anything to the contrary contained in this Act, but subject to the provisions of sub-sections (3) and (4) of section 9, a registered person, not eligible to opt to pay tax under sub-section (1) and sub-section (2), whose aggregate turnover in the preceding financial year did not exceed fifty lakh rupees, may opt to pay, in lieu of the tax payable by him under sub-section (1) of section 9, an amount of tax calculated at such rate as may be prescribed, but not exceeding three per cent. of the turnover in State or turnover in Union territory, if he is not—

29 Substituted for —Council:l by The Finance (No. 2) Act, 2019 (No. 23 of 2019) – Brought into force w.e.f. 01st January, 2020

30 Inserted by The Finance (No. 2) Act, 2019 (No. 23 of 2019) – Brought into force w.e.f. 01st January, 2020.

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

Provided that where more than one registered person are having the same Permanent Account Number issued under the Income-tax Act, 1961, the registered person shall not be eligible to opt for the scheme under this sub-section unless all such registered persons opt to pay tax under this sub-section.]³¹

- (3) The option availed of by a registered person under sub-section (1) [or subsection (2A), as the case may be,]³² shall lapse with effect from the day on

³¹ Inserted by The Finance (No. 2) Act, 2019 (No. 23 of 2019) – Brought into force w.e.f. 01st January, 2020.

³² Inserted by The Finance (No. 2) Act, 2019 (No. 23 of 2019) – Brought into force w.e.f. 01st January, 2020.

which his aggregate turnover during a financial year exceeds the limit specified under sub-section (1) [or sub-section (2A), as the case may be.]³³

- (4) A taxable person to whom the provisions of sub-section (1) [or, as the case may be, sub-section (2A)]³⁴ apply shall not collect any tax from the recipient on supplies made by him nor shall he be entitled to any credit of input tax.
- (5) If the proper officer has reasons to believe that a taxable person has paid tax under sub-section (1) [or sub-section (2A), as the case may be,]³⁵ despite not being eligible, such person shall, in addition to any tax that may be payable by him under any other provisions of this Act, be liable to a penalty and the provisions of section 73 or section 74 shall, *mutatis mutandis*, apply for determination of tax and penalty.

[*Explanation 1.*—For the purposes of computing aggregate turnover of a person for determining his eligibility to pay tax under this section, the expression —aggregate turnover|| shall include the value of supplies made by such person from the 1st day of April of a financial year up to the date when he becomes liable for registration under this Act, but shall not include the value of exempt supply of services provided by way of extending deposits,

³³ Inserted by The Finance (No. 2) Act, 2019 (No. 23 of 2019) – Brought into force w.e.f. 01st January, 2020.

³⁴ Inserted by The Finance (No. 2) Act, 2019 (No. 23 of 2019) – Brought into force w.e.f. 01st January, 2020.

³⁵ Brought into force w.e.f. 01st

loans or advances in so far as the consideration is represented by way of interest or discount.

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

- (i) supplies from the first day of April of a financial year up to the date when such person becomes liable for registration under this Act; and
- (ii) exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.]³⁶

Author Comment

Composition Scheme is included from small taxpayer perspective so that to reduce compliance burden and reduce cost of compliance. Certain key difference of GST levied under Composition Scheme vis Normal Scheme are as given below

³⁶ Inserted by The Finance (No. 2) Act, 2019 (No. 23 of 2019) – Brought into force w.e.f. 01st January, 2020.

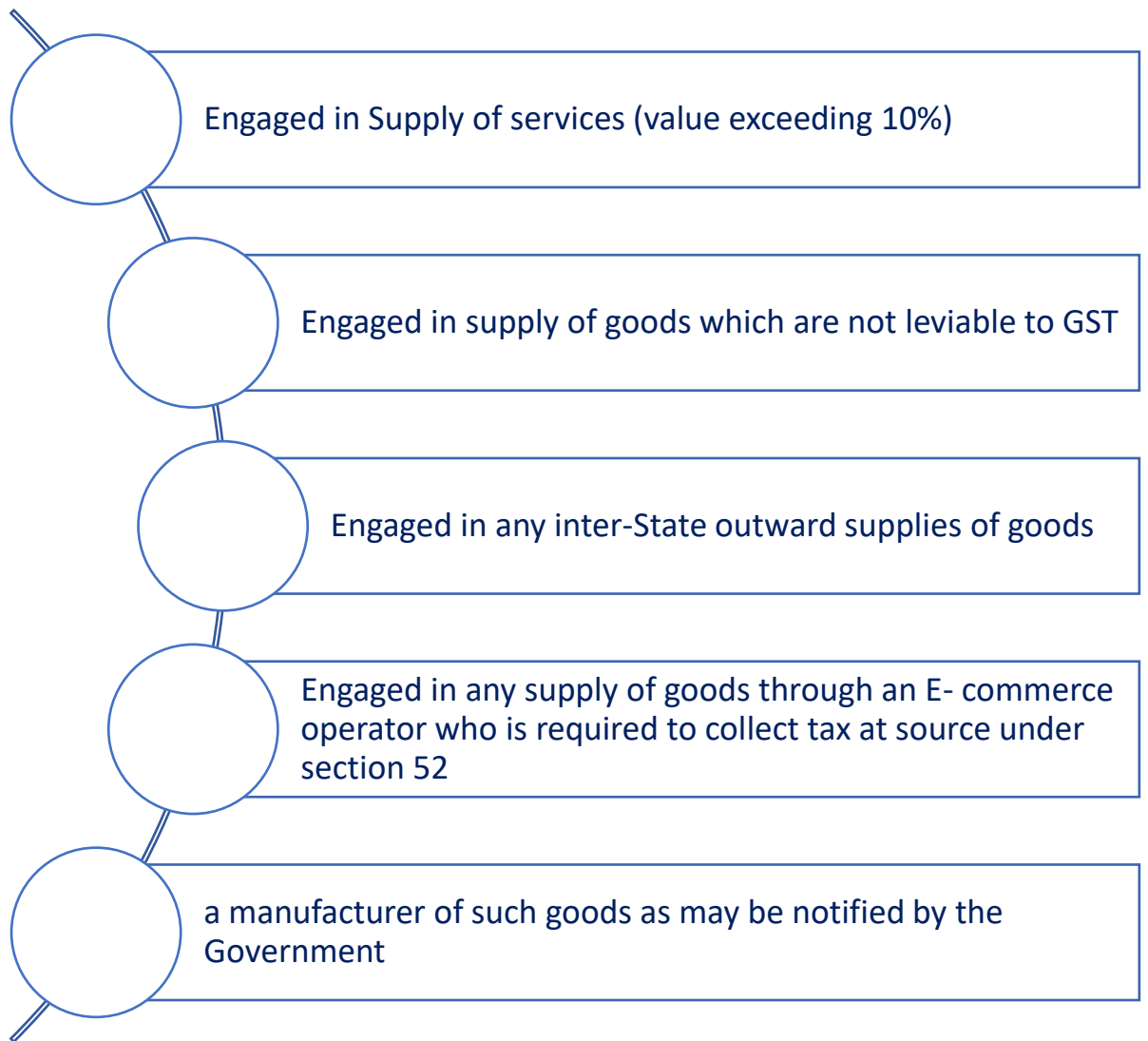
Normal Levy

- Section 9
- GSTR-1 and 3 B
- Monthly Return
- GST levied is to be collected from Recipient
- ITC is available

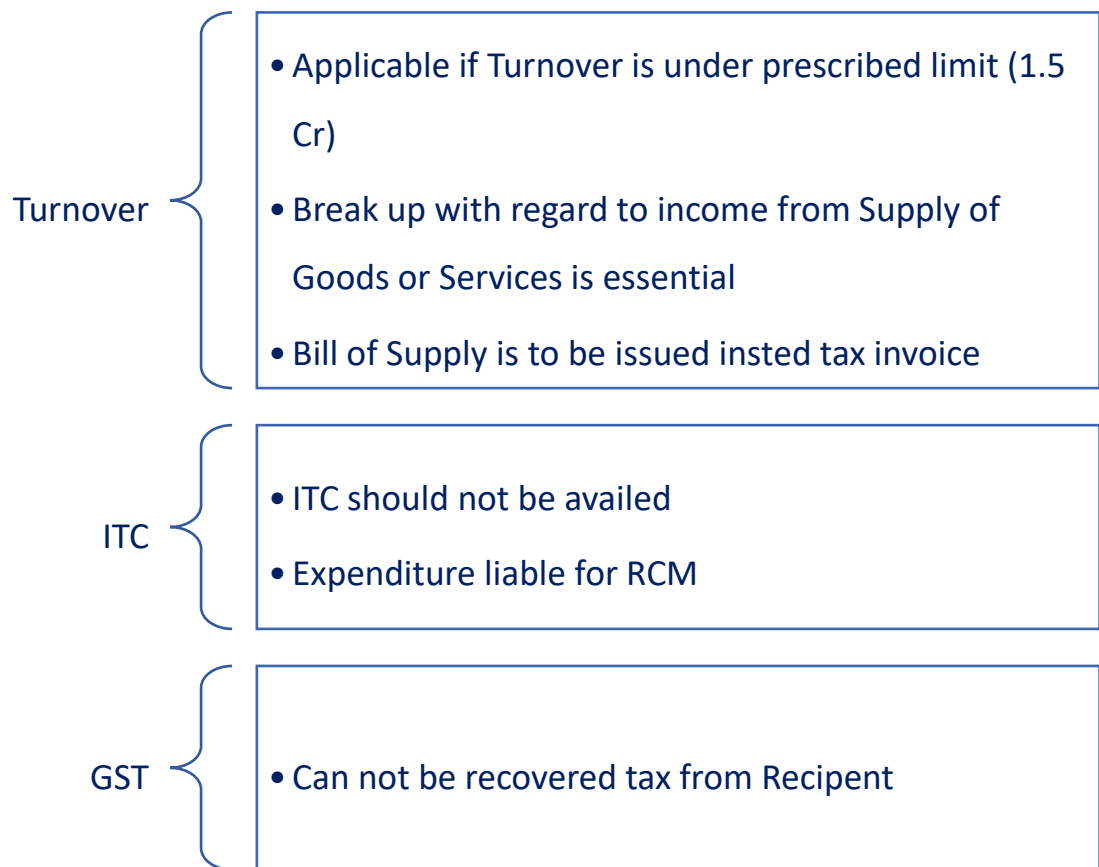
Composition Levy

- Section 10
- CMP-8
- Quarterly Return
- GST levied is not entitled to collect from Recipient
- ITC is not available

Additionally, composition levy is not applicable to below persons



Key Aspects of Composition Scheme



Key Documents issued

Key notification issued with respect to Section 10 of the CGST Act,

NT-08/2017-CT

- Supplies notified - 1% manufacturer, 2.5% restaurant, 0.5% trader and manufacturer

NT-14/2019-CT

- 1.5 cr Aggregate Turnover Limit prescribed

NT-02/2019-CTR

- Rate 3% with condition

NT-05/2019-CT

- Composition rates linked with rule 7 of CGSTR

NT-09/2019-CTR

- Reversal of credit or persons exercising option of NT-02/2019-CTR

NT-43/2019-CT

- Manufacturer of Aerated water prohibited from composition schme

NT-12/2020-CT

- No need to file CMP-08 or GSTR-1 if GSTR3B filed for 2019-20

Other key documents issued

RDO-01/2017-CT

- Interest income to be excluded

ORD-03/2019-CT

- Bill of supply for supplier opting to pay tax under NT-02/2019-CTR

RDO-01/2020-CT

- Period of 30 days calculation for revocation of cancellation order

CIR-143/13/2020-GST

- Quarterly Return Monthly Payment scheme

11. Power to grant Exemption.

- (1) Where the Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by notification, exempt generally, either absolutely or subject to such conditions as may be specified therein, goods or services or both of any specified description from the whole or any part of the tax leviable thereon with effect from such date as may be specified in such notification.
- (2) Where the Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by special order in each case, under circumstances of an exceptional nature to be stated in such order, exempt from payment of tax any goods or services or both on which tax is leviable.
- (3) The Government may, if it considers necessary or expedient so to do for the purpose of clarifying the scope or applicability of any notification issued under sub-section (1) or order issued under sub-section (2), insert an explanation in such notification or order, as the case may be, by notification at any time within one year of issue of the notification under sub-section (1) or order under sub-section (2), and every such explanation shall have effect as if it had always been the part of the first such notification or order, as the case may be.

Explanation.—For the purposes of this section, where an exemption in respect of any goods or services or both from the whole or part of the tax leviable thereon

has been granted absolutely, the registered person supplying such goods or services or both shall not collect the tax, in excess of the effective rate, on such supply of goods or services or both.

Author Comment

Section 11 of the CGST Act gives power to the Government to grant an exemption to the goods and/or services either generally or absolutely if satisfied that it is necessary in the public interest. Till now various notifications are issued by the Government under said section as given below

<p>NT-02/2017-CTR-</p> <ul style="list-style-type: none"> • Exempts certain goods from CGST 	<p>NT-03/2017-CTR</p> <ul style="list-style-type: none"> • Concessional CGST Rates for certain goods supplied to specified petroleum 	<p>NT-07/2017-CTR</p> <ul style="list-style-type: none"> • Exemption to supplies of goods by CSD under ministry of defence to unit run canteen
<p>NT-09/2017-CTR</p> <ul style="list-style-type: none"> • Exemption to intra-state supplies received by TDS deductor from URD 	<p>NT-12/2017-CTR</p> <ul style="list-style-type: none"> • Exempt Services 	<p>NT-26/2017-CTR</p> <ul style="list-style-type: none"> • Exmption - Intra-state supply of heavy water and nuclear fuels.
<p>NT-40/2017-CTR</p> <ul style="list-style-type: none"> • Merchant Exporter exemption 	<p>NT-21/2018-CTR</p> <ul style="list-style-type: none"> • Exemption to Intra-state supply of handicraft 	<p>NT-04/2019-CTR</p> <ul style="list-style-type: none"> • Exemption on TDR or FSI and long term lease
<p>NT-09/2019-CTR</p> <ul style="list-style-type: none"> • Reversal of credit or persons exercising option of NT-02/2019-CTR 	<p>NT-05/2020-CTR</p> <ul style="list-style-type: none"> • Exemption to ISRO and Antrix, New Space India 	<p>NT-05/2021-CTR</p> <p>1.COVID Related goods - tax rate amended upto 30-09-2021</p>

12. Time of Supply of Goods.—

- (1) The liability to pay tax on goods shall arise at the time of supply, as determined in accordance with the provisions of this section.
- (2) The time of supply of goods shall be the earlier of the following dates, namely:—
 - (a) the date of issue of invoice by the supplier or the last date on which he is required, under [*****]37 section 31, to issue the invoice with respect to the supply; or
 - (b) the date on which the supplier receives the payment with respect to the supply:

Provided that where the supplier of taxable goods receives an amount up to one thousand rupees in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess amount shall, at the option of the said supplier, be the date of issue of invoice in respect of such excess amount.

37 Omitted —sub-section (1) ofl by The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of

2018) – Brought into force w.e.f. 01st February, 2019.

Explanation 1.—For the purposes of clauses (a) and (b), —supply|| shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment.

Explanation 2.—For the purposes of clause (b), —the date on which the supplier receives the payment|| shall be the date on which the payment is entered in his books of account or the date on which the payment is credited to his bank account, whichever is earlier.

- (3) In case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earliest of the following dates, namely:—
- (a) the date of the receipt of goods; or
 - (b) the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or
 - (c) the date immediately following thirty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier:

Provided that where it is not possible to determine the time of supply under clause (a) or clause (b) or clause (c), the time of supply shall be the date of entry in the books of account of the recipient of supply.

- (4) In case of supply of vouchers by a supplier, the time of supply shall be—
- (a) the date of issue of voucher, if the supply is identifiable at that point; or
 - (b) the date of redemption of voucher, in all other cases.
- (5) Where it is not possible to determine the time of supply under the provisions of sub-section (2) or sub-section (3) or sub-section (4), the time of supply shall—
- - (a) in a case where a periodical return has to be filed, be the date on which such return is to be filed; or
 - (b) in any other case, be the date on which the tax is paid.
- (6) The time of supply to the extent it relates to an addition in the value of supply by way of interest, late fee or penalty for delayed payment of any consideration shall be the date on which the supplier receives such addition in value.

Author Comment

GST is levied on supply and once supply is determined it is essential to determine point of time of taxable event. However, it is difficult to determine point of time of goods and/or services supplied. i.e e whether it can be on the date of Agreement, or actual delivery or amount received etc.

The tax is required to be determined and/or compute on a particular time and Section 12 of the CGST Act prescribes the time of supply for goods whereas Section 13 of the CGST Act prescribes the time of supply for Services. These sections help to determine the point of time for supply.

The brief synopsis of Section 12 is as given hereunder

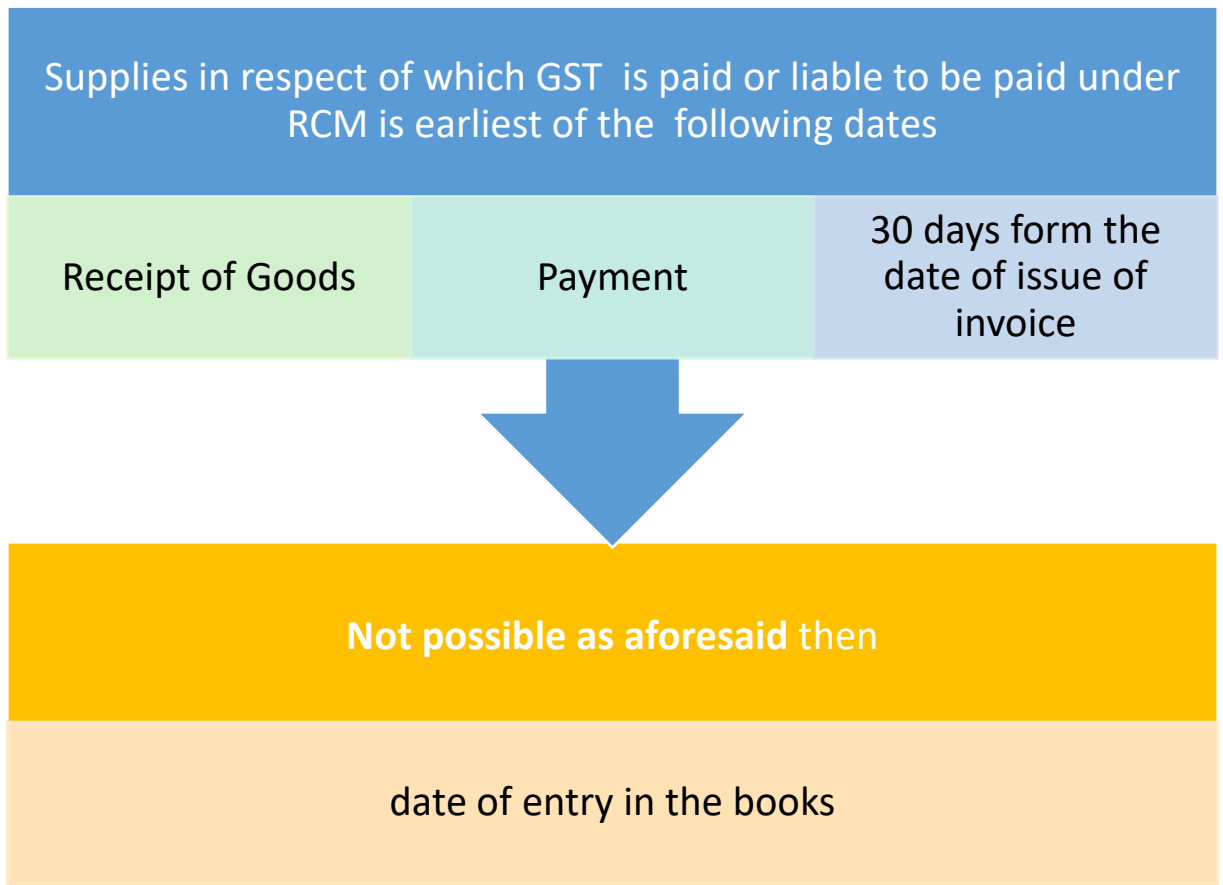
1. Time of Supply to be used for all regular transactions of supply of goods other than supply of goods for which specific provision mentioned

Time of Supply of goods is to be determine earlier of the following dates subject to NT-40/2017-CT and NT-66/2017-CT

Issue of Invoice	Last of issuance of invoice	Suppler Receives the Payment
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Additionally with respect to goods it is essential to note that NT-40/2017-CT and NT-66/2017-CT has been issued and thus the GST is not liable to be paid on advance received against supply of goods.

2. Time of Supply respect of supply of goods where GST is liable to be paid on reverse charge basis

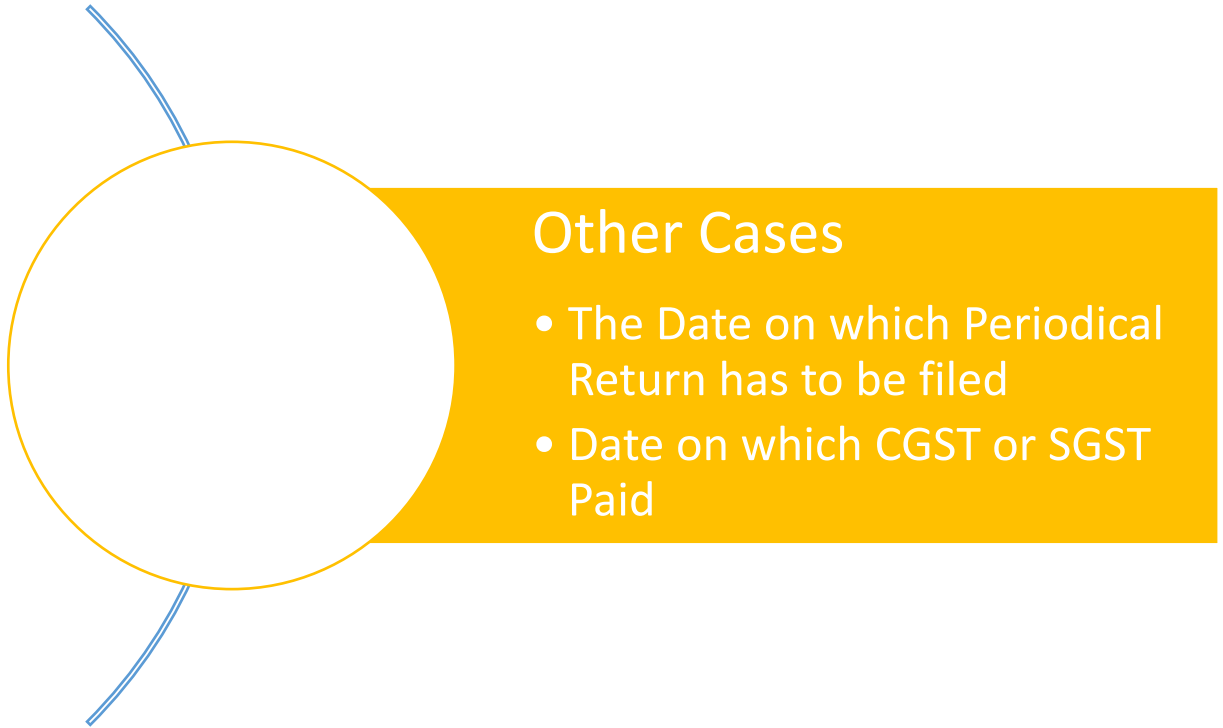


3. In case of supply of vouchers by a supplier, the time of supply is required to be determine as given below

Supply of Voucher

- Date of Issue of Voucher if supply is identifiable
- Otherwise Redemption of Voucher

4. Where it is not possible to determine the time of supply as per any of the aforesaid methods as prescribed then the time of supply is to be determined as per the miscellaneous rule as given hereunder



Some of the key notifications given below are issued with respect to Section 12 of the CGST Act

NT-40/2017-CT

- Turnover less than 1.5cr pay tax only on supply of goods and not on advance.

NT-66/2017-CT

- Suppresses NT-40/2017-CT.

NT-35/2020-CT

- Relaxes time limit of all provisions except few

NT-14/2021-CT

- Relaxes time limit of all provisions except few

13. Time of Supply of Services.—

- (1) The liability to pay tax on services shall arise at the time of supply, as determined in accordance with the provisions of this section.
- (2) The time of supply of services shall be the earliest of the following dates, namely:—

- (a) the date of issue of invoice by the supplier, if the invoice is issued within the period prescribed under [*****]³⁸ section 31 or the date of receipt of payment, whichever is earlier; or
- (b) the date of provision of service, if the invoice is not issued within the period prescribed under [*****]³⁹ section 31 or the date of receipt of payment, whichever is earlier; or
- (c) the date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or clause (b) do not apply:

Provided that where the supplier of taxable service receives an amount up to one thousand rupees in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess amount shall, at the option of the said supplier, be the date of issue of invoice relating to such excess amount.

Explanation.—For the purposes of clauses (a) and (b)—

- (i) the supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment;

³⁸ -section (2) of the Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of

³⁹ -section (2) of the Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of

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

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

(a) the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or

(b) the date immediately following sixty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier:

Provided that where it is not possible to determine the time of supply under clause (a) or clause (b), the time of supply shall be the date of entry in the books of account of the recipient of supply:

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

- (4) In case of supply of vouchers by a supplier, the time of supply shall be—
 - (a) the date of issue of voucher, if the supply is identifiable at that point; or
 - (b) the date of redemption of voucher, in all other cases.

- (5) Where it is not possible to determine the time of supply under the provisions of sub-section (2) or sub-section (3) or sub-section (4), the time of supply shall—
 - (a) in a case where a periodical return has to be filed, be the date on which such return is to be filed; or
 - (b) in any other case, be the date on which the tax is paid.

- (6) The time of supply to the extent it relates to an addition in the value of supply by way of interest, late fee or penalty for delayed payment of any consideration shall be the date on which the supplier receives such addition in value.

Author Comment

GST is levied on supply and once supply is determined it is essential to determine point of time of taxable event. However, it is difficult to determine point of time of goods and/or services supplied. i.e whether it can be on the date of Agreement, or actual delivery or amount received etc.

The tax is required to be determined and/or compute on a particular time and Section 12 of the CGST Act prescribes the time of supply for goods whereas Section 13 of the CGST Act prescribes the time of supply for Services. These sections help to determine the point of time for supply.

The brief synopsis of Section 13 is as given hereunder

1. Time of Supply for services is

Time of Supply of service is earlier of the following

Issue of Invoice	Last prescribed date	Receiving payment
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2. Time of Supply respect of supply of services where GST is liable to be paid on reverse charge basis

Supplies in respect of which GST is paid or liable to be paid under RCM is earliest of the following dates

Payment

30 days form the date of issue of invoice



Not possible as aforesaid then

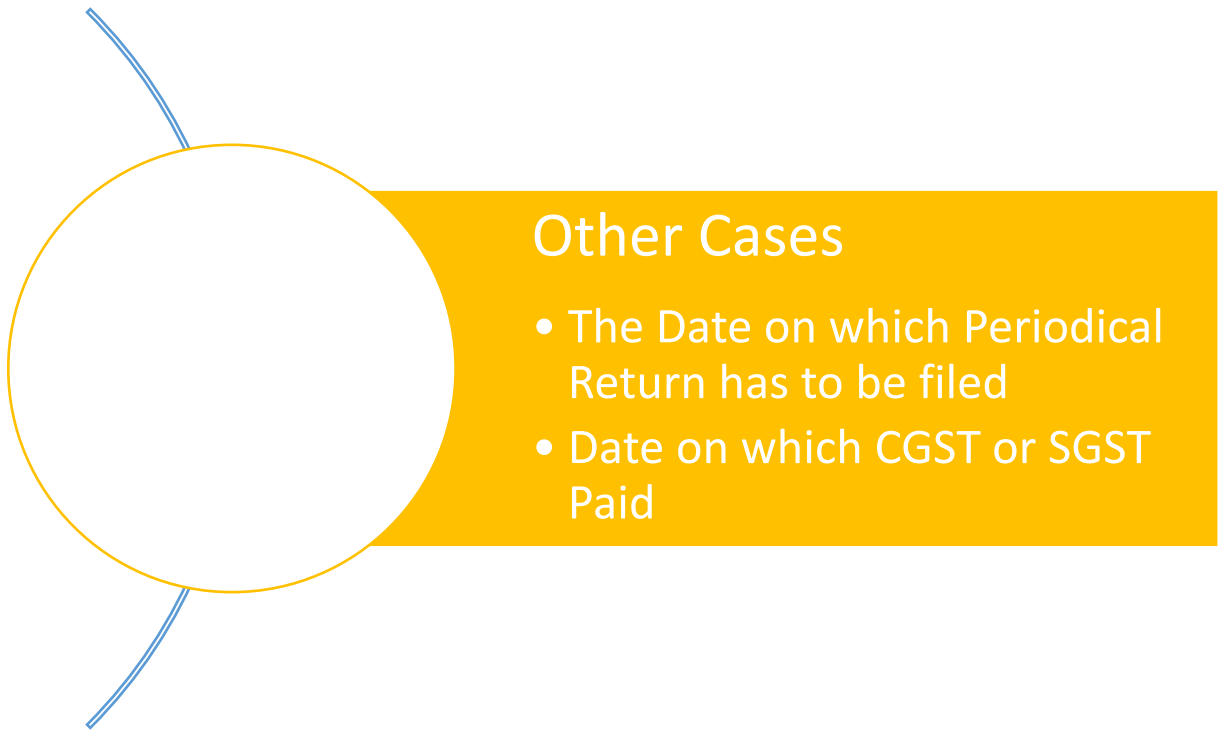
date of entry in the books

3. In case of supply of vouchers by a supplier, the time of supply is required to be determine as given below

Supply of Voucher

- Date of Issue of Voucher if supply is identifiable
- Otherwise Redemption of Voucher

4. Where it is not possible to determine the time of supply as per any of the aforesaid methods as prescribed then the time of supply is to be determined as per the miscellaneous rule as given hereunder



Some of the key notifications given below are issued with respect to Section 12 of the CGST Act

NT-04/2018-CTR

- Time of supply for Conveyance deed

NT-04/2018-ITR

- Prescribes time of supply for Developers and Builders

NT-06/2019-CTR

- Date of Payment of GST for promoter in case of TDR/FSI

NT-06/2019-ITR

- Date of Payment of GST for promoter in case of TDR/FSI

NT-35/2020-CT

- Relaxes time limit of all provisions except few

NT-14/2021-CT

- Relaxes time limit of all provisions except few

14. Change in rate of tax in respect of supply of goods or services

Notwithstanding anything contained in section 12 or section 13, the time of supply, where there is a change in the rate of tax in respect of goods or services or both, shall be determined in the following manner, namely:—

- (a) in case the goods or services or both have been supplied before the change in rate of tax,—

- (i) where the invoice for the same has been issued and the payment is also received after the change in rate of tax, the time of supply shall be the date of receipt of payment or the date of issue of invoice, whichever is earlier; or
 - (ii) where the invoice has been issued prior to the change in rate of tax but payment is received after the change in rate of tax, the time of supply shall be the date of issue of invoice; or
 - (iii) where the payment has been received before the change in rate of tax, but the invoice for the same is issued after the change in rate of tax, the time of supply shall be the date of receipt of payment;
- (b) in case the goods or services or both have been supplied after the change in rate of tax,—
- (i) where the payment is received after the change in rate of tax but the invoice has been issued prior to the change in rate of tax, the time of supply shall be the date of receipt of payment; or
 - (ii) where the invoice has been issued and payment is received before the change in rate of tax, the time of supply shall be the date of receipt of payment or date of issue of invoice, whichever is earlier; or

(iii) where the invoice has been issued after the change in rate of tax but the payment is received before the change in rate of tax, the time of supply shall be the date of issue of invoice:

Provided that the date of receipt of payment shall be the date of credit in the bank account if such credit in the bank account is after four working days from the date of change in the rate of tax.

Explanation.—For the purposes of this section, —the date of receipt of payment|| shall be the date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank account, whichever is earlier.

Author Comment\

The rate of various goods and/or services has undergone to numerous changes from the date of implementation of GST. Thus, there could be the scenarios that the rate of particular goods and/or services would be different as on the date of Invoice Vs as on the date of Agreement Vs as on the date of Payment etc. Thus, Section 14 of the CGST Act plays a critical role in such scenario.

Brief Synopsis of Section 14 of the CGST Act is as given hereunder

Particular	Issue Of Receipt of TOS		
	Invoice	Payment	
Goods and Services have been supplied before the change in Tax	Before	Before	Whichever is Earlier
	Before	After	The Date of Issue of Invoice
	After	Before	The Date of receipt of Payment
Goods and Services have been supplied after the change in Tax	After	After	Whichever is Earlier
	Before	After	The Date of receipt of Payment
	After	Before	The Date of Issue of Invoice

15. Value of Taxable Supply

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

(2) The value of supply shall include—

- (a) any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;
- (b) any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;
- (c) incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;
- (d) interest or late fee or penalty for delayed payment of any consideration for any supply; and
- (e) subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments.

Explanation.—For the purposes of this sub-section, the amount of subsidy shall be included in the value of supply of the supplier who receives the subsidy.

- (3) The value of the supply shall not include any discount which is given—
- (a) before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply; and
 - (b) after the supply has been effected, if—
 - (i) such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and
 - (ii) input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply.
- (4) Where the value of the supply of goods or services or both cannot be determined under sub-section (1), the same shall be determined in such manner as may be prescribed.

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

Explanation.—For the purposes of this Act,—

(a) persons shall be deemed to be —related persons|| if—

- (i) such persons are officers or directors of one another's businesses;
- (ii) such persons are legally recognised partners in business;
- (iii) such persons are employer and employee;
- (iv) any person directly or indirectly owns, controls or holds twenty-five per cent. or more of the outstanding voting stock or shares of both of them;
- (v) one of them directly or indirectly controls the other;
- (vi) both of them are directly or indirectly controlled by a third person;
- (vii) together they directly or indirectly control a third person; or
- (viii) they are members of the same family;

(b) the term —person also includes legal persons;

(c) persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other, shall be deemed to be related.

Author Comment

Another key aspect to determine the GST to be paid is Value. Thus, it is essential to know on which value GST is payable. As per Section 15 of the CGST Act, value will be transaction value if both the conditions given below are fulfilled for particular supply.

- the supplier and the recipient of the supply are not related and
- the price is the sole consideration for the supply.

Subsection (2) and (3) of the Section 15 of the CGST Act prescribes the certain inclusion and exclusion in the value of supply so that to arrive at transaction value. The brief synopsis of the same is as given below

TV to include

- **any taxes, duties, cesses, fees and charges levied** under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier
- any amount that the supplier is liable to pay in relation to such supply, but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;
- **incidental expenses**, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services
- **interest or late fee or penalty for delayed payment of any consideration for any supply; and**
- **subsidies** directly linked to the price excluding subsidies provided by the Central Government and State Governments

TV to Exclude

- 3) The value of the supply shall not include any discount which is given
 - (a) before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply; and
 - (b) after the supply has been effected, if—
 - such discount is **established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices;** and
 - input tax credit as is attributable to the discount on the basis of document issued by the **supplier has been reversed by the recipient of the supply.**

Further, as per subsection 4 of Section 15 of the CGST Act, value of the supply of goods or services or both cannot be determined under sub-section (1) if any one or both the condition as given below has not fulfilled

- the supplier and the recipient of the supply are not related or
- the price is the sole consideration for the supply.

In such scenario the value shall be determined as per the 'Valuation Rules prescribed from Rule 27 to Rule 31 of the CGST Act.

Additionally, as per subclause (5) of Section 15 the CGST Act, the value of supplies which are notified by the Government on the recommendations of the Council shall be determined as per the methodology prescribed.

Correct Valuation is an key aspect for paying correct GST. Government has also issued certain key clarification with respect to Valuation as given below

CIR-27/01/2018

- Accommodation, betting etc

CIR-28/02/2018

- GST on college hostel mess fee

CIR 38/12/2018

- Clarification regarding Job Work

CIR-47/21/2018

- Clarification - Moulds

CIR-54/24/2018

- GST on hostel mess fee updates CIR-28/02/2018

CIR-76/50/2018

- used goods, Penalty, Debit note- Transition, TCS

CIR-88/07/2019-GST

- Amends certain circulars in conformity with Amendment Act 2018

CIR-92/11/2019

- sales promotion scheme and free gifts

Corr CIR-76/50/2018-GST

- TCS not to be included in value of supply

CIR-102/21/2109-GST

- GST on additional / penal interest

CIR-105/24/2019-GST

- Clarification on secondary or post sales discount

In this regard, two key clarifications are discussed hereunder so that to get overall approach for determining the value and key aspects

Clarification with respect Post Supply Discount

Issue

Issues has been raised with respect to tax treatment of sales promotion schemes under GST.

Clarification

A. Free samples and gifts:

It is clarified that free samples supplied, do not qualify as “supply”, except where the activity falls within the ambit of Schedule I of the said Act. Thus, GST is not leviable.

B. Goods Stolen:

It is clarified that, ITC shall not be available to the supplier on the inputs, input services and capital goods to the extent they are used as gifts or free samples. However, where the activity of distribution of gifts or free samples falls within the scope of “supply” as per Schedule I then, the supplier would be eligible to avail of the ITC.

B. Buy one get one free offer :

It is clarified that, in such cases taxability will be dependent upon as to whether the supply is a composite supply or a mixed supply.

Accordingly, the rate of tax is required to be determined as per section 8 of the CGST Act.

Further clarified that, ITC shall be available for goods or services used in relation to supply of goods or services or both as part of such offers.

C. Discount including buy more and Save more offer

It is clarified that discounts offered by the suppliers to the customers (including staggered discount under “Buy more, Save More” scheme and post supply / volume discounts established before or at the time of supply) shall be excluded from the value of supply as per section 15(3) of the CGST Act, including the reversal of ITC by the recipient of the supply as is attributable to the discount on the basis of document (s) issued by the supplier.

It is further clarified that the supplier shall be entitled to avail the ITC for such inputs, input services and capital goods used in relation to the supply of goods or services or both on such discounts

D. Secondary Discounts

These are the discounts which are not known at the time of supply or are offered after the supply is already over.

It is clarified that financial / commercial credit note(s) can be issued by the supplier even if the conditions mentioned in Section 15(3)(b) of the CGST Act are not satisfied.

It is further clarified that such secondary discounts shall not be excluded while determining the value of supply as such discounts are not known at the time of supply and the conditions as prescribed u/s 15(3)(b) of the CGST Act are not satisfied.

There is no impact on availability or otherwise of ITC in the hands of supplier in this case.

Thus in case of offering any discount to avoid litigation certain key aspect as given hereunder should always be taken in to consideration

What is the nature of discount?

Whether discount has been offered with any further obligation?

Whether discount has been offered without any further obligation?

Computation methodology for discount

Any other discount offered like Additional discount

Who is liable to pay GST

Circular No. 105/24/2019-GST dated 28.06.2019 has been withdrawn issued to clarify to treatment of secondary or post-sales discounts under GST

Clarification on Additional Interest Vs Foreclosure charges

What is the applicability of GST on additional / penal interest on the overdue loan i.e. whether it would be

- Exempt from GST in terms of Sl. No. 27 of notification No. 12/2017-Central Tax (Rate) dated 28th June 2017 or
- Such penal interest would be treated as consideration for liquidated damages [amounting to a separate taxable supply of services under GST covered under entry 5(e) of Schedule II of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the CGST Act)]

Legal Provisions

Entry 5(e) of Schedule II - Supply

“agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act”

Sl. No. 27 of Noti. No. 12/2017-CT(R) dated 28th June 2017 - Exemption

“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)”

Section 15 (2) (d) of the CGST Act - Transaction Value

“interest or late fee or penalty for delayed payment of any consideration for any supply”.

Clause 2 (zk) of Not. No. 12/2017-CT(R) dated 28th June, 2017

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

Clarification-Circular No. 102/21/2019-GST

i Penal interest which forms the part of value of supply – Case -1

The penal interest would be taxable as it would be included in the value, irrespective of the manner of invoicing.

ii The additional / penal interest is charged for a transaction- Case 2

The 'penal interest' charged on a transaction would not be subject to GST, as the same would not be covered under notification No. 12/2017-Central Tax (Rate) dated 28.06.2017.

iii Whether additional / penal interest is supply

Transaction of levy of additional / penal interest does not fall within the ambit of entry 5(e) of Schedule II of the CGST Act

Our Comment

In addition to clarification as aforesaid, the observations of the court as given below are essential to be considered

Small Industries [2011 (23) STR 392 (Tri. Del)]

held that foreclosure of a loan results in end of service and therefore foreclosure can be treated as a compensation paid for possible loss of interest revenue on the loan amount returned by the customer. Thus, **concluding that foreclosure charges do not form part of 'banking and other financial services**

HUDCO vs CST [2012 (26) STR 531 (Tri. –Ahmd)]

The CESTAT held that charges levied for pre-closing a loan was in a way a service and therefore, would form part of the lending service under 'banking and other financial services', thus attracting Service tax

Repc Home Finance Limited [[TS-506-CESTAT-2020-ST]

The observations of larger bench of CESTAT in the case of Repco Home Finance Limited [TS-506-CESTAT-2020-ST] are relevant to be considered in

such scenario. The larger bench of CESTAT has observed certain primary requirement so that to certain transaction to be considered as Provision of Service. This decision is of Pre-GST Regime, however observations as given below would be relevant from the supply perspective also

Any amount payable for taxable service provided or to be provided is consideration

Apex Court's in the case of Bhayana Builders P. Ltd [TS-140-Tribunal2013-ST], relied upon difference of 'conditions' and 'consideration

amount charged which has no connection with the taxable service and is not a consideration for the service provided does not become a part of the taxable value

European Court of Justice where it was observed that there has to be a direct link between the service rendered and consideration received.

As per the Indian Contract Act the term Consideration is as per the Desire of promisor,

Clarification with respect Valuation Mechanism

Issue

Whether Amortization cost of Moulds is included in value for levy of GST

Legal Provision

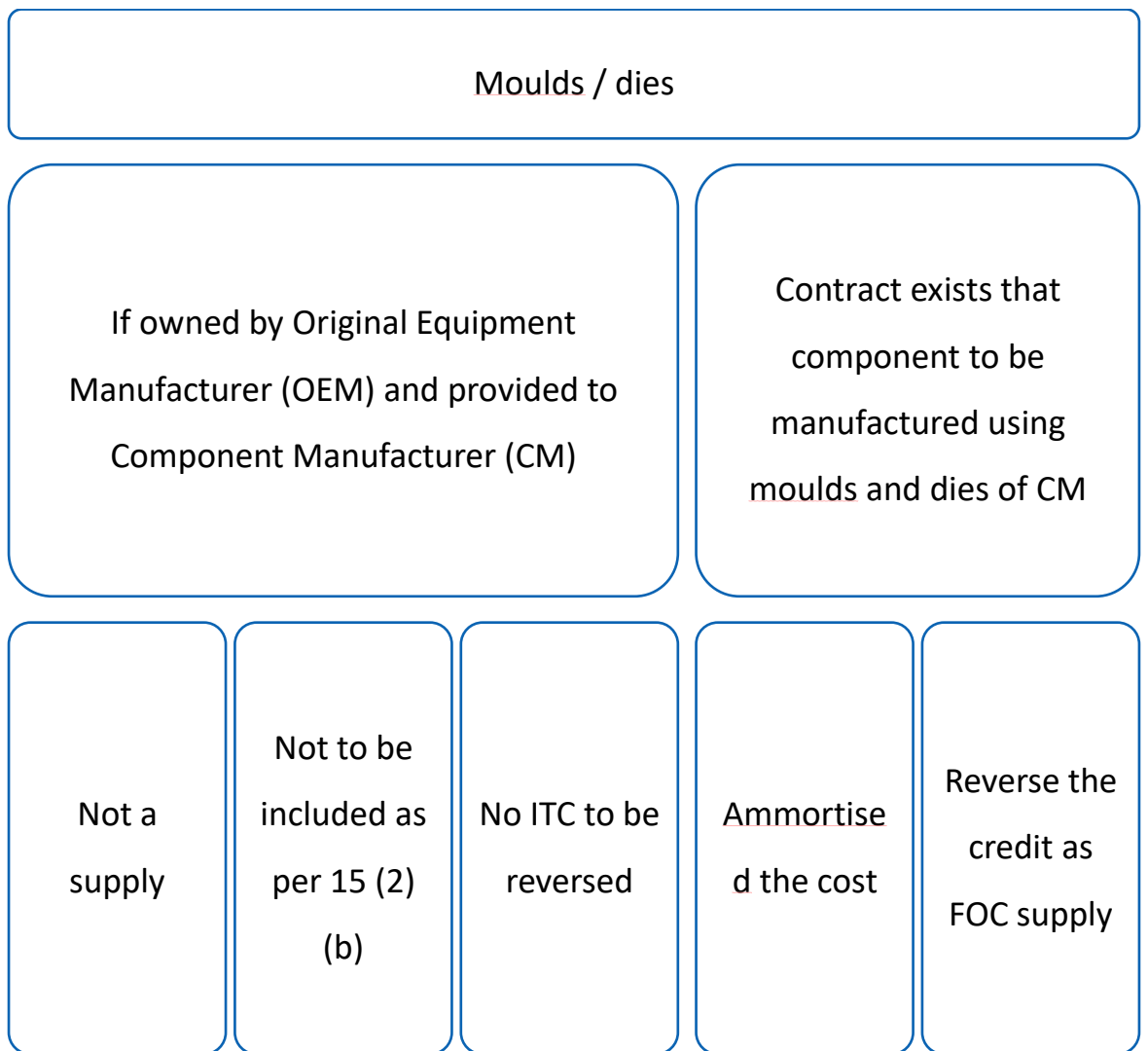
Section 15(2) of CGST Act

(2) The value of supply shall include–

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

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

Clarification - Circular 47/2018 – 8th June 2018



Value in case of servicing of cars

Issue

How is servicing of cars involving both supply of goods (spare parts) and services (labour), where the value of goods and services are shown separately, to be treated under GST?

Clarification

- 2.1 The taxability of supply would have to be determined on a case to case basis looking at the facts and circumstances of each case.
- 2.2 Where a supply involves supply of both goods and services and the value of such goods and services supplied are shown separately, the goods and services would be liable to tax at the rates as applicable to such goods and services separately

16. Eligibility and conditions for taking input tax credit.—

- (1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.
- (2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,—

- (a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;
- (b) he has received the goods or services or both.

[Explanation.— For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services—

- (i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;
- (ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person;]⁴⁰

⁴⁰ Substituted for —*Explanation.*—For the purposes of this clause, it shall be deemed that the registered person has received the goods where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;] by The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018) – Brought into force w.e.f. 01st February, 2019.

- (c) subject to the provisions of section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and
- (d) he has furnished the return under section 39:

Provided that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment:

Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed:

Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.

- (3) Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Incometax Act, 1961, the input tax credit on the said tax component shall not be allowed.
- (4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or [*****]⁴¹ debit note pertains or furnishing of the relevant annual return, whichever is earlier.

[Provided that the registered person shall be entitled to take input tax credit after the due date of furnishing of the return under section 39 for the month of September, 2018 till the due date of furnishing of the return under the said section for the month of March, 2019 in respect of any invoice or invoice relating to such debit note for supply of goods or services or both made during the financial year 2017-18, the details of which have been uploaded by the supplier

⁴¹ Omitted —invoice relating to such|| by The Finance Act, 2020 (No. 12 of 2020) – Brought into force w.e.f. 01st January, 2021.

under sub-section (1) of section 37 till the due date for furnishing the details under sub-section (1) of said section for the month of March, 2019.]⁴²

Author Comment

Section 16 is key section from all taxpayers perspective who avails ITC and intends to optimise the same. As per Section 16(1) of the CGST Act, Every registered person is entitled to take credit of input tax charged on any supply of goods or services or both **which are used or intended to be used in the course or furtherance of his business.**

Thus, to avail ITC it is essential that goods or services or both should be used or intended to be used in the course or furtherance of his business. In this regard observations of the various case laws are critical to take in to consideration so that to conclude the term **‘in the course or furtherance of his business’**

In the case of Chandulal Keshavlal & Co. - (1960) 38 ITR 601 (SC), at Page 170, the Apex Court held as under : *“The test laid down by this case therefore was that in the absence of fraud or an oblique motive and if a transaction is of a nature which is entered in the course of a business of the assessee and is commercially expedient*

⁴² Inserted vide Order No. 02/2018 –Central Tax dated 31.12.2018

that it does become a deductible allowance. If as a result of the transaction the assessee benefits is immaterial that a third party also benefits thereby.

Similarly, in *Eastern Investments Limited* [1951 (20) ITR 1] the Hon'ble Apex Court held as under : “... *Most commercial transactions are entered into for the mutual benefit of both sides, or at any rate each side hopes to gain something for itself. The test for present purposes is not whether the other party benefited, nor indeed whether this was a prudent transaction which resulted in ultimate gain to the appellant, but whether it was properly entered into as a part of the appellants' legitimate commercial undertakings in order to indirectly facilitate the carrying on of its business.*

Furter, Section 16 (2) of the CGST Act prescribe 4 condition given below which are mandatory to fulfil so that a registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him

- A tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed should be available.
- Goods or Services or both should be received.

- Tax Charged in respect to such supply has been actually paid to the Government.
- Furnished the return under section 39:

Recently in Budget 2021, Section 16 (2) of the CGST Act is proposed to be amended so that to prescribe one more condition for eligibility of ITC. In this regard 'Notes to Clauses' of the FB, 2021 read as

Clause 100 of the Bill seeks to amend section 16 of the Central Goods and Services Tax Act by inserting a new clause (aa) in sub-section (2) thereof, so as to provide that input tax credit on invoice or debit note may be availed only when the details of such invoice or debit note has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note.

Thus, now in addition to aforesaid it is proposed that taxpayer must comply with one more condition that respective details of invoice or debit note has been furnished by the supplier in the statement of outward supply and such details have been communicated to the recipient.

Given the aforesaid it can be said that, to overcome the lacuna in the law a provision is proposed in the law in line with Rule 36(4) of the CGST Act which restrict the avaiment of ITC to the extent of prescribed percentage with respect to invoices which are not uploaded by the Supplier. Below are the amendments made time to time under Rule 36 (4) of the CGST Act. However, said amendment is yet to notify. Path of ITC restriction started from October 19 below is the saga of the same



Also, Section 16 (4) amended to omit the words “invoice relating to such” via Finance Act 2020 effective from 01-01-2021⁴³. Thus, revised Section 16(4) read as

A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or ~~invoice relating to such~~ debit note pertains or furnishing of the relevant annual return, whichever is earlier.

Thus, via such amendment date of issuance Debit Note delinked with the date of issuance Invoice. Accordingly, the date of issuance of debit note (and not the date of underlying invoice) will determine the relevant Financial Year. Even after said amendment there were certain issues raised like

- Whether date of issuance of debit note, or date of issuance of underlying invoice is relevant to determine the ‘financial year’ after

⁴³ NT-92/2020-CT

the amendment of Section 16(4) of the CGST Act (i.e. w.e.f 01.01.2021)?

- Whether amended provision will be applicable only in respect of the debit notes issued after 01.01.2021?

Accordingly, it is clarified via Circular No. 160/16/2021-GST that w.e.f. 01.01.2021, the date of issuance of debit note (and not the date of underlying invoice) shall determine the relevant FY.

Examples

<u>Date of Invoice</u>	<u>Date of Debit Note</u>	<u>Relevant FY for Invoice</u>	<u>Relevant FY for Debit Note</u>
16.03.2021	07.07.2021	F.Y. 2020-21	F.Y. 2020-21
15.07.2019	10.11.2020	F.Y. 2019-20	F.Y. 2020-21

Thus, the availment of ITC on debit notes as per amended provision is applicable from 01.01.2021. Accordingly, for availment of ITC on or after 01.01.2021, in respect of debit notes issued either prior to or after 01.01.2021, the eligibility for availment of ITC will be governed by the amended provision of section 16(4).

Key documents issued

Some of the key notifications issued with respect to Section 16 are given hereunder

NT-11/2017-CTR <ul style="list-style-type: none">•Rates notified	NT-20/2017-CTR <ul style="list-style-type: none">•Notifies rates of supply of services Amends NT-11/2017-CTR	NT-31/2017-CTR <ul style="list-style-type: none">•Rate schedule of Services amended - NT-11/2017-CTR
NT-46/2017-CTR <ul style="list-style-type: none">•Amends rates of certain services, amends NT-11/2017-CTR	NT-01/2018-CTR <ul style="list-style-type: none">•Amends NT-11/2017-CTR - amends rates for services	NT-01/2018-ITR <ul style="list-style-type: none">•Amends rate of IGST on supply of certain services, amends NT-08/2017-ITR
NT-13/2018-CTR <ul style="list-style-type: none">•Rates of services amended amends NT-11/2017-CTR	NT-27/2018-CTR <ul style="list-style-type: none">•Change of Rate - Services	NT-28/2018-ITR <ul style="list-style-type: none">•Rates amended for certain services -Amends NT-08/2017-ITR
NT-02/2019-CTR <ul style="list-style-type: none">•Rate of 3% with condition	NT-03/2019-CTR <ul style="list-style-type: none">•Revised rates for Real Estate Projects	NT-09/2019-CTR <ul style="list-style-type: none">•Reversal of credit or persons exercising option of NT-02/2019-CTR
NT-03/2019-ITR <ul style="list-style-type: none">•Revised rates for Real Estate Projects	NT-10/2019-CTR <ul style="list-style-type: none">•Amends date of filing declaration by Real estate developer	NT-18/2019-CTR <ul style="list-style-type: none">•Manufacturer of 'aerated water' prohibited from NT-02/2019-CTR benefit
NT-20/2019-CTR <ul style="list-style-type: none">•Amends NT-11/2017-CTR for certain services	NT-19/2019-ITR <ul style="list-style-type: none">•Amends NT-08/2017-ITR for certain services	NT-11/2020-CT <ul style="list-style-type: none">•Certain Aspects under GST law

17. Apportionment of credit and blocked credits.—

- (1) Where the goods or services or both are used by the registered person partly for the purpose of any business and partly for other purposes, the amount of credit shall be restricted to so much of the input tax as is attributable to the purposes of his business.
- (2) Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.
- (3) The value of exempt supply under sub-section (2) shall be such as may be prescribed, and shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.

[Explanation.— For the purposes of this sub-section, the expression value of exempt supply“ shall not include the value of activities or transactions

specified in Schedule III, except those specified in paragraph 5 of the said Schedule;]⁴⁴

- (4) A banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances shall have the option to either comply with the provisions of subsection (2), or avail of, every month, an amount equal to fifty per cent. of the eligible input tax credit on inputs, capital goods and input services in that month and the rest shall lapse:

Provided that the option once exercised shall not be withdrawn during the remaining part of the financial year:

Provided further that the restriction of fifty per cent. shall not apply to the tax paid on supplies made by one registered person to another registered person having the same Permanent Account Number.

⁴⁴ Inserted by The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018) – Brought into force w.e.f. 01st February, 2019.

(5) Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available in respect of the following, namely:—

(a) [motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver), except when they are used for making the following taxable supplies, namely:—

A) further supply of such motor vehicles; or

(B) transportation of passengers; or

(C) imparting training on driving such motor vehicles;

(aa) vessels and aircraft except when they are used—

(i) for making the following taxable supplies, namely:—

(A) further supply of such vessels or aircraft; or

(B) transportation of passengers; or

(C) imparting training on navigating such vessels; or

- (D) imparting training on flying such aircraft;
- (ii) for transportation of goods;
 - (ab) services of general insurance, servicing, repair and maintenance in so far as they relate to motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa):

Provided that the input tax credit in respect of such services shall be available—

- (i) where the motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) are used for the purposes specified therein;

(ii) where received by a taxable person engaged—

- (I) in the manufacture of such motor vehicles, vessels or aircraft; or
- (II) in the supply of general insurance services in respect of such motor vehicles, vessels or aircraft insured by him;]⁴⁵

⁴⁵ Substituted for —

(a) motor vehicles and other conveyances except when they are used—

(b) [the following supply of goods or services or both—

- (i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) except when used for the purposes specified therein, life insurance and health insurance:

Provided that the input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;

- (ii) membership of a club, health and fitness centre; and

(i) for making the following taxable supplies, namely:—

(A) further supply of such vehicles or conveyances ; or

(B) transportation of passengers; or

(C) imparting training on driving, flying, navigating such vehicles or conveyances;

(ii) for transportation of goods;|| by The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018) – Brought into force w.e.f. 01st February, 2019.

- (iii) travel benefits extended to employees on vacation such as leave or home travel concession:

Provided that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.]⁴⁶

- (c) works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service;

⁴⁶ Substituted for —(b) the following supply of goods or services or both— (i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery except where an inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply; (ii) membership of a club, health and fitness centre; (iii) rent-a-cab, life insurance and health insurance except where— (A) the Government notifies the services which are obligatory for an employer to provide to its employees under any law for the time being in force; or (B) such inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as part of a taxable composite or mixed supply; and (iv) travel benefits extended to employees on vacation such as leave or home travel concession;|| by The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018) – Brought into force w.e.f. 01st February, 2019.

(d) 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.

Explanation.—For the purposes of clauses (c) and (d), the expression construction|| includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property;

(e) goods or services or both on which tax has been paid under section 10;

(f) goods or services or both received by a non-resident taxable person except on goods imported by him;

(g) goods or services or both used for personal consumption;

(h) goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples; and

(i) any tax paid in accordance with the provisions of sections 74, 129 and 130.

(6) The Government may prescribe the manner in which the credit referred to in sub-sections (1) and (2) may be attributed.

Explanation.—For the purposes of this Chapter and Chapter VI, the expression

plant and machinery|| means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes—

- (i) land, building or any other civil structures;
- (ii) telecommunication towers; and
- (iii) pipelines laid outside the factory premises.

Author Comment

Section 17 of the CGST Act is one of the key sections to avail eligible ITC. In this regard, as per Section 17 (1) of the CGST Act, the goods or services or both if used by the registered person partly for the purpose of any business and partly for other purposes, then ITC is restricted to the extent attributable to the purposes of his business.

Further, as per section 17(2) of the CGST Act even if credit used partly for other purposes, then ITC should be restricted to the extent attributable to the purposes of his business.

Further, section 17 also amended via GST (Amendment) Act, 2018 to insert following Explanation:

‘Explanation. —For the purposes of this sub-section, the expression “value of exempt supply” shall not include the value of activities or transactions specified in Schedule III, except those specified in paragraph 5 of the said Schedule.’

In this regard, Schedule III contains the **activities which are neither treated as supply of good nor supply of services (like services of funeral, burial, crematorium or mortuary including transportation of the deceased, actionable claims, other than lottery, betting and gambling etc).** The intention to include explanation was to allow availment of ITC on activities or transactions specified in Schedule III (other than sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building) by excluding it from the ambit of ‘exempt supply’ on which ITC is blocked.

Further, Section 17(5) is essential so that to decide which credit is specifically not eligible irrespective of business use and same is amended via GST (Amendment) Act, 2018 as given hereunder. Details of key amendment is as given hereunder

ITC on Motor Vehicle

<u>Before 1st February 2019</u>	<u>After 1st February 2019</u>
<p>ITC with respect to Motor vehicle was not allowed. Allowed only if used for</p> <ul style="list-style-type: none"> - Further supply of services and/or vehicles - Transportation of passengers; - Imparting training on driving, flying, navigating such vehicles or conveyances; 	<p>Motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver), allowed if used for</p> <ul style="list-style-type: none"> - Further supply of such motor vehicles; - transportation of passengers - Imparting training on driving such motor vehicles
<p>The eligibility of ITC with respect to expenses like insurance, repairs and maintenance etc. related to motor car was not specifically included.</p>	<p>New clause is inserted to block the ITC with respect expenses (like insurance, repairs etc.) incurred for the vehicle on which ITC is not available. That implies ITC of insurance, repairs and other incidental expenses will be allowed only if the ITC of that Motor vehicle is allowed..</p>

ITC on certain expenses incurred for the benefit of the employee

Before 1st February 2019	After 1st February 2019
<p>Section 17(5)(b), ITC was not available in respect of food and beverages, health services, travel benefits to employees etc.</p>	<p>ITC in respect of such goods or services or both where the provision of such goods or services or both is obligatory for an employer to provide to its employees under any law for the time being in force.</p> <p>Thus, earlier ITC is not available in respect of food and beverages, health services, travel benefits to employees etc.</p> <p>This sub-section is amended so that to allow ITC in respect of such goods or services or both where the provision of such goods or services or both is obligatory for an employer to provide to its employees under any law for the time being in force.</p> <p>Thus, this is a taxpayer-friendly amendment.</p>

Following are certain key notifications and/or documents issued with respect to Section 17

RDO-04/2019-CT

- construction services to be proportioned basis construction area

NT-03/2019-ITR

- Revised rates for Real Estate Projects

CIR-33/07/2018

- CENVAT non utilisation Sec 140 related

CIR-123/42/2019-GST

- Restriction in availing ITC

18. Availability of credit in special circumstances.—

(1) Subject to such conditions and restrictions as may be prescribed—

- (a) a person who has applied for registration under this Act within thirty days from the date on which he becomes liable to registration and has been granted such registration shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or

finished goods held in stock on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of this Act;

(b) a person who takes registration under sub-section (3) of section 25 shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date of grant of registration;

(c) where any registered person ceases to pay tax under section 10, he shall be entitled to take credit of input tax in respect of inputs held in stock, inputs contained in semifinished or finished goods held in stock and on capital goods on the day immediately preceding the date from which he becomes liable to pay tax under section 9:

Provided that the credit on capital goods shall be reduced by such percentage points as may be prescribed;

(d) Where an exempt supply of goods or services or both by a registered person becomes a taxable supply, such person shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock relating to such exempt supply and on capital goods exclusively used for such exempt supply on the day immediately preceding the date from which such supply becomes taxable:

Provided that the credit on capital goods shall be reduced by such percentage points as may be prescribed.

- (2) A registered person shall not be entitled to take input tax credit under sub-section (1) in respect of any supply of goods or services or both to him after the expiry of one year from the date of issue of tax invoice relating to such supply.
- (3) Where there is a change in the constitution of a registered person on account of sale, merger, demerger, amalgamation, lease or transfer of the business with the specific provisions for transfer of liabilities, the said registered person shall be allowed to transfer the input tax credit which remains unutilised in his electronic credit ledger to such sold, merged, demerged, amalgamated, leased or transferred business in such manner as may be prescribed.
- (4) Where any registered person who has availed of input tax credit opts to pay tax under section 10 or, where the goods or services or both supplied by him become wholly exempt, he shall pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger, equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held

in stock and on capital goods, reduced by such percentage points as may be prescribed, on the day immediately preceding the date of exercising of such option or, as the case may be, the date of such exemption:

Provided that after payment of such amount, the balance of input tax credit, if any, lying in his electronic credit ledger shall lapse.

- (5) The amount of credit under sub-section (1) and the amount payable under sub-section (4) shall be calculated in such manner as may be prescribed.
- (6) In case of supply of capital goods or plant and machinery, on which input tax credit has been taken, the registered person shall pay an amount equal to the input tax credit taken on the said capital goods or plant and machinery reduced by such percentage points as may be prescribed or the tax on the transaction value of such capital goods or plant and machinery determined under section 15, whichever is higher:

Provided that where refractory bricks, moulds and dies, jigs and fixtures are supplied as scrap, the taxable person may pay tax on the transaction value of such goods determined under section 15.

Author Comment

Section 18 of the CGST Act prescribe ITC availability in special circumstances as given below. Said section include 6 subclauses, however most discussed clause is Section 18(3) of CGST Act read as

Where there is a change in the constitution of a registered person on account of sale, merger, demerger, amalgamation, lease or transfer of the business with the specific provisions for transfer of liabilities, the said registered person shall be allowed to transfer the input tax credit which remains unutilised in his electronic credit ledger to such sold, merged, demerged, amalgamated, leased or transferred business in such manner as may be prescribed.

Further, Rule 41(1) of the CGST Rules read as

*“A registered person shall, in the event of sale, merger, de-merger, amalgamation, lease or transfer or change in the ownership of business for any reason, furnish the details of sale, merger, demerger, amalgamation, lease or transfer of business, **in FORM GST ITC-02, electronically on the common portal along with a request for transfer of unutilized input tax credit** lying in his electronic credit ledger to the transferee:*

Provided that in the case of demerger, the input tax credit shall be apportioned in the ratio of the value of assets of the new units as specified in the demerger scheme.

Explanation:- For the purpose of this sub-rule, it is hereby clarified that the “value of

assets” means the value of the entire assets of the business, whether or not input tax credit has been availed thereon.

The issue given below aroused as per section 18(3) of the CGST Act

- Whether section 18(3) is applicable for interstate transfer of ITC?
- Why ITC -02 is restricted only for intra-state transfer of ITC?
- What is the last date of filing of ITC-02?
- Can ITC be transferred after closure of the factory at any time?

In this regard, as per Advance Ruling Authorities in the case of M/s Shilpa Medicare Limited [AARN 0.05/AP/GST/2020] it is held that, the Company can transfer accumulated credit on account of inter-state transfer of going concern by ITC-2. Circular No.133/03/2020-GST has clarified some of below aspect in this regard,

<u>Issue</u>	<u>Clarifications</u>
Is the transferor required to file FORM GST ITC – 02 in all States	No. The transferor is required to file FORM GST ITC-02 only in those States where both transferor and transferee are registered.

Whether all reorganization of the business are Covered including partial reorganization	Yes, the formula for apportionment of ITC, as prescribed under proviso to sub-rule (1) of rule 41 of the CGST Rules, shall be applicable for all forms of business re-organization that results in partial transfer of business assets along with liabilities.
Which date shall be relevant to calculate the amount of unutilized ITC balance of transferor	Apportionment formula shall be applied on the ITC balance of the transferor as available in electronic credit ledger on the date of filing of FORM GST ITC – 02 by the transferor.
Which date shall be relevant to calculate the ratio of value of assets	while the ratio of the value of assets should be taken as on the “appointed date of demerger”, the said ratio is to be applied on the ITC balance of the transferor on the date of filing FORM GST ITC - 02 to calculate the amount to transferable ITC.

Thus, below are key documents which can be referred for Section 18 of the CGST Act

CIR-96/15/2019-GST

- Clarification regarding transfer of ITC in case of death of sole proprietor

Cir-133/03/2020-GST

- Clarification regarding apportionment of ITC in case of business re-organisation

19. Taking input tax credit in respect of inputs and capital goods sent for job work. —

- (1) The principal shall, subject to such conditions and restrictions as may be prescribed, be allowed input tax credit on inputs sent to a job worker for job work. Notwithstanding anything contained in clause (b) of sub-section (2) of section 16, the principal shall be entitled to take credit of input tax on inputs even if the inputs are directly sent to a job worker for job work without being first brought to his place of business.

(2) Where the inputs sent for job work are not received back by the principal after completion of job work or otherwise or are not supplied from the place of business of the job worker in accordance with clause (a) or clause (b) of sub-section (1) of section 143 within one year of being sent out, it shall be deemed that such inputs had been supplied by the principal to the job worker on the day when the said inputs were sent out:

Provided that where the inputs are sent directly to a job worker, the period of one year shall be counted from the date of receipt of inputs by the job worker.

- (3) The principal shall, subject to such conditions and restrictions as may be prescribed, be allowed input tax credit on capital goods sent to a job worker for job work.
- (4) Notwithstanding anything contained in clause (b) of sub-section (2) of section 16, the principal shall be entitled to take credit of input tax on capital goods even if the capital goods are directly sent to a job worker for job work without being first brought to his place of business.
- (5) Where the capital goods sent for job work are not received back by the principal within a period of three years of being sent out, it shall be deemed that such capital goods had been supplied by the principal to the job worker on the day when the said capital goods were sent out:

Provided that where the capital goods are sent directly to a job worker, the period of three years shall be counted from the date of receipt of capital goods by the job worker.

- (6) Nothing contained in sub-section (3) or sub-section (6) shall apply to moulds and dies, jigs and fixtures, or tools sent out to a job worker for job work.

Explanation.—For the purpose of this section, —principal means the person referred to in section 143.

20. Manner of distribution of credit by Input Service Distributor.

- (1) The Input Service Distributor shall distribute the credit of central tax as central tax or integrated tax and integrated tax as integrated tax or central tax, by way of issue of a document containing the amount of input tax credit being distributed in such manner as may be prescribed.
- (2) The Input Service Distributor may distribute the credit subject to the following conditions, namely:—
 - (a) the credit can be distributed to the recipients of credit against a document containing such details as may be prescribed;
 - (b) the amount of the credit distributed shall not exceed the amount of credit available for distribution;
 - (c) the credit of tax paid on input services attributable to a recipient of credit shall be distributed only to that recipient;
 - (d) the credit of tax paid on input services attributable to more than one recipient of credit shall be distributed amongst such recipients to whom the input service is attributable and such distribution shall be *pro rata* on the basis of the turnover in a State or turnover in a Union territory of such recipient, during the relevant period, to the aggregate of the turnover of all such recipients to whom such input service is attributable and which are operational in the current year, during the said relevant period;

- (e) the credit of tax paid on input services attributable to all recipients of credit shall be distributed amongst such recipients and such distribution shall be *pro rata* on the basis of the turnover in a State or turnover in a Union territory of such recipient, during the relevant period, to the aggregate of the turnover of all recipients and which are operational in the current year, during the said relevant period.

Explanation.—For the purposes of this section,—

- (a) the relevant period shall be—
 - (i) if the recipients of credit have turnover in their States or Union territories in the financial year preceding the year during which credit is to be distributed, the said financial year; or
 - (ii) if some or all recipients of the credit do not have any turnover in their States or Union territories in the financial year preceding the year during which the credit is to be distributed, the last quarter for which details of such turnover of all the recipients are available, previous to the month during which credit is to be distributed;
- (b) the expression —recipient of credit|| means the supplier of goods or services or both having the same Permanent Account Number as that of the Input Service Distributor;

- (c) the term “turnover”, in relation to any registered person engaged in the supply of taxable goods as well as goods not taxable under this Act, means the value of turnover, reduced by the amount of any duty or tax levied under [entries 84 and 92A]⁴⁷ of List I of the Seventh Schedule to the Constitution and entries 51 and 54 of List II of the said Schedule.

21. Manner of recovery of credit distributed in excess.

Where the Input Service Distributor distributes the credit in contravention of the provisions contained in section 20 resulting in excess distribution of credit to one or more recipients of credit, the excess credit so distributed shall be recovered from such recipients along with interest, and the provisions of section 73 or section 74, as the case may be, shall, *mutatis mutandis*, apply for determination of amount to be recovered.

22. Persons liable for registration.

- (1) Every supplier shall be liable to be registered under this Act in the State or Union territory, other than special category States, from where he makes a

⁴⁷ Substituted for —under entry 84|| by The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018) – Brought into force w.e.f. 01st February, 2019.

taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds twenty lakh rupees:

Provided that where such person makes taxable supplies of goods or services or both from any of the special category States, he shall be liable to be registered if his aggregate turnover in a financial year exceeds ten lakh rupees:

[Provided further that the Government may, at the request of a special category State and on the recommendations of the Council, enhance the aggregate turnover referred to in the first proviso from ten lakh rupees to such amount, not exceeding twenty lakh rupees and subject to such conditions and limitations, as may be so notified:]⁴⁸

[Provided also that the Government may, at the request of a State and on the recommendations of the Council, enhance the aggregate turnover from twenty lakh rupees to such amount not exceeding forty lakh rupees in case of supplier who is engaged exclusively in the supply of goods, subject to such conditions and limitations, as may be notified:

Explanation.—For the purposes of this sub-section, a person shall be considered to be engaged exclusively in the supply of goods even if he is engaged in exempt supply of services provided by way of extending deposits,

⁴⁸ Inserted by The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018) – Brought into force w.e.f. 01st February, 2019.

loans or advances in so far as the consideration is represented by way of interest or discount.]⁴⁹

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

(3) Where a business carried on by a taxable person registered under this Act is transferred, whether on account of succession or otherwise, to another person as a going concern, the transferee or the successor, as the case may be, shall be liable to be registered with effect from the date of such transfer or succession.

(4) Notwithstanding anything contained in sub-sections (1) and (3), in a case of transfer pursuant to sanction of a scheme or an arrangement for amalgamation or, as the case may be, demerger of two or more companies pursuant to an order of a High Court, Tribunal or otherwise, the transferee shall be liable to be registered, with effect from the date on which the Registrar of Companies issues a certificate of incorporation giving effect to such order of the High Court or Tribunal.

Explanation.—For the purposes of this section,—

⁴⁹ Inserted by The Finance (No. 2) Act, 2019 (No. 23 of 2019) – Brought into force w.e.f. 01st January, 2020.

- (i) the expression —aggregate turnover|| shall include all supplies made by the taxable person, whether on his own account or made on behalf of all his principals;
- (ii) the supply of goods, after completion of job work, by a registered job worker shall be treated as the supply of goods by the principal referred to in section 143, and the value of such goods shall not be included in the aggregate turnover of the registered job worker;
- (iii) the expression —special category States|| shall mean the States as specified in sub-clause (g) of clause (4) of article 279A of the Constitution [except the State of Jammu and Kashmir]⁵⁰ [and States of Arunachal Pradesh, Assam, Himachal Pradesh, Meghalaya, Sikkim and Uttarakhand.]⁵¹

Author Comment

Section 22 of the CGST Act is related to registration under GST. In this regard, key notifications and/or documents issued by the Government is as given below

⁵⁰ Inserted by The Central Goods and Services Tax (Extension to Jammu And Kashmir) Act, 2017 (No. 26 of 2017) (Corrigendum for this provision issued vide Indian Institutes of Management Act, 2017 dated 31st December, 2017 (No. 33 of 2017)) – Brought into force w.e.f. 8th July, 2017.

⁵¹ Inserted by The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018) – Brought into force w.e.f. 01st February, 2019.

NT-07/2017-IT

- Registration Exemption-Job Worker

NT-65/2017-CT

- Exemption from registration - service providers providing services on e-commerce portal having turnover less than 20lakhs

NT-56/2018-CT

- Casual Taxable Persons exempted from registration

NT-03/2018-IT

- Exempts certain Casual Taxable persons from registration

NT-06/2019-CT

- Amends NT-65/2017-CT

NT-03/2019-IT

- Amends NT-10/2017-IT - supplier on e-commerce and registration requirement

23. Persons not liable for registration.—

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

(a) any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly exempt from tax under this Act or under the Integrated Goods and Services Tax Act;

(b) an agriculturist, to the extent of supply of produce out of cultivation of land.

(2) The Government may, on the recommendations of the Council, by notification, specify the category of persons who may be exempted from obtaining registration under this Act.

Author Comment

Section 23 of the CGST Act is related to registration under GST and prescribe the person who is not liable for registration under GST like person who engaged in exempt supply, an agriculturist etc. In this regard, key notifications and/or documents issued by the Government is as given below

<p>NT-5/2017-CT</p> <ul style="list-style-type: none"> • persons making only supplies taxable under 9(3) of CGST - exempt from registration. 	<p>NT-32/2017-CT</p> <ul style="list-style-type: none"> • emption from registration for casual taxable persons dealing in handicraft goods if turnover is less than 20lakhs 	<p>NT-38/2017-CT</p> <ul style="list-style-type: none"> • amends NT-32/2017-CT, adds textile handloom products, shawls, stoles and scarves
<p>NT-07/2017-IT</p> <ul style="list-style-type: none"> • Exemption from registration, Job worker making interstate taxable supplies to a registered person. 	<p>NT-08/2017-IT</p> <p>1.Exemption from registration, persons making interstate taxable supplies of handicraft goods NT-09/2017-IT-Exem</p>	<p>NT-09/2017-IT</p> <ul style="list-style-type: none"> • Exemption from registration, amends NT-08/2017-IT, substitutes few items.
<p>NT-10/2017-IT</p> <ul style="list-style-type: none"> • Exemption from registration - persons making interstate taxable supply of services, having aggregate turnover less than Rs. 20lakhs (10lakhs - specified states) 	<p>NT-65/2017-CT</p> <ul style="list-style-type: none"> • Exemption from registration - service providers providing services on e-commerce portal having turnover less than 20lakhs 	<p>NT-56/2018-CT</p> <ul style="list-style-type: none"> • Casual Taxable Persons exempted from registration
<p>NT-03/2018-IT</p> <ul style="list-style-type: none"> • Exempts certain Casual Taxable persons from registration 	<p>NT-06/2019-CT</p> <ul style="list-style-type: none"> • Amends NT-65/2017-CT 	<p>NT-02/2019-IT</p> <ul style="list-style-type: none"> • Registration - Job worker - Gold jewellery - Inter state supply,
<p>NT-03/2019-IT</p> <ul style="list-style-type: none"> • Amends NT-10/2017-IT - supplier on e-commerce 		<p>NT-10/2019-CT</p> <ul style="list-style-type: none"> • Exemption from Registration - Limit 40Lakh

24. Compulsory registration in certain cases.—

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

- (i) persons making any inter-State taxable supply;
- (ii) casual taxable persons making taxable supply;
- (iii) persons who are required to pay tax under reverse charge;
- (iv) person who are required to pay tax under sub-section (5) of section 9;
- (v) non-resident taxable persons making taxable supply;
- (vi) persons who are required to deduct tax under section 51, whether or not separately registered under this Act;
- (vii) persons who make taxable supply of goods or services or both on behalf of other taxable persons whether as an agent or otherwise;
- (viii) Input Service Distributor, whether or not separately registered under this Act;

(ix) persons who supply goods or services or both, other than supplies specified under sub-section (5) of section 9, through such electronic commerce operator who is required to collect tax at source under section 52;

(x) every electronic commerce operator [who is required to collect tax at source under section 52;]⁵²

(xi) every person supplying online information and database access or retrieval services from a place outside India to a person in India, other than a registered person; and

(xii) such other person or class of persons as may be notified by the Government on the recommendations of the Council.

Author Comment

⁵² Inserted by The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018) – Brought into force w.e.f. 01st February, 2019.

Section 24 of the CGST Act prescribes the persons who shall be liable to be register under GST compulsorily irrespective of turnover. In this regard, key notifications and/or documents issued by the Government is as given below. This section is amended via Amendment Act 2018 so that to include e-commerce operator who is required to collect tax at source under section 52.

25. Procedure for registration

- (1) Every person who is liable to be registered under section 22 or section 24 shall apply for registration in every such State or Union territory in which he is so liable within thirty days from the date on which he becomes liable to registration, in such manner and subject to such conditions as may be prescribed:

Provided that a casual taxable person or a non-resident taxable person shall apply for registration at least five days prior to the commencement of business:

[Provided further that a person having a unit, as defined in the Special Economic Zones Act, 2005, in a Special Economic Zone or being a Special Economic Zone developer shall have to apply for a separate registration, as

distinct from his place of business located outside the Special Economic Zone in the same State or Union territory.]⁵³

Explanation.—Every person who makes a supply from the territorial waters of India shall obtain registration in the coastal State or Union territory where the nearest point of the appropriate baseline is located.

(2) A person seeking registration under this Act shall be granted a single registration in a State or Union territory:

[Provided that a person having multiple places of business in a State or Union territory may be granted a separate registration for each such place of business, subject to such conditions as may be prescribed.]⁵⁴

(3) A person, though not liable to be registered under section 22 or section 24 may get himself registered voluntarily, and all provisions of this Act, as are applicable to a registered person, shall apply to such person.

⁵³ Inserted by The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018) – Brought into force w.e.f. 01st February, 2019.

⁵⁴ Substituted for —Provided that a person having multiple business verticals in a State or Union territory may be granted a separate registration for each business vertical, subject to such conditions as may be prescribed.¶ by The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018) – Brought into force w.e.f. 01st February, 2019.

(4) A person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as distinct persons for the purposes of this Act.

(5) Where a person who has obtained or is required to obtain registration in a State or Union territory in respect of an establishment, has an establishment in another State or Union territory, then such establishments shall be treated as establishments of distinct persons for the purposes of this Act.

(6) Every person shall have a Permanent Account Number issued under the Income- tax Act, 1961 in order to be eligible for grant of registration: Provided that a person required to deduct tax under section 51 may have, in lieu of a Permanent Account Number, a Tax Deduction and Collection Account Number issued under the said Act in order to be eligible for grant of registration.

[(6A) Every registered person shall undergo authentication, or furnish proof of possession of Aadhaar number, in such form and manner and within such time as may be prescribed:

Provided that if an Aadhaar number is not assigned to the registered person, such person shall be offered alternate and viable means of identification in such manner as Government may, on the recommendations of the Council, prescribe:

Provided further that in case of failure to undergo authentication or furnish proof of possession of Aadhaar number or furnish alternate and viable means of identification, registration allotted to such person shall be deemed to be invalid and the other provisions of this Act shall apply as if such person does not have a registration.

(6B) On and from the date of notification, every individual shall, in order to be eligible for grant of registration, undergo authentication, or furnish proof of possession of Aadhaar number, in such manner as the Government may, on the recommendations of the Council, specify in the said notification:

Provided that if an Aadhaar number is not assigned to an individual, such individual shall be offered alternate and viable means of identification in such manner as the Government may, on the recommendations of the Council, specify in the said notification.

(6C) On and from the date of notification, every person, other than an individual, shall, in order to be eligible for grant of registration, undergo authentication,

or furnish proof of possession of Aadhaar number of the Karta, Managing Director, whole time Director, such number of partners, Members of Managing Committee of Association, Board of Trustees, authorised representative, authorised signatory and such other class of persons, in such manner, as the Government may, on the recommendations of the Council, specify in the said notification:

Provided that where such person or class of persons have not been assigned the Aadhaar Number, such person or class of persons shall be offered alternate and viable means of identification in such manner as the Government may, on the recommendations of the Council, specify in the said notification.

(6D) The provisions of sub-section (6A) or sub-section (6B) or sub-section (6C) shall not apply to such person or class of persons or any State or Union territory or part thereof, as the Government may, on the recommendations of the Council, specify by notification.

Explanation.—For the purposes of this section, the expression —Aadhaar number|| shall have the same meaning as assigned to it in clause (a) of section

2 of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016.]⁵⁵

(7) Notwithstanding anything contained in sub-section (6), a non-resident taxable person may be granted registration under sub-section (1) on the basis of such other documents as may be prescribed.

(8) Where a person who is liable to be registered under this Act fails to obtain registration, the proper officer may, without prejudice to any action which may be taken under this Act or under any other law for the time being in force, proceed to register such person in such manner as may be prescribed.

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

- (a) any specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries; and
- (b) any other person or class of persons, as may be notified by the Commissioner, shall be granted a Unique Identity Number in such manner and for such

⁵⁵ Inserted by The Finance (No. 2) Act, 2019 (No. 23 of 2019) – Brought into force w.e.f. 01st January, 2020.

purposes, including refund of taxes on the notified supplies of goods or services or both received by them, as may be prescribed.

(10) The registration or the Unique Identity Number shall be granted or rejected after due verification in such manner and within such period as may be prescribed.

(11) A certificate of registration shall be issued in such form and with effect from such date as may be prescribed.

(12) A registration or a Unique Identity Number shall be deemed to have been granted after the expiry of the period prescribed under sub-section (10), if no deficiency has been communicated to the applicant within that period.

26. Deemed registration

(1) The grant of registration or the Unique Identity Number under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act shall be deemed to be a grant of registration or the Unique Identity Number under this Act subject to the condition that the application for registration or the

Unique Identity Number has not been rejected under this Act within the time specified in sub-section (10) of section 25.

- (7) Notwithstanding anything contained in sub-section (10) of section 25, any rejection of application for registration or the Unique Identity Number under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act shall be deemed to be a rejection of application for registration under this Act.

27. Special provisions relating to casual taxable person and non-resident taxable person

- (1) The certificate of registration issued to a casual taxable person or a non-resident taxable person shall be valid for the period specified in the application for registration or ninety days from the effective date of registration, whichever is earlier and such person shall make taxable supplies only after the issuance of the certificate of registration:

Provided that the proper officer may, on sufficient cause being shown by the said taxable person, extend the said period of ninety days by a further period not exceeding ninety days.

(2) A casual taxable person or a non-resident taxable person shall, at the time of submission of application for registration under sub-section (1) of section 25, make an advance deposit of tax in an amount equivalent to the estimated tax liability of such person for the period for which the registration is sought:

Provided that where any extension of time is sought under sub-section (1), such taxable person shall deposit an additional amount of tax equivalent to the estimated tax liability of such person for the period for which the extension is sought.

(3) The amount deposited under sub-section (2) shall be credited to the electronic cash ledger of such person and shall be utilised in the manner provided under section 49.

28. Amendment of registration.—

(1) Every registered person and a person to whom a Unique Identity Number has been assigned shall inform the proper officer of any changes in the information furnished at the time of registration or subsequent thereto, in such form and manner and within such period as may be prescribed.

(2) The proper officer may, on the basis of information furnished under subsection (1) or as ascertained by him, approve or reject amendments in the registration particulars in such manner and within such period as may be prescribed:

Provided that approval of the proper officer shall not be required in respect of amendment of such particulars as may be prescribed:

Provided further that the proper officer shall not reject the application for amendment in the registration particulars without giving the person an opportunity of being heard.

(3) Any rejection or approval of amendments under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, shall be deemed to be a rejection or approval under this Act.

29. Cancellation [or suspension]⁵⁶ of registration.—

- (1) The proper officer may, either on his own motion or on an application filed by the registered person or by his legal heirs, in case of death of such person, cancel the registration, in such manner and within such period as may be prescribed, having regard to the circumstances where,—
- (a) the business has been discontinued, transferred fully for any reason including death of the proprietor, amalgamated with other legal entity, demerged or otherwise disposed of; or
 - (b) there is any change in the constitution of the business; or
 - (c) [the taxable person is no longer liable to be registered under section 22 or section 24 or intends to optout of the registration voluntarily made under sub-section (3) of section 25:]⁵⁷

⁵⁶ Inserted by The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018) into force w.e.f. 01st February, 2019.

⁵⁷ Substituted for —(c) the taxable person, other than the person registered under sub-section (3) of section 25, is no longer liable to be registered under section 22 or section 24. by the Finance Act, 2020 (No. 12 of 2020) – Brought into force w.e.f. 01st January, 2021.

[Provided that during pendency of the proceedings relating to cancellation of registration filed by the registered person, the registration may be suspended for such period and in such manner as may be prescribed.]⁵⁸

- (2) The proper officer may cancel the registration of a person from such date, including any retrospective date, as he may deem fit, where,—
- (a) a registered person has contravened such provisions of the Act or the rules made thereunder as may be prescribed; or
 - (b) a person paying tax under section 10 has not furnished returns for three consecutive tax periods; or
 - (c) any registered person, other than a person specified in clause (b), has not furnished returns for a continuous period of six months; or
 - (d) any person who has taken voluntary registration under sub-section (3) of section 25 has not commenced business within six months from the date of registration; or
 - (e) registration has been obtained by means of fraud, wilful misstatement or suppression of facts:

⁵⁸ Inserted by The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018) into force w.e.f. 01st February, 2019.

Provided that the proper officer shall not cancel the registration without giving the person an opportunity of being heard:

[Provided further that during pendency of the proceedings relating to cancellation of registration, the proper officer may suspend the registration for such period and in such manner as may be prescribed.]⁵⁹

- (3) The cancellation of registration under this section shall not affect the liability of the person to pay tax and other dues under this Act or to discharge any obligation under this Act or the rules made thereunder for any period prior to the date of cancellation whether or not such tax and other dues are determined before or after the date of cancellation.
- (4) The cancellation of registration under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, shall be deemed to be a cancellation of registration under this Act.
- (5) Every registered person whose registration is cancelled shall pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger, equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semifinished or finished goods held in stock

⁵⁹ Inserted by The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018) into force w.e.f. 01st February, 2019.

or capital goods or plant and machinery on the day immediately preceding the date of such cancellation or the output tax payable on such goods, whichever is higher, calculated in such manner as may be prescribed:

Provided that in case of capital goods or plant and machinery, the taxable person shall pay an amount equal to the input tax credit taken on the said capital goods or plant and machinery, reduced by such percentage points as may be prescribed or the tax on the transaction value of such capital goods or plant and machinery under section 15, whichever is higher.

- (6) The amount payable under sub-section (5) shall be calculated in such manner as may be prescribed.

30. Revocation of cancellation of registration

- (1) Subject to such conditions as may be prescribed, any registered person, whose registration is cancelled by the proper officer on his own motion, may apply to such officer for revocation of cancellation of the registration in the prescribed manner within thirty days from the date of service of the cancellation order.

[Provided that such period may, on sufficient cause being shown, and for reasons to be recorded in writing, be extended]

(a) by the Additional Commissioner or the Joint Commissioner, as the case may be, for a period not exceeding thirty days;

(b) by the Commissioner, for a further period not exceeding thirty days, beyond the period specified in clause (a).]⁶⁰

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

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

(3) The revocation of cancellation of registration under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, shall be deemed to be a revocation of cancellation of registration under this Act.

⁶⁰ Substituted for the proviso —Provided that the registered person who was served notice under sub-section (2) of section 29 in the manner as provided in clause (c) or clause (d) of sub-section (1) of section 169 and who could not reply to the said notice, thereby resulting in cancellation of his registration certificate and is hence unable to file application for revocation of cancellation of registration under sub-section (1) of section 30 of the Act, against such order passed up to 31.03.2019, shall be allowed to file application for revocation of cancellation of the registration not later than 22.07.2019 (which was Inserted vide Order No. 05/2019-GST dated 23.04.2020) by The Finance Act, 2020 (No. 12 of 2020) – Brought into force w.e.f. 01st January, 2021.

Author Comment

Section 30 of the CGST Act is with respect to Revocation of cancellation of Registration. It is observed that GST registration has been cancelled for many taxpayers on account of non-filing of GST Return. Further, many Appeals are pending before Appellate Authorities for Order received towards rejection of Revocation of cancellation of registration. Thus it is essential to follow the procedure as prescribed under GST Act and Rules thereunder to avoid litigation.

Below are certain key provisions under GST Act and Rules thereunder which are required to be considered for Revocation of cancellation of Registration

Section 29

- Cancellation or suspension of registration

Rule 22

- Cancellation of Registration

Rule 23

- Revocation of cancellation of registration

Additionally, below are the key Notifications and/or Documents which are issued with respect to Revocation of cancellation of registration

NT-20/2019-CT

- Rules amended to include proviso inserted in sub rule 1

NT-15/2021-CT

- Amends Rules - Sub Rule (1)

RDO-05/2019

- Application for revocation of cancellation of registration - file by 22-07-2019

RDO-01/2020-CT

- Period of 30 days calculation for revocation of cancellation order

NT-34/2021-CT

- Partially modifies NT-35/2020-CT and NT-14/2021-CT regarding cancellation and revocation of registration

Further, circular given below are key and required to be considered

CIR-95/14/2019-GST

- Verification of application for grant of new registration

Trade Notice-03/2019

- Application for revocation of cancellation

CIR-148/04/2021-GST

- SOP for extension of time limit to supply revocation of cancellation

Following is the procedure prescribed for revocation of cancellation

FORM GST REG-17

- SCN for Cancellation of Registration



FORM REG-18

- Reply to SCN to be filed within a period of **seven working days**



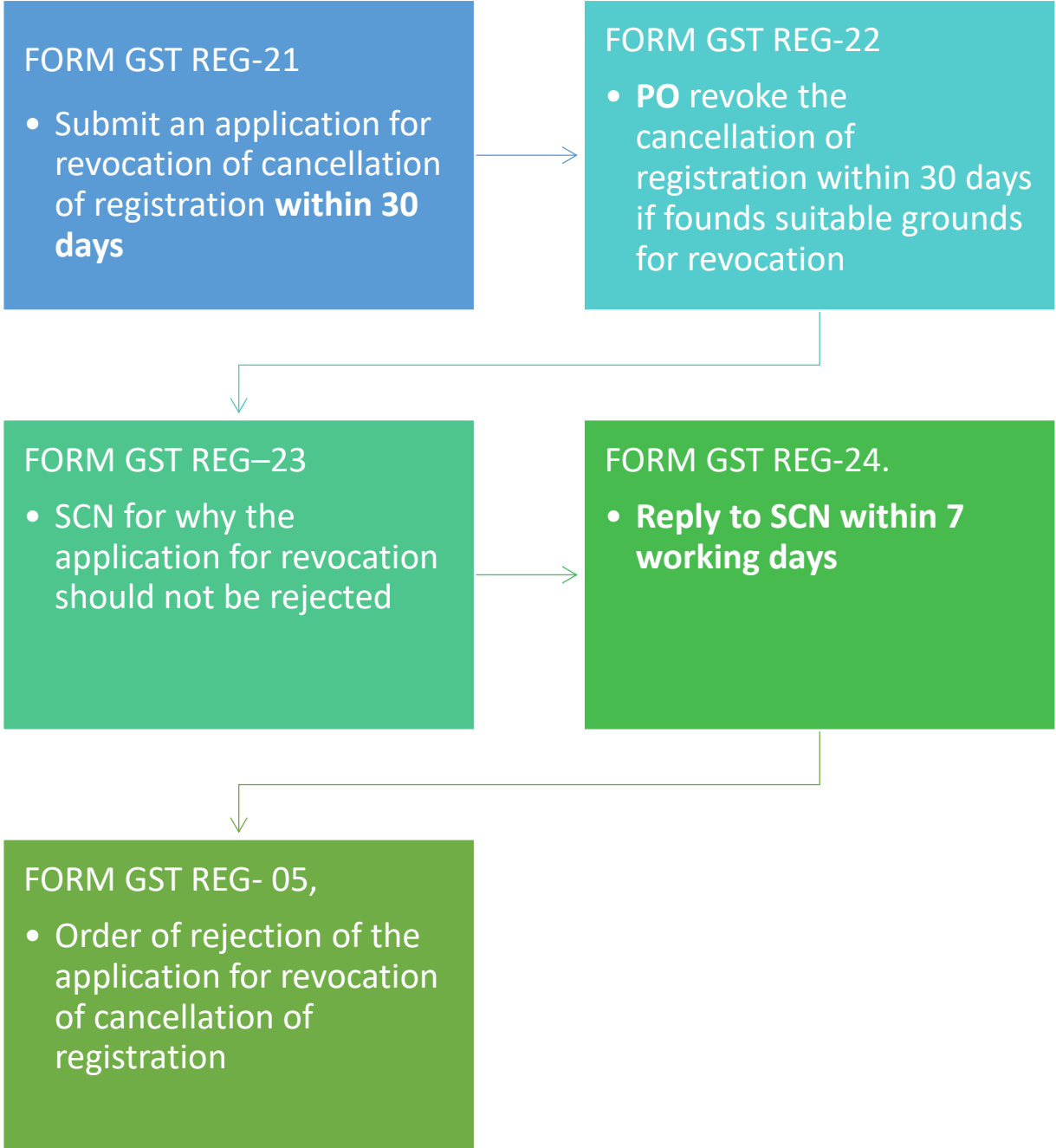
FORM GST REG-19,

- Order issued if officer is of the opinion that Rgn is required to be **cancelled within 30 days**



FORM GST REG -20

- Reply is satisfactory then drop the proceedings and pass an order



Further, In various scenarios application for Revocation has been rejected by the Authorities as same is not filed within the time limit as prescribed under GST law and Rules thereunder

Thus, Finance Act 2020 substituted proviso to Section 30 (1) of CGST Act made effective from 01-01-2021⁶¹ so that to empower the Authorities to extend the time limit. The proviso added read as

30. (1) Subject to such conditions as may be prescribed, any registered person, whose registration is cancelled by the proper officer on his own motion, may apply to such officer for revocation of cancellation of the registration in the prescribed manner within thirty days from the date of service of the cancellation order.

~~*Provided that the registered person who was served notice under sub-section (2) of section 29 in the manner as provided in clause (c) or clause (d) of sub-section (1) of section 169 and who could not reply to the said notice, thereby resulting in cancellation of his registration certificate and is hence unable to file application for revocation of cancellation of registration under sub-section (1) of section 30 of the Act, against such order passed up to 31.03.2019, shall be allowed to file application for revocation of cancellation of the registration not later than 22.07.2019*~~

61 NT-92/2020-CT

Provided that such period may, on sufficient cause being shown, and for reasons to be recorded in writing, be extended,-

(a) by the Additional Commissioner or the Joint Commissioner, as the case may be, for a period not exceeding thirty days;

(b) by the Commissioner, for a further period not exceeding thirty days, beyond the period specified in clause (a).

Thus, the Section 30 (1) is amended to empower the Jurisdictional Tax Authorities to extend the date for application of Revocation of Cancellation of Registration in certain cases. Accordingly Rule 23 amended and Form REG-21 notified in parity with the amendment of section 30(1) of the CGST Act. Further SOP in this regard, has been issued via Circular No. 148/04/2021-GST. The same can be briefed as given under

Apply in FORM GST REG-21, for revocation of cancellation of registration within 30 days from the date of service of the cancellation order.

In case the registered person applies for revocation of cancellation beyond 30 days, but within 90 days from the date of service of the cancellation order then **Follow the Procedure Prescribed in Circular No. 148/04/2021-GST**

Request, through letter or e-mail, for extension of time limit along with the grounds

If Applies for revocation of cancellation beyond 30 days, but within 60 days

- **Request to the Additional or Joint Commissioner, as the case may be**
- In case of rejection same should be after PH

Also, in case revocation of cancellation beyond 60 days, but within 90 days

- **The Additional or Joint Commissioner, as the case may be**
- In case of rejection same should be after PH

31. Tax invoice.

(1) A registered person supplying taxable goods shall, before or at the time of,—

(a) removal of goods for supply to the recipient, where the supply involves movement of goods; or

(b) delivery of goods or making available thereof to the recipient, in any other case, issue a tax invoice showing the description, quantity and value of goods, the tax charged thereon and such other particulars as may be prescribed:

Provided that the Government may, on the recommendations of the Council, by notification, specify the categories of goods or supplies in respect of which a tax invoice shall be issued, within such time and in such manner as may be prescribed.

(2) A registered person supplying taxable services shall, before or after the provision of service but within a prescribed period, issue a tax invoice, showing the description, value, tax charged thereon and such other particulars as may be prescribed:

[Provided that the Government may, on the recommendations of the Council, by notification,—

(a) specify the categories of services or supplies in respect of which a tax invoice shall be issued, within such time and in such manner as may be prescribed;

(b) subject to the condition mentioned therein, specify the categories of services in respect of which—

(i) any other document issued in relation to the supply shall be deemed to be a tax invoice; or

(ii) tax invoice may not be issued.]⁶²

(3) Notwithstanding anything contained in sub-sections (1) and (2)—

(a) a registered person may, within one month from the date of issuance of certificate of registration and in such manner as may be prescribed, issue a revised invoice against the invoice already issued during the period beginning with the effective date of registration till the date of issuance of certificate of registration to him;

⁶² Substituted for the proviso —Provided that the Government may, on the recommendations of the

Council, by notification and subject to such conditions as may be mentioned therein, specify the categories of services in respect of which—

(a) any other document issued in relation to the supply shall be deemed to be a tax invoice; or

(b) a registered person may not issue a tax invoice if the value of the goods or services or both supplied is less than two hundred rupees subject to such conditions and in such manner as may be prescribed;

(c) a registered person supplying exempted goods or services or both or paying tax under the provisions of section 10 shall issue, instead of a tax invoice, a bill of supply containing such particulars and in such manner as may be prescribed:

Provided that the registered person may not issue a bill of supply if the value of the goods or services or both supplied is less than two hundred rupees subject to such conditions and in such manner as may be prescribed;

(d) a registered person shall, on receipt of advance payment with respect to any supply of goods or services or both, issue a receipt voucher or any other document, containing such particulars as may be prescribed, evidencing receipt of such payment;

(e) where, on receipt of advance payment with respect to any supply of goods or services or both the registered person issues a receipt voucher, but subsequently no supply is made and no tax invoice is issued in pursuance thereof, the said registered person may issue to the person who had made the payment, a refund voucher against such payment;

(f) a registered person who is liable to pay tax under sub-section (3) or subsection (4) of section 9 shall issue an invoice in respect of goods or services or both received by him from the supplier who is not registered on the date of receipt of goods or services or both;

(g) a registered person who is liable to pay tax under sub-section (3) or subsection (4) of section 9 shall issue a payment voucher at the time of making payment to the supplier.

(4) In case of continuous supply of goods, where successive statements of accounts or successive payments are involved, the invoice shall be issued before or at the time each such statement is issued or, as the case may be, each such payment is received.

(5) Subject to the provisions of clause (d) of sub-section (3), in case of continuous supply of services,—

(a) where the due date of payment is ascertainable from the contract, the invoice shall be issued on or before the due date of payment;

(b) where the due date of payment is not ascertainable from the contract, the invoice shall be issued before or at the time when the supplier of service receives the payment;

(c) where the payment is linked to the completion of an event, the invoice shall be issued on or before the date of completion of that event.

(6) In a case where the supply of services ceases under a contract before the completion of the supply, the invoice shall be issued at the time when the supply ceases and such invoice shall be issued to the extent of the supply made before such cessation.

(7) Notwithstanding anything contained in sub-section (1), where the goods being sent or taken on approval for sale or return are removed before the supply takes place, the invoice shall be issued before or at the time of supply or six months from the date of removal, whichever is earlier.

Explanation.—For the purposes of this section, the expression —tax invoice|| shall include any revised invoice issued by the supplier in respect of a supply made earlier.

Author Comment

Section 31 of the CGST Act is with respect to issuance of tax invoice. The brief synopsis of Section 31 is as given hereunder

Section 31 Due date for issue of invoice

- **Supply involving movement of goods** : Time of removal of goods for supply [Sec. 31(1)(a)]
- **Supply - Other cases**: Delivery of goods/ making available to the recipient or [Sec. 31(1)(b)]
- **Continuous Supply involving successive statement of accounts or successive payments** : Date of issue of statement of account/receipt of payment [Sec. 31(4)]
- **Sale on Approval Basis**: Earlier of time at which it becomes known that the supply has taken place OR 6 months from date of removal [Sec. 31(7)]

Following are the key documents issued with respect to Tax Invoice

ORD-03/2019-CT

- Bill of supply for supplier opting to pay tax under NT-02/2019-CTR

NT-35/2020-CT

- Relaxes time limit of all provisions except few - Time limit extended for compliance upto 30th June 2020 - **This clause was in exception**

NT-66/2020-CT

- Time limit to comply with sale on approval basis - sent outside India - Extended 31-10-2020

NT-14/2021-CT

- Relaxes time limit of all provisions except few - Time limit extended for compliance upto 31st May 2021 - **This clause was in exception**

31A. Facility of digital payment to recipient

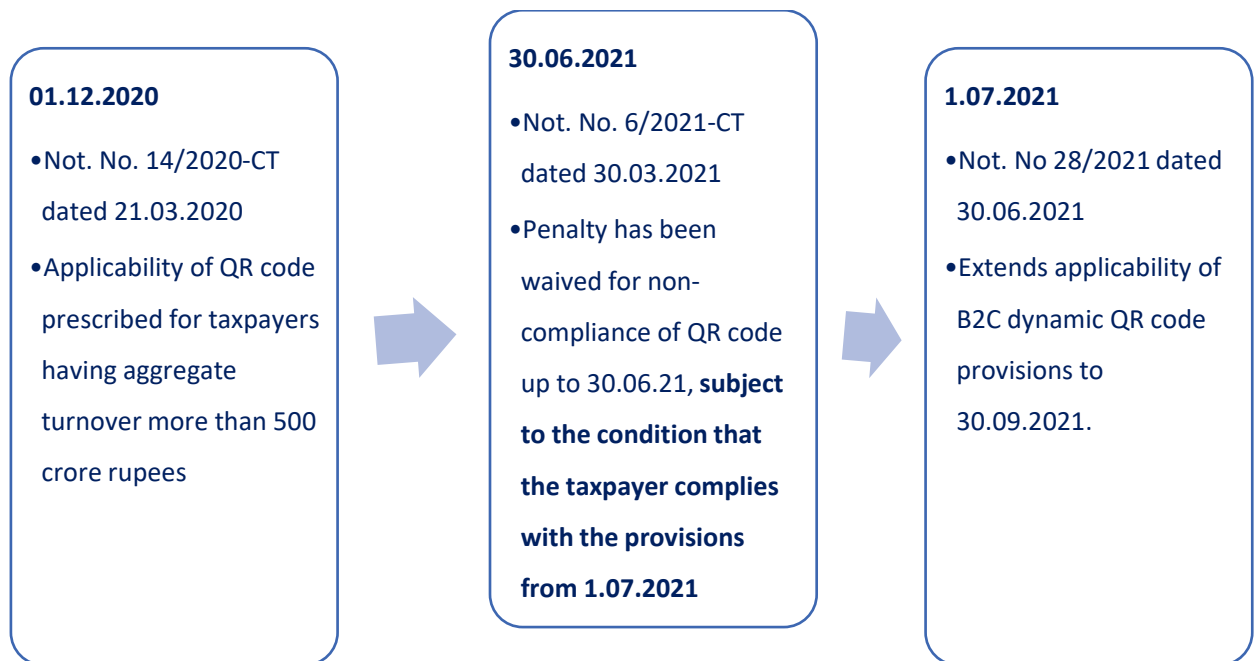
(1) The Government may, on the recommendations of the Council, prescribe a class of registered persons who shall provide prescribed modes of electronic payment to the recipient of supply of goods or services or both made by him and give option to such recipient to make payment accordingly, in such manner and subject to such conditions and restrictions, as may be prescribed.]⁶³

⁶³ Inserted by The Finance (No. 2) Act, 2019 (No. 23 of 2019) – Brought into force w.e.f. 01st January, 2020.

Author Comment

Section 31 A read with NT-72/2019-CT and NT-14/2020-CT issued and amended from time to time so that to apply QR Code provisions for specified Taxpayers.

QR code has been made applicable for the taxpayers having Aggregate Turnover more than 500 Crore Rupees from 01.10.2021.⁶⁴ The path of applicability of QR code and relevant notification with respect to same is as under:



⁶⁴ Not. No 28/2021

Circular no. 156/12/2021-GST has been issued for the clarification of certain aspects with respect to QR Code. However, the Taxpayers could face certain challenges to determine the applicability QR code on certain transaction such as

- Whether QR Code is applicable in case of Exempt Supply?
- Whether QR code is required to be generated for the transactions like notice pay recovery, food recovery, reimbursement etc?
- QR code applicability in case of supply to Government?

Brief summary of Circular no. 156/12/2021-GST is as under

<u>Sr.No.</u>	<u>Questions</u>	<u>Clarification -</u>
1.	<i>Whether Dynamic QR Code is to be provided on an invoice, issued to a person, who has obtained a Unique Identity Number as per the provisions of Sub-Section 9 of Section 25 of CGST Act 2017?</i>	<i>Any person, who has obtained a Unique Identity Number (UIN) as per the provisions of Sub-Section 9 of Section 25 of CGST Act 2017, is not a “registered person” as per the definition of registered person provided in section 2(94) of the CGST Act 2017. Therefore, any invoice, issued to such person having a UIN, shall be considered as invoice issued for a B2C supply and shall be required to comply with the requirement of Dynamic QR Code</i>
2.	<i>UPI ID is linked to the bank account of the payee/ person collecting money. Whether bank account and IFSC details also need to be provided separately in</i>	<i>Given that UPI ID is linked to a specific bank account of the payee/ person collecting money, separate details of bank account and IFSC may not be provided in the Dynamic QR Code.</i>

	<i>the Dynamic QR Code along with UPI ID?</i>	
3.	<i>In cases where the payment is collected by some person other than the supplier (ECO or any other person authorized by the supplier on his/ her behalf), whether in such cases, in place of UPI ID of the supplier, the UPI ID of such person, who is authorized to collect the payment on behalf of the supplier, may be provided?</i>	<i>Yes. In such cases where the payment is collected by some person, authorized by the supplier on his/ her behalf, the UPI ID of such person may be provided in the Dynamic QR Code, instead of UPI ID of the supplier. .</i>
4.	<i>In cases, where receiver of services is located outside India, and payment is being received by the supplier of services in foreign exchange, through RBI approved modes of payment, but as per provisions of the IGST Act 2017, the place of supply of such services is in India, then such supply of services is not considered as export of services as per the IGST Act 2017; whether in such cases, the Dynamic QR Code is required on the invoice issued, for such supply of services, to such recipient located outside India?</i>	<i>No. Wherever an invoice is issued to a recipient located outside India, for supply of services, for which the place of supply is in India, as per the provisions of IGST Act 2017, and the payment is received by the supplier in foreign currency, through RBI approved mediums, such invoice may be issued without having a Dynamic QR Code, as such dynamic QR code cannot be used by the recipient located outside India for making payment to the supplier.</i>

5.	<p><i>In some instances of retail sales over the counter, the payment from the customer is received on the payment counter by displaying dynamic QR code on digital display, whereas the invoice, along with invoice number, is generated on the processing system being used by supplier/ merchant after receiving the payment. In such cases, it may not be possible for the merchant/ supplier to provide details of invoice number in the dynamic QR code displayed to the customer on payment counter. However, each transaction i.e. receipt of payment from a customer is having a unique Order ID/ sales reference number, which is linked with the invoice for the said transaction. Whether in such cases, the order ID/ reference number of such transaction can be provided in the dynamic QR code displayed digitally, instead of invoice number.</i></p>	<p><i>In such cases, where the invoice number is not available at the time of digital display of dynamic QR code in case of over the counter sales and the invoice number and invoices are generated after receipt of payment, the unique order ID/ unique sales reference number, which is uniquely linked to the invoice issued for the said transaction, may be provided in the Dynamic QR Code for digital display, as long as the details of such unique order ID/ sales reference number linkage with the invoice are available on the processing system of the merchant/ supplier and the cross reference of such payment along with unique order ID/ sales reference number are also provided on the invoice. .</i></p>
6.	<p><i>When part-payment has already been received by the merchant/ supplier, either in advance or by</i></p>	<p><i>The purpose of dynamic QR Code is to enable the recipient/ customer to scan and pay the amount to be paid to the merchant/ supplier in</i></p>

	<p><i>adjustment (e.g. using a voucher, discount coupon etc), before the dynamic QR Code is generated, what amount should be provided in the Dynamic QR Code for “invoice value”?</i></p>	<p><i>respect of the said supply. When the part-payment for any supply has already been received from the customer/ recipient, in form of either advance or adjustment through voucher/ discount coupon etc., then the dynamic QR code may provide only the remaining amount payable by the customer/ recipient against “invoice value”. The details of total invoice value, along with details/ cross reference of the part payment/ advance/ adjustment done, and the remaining amount to be paid, should be provided on the invoice.</i></p>
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32. Prohibition of unauthorised collection of tax.—

- (1) A person who is not a registered person shall not collect in respect of any supply of goods or services or both any amount by way of tax under this Act.
- (2) No registered person shall collect tax except in accordance with the provisions of this Act or the rules made thereunder.

33. Amount of tax to be indicated in tax invoice and other documents.

Notwithstanding anything contained in this Act or any other law for the time being in force, where any supply is made for a consideration, every person who is liable to pay tax for such supply shall prominently indicate in all documents

relating to assessment, tax invoice and other like documents, the amount of tax which shall form part of the price at which such supply is made.

34. Credit and debit notes.—

- (1) [Where one or more tax invoices have]⁶⁵ been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to exceed the taxable value or tax payable in respect of such supply, or where the goods supplied are returned by the recipient, or where goods or services or both supplied are found to be deficient, the registered person, who has supplied such goods or services or both, may issue to the recipient [one or more credit notes for supplies made in a financial year]⁶⁶ containing such particulars as may be prescribed.
- (2) Any registered person who issues a credit note in relation to a supply of goods or services or both shall declare the details of such credit note in the return for the month during which such credit note has been issued but not later than September following the end of the financial year in which such supply was made, or the date of furnishing of the relevant annual return, whichever is

⁶⁵ Substituted for —Where a tax invoice has~~l~~ by The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018) – Brought into force w.e.f. 01st February, 2019.

⁶⁶ Substituted for —a credit notel~~l~~ by The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018) – Brought into force w.e.f. 01st February, 2019.

earlier, and the tax liability shall be adjusted in such manner as may be prescribed:

Provided that no reduction in output tax liability of the supplier shall be permitted, if the incidence of tax and interest on such supply has been passed on to any other person.

(3) [Where one or more tax invoices have]⁶⁷ been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to be less than the taxable value or tax payable in respect of such supply, the registered person, who has supplied such goods or services or both, shall issue to the recipient [one or more debit notes for supplies made in a financial year]⁶⁸ containing such particulars as may be prescribed.

(4) Any registered person who issues a debit note in relation to a supply of goods or services or both shall declare the details of such debit note in the return for the month during which such debit note has been issued and the tax liability shall be adjusted in such manner as may be prescribed.

⁶⁷ Substituted for —Where a tax invoice has~~l~~ by The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018) – Brought into force w.e.f. 01st February, 2019.

⁶⁸ Substituted for —a debit notel by The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018) – Brought into force w.e.f. 01st February, 2019.

Explanation.—For the purposes of this Act, the expression —debit note|| shall include a supplementary invoice.

35. Accounts and other records.—

(1) Every registered person shall keep and maintain, at his principal place of business, as mentioned in the certificate of registration, a true and correct account of—

- (a) production or manufacture of goods;
- (b) inward and outward supply of goods or services or both;
- (c) stock of goods;
- (d) input tax credit availed;
- (e) output tax payable and paid; and
- (f) such other particulars as may be prescribed:

Provided that where more than one place of business is specified in the certificate of registration, the accounts relating to each place of business shall be kept at such places of business:

Provided further that the registered person may keep and maintain such accounts and other particulars in electronic form in such manner as may be prescribed.

(2) Every owner or operator of warehouse or godown or any other place used for storage of goods and every transporter, irrespective of whether he is a registered person or not, shall maintain records of the consigner, consignee and other relevant details of the goods in such manner as may be prescribed.

(3) The Commissioner may notify a class of taxable persons to maintain additional accounts or documents for such purpose as may be specified therein.

(4) Where the Commissioner considers that any class of taxable person is not in a position to keep and maintain accounts in accordance with the provisions of this section, he may, for reasons to be recorded in writing, permit such class of taxable persons to maintain accounts in such manner as may be prescribed.

(5) [[*****]69]70

(6) Subject to the provisions of clause (h) of sub-section (5) of section 17, where the registered person fails to account for the goods or services or both in accordance with the provisions of sub-section (1), the proper officer shall determine the amount of tax payable on the goods or services or both

6964 Inserted —Provided that nothing contained in this sub-section shall apply to any department of the Central Government or a State Government or a local authority, whose books of account are subject to audit by the Comptroller and Auditor-General of India or an auditor appointed for auditing the accounts of local authorities under any law for the time being in force|| by The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018) – Brought into force w.e.f. 01st February, 2019.

70 Omitted —(5) Every registered person whose turnover during a financial year exceeds the prescribed limit shall get his accounts audited by a chartered accountant or a cost accountant and shall submit a copy of the audited annual accounts, the reconciliation statement under sub-section (2) of section 44 and such other documents in such form and manner as may be prescribed:

[Provided that nothing contained in this sub-section shall apply to any department of the Central Government or a State Government or a local authority, whose books of account are subject to audit by the Comptroller and Auditor-General of India or an auditor appointed for auditing the accounts of local authorities under any law for the time being in force.]] – by The Finance Act, 2021 No. 13 Of 2021 – Brought into force w.e.f. 01st August, 2021.

that are not accounted for, as if such goods or services or both had been supplied by such person and the provisions of section 73 or section 74, as the case may be, shall, *mutatis mutandis*, apply for determination of such tax.

Author Comment

Section 35 of the CGST Act prescribes the list of documents, recodes and/or accounts which a registered person is required to keep and maintain, at his principal place of business, as mentioned in the certificate of registration, a true and correct account of

In this regard, recently in Budget 2021 Section 35 (5) of the CGST Act has omitted. 'Notes to Clauses related to said section read as under,

Clause 101 of the Bill seeks to omit sub-section (5) of section 35 of the Central Goods and Services Tax Act so as to remove the mandatory requirement of getting annual accounts audited and the reconciliation statement submitted by specified professional.

Accordingly, now as per NT-29/2021-CT from 30-07-2021 there will not be a requirement to get accounts audited from professional. There was always a debate that whether professionals are liable to the extent of reconciliation statement as prescribed or has a huge responsibility as defined u/s 2(13) of the CGST Act. However, amending such section to include self-certification has now cast a huge responsibility on taxpayer.

36. Period of retention of accounts.

Every registered person required to keep and maintain books of account or other records in accordance with the provisions of sub-section (1) of section 35 shall retain them until the expiry of seventy-two months from the due date of furnishing of annual return for the year pertaining to such accounts and records:

Provided that a registered person, who is a party to an appeal or revision or any other proceedings before any Appellate Authority or Revisional Authority or Appellate Tribunal or court, whether filed by him or by the Commissioner, or is under investigation for an offence under Chapter XIX, shall retain the books of account and other records pertaining to the subject matter of such appeal or revision or proceedings or investigation for a period of one year after final disposal of such appeal or revision or proceedings or investigation, or for the period specified above, whichever is later.

37. Furnishing details of outward supplies

- (1) Every registered person, other than an Input Service Distributor, a non-resident taxable person and a person paying tax under the provisions of section 10 or section 51 or section 52, shall furnish, electronically, in such form and manner as may be prescribed, the details of outward supplies of goods or services or both effected during a tax period on or before the tenth day of the month succeeding the said tax period and such details shall be communicated to the recipient of the said supplies within such time and in such manner as may be prescribed:

Provided that the registered person shall not be allowed to furnish the details of outward supplies during the period from the eleventh day to the fifteenth day of the month succeeding the tax period:

Provided further that the Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing such details for such class of taxable persons as may be specified therein:

Provided also that any extension of time limit notified by the Commissioner of State tax or Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.

(2) Every registered person who has been communicated the details under sub-section (3) of section 38 or the details pertaining to inward supplies of Input Service Distributor under sub-section (4) of section 38, shall either accept or reject the details so communicated, on or before the seventeenth day, but not before the fifteenth day, of the month succeeding the tax period and the details furnished by him under sub-section (1) shall stand amended accordingly.

(3) Any registered person, who has furnished the details under sub-section (1) for any tax period and which have remained unmatched under section 42 or section 43, shall, upon discovery of any error or omission therein, rectify such error or omission in such manner as may be prescribed, and shall pay the tax and interest, if any, in case there is a short payment of tax on account of such error or omission, in the return to be furnished for such tax period:

Provided that no rectification of error or omission in respect of the details furnished under sub-section (1) shall be allowed after furnishing of the return under section 39 for the month of September following the end of the financial year to which such details pertain, or furnishing of the relevant annual return, whichever is earlier.

[Provided further that the rectification of error or omission in respect of the details furnished under sub-section (1) shall be allowed after furnishing of the return under section 39 for the month of September, 2018 till the due date for furnishing the details under subsection (1) for the month of March, 2019 or for the quarter January, 2019 to March, 2019] ⁷¹

Explanation.—For the purposes of this Chapter, the expression —details of outward supplies|| shall include details of invoices, debit notes, credit notes and revised invoices issued in relation to outward supplies made during any tax period.

⁷¹ Inserted vide Order No. 02/2018-Central Tax dated 31.12.2018

38. Furnishing details of inward supplies.

(1) Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52, shall verify, validate, modify or delete, if required, the details relating to outward supplies and credit or debit notes communicated under sub-section (1) of section 37 to prepare the details of his inward supplies and credit or debit notes and may include therein, the details of inward supplies and credit or debit notes received by him in respect of such supplies that have not been declared by the supplier under sub-section (1) of section 37.

(2) Every registered person, other than an Input Service Distributor or a nonresident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52, shall furnish, electronically, the details of inward supplies of taxable goods or services or both, including inward supplies of goods or services or both on which the tax is payable on reverse charge basis under this Act and inward supplies of goods or services or both taxable under the Integrated Goods and Services Tax Act or on which integrated goods and services tax is payable under section 3 of the Customs Tariff Act, 1975, and credit or debit notes received in respect of such supplies during a tax period after the tenth day but on or before the fifteenth day of

the month succeeding the tax period in such form and manner as may be prescribed:

Provided that the Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing such details for such class of taxable persons as may be specified therein:

Provided further that any extension of time limit notified by the Commissioner of State tax or Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.

(3) The details of supplies modified, deleted or included by the recipient and furnished under sub-section (2) shall be communicated to the supplier concerned in such manner and within such time as may be prescribed.

(4) The details of supplies modified, deleted or included by the recipient in the return furnished under sub-section (2) or sub-section (4) of section 39 shall be communicated to the supplier concerned in such manner and within such time as may be prescribed.

(5) Any registered person, who has furnished the details under sub-section (2) for any tax period and which have remained unmatched under section 42 or section 43, shall, upon discovery of any error or omission therein,

rectify such error or omission in the tax period during which such error or omission is noticed in such manner as may be prescribed, and shall pay the tax and interest, if any, in case there is a short payment of tax on account of such error or omission, in the return to be furnished for such tax period:

Provided that no rectification of error or omission in respect of the details furnished under sub-section (2) shall be allowed after furnishing of the return under section 39 for the month of September following the end of the financial year to which such details pertain, or furnishing of the relevant annual return, whichever is earlier.

39. Furnishing of returns.

- (1) Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52 shall, for every calendar month or part thereof, furnish, a return, electronically, of inward and outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid and such other particulars, in such form and manner, and within such time, as may be prescribed:

Provided that the Government may, on the recommendations of the Council, notify certain class of registered persons who shall furnish a return for every

quarter or part thereof, subject to such conditions and restrictions as may be specified therein.

(2) A registered person paying tax under the provisions of section 10, shall, for each financial year or part thereof, furnish a return, electronically, of turnover in the State or Union territory, inward supplies of goods or services or both, tax payable, tax paid and such other particulars in such form and manner, and within such time, as may be prescribed.]⁷²

(3) Every registered person required to deduct tax at source under the provisions of section 51 shall furnish, in such form and manner as may be

⁷² Substituted vide The Finance (No. 2) Act, 2019 (No. 23 of 2019) – Brought into force w.e.f. 10th November, 2020. for “(1) Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52 shall, for every calendar month or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, of inward and outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid and such other particulars, in such form and manner, and within such time, as may be prescribed, on or before the twentieth day of the month succeeding such calendar month or part thereof.

(2) A registered person paying tax under the provisions of section 10 shall, for each quarter or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, of turnover in the State or Union territory, inward supplies of goods or services or both, tax payable and tax paid within eighteen days after the end of such quarter.”

prescribed, a return, electronically, for the month in which such deductions have been made within ten days after the end of such month.

(4) Every taxable person registered as an Input Service Distributor shall, for every calendar month or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, within thirteen days after the end of such month.

(5) Every registered non-resident taxable person shall, for every calendar month or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, within twenty days after the end of a calendar month or within seven days after the last day of the period of registration specified under sub-section (1) of section 27, whichever is earlier.

(6) The Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing the returns under this section for such class of registered persons as may be specified therein: Provided that any extension of time limit notified by the Commissioner of State tax or Union territory tax shall be deemed to be notified by the Commissioner.

(7) Every registered person who is required to furnish a return under sub-section (1), other than the person referred to in the proviso thereto, or sub-section (3) or sub-section (5), shall pay to the Government the tax due as per

such return not later than the last date on which he is required to furnish such return:

Provided that every registered person furnishing return under the proviso to subsection (1) shall pay to the Government, the tax due taking into account inward and outward supplies of goods or services or both, input tax credit availed, tax payable and such other particulars during a month, in such form and manner, and within such time, as may be prescribed:

Provided further that every registered person furnishing return under subsection (2) shall pay to the Government, the tax due taking into account turnover in the State or Union territory, inward supplies of goods or services or both, tax payable, and such other particulars during a quarter, in such form and manner, and within such time, as may be prescribed.]⁷³

- (8) Every registered person who is required to furnish a return under sub-section (1) or sub-section (2) shall furnish a return for every tax period whether or not

⁷³ Substituted vide The Finance (No. 2) Act, 2019 (No. 23 of 2019) – Brought into force w.e.f. 10th November, 2020 for “(7) Every registered person, who is required to furnish a return under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (5), shall pay to the Government the tax due as per such return not later than the last date on which he is required to furnish such return.”

any supplies of goods or services or both have been made during such tax period.

- (9) Subject to the provisions of sections 37 and 38, if any registered person after furnishing a return under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (4) or sub-section (5) discovers any omission or incorrect particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, he shall rectify such omission or incorrect particulars in the return to be furnished for the month or quarter during which such omission or incorrect particulars are noticed, subject to payment of interest under this Act:

Provided that no such rectification of any omission or incorrect particulars shall be allowed after the due date for furnishing of return for the month of September or second quarter following the end of the financial year, or the actual date of furnishing of relevant annual return, whichever is earlier.

- (10) A registered person shall not be allowed to furnish a return for a tax period if the return for any of the previous tax periods has not been furnished by him.

40 First return.

Every registered person who has made outward supplies in the period between the date on which he became liable to registration till the date on which registration has been granted shall declare the same in the first return furnished by him after grant of registration.

41. Claim of input tax credit and provisional acceptance thereof

- (1) Every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to take the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited on a provisional basis to his electronic credit ledger.
- (2) The credit referred to in sub-section (1) shall be utilised only for payment of self- assessed output tax as per the return referred to in the said sub-section.

42. Matching, reversal and reclaim of input tax credit

- (1) The details of every inward supply furnished by a registered person (hereafter in this section referred to as the “recipient”) for a tax period shall, in such manner and within such time as may be prescribed, be matched—

(a) with the corresponding details of outward supply furnished by the corresponding registered person (hereafter in this section referred to as the “Supplier”) in his valid return for the same tax period or any preceding tax period;

(b) with the integrated goods and services tax paid under section 3 of the Customs Tariff Act, 1975 in respect of goods imported by him; and

(c) for duplication of claims of input tax credit.

(2) The claim of input tax credit in respect of invoices or debit notes relating to inward supply that match with the details of corresponding outward supply or with the integrated goods and services tax paid under section 3 of the Customs Tariff Act, 1975 in respect of goods imported by him shall be finally accepted and such acceptance shall be communicated, in such manner as may be prescribed, to the recipient.

(3) Where the input tax credit claimed by a recipient in respect of an inward supply is in excess of the tax declared by the supplier for the same supply or the outward supply is not declared by the supplier in his valid returns, the discrepancy shall be communicated to both such persons in such manner as may be prescribed.

(4) The duplication of claims of input tax credit shall be communicated to the recipient in such manner as may be prescribed.

(5) The amount in respect of which any discrepancy is communicated under sub-section (3) and which is not rectified by the supplier in his valid return for the month in which discrepancy is communicated shall be added to the output tax liability of the recipient, in such manner as may be prescribed, in his return for the month succeeding the month in which the discrepancy is communicated.

(6) The amount claimed as input tax credit that is found to be in excess on account of duplication of claims shall be added to the output tax liability of the recipient in his return for the month in which the duplication is communicated.

(7) The recipient shall be eligible to reduce, from his output tax liability, the amount added under sub-section (5), if the supplier declares the details of the invoice or debit note in his valid return within the time specified in sub-section (9) of section 39.

(8) A recipient in whose output tax liability any amount has been added under sub-section (5) or sub-section (6), shall be liable to pay interest at the rate specified under sub-section (1) of section 50 on the amount so

added from the date of availing of credit till the corresponding additions are made under the said sub-sections.

(9) Where any reduction in output tax liability is accepted under sub-section (7), the interest paid under sub-section (8) shall be refunded to the recipient by crediting the amount in the corresponding head of his electronic cash ledger in such manner as may be prescribed:

Provided that the amount of interest to be credited in any case shall not exceed the amount of interest paid by the supplier.

(10) The amount reduced from the output tax liability in contravention of the provisions of sub-section (7) shall be added to the output tax liability of the recipient in his return for the month in which such contravention takes place and such recipient shall be liable to pay interest on the amount so added at the rate specified in sub-section (3) of section 50.

43. Matching, reversal and reclaim of reduction in output tax liability.

- (1) The details of every credit note relating to outward supply furnished by a registered person (hereafter in this section referred to as the —supplier||) for a tax period shall, in such manner and within such time as may be prescribed, be matched—

(a) with the corresponding reduction in the claim for input tax credit by the corresponding registered person (hereafter in this section referred to as the —recipient[|]) in his valid return for the same tax period or any subsequent tax period; and

(b) for duplication of claims for reduction in output tax liability.

(2) The claim for reduction in output tax liability by the supplier that matches with the corresponding reduction in the claim for input tax credit by the recipient shall be finally accepted and communicated, in such manner as may be prescribed, to the supplier.

(3) Where the reduction of output tax liability in respect of outward supplies exceeds the corresponding reduction in the claim for input tax credit or the corresponding credit note is not declared by the recipient in his valid returns, the discrepancy shall be communicated to both such persons in such manner as may be prescribed.

(4) The duplication of claims for reduction in output tax liability shall be communicated to the supplier in such manner as may be prescribed.

(5) The amount in respect of which any discrepancy is communicated under sub-section (3) and which is not rectified by the recipient in his valid return for the month in which discrepancy is communicated shall be added to

the output tax liability of the supplier, in such manner as may be prescribed, in his return for the month succeeding the month in which the discrepancy is communicated.

(6) The amount in respect of any reduction in output tax liability that is found to be on account of duplication of claims shall be added to the output tax liability of the supplier in his return for the month in which such duplication is communicated.

(7) The supplier shall be eligible to reduce, from his output tax liability, the amount added under sub-section (5) if the recipient declares the details of the credit note in his valid return within the time specified in sub-section (9) of section 39.

(8) A supplier in whose output tax liability any amount has been added under sub-section (5) or sub-section (6), shall be liable to pay interest at the rate specified under sub-section (1) of section 50 in respect of the amount so added from the date of such claim for reduction in the output tax liability till the corresponding additions are made under the said sub-sections.

(9) Where any reduction in output tax liability is accepted under sub-section (7), the interest paid under sub-section (8) shall be refunded to the supplier by crediting the amount in the corresponding head of his electronic cash ledger in such manner as may be prescribed:

Provided that the amount of interest to be credited in any case shall not exceed the amount of interest paid by the recipient.

- (10) The amount reduced from output tax liability in contravention of the provisions of sub-section (7) shall be added to the output tax liability of the supplier in his return for the month in which such contravention takes place and such supplier shall be liable to pay interest on the amount so added at the rate specified in sub-section (3) of section 50.

44. Annual return.

Every registered person, other than an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person shall furnish an annual return which may include a self-certified reconciliation statement, reconciling the value of supplies declared in the return furnished for the financial year, with the audited annual financial statement for every financial year electronically, within such time and in such form and in such manner as may be prescribed:

Provided that the Commissioner may, on the recommendations of the Council, by notification, exempt any class of registered persons from filing annual return under this section:

Provided further that nothing contained in this section shall apply to any department of the Central Government or a State Government or a local authority, whose books of account are subject to audit by the Comptroller and Auditor-General of India or an auditor appointed for auditing the accounts of local authorities under any law for the time being in force.]74757677

74 Inserted —[Provided that the Commissioner may, on the recommendations of the Council and for reasons to be recorded in writing, by notification, extend the time limit for furnishing the annual return for such class of registered persons as may be specified therein: Provided further that any extension of time limit notified by the Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner] by The Finance (No. 2) Act, 2019 (No. 23 of 2019) – Brought into force w.e.f. 01st January, 2020.

75 Substituted for —31st December, 2019] by Order No. 10/2019 dated 26.12.2019

76 Substituted by Order No.08/2019 dated 14.12.2019 for —Explanation.- For the purposes of this section, it is hereby declared that the annual return for the period from the 1st July, 2017 to the [30th November,2019] (Substituted for —31st August, 2019] vide Order No. 06/2019-Central Tax dated 28.06.2019, which was substituted for —30th June, 2019] vide Order No. 03/2018-Central Tax dated 31.12.2018, which was substituted for —31st March, 2019] shall be furnished on or before the [30th November, 2019] (Substituted for —31st August, 2019] vide Order No. 06/2019-Central Tax dated 28.06.2019, which was substituted for —30th June, 2019] vide Order No. 03/2018- Central Tax dated 31.12.2018, which was substituted for —31st March, 2019]).[This explanation was inserted vide Order No. 01/2018-Central Tax dated 11.12.2018

77 Substituted for “ Every registered person, other than an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person, shall furnish an annual return for every financial year electronically in such form and manner as may be prescribed on or before the thirty-first day of December following the end of such financial year: [Provided that the Commissioner may, on the recommendations of the Council and for reasons to be recorded in writing, by notification, extend the time limit for furnishing the annual return for such class of registered persons as may be specified therein: Provided further that any extension of time limit notified by the Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.] (2) Every registered person who is required to get his accounts audited in accordance with the provisions of sub-section (5) of section 35 shall furnish, electronically, the annual return under sub-section (1) along with a copy of the audited annual accounts and a reconciliation statement, reconciling the value of supplies declared in the return furnished for the financial year with the audited annual financial statement, and such other particulars as may be prescribed. [Explanation.- For the purposes of this section, it is hereby declared that the annual return for the period from the 1st July, 2017 to the 31st March, 2018 shall be furnished on or before the [31st January, 2020] and the

45. Final return.

Every registered person who is required to furnish a return under sub-section (1) of section 39 and whose registration has been cancelled shall furnish a final return within three months of the date of cancellation or date of order of cancellation, whichever is later, in such form and manner as may be prescribed.

45. Notice to return defaulters.

Where a registered person fails to furnish a return under section 39 or section 44 or section 45, a notice shall be issued requiring him to furnish such return within fifteen days in such form and manner as may be prescribed.

46. Levy of late fee.

- (1) Any registered person who fails to furnish the details of outward or inward supplies required under section 37 or section 38 or returns required under section 39 or section 45 by the due date shall pay a late fee of one hundred rupees for every day during which such failure continues subject to a maximum amount of five thousand rupees.
- (2) Any registered person who fails to furnish the return required under section 44 by the due date shall be liable to pay a late fee of one hundred rupees for

annual return for the period from the 1st April, 2018 to the 31st March, 2019 shall be furnished on or before the 31st March, 2020.] by The Finance Act, 2021 No. 13 Of 2021 – Brought into force w.e.f. 01st August, 2021.

every day during which such failure continues subject to a maximum of an amount calculated at a quarter per cent. of his turnover in the State or Union territory.

48. Goods and services tax practitioners.

(1) The manner of approval of goods and services tax practitioners, their eligibility conditions, duties and obligations, manner of removal and other conditions relevant for their functioning shall be such as may be prescribed.

(2) A registered person may authorise an approved goods and services tax practitioner to furnish the details of outward supplies under section 37, the details of inward supplies under section 38 and the return under section 39 or section 44 or section 45 [and to perform such other functions]⁷⁸ in such manner as may be prescribed.

(3) Notwithstanding anything contained in sub-section (2), the responsibility for correctness of any particulars furnished in the return or other details filed by the goods and services tax practitioners shall continue to rest with the registered person on whose behalf such return and details are furnished.

49. Payment of tax, interest, penalty and other amounts.

(1) Every deposit made towards tax, interest, penalty, fee or any other amount by a person by internet banking or by using credit or debit cards or National Electronic Fund Transfer or Real Time Gross Settlement or by such other mode

⁷⁸ Inserted by The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018) – Brought into force w.e.f. 01st February, 2019.

and subject to such conditions and restrictions as may be prescribed, shall be credited to the electronic cash ledger of such person to be maintained in such manner as may be prescribed.

(2) The input tax credit as self-assessed in the return of a registered person shall be credited to his electronic credit ledger, in accordance with section 41, to be maintained in such manner as may be prescribed.

(3) The amount available in the electronic cash ledger may be used for making any payment towards tax, interest, penalty, fees or any other amount payable under the provisions of this Act or the rules made thereunder in such manner and subject to such conditions and within such time as may be prescribed.

(4) The amount available in the electronic credit ledger may be used for making any payment towards output tax under this Act or under the Integrated Goods and Services Tax Act in such manner and subject to such conditions and within such time as may be prescribed.

(5) The amount of input tax credit available in the electronic credit ledger of the registered person on account of—

(a) integrated tax shall first be utilised towards payment of integrated tax and the amount remaining, if any, may be utilised towards

the payment of central tax and State tax, or as the case may be, Union territory tax, in that order;

(b) the central tax shall first be utilised towards payment of central tax and the amount remaining, if any, may be utilised towards the payment of integrated tax;

(c) the State tax shall first be utilised towards payment of State tax and the amount remaining, if any, may be utilised towards payment of integrated tax

[Provided that the input tax credit on account of State tax shall be utilised towards payment of integrated tax only where the balance of the input tax credit on account of central tax is not available for payment of integrated tax;]⁷⁹;

(d) the Union territory tax shall first be utilised towards payment of Union territory tax and the amount remaining, if any, may be utilised towards payment of integrated tax:

[Provided that the input tax credit on account of Union territory tax shall be utilised towards payment of integrated tax only where the balance of

⁷⁹ Inserted by The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018) –Brought into force w.e.f. 01st February, 2019. .

the input tax credit on account of central tax is not available for payment of integrated tax;]⁸⁰

(e) the central tax shall not be utilised towards payment of State tax or Union territory tax; and

(f) the State tax or Union territory tax shall not be utilised towards payment of central tax.

(6) The balance in the electronic cash ledger or electronic credit ledger after payment of tax, interest, penalty, fee or any other amount payable under this Act or the rules made thereunder may be refunded in accordance with the provisions of section 54.

(7) All liabilities of a taxable person under this Act shall be recorded and maintained in an electronic liability register in such manner as may be prescribed.

(8) Every taxable person shall discharge his tax and other dues under this Act or the rules made thereunder in the following order, namely:—

(a) self-assessed tax, and other dues related to returns of previous tax periods;

⁸⁰ Inserted by The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018) – Brought into force w.e.f. 01st February, 2019.

(b) self-assessed tax, and other dues related to the return of the current tax period;

(c) any other amount payable under this Act or the rules made thereunder including the demand determined under section 73 or section 74.

(9) Every person who has paid the tax on goods or services or both under this Act shall, unless the contrary is proved by him, be deemed to have passed on the full incidence of such tax to the recipient of such goods or services or both.

Explanation.—For the purposes of this section,—

(a) the date of credit to the account of the Government in the authorised bank shall be deemed to be the date of deposit in the electronic cash ledger;

(b) the expression,—

(i) “tax dues” means the tax payable under this Act and does not include interest, fee and penalty; and

(ii) “other dues” means interest, penalty, fee or any other amount payable under this Act or the rules made thereunder.

(10) [A registered person may, on the common portal, transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under this Act, to the electronic cash ledger for integrated tax, central tax, State tax, Union territory tax or cess, in such form and manner and subject to such conditions and restrictions as may be prescribed and such transfer shall be deemed to be a refund from the electronic cash ledger under this Act.

(11) Where any amount has been transferred to the electronic cash ledger under this Act, the same shall be deemed to be deposited in the said ledger as provided in subsection (1).]⁸¹

[49A. Utilisation of input tax credit subject to certain conditions.—

(1) Notwithstanding anything contained in section 49, the input tax credit on account of central tax, State tax or Union territory tax shall be utilised towards payment of integrated tax, central tax, State tax or Union territory tax, as the case may be, only after the input tax credit available on account of integrated tax has first been utilised fully towards such payment.

49B. Order of utilisation of input tax credit.—

⁸¹ Inserted by The Finance (No. 2) Act, 2019 (No. 23 of 2019) – Brought into force w.e.f. 01st January, 2020.

- (1) Notwithstanding anything contained in this Chapter and subject to the provisions of clause (e) and clause (f) of subsection (5) of section 49, the Government may, on the recommendations of the Council, prescribe the order and manner of utilisation of the input tax credit on account of integrated tax, central tax, State tax or Union territory tax, as the case may be, towards payment of any such tax.]⁸²

50. Interest on delayed payment of tax.—

- (1) Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent., as may be notified by the Government on the recommendations of the Council:

[Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or

⁸² Inserted by The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018) –Brought into force w.e.f. 01st February, 2019.

section 74 in respect of the said period, shall be payable on that portion of the tax which is paid by debiting the electronic cash ledger.]⁸³

(2) The interest under sub-section (1) shall be calculated, in such manner as may be prescribed, from the day succeeding the day on which such tax was due to be paid.

(3) A taxable person who makes an undue or excess claim of input tax credit under sub-section (10) of section 42 or undue or excess reduction in output tax liability under sub-section (10) of section 43, shall pay interest on such undue or excess claim or on such undue or excess reduction, as the case may be, at such rate not exceeding twentyfour per cent., as may be notified by the Government on the recommendations of the Council.

Author Comment

⁸³ Substituted for —Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger by The Finance Act, 2021 (No. 13 of 2021) – Brought into force w.e.f. 01st June, 2021. It shall be deemed to have been substituted with effect from the 1st day of July, 2017.

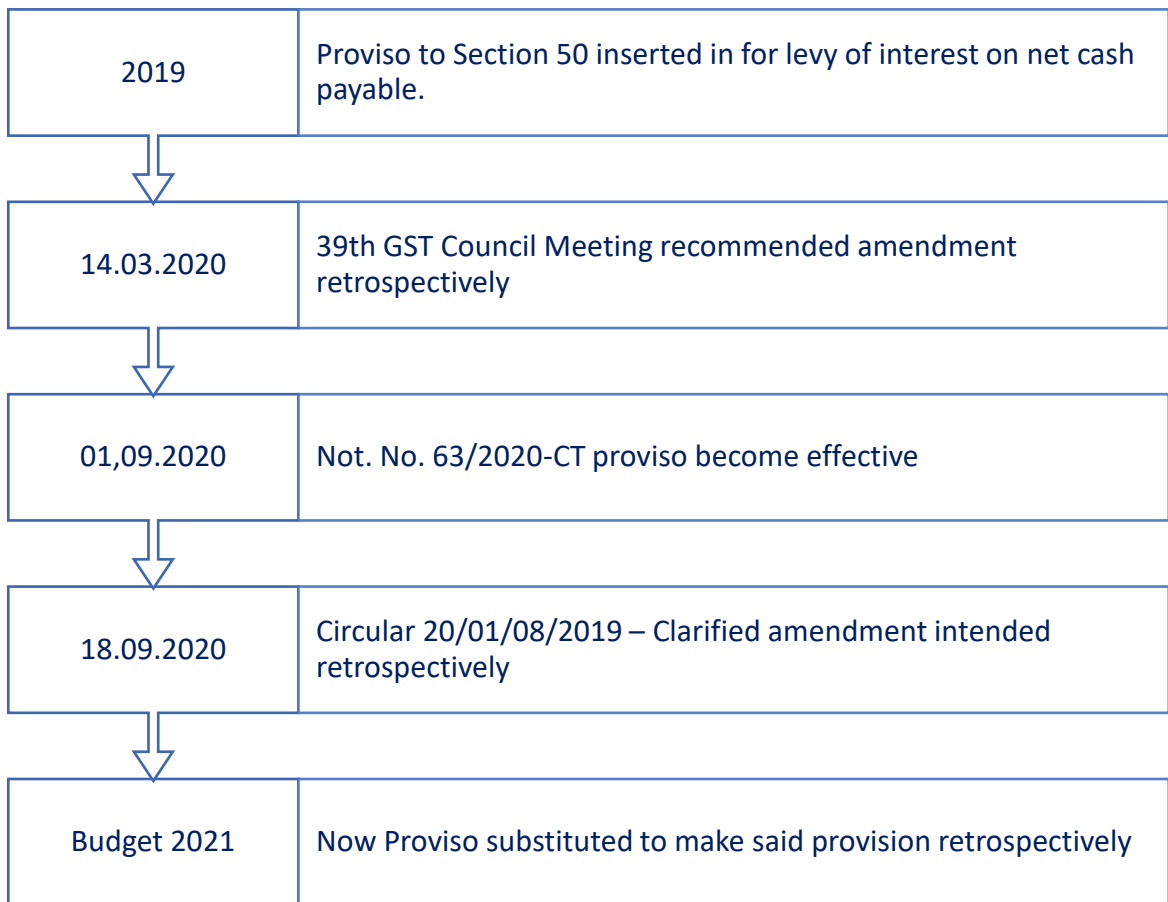
As per Section 50 of the CGST Act interest will become applicable at prescribed rate. In the initial stage of GST taxpayers was required to face litigation for payment of interest on Gross liability instead Net Liability. To reduce the ambiguity of the Section 50 of the CGST Act, proviso was inserted under sub section (1) which was notified with effect from 01-09-2020⁸⁴ so that to levy interest only on the net cash tax liability, except in proceedings under section 73 or 74.

However, even after said amendment the question was remained unanswered for prior period (i.e. before 01st February, 2019). Thus, again via Finance Act, 2021 the proviso was substituted to subsection (1) of Section 50 with retrospective effect from 01.07.2017 - NT-16/2021 – CT. ‘Notes to clause’ with respect to said amendment read as

‘Clause 103 of the Bill seeks to amend section 50 of the Central Goods and Services Tax Act to substitute the proviso to sub-section (1) so as to charge interest on net cash liability retrospectively with effect from the 1st July, 2017’

This is one of the most awaited amendment. The interest Saga can be shortly as given below

84 NT-01/2020-CT and NT-63/2020-CT



51. Tax deduction at source

(1) Notwithstanding anything to the contrary contained in this Act, the Government may mandate,

(a) a department or establishment of the Central Government or State Government; or

(b) local authority; or

(c) Governmental agencies; or

(d) such persons or category of persons as may be notified by the Government on the recommendations of the Council, (hereafter in this section referred to as —the deductor)), to deduct tax at the rate of one per cent. from the payment made or credited to the supplier (hereafter in this section referred to as —the deductee)) of taxable goods or services or both, where the total value of such supply, under a contract, exceeds two lakh and fifty thousand rupees:

Provided that no deduction shall be made if the location of the supplier and the place of supply is in a State or Union territory which is different from the State or as the case may be, Union territory of registration of the recipient.

Explanation.—For the purpose of deduction of tax specified above, the value of supply shall be taken as the amount excluding the central tax, State tax, Union territory tax, integrated tax and cess indicated in the invoice.

(2) The amount deducted as tax under this section shall be paid to the Government by the deductor within ten days after the end of the month in which such deduction is made, in such manner as may be prescribed.

(3) [A certificate of tax deduction at source shall be issued in such form and in such manner as may be prescribed.]⁸⁵.

(4) [*****]⁸⁶

(5) The deductee shall claim credit, in his electronic cash ledger, of the tax deducted and reflected in the return of the deductor furnished under sub-section (3) of section 39, in such manner as may be prescribed.

(6) If any deductor fails to pay to the Government the amount deducted as tax under sub-section (1), he shall pay interest in accordance with the provisions of sub-section (1) of section 50, in addition to the amount of tax deducted.

(7) The determination of the amount in default under this section shall be made in the manner specified in section 73 or section 74.

⁸⁵ Substituted for —(3) The deductor shall furnish to the deductee a certificate mentioning therein the contract value, rate of deduction, amount deducted, amount paid to the Government and such other particulars in such manner as may be prescribed.¶ by The Finance Act, 2020 (No. 12 of 2020) –Brought into force w.e.f. 01st January, 2021.

⁸⁶ Omitted —(4) If any deductor fails to furnish to the deductee the certificate, after deducting the tax at source, within five days of crediting the amount so deducted to the Government, the deductor shall pay, by way of a late fee, a sum of one hundred rupees per day from the day after the expiry of such five days period until the failure is rectified, subject to a maximum amount of five thousand rupees.¶ by The Finance Act, 2020 (No. 12 of 2020) –Brought into force w.e.f. 01st January, 2021.

(8) The refund to the deductor or the deductee arising on account of excess or erroneous deduction shall be dealt with in accordance with the provisions of section 54:

Provided that no refund to the deductor shall be granted, if the amount deducted has been credited to the electronic cash ledger of the deductee.

52. Collection of tax at source.

- (1) Notwithstanding anything to the contrary contained in this Act, every electronic commerce operator (hereafter in this section referred to as the “operator”), not being an agent, shall collect an amount calculated at such rate not exceeding one per cent., as may be notified by the Government on the recommendations of the Council, of the net value of taxable supplies made through it by other suppliers where the consideration with respect to such supplies is to be collected by the operator.

Explanation.—For the purposes of this sub-section, the expression —net value of taxable supplies|| shall mean the aggregate value of taxable supplies of goods or services or both, other than services notified under sub-section (5) of section 9, made during any month by all registered persons through the operator reduced by the aggregate value of taxable supplies returned to the suppliers during the said month.

- (2) The power to collect the amount specified in sub-section (1) shall be without prejudice to any other mode of recovery from the operator.
- (3) The amount collected under sub-section (1) shall be paid to the Government by the operator within ten days after the end of the month in which such collection is made, in such manner as may be prescribed
- (4) Every operator who collects the amount specified in sub-section (1) shall furnish a statement, electronically, containing the details of outward supplies of goods or services or both effected through it, including the supplies of goods or services or both returned through it, and the amount collected under sub-section (1) during a month, in such form and manner as may be prescribed, within ten days after the end of such month:

[Explanation: - For the purposes of this sub-section, it is hereby declared that the due date for furnishing the said statement for the months of October, November and December, 2018 shall be the [07th February, 2019]⁸⁷.]⁸⁸

⁸⁷ Substituted for “31st January, 2019” vide Order No 02/2019-Central Tax dated 01.02.2019

⁸⁸ Inserted vide Order No. 04/2018- Central Tax dated 31.12.2018

[Provided that the Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing the statement for such class of registered persons as may be specified therein:

Provided further that any extension of time limit notified by the Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.]⁸⁹

(5) Every operator who collects the amount specified in sub-section (1) shall furnish an annual statement, electronically, containing the details of outward supplies of goods or services or both effected through it, including the supplies of goods or services or both returned through it, and the amount collected under the said sub-section during the financial year, in such form and manner as may be prescribed, before the thirty first day of December following the end of such financial year

[Provided that the Commissioner may, on the recommendations of the Council and for reasons to be recorded in writing, by notification, extend the time limit for furnishing the annual statement for such class of registered persons as may be specified therein:

⁸⁹ Inserted by The Finance (No. 2) Act, 2019 (No. 23 of 2019) – Brought into force w.e.f. 01st January, 2020.

Provided further that any extension of time limit notified by the Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.]⁹⁰

(6) If any operator after furnishing a statement under sub-section (4) discovers any omission or incorrect particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, he shall rectify such omission or incorrect particulars in the statement to be furnished for the month during which such omission or incorrect particulars are noticed, subject to payment of interest, as specified in sub-section (1) of section 50:

Provided that no such rectification of any omission or incorrect particulars shall be allowed after the due date for furnishing of statement for the month of September following the end of the financial year or the actual date of furnishing of the relevant annual statement, whichever is earlier.

(7) The supplier who has supplied the goods or services or both through the operator shall claim credit, in his electronic cash ledger, of the

⁹⁰ Inserted by The Finance (No. 2) Act, 2019 (No. 23 of 2019) – Brought into force w.e.f. 01st January, 2020.

amount collected and reflected in the statement of the operator furnished under sub-section (4), in such manner as may be prescribed.

(8) The details of supplies furnished by every operator under sub-section (4) shall be matched with the corresponding details of outward supplies furnished by the concerned supplier registered under this Act in such manner and within such time as may be prescribed.

(9) Where the details of outward supplies furnished by the operator under sub-section (4) do not match with the corresponding details furnished by the supplier under [section 37 or section 39]⁹¹, the discrepancy shall be communicated to both persons in such manner and within such time as may be prescribed.

(10) The amount in respect of which any discrepancy is communicated under sub-section (9) and which is not rectified by the supplier in his valid return or the operator in his statement for the month in which discrepancy is communicated, shall be added to the output tax liability of the said supplier, where the value of outward supplies furnished by the operator is more than the value of outward supplies furnished by the supplier, in his return for the

⁹¹ Substituted for —section 37| by The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018) – Brought into force w.e.f. 01st February, 2019.

month succeeding the month in which the discrepancy is communicated in such manner as may be prescribed.

(11) The concerned supplier, in whose output tax liability any amount has been added under sub-section (10), shall pay the tax payable in respect of such supply along with interest, at the rate specified under sub-section (1) of section 50 on the amount so added from the date such tax was due till the date of its payment.

(12) Any authority not below the rank of Deputy Commissioner may serve a notice, either before or during the course of any proceedings under this Act, requiring the operator to furnish such details relating to—

(a) supplies of goods or services or both effected through such operator during any period; or

(b) stock of goods held by the suppliers making supplies through such operator in the godowns or warehouses, by whatever name called, managed by such operator and declared as additional places of business by such suppliers, as may be specified in the notice.

(13) Every operator on whom a notice has been served under sub-section (12) shall furnish the required information within fifteen working days of the date of service of such notice.

(14) Any person who fails to furnish the information required by the notice served under sub-section (12) shall, without prejudice to any action that may be taken under section 122, be liable to a penalty which may extend to twenty-five thousand rupees.

Explanation.—For the purposes of this section, the expression —concerned supplier|| shall mean the supplier of goods or services or both making supplies through the operator.

53. Transfer of input tax credit.—

On utilisation of input tax credit availed under this Act for payment of tax dues under the Integrated Goods and Services Tax Act in accordance with the provisions of sub-section (5) of section 49, as reflected in the valid return furnished under sub-section (1) of section 39, the amount collected as central tax shall stand reduced by an amount equal to such credit so utilised and the Central Government shall transfer an amount equal to the amount so reduced from the central tax account to the integrated tax account in such manner and within such time as may be prescribed.

[53A. Transfer of certain amounts.

Where any amount has been transferred from the electronic cash ledger under this Act to the electronic cash ledger under the State Goods and Services Tax Act or the Union territory Goods and Services Tax Act, the Government shall, transfer to the State tax account or the Union territory tax account, an amount

equal to the amount transferred from the electronic cash ledger, in such manner and within such time as may be prescribed.]⁹²

⁹² Inserted by The Finance (No. 2) Act, 2019 (No. 23 of 2019) – Brought into force w.e.f. 01st January, 2020.

54. Refund of tax.

- (1) Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed:

Provided that a registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49, may claim such refund in the return furnished under section 39 in such manner as may be prescribed.

- (2) A specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries or any other person or class of persons, as notified under section 55, entitled to a refund of tax paid by it on inward supplies of goods or services or both, may make an application for such refund, in such form and manner as may be prescribed, before the expiry of six months from the last day of the quarter in which such supply was received.

(3) Subject to the provisions of sub-section (10), a registered person may claim refund of any unutilised input tax credit at the end of any tax period: Provided that no refund of unutilised input tax credit shall be allowed in cases other than—

- (i) zero rated supplies made without payment of tax;
- (ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council:

Provided further that no refund of unutilised input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty:

Provided also that no refund of input tax credit shall be allowed, if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies.

(4) The application shall be accompanied by—

- (a) such documentary evidence as may be prescribed to establish that a refund is due to the applicant; and

- (b) such documentary or other evidence (including the documents referred to in section 33) as the applicant may furnish to establish that the amount of tax and interest, if any, paid on such tax or any other amount paid in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such tax and interest had not been passed on to any other person:

Provided that where the amount claimed as refund is less than two lakh rupees, it shall not be necessary for the applicant to furnish any documentary and other evidences but he may file a declaration, based on the documentary or other evidences available with him, certifying that the incidence of such tax and interest had not been passed on to any other person.

(5) If, on receipt of any such application, the proper officer is satisfied that the whole or part of the amount claimed as refund is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund referred to in section 57.

(6) Notwithstanding anything contained in sub-section (5), the proper officer may, in the case of any claim for refund on account of zero-rated supply of goods or services or both made by registered persons, other than such

category of registered persons as may be notified by the Government on the recommendations of the Council, refund on a provisional basis, ninety per cent. of the total amount so claimed, excluding the amount of input tax credit provisionally accepted, in such manner and subject to such conditions, limitations and safeguards as may be prescribed and thereafter make an order under sub-section (5) for final settlement of the refund claim after due verification of documents furnished by the applicant.

(7) The proper officer shall issue the order under sub-section (5) within sixty days

from the date of receipt of application complete in all respects.

(8) Notwithstanding anything contained in sub-section (5), the refundable amount shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to—

(a) [refund of tax paid on export of goods or services or both or on inputs or input services used in making such exports;]⁹³

(b) refund of unutilised input tax credit under sub-section (3);

⁹³ Substituted for —zero-rated supplies by The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018) – Brought into force w.e.f. 01st February, 2019.

(c) refund of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued, or where a refund voucher has been issued;

(d) refund of tax in pursuance of section 77;

(e) 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; or

(f) the tax or interest borne by such other class of applicants as the Government may, on the recommendations of the Council, by notification, specify.

[(8A) The Government may disburse the refund of the State tax in such manner as may be prescribed.]⁹⁴

(9) Notwithstanding anything to the contrary contained in any judgment, decree, order or direction of the Appellate Tribunal or any court or in any other provisions of this Act or the rules made thereunder or in any other

⁹⁴ Inserted by The Finance (No. 2) Act, 2019 (No. 23 of 2019) – Brought into force w.e.f. 01st September, 2019 vide Notification No. 39/2019 – Central Tax dt. 31st August, 2019.

law for the time being in force, no refund shall be made except in accordance with the provisions of sub-section (8).

(10) Where any refund is due under sub-section (3) to a registered person who has defaulted in furnishing any return or who is required to pay any tax, interest or penalty, which has not been stayed by any court, Tribunal or Appellate Authority by the specified date, the proper officer may—

(a) withhold payment of refund due until the said person has furnished the return or paid the tax, interest or penalty, as the case may be;

(b) deduct from the refund due, any tax, interest, penalty, fee or any other amount which the taxable person is liable to pay but which remains unpaid under this Act or under the existing law.

Explanation.—For the purposes of this sub-section, the expression —specified date|| shall mean the last date for filing an appeal under this Act.

(11) Where an order giving rise to a refund is the subject matter of an appeal or further proceedings or where any other proceedings under this Act is pending and the Commissioner is of the opinion that grant of such refund is likely to adversely affect the revenue in the said appeal or other proceedings on account of malfeasance or fraud committed, he may, after giving the

taxable person an opportunity of being heard, withhold the refund till such time as he may determine.

(12) Where a refund is withheld under sub-section (11), the taxable person shall, notwithstanding anything contained in section 56, be entitled to interest at such rate not exceeding six per cent. as may be notified on the recommendations of the Council, if as a result of the appeal or further proceedings he becomes entitled to refund.

(13) Notwithstanding anything to the contrary contained in this section, the amount of advance tax deposited by a casual taxable person or a non-resident taxable person under sub-section (2) of section 27, shall not be refunded unless such person has, in respect of the entire period for which the certificate of registration granted to him had remained in force, furnished all the returns required under section 39.

(14) Notwithstanding anything contained in this section, no refund under subsection (5) or sub-section (6) shall be paid to an applicant, if the amount is less than one thousand rupees.

Explanation.—For the purposes of this section,—

(1) 'refund' includes refund of tax paid on zero-rated supplies of goods or services or both or on inputs or input services used in making such

zero-rated supplies, or refund of tax on the supply of goods regarded as deemed exports, or refund of unutilised input tax credit as provided under subsection (3).

(2) 'relevant date' means—

(a) in the case of goods exported out of India where a refund of tax paid is available in respect of goods themselves or, as the case may be, the inputs or input services used in such goods,—

(i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India;
or

(ii) if the goods are exported by land, the date on which such goods pass the frontier; or

(iii) if the goods are exported by post, the date of despatch of goods by the Post Office concerned to a place outside India;

(b) in the case of supply of goods regarded as deemed exports where a refund of tax paid is available in respect of the goods, the date on which the return relating to such deemed exports is furnished;

(c) in the case of services exported out of India where a refund of tax paid is available in respect of services themselves or, as the case may be, the inputs or input services used in such services, the date of—

(i) receipt of payment in convertible foreign exchange [or in Indian rupees wherever permitted by the Reserve Bank of India]⁹⁵, where the supply of services had been completed prior to the receipt of such payment; or

(ii) issue of invoice, where payment for the services had been received in advance prior to the date of issue of the invoice;

(d) in case where the tax becomes refundable as a consequence of judgment, decree, order or direction of the Appellate Authority, Appellate Tribunal or any court, the date of communication of such judgment, decree, order or direction;

(e) [in the case of refund of unutilised input tax credit under clause (ii) of the first proviso to sub-section (3), the due date for furnishing

⁹⁵ Inserted by The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018) – Brought into force w.e.f. 01st February, 2019.

of return under section 39 for the period in which such claim for refund arises;]⁹⁶

(f) in the case where tax is paid provisionally under this Act or the rules made thereunder, the date of adjustment of tax after the final assessment thereof;

(g) in the case of a person, other than the supplier, the date of receipt of goods or services or both by such person; and

(h) in any other case, the date of payment of tax.

55. Refund in certain cases.

The Government may, on the recommendations of the Council, by notification, specify any specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries and any other person or class of persons as may be specified in this

⁹⁶ Substituted for —(e) in the case of refund of unutilised input tax credit under sub-section (3), the end of the financial year in which such claim for refund arises;|| by The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018) – Brought into force w.e.f. 01st February, 2019.

behalf, who shall, subject to such conditions and restrictions as may be prescribed, be entitled to claim a refund of taxes paid on the notified supplies of goods or services or both received by them.

56. Interest on delayed refunds.

If any tax ordered to be refunded under sub-section (5) of section 54 to any applicant is not refunded within sixty days from the date of receipt of application under sub- section (1) of that section, interest at such rate not exceeding six per cent. as may be specified in the notification issued by the Government on the recommendations of the Council shall be payable in respect of such refund from the date immediately after the expiry of sixty days from the date of receipt of application under the said sub-section till the date of refund of such tax:

Provided that where any claim of refund arises from an order passed by an adjudicating authority or Appellate Authority or Appellate Tribunal or court which has attained finality and the same is not refunded within sixty days from the date of receipt of application filed consequent to such order, interest at such rate not exceeding nine per cent. as may be notified by the Government on the recommendations of the Council shall be payable in respect of such refund from

the date immediately after the expiry of sixty days from the date of receipt of application till the date of refund.

Explanation.—For the purposes of this section, where any order of refund is made by an Appellate Authority, Appellate Tribunal or any court against an order of the proper officer under sub-section (5) of section 54, the order passed by the Appellate Authority, Appellate Tribunal or by the court shall be deemed to be an order passed under the said sub-section (5).

57. Consumer Welfare Fund.

The Government shall constitute a Fund, to be called the Consumer Welfare Fund and there shall be credited to the Fund,—

- (a) the amount referred to in sub-section (5) of section 54;
- (b) any income from investment of the amount credited to the Fund; and
- (c) such other monies received by it, in such manner as may be prescribed.

58. Utilisation of Fund.

- (1) All sums credited to the Fund shall be utilised by the Government for the welfare of the consumers in such manner as may be prescribed.
- (2) The Government or the authority specified by it shall maintain proper and separate account and other relevant records in relation to the Fund and prepare an annual statement of accounts in such form as may be prescribed in consultation with the Comptroller and Auditor-General of India.

59. Self-assessment.

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

60. Provisional assessment.

(1) Subject to the provisions of sub-section (2), where the taxable person is unable to determine the value of goods or services or both or determine the rate of tax applicable thereto, he may request the proper officer in writing giving reasons for payment of tax on a provisional basis and the proper officer shall pass an order, within a period not later than ninety days from the date of receipt of such request, allowing payment of tax on provisional basis at such rate or on such value as may be specified by him.

(2) The payment of tax on provisional basis may be allowed, if the taxable person executes a bond in such form as may be prescribed, and with such surety or security as the proper officer may deem fit, binding the taxable person for payment of the difference between the amount of tax as may be finally assessed and the amount of tax provisionally assessed.

(3) The proper officer shall, within a period not exceeding six months from the date of the communication of the order issued under sub-section (1), pass the final assessment order after taking into account such information as may be required for finalizing the assessment:

Provided that the period specified in this sub-section may, on sufficient cause being shown and for reasons to be recorded in writing, be extended by the Joint Commissioner or Additional Commissioner for a further period not exceeding six months and by the Commissioner for such further period not exceeding four years.

(4) The registered person shall be liable to pay interest on any tax payable on the supply of goods or services or both under provisional assessment but not paid on the due date specified under sub-section (7) of section 39 or the rules made thereunder, at the rate specified under sub-section (1) of section 50, from the first day after the due date of payment of tax in respect of the said supply of goods or services or both till the date of actual payment, whether such amount is paid before or after the issuance of order for final assessment.

(5) Where the registered person is entitled to a refund consequent to the order of final assessment under sub-section (3), subject to the provisions of sub-section (8) of section 54, interest shall be paid on such refund as provided in section 56.

61. Scrutiny of returns.

(1) The proper officer may scrutinize the return and related particulars furnished by the registered person to verify the correctness of the return and inform

him of the discrepancies noticed, if any, in such manner as may be prescribed and seek his explanation thereto.

(2) In case the explanation is found acceptable, the registered person shall be informed accordingly and no further action shall be taken in this regard.

(3) In case no satisfactory explanation is furnished within a period of thirty days of being informed by the proper officer or such further period as may be permitted by him or where the registered person, after accepting the discrepancies, fails to take the corrective measure in his return for the month in which the discrepancy is accepted, the proper officer may initiate appropriate action including those under section 65 or section 66 or section 67, or proceed to determine the tax and other dues under section 73 or section 74.

62. Assessment of non-filers of returns.

- (1) Notwithstanding anything to the contrary contained in section 73 or section 74, where a registered person fails to furnish the return under section 39 or section 45, even after the service of a notice under section 46, the proper officer may proceed to assess the tax liability of the said person to the best of his judgement taking into account all the relevant material which is available or which he has gathered and issue an assessment order within a period of five

years from the date specified under section 44 for furnishing of the annual return for the financial year to which the tax not paid relates.

- (2) Where the registered person furnishes a valid return within thirty days of the service of the assessment order under sub-section (1), the said assessment order shall be deemed to have been withdrawn but the liability for payment of interest under sub section (1) of section 50 or for payment of late fee under section 47 shall continue.

63.Assessment of unregistered persons.

Notwithstanding anything to the contrary contained in section 73 or section 74, where a taxable person fails to obtain registration even though liable to do so or whose registration has been cancelled under sub-section (2) of section 29 but who was liable to pay tax, the proper officer may proceed to assess the tax liability of such taxable person to the best of his judgment for the relevant tax periods and issue an assessment order within a period of five years from the date specified under section 44 for furnishing of the annual return for the financial year to which the tax not paid relates:

Provided that no such assessment order shall be passed without giving the person an opportunity of being heard.

64. Summary assessment in certain special cases.

- (1) The proper officer may, on any evidence showing a tax liability of a person coming to his notice, with the previous permission of Additional Commissioner or Joint Commissioner, proceed to assess the tax liability of such person to protect the interest of revenue and issue an assessment order, if he has sufficient grounds to believe that any delay in doing so may adversely affect the interest of revenue:

Provided that where the taxable person to whom the liability pertains is not ascertainable and such liability pertains to supply of goods, the person in charge of such goods shall be deemed to be the taxable person liable to be assessed and liable to pay tax and any other amount due under this section.

- (2) On an application made by the taxable person within thirty days from the date of receipt of order passed under sub-section (1) or on his own motion, if the Additional Commissioner or Joint Commissioner considers that such order is erroneous, he may withdraw such order and follow the procedure laid down in section 73 or section 74.

65. Audit by tax authorities

(1) The Commissioner or any officer authorised by him, by way of a general or a specific order, may undertake audit of any registered person for such period, at such frequency and in such manner as may be prescribed.

(2) The officers referred to in sub-section (1) may conduct audit at the place of business of the registered person or in their office.

(3) The registered person shall be informed by way of a notice not less than fifteen working days prior to the conduct of audit in such manner as may be prescribed.

(4) The audit under sub-section (1) shall be completed within a period of three months from the date of commencement of the audit:

Provided that where the Commissioner is satisfied that audit in respect of such registered person cannot be completed within three months, he may, for the reasons to be recorded in writing, extend the period by a further period not exceeding six months.

Explanation.—For the purposes of this sub-section, the expression —commencement of audit|| shall mean the date on which the records and other documents, called for by the tax authorities, are made available by the

registered person or the actual institution of audit at the place of business, whichever is later.

(5) During the course of audit, the authorised officer may require the registered person,—

(i) to afford him the necessary facility to verify the books of account or other documents as he may require;

(ii) to furnish such information as he may require and render assistance for timely completion of the audit.

(6) On conclusion of audit, the proper officer shall, within thirty days, inform the registered person, whose records are audited, about the findings, his rights and obligations and the reasons for such findings.

(7) Where the audit conducted under sub-section (1) results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilised, the proper officer may initiate action under section 73 or section 74.

66. Special audit.

(1) If at any stage of scrutiny, inquiry, investigation or any other proceedings before him, any officer not below the rank of Assistant Commissioner, having regard to the nature and complexity of the case and the interest of revenue, is of the opinion that the value has not been correctly declared or the credit availed is not within the normal limits, he may, with the prior approval of the Commissioner, direct such registered person by a communication in writing to get his records including books of account examined and audited by a chartered accountant or a cost accountant as may be nominated by the Commissioner.

(2) The chartered accountant or cost accountant so nominated shall, within the period of ninety days, submit a report of such audit duly signed and certified by him to the said Assistant Commissioner mentioning therein such other particulars as may be specified:

Provided that the Assistant Commissioner may, on an application made to him in this behalf by the registered person or the chartered accountant or cost accountant or for any material and sufficient reason, extend the said period by a further period of ninety days.

(3) The provisions of sub-section (1) shall have effect notwithstanding that the accounts of the registered person have been audited under any other provisions of this Act or any other law for the time being in force.

(4) The registered person shall be given an opportunity of being heard in respect of any material gathered on the basis of special audit under sub-section (1) which is proposed to be used in any proceedings against him under this Act or the rules made thereunder.

(5) The expenses of the examination and audit of records under sub-section (1), including the remuneration of such chartered accountant or cost accountant, shall be determined and paid by the Commissioner and such determination shall be final.

(6) Where the special audit conducted under sub-section (1) results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilised, the proper officer may initiate action under section 73 or section 74.

67. Power of inspection, search and seizure.

(1) Where the proper officer, not below the rank of Joint Commissioner, has reasons to believe that—

(a) a 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 input tax credit in excess of his entitlement under this Act or has indulged in contravention of any of the provisions of this Act or the rules made thereunder to evade tax under this Act; or

(b) any person engaged in the business of transporting goods or an owner or operator of a warehouse or a godown or any other place is keeping 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 under this Act, he may authorise in writing any other officer of central tax to inspect any places of business of the taxable person or the persons engaged in the business of transporting goods or the owner or the operator of warehouse or godown or any other place.

(2) Where the proper officer, not below the rank of Joint Commissioner, either pursuant to an inspection carried out under sub-section (1) or otherwise, has reasons to believe that any goods liable to confiscation or any documents or books or things, which in his opinion shall be useful for or relevant to any proceedings under this Act, are secreted in any place, he may authorise in

writing any other officer of central tax to search and seize or may himself search and seize such goods, documents or books or things:

Provided that where it is not practicable to seize any such goods, the proper officer, or any officer authorised by him, may serve on the owner or the custodian of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer:

Provided further that the documents or books or things so seized shall be retained by such officer only for so long as may be necessary for their examination and for any inquiry or proceedings under this Act.

(3) The documents, books or things referred to in sub-section (2) or any other documents, books or things produced by a taxable person or any other person, which have not been relied upon for the issue of notice under this Act or the rules made thereunder, shall be returned to such person within a period not exceeding thirty days of the issue of the said notice.

(4) The officer authorised under sub-section (2) shall have the power to seal or break open the door of any premises or to break open any *almirah*, electronic devices, box, receptacle in which any goods, accounts, registers or documents of the person are suspected to be concealed, where access to such premises, *almirah*, electronic devices, box or receptacle is denied.

(5) The person from whose custody any documents are seized under subsection (2) shall be entitled to make copies thereof or take extracts therefrom in the presence of an authorised officer at such place and time as such officer may indicate in this behalf except where making such copies or taking such extracts may, in the opinion of the proper officer, prejudicially affect the investigation.

(6) The goods so seized under sub-section (2) shall be released, on a provisional basis, upon execution of a bond and furnishing of a security, in such manner and of such quantum, respectively, as may be prescribed or on payment of applicable tax, interest and penalty payable, as the case may be.

(7) Where any goods are seized under sub-section (2) and no notice in respect thereof is given within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized:

Provided that the period of six months may, on sufficient cause being shown, be extended by the proper officer for a further period not exceeding six months.

(8) The Government may, having regard to the perishable or hazardous nature of any goods, depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or any other relevant considerations, by notification, specify the goods or class of goods which shall,

as soon as may be after its seizure under sub-section (2), be disposed of by the proper officer in such manner as may be prescribed.

(9) Where any goods, being goods specified under sub-section (8), have been seized by a proper officer, or any officer authorised by him under sub-section (2), he shall prepare an inventory of such goods in such manner as may be prescribed.

(10) The provisions of the Code of Criminal Procedure, 1973, relating to search and seizure, shall, so far as may be, apply to search and seizure under this section subject to the modification that sub-section (5) of section 165 of the said Code shall have effect as if for the word "Magistrate", wherever it occurs, the word "Commissioner" were substituted.

(11) Where the proper officer has reasons to believe that any person has evaded or is attempting to evade the payment of any tax, he may, for reasons to be recorded in writing, seize the accounts, registers or documents of such person produced before him and shall grant a receipt for the same, and shall retain the same for so long as may be necessary in connection with any proceedings under this Act or the rules made thereunder for prosecution.

(12) The Commissioner or an officer authorised by him may cause purchase of any goods or services or both 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, and on return of goods so purchased by such officer, such taxable person or any person in charge of the business premises shall refund the amount so paid towards the goods after cancelling any tax invoice or bill of supply issued earlier.

68. Inspection of goods in movement.

(1) The Government may require the person in charge of a conveyance carrying any consignment of goods of value exceeding such amount as may be specified to carry with him such documents and such devices as may be prescribed.

(2) The details of documents required to be carried under sub-section (1) shall be validated in such manner as may be prescribed.

(3) Where any conveyance referred to in sub-section (1) is intercepted by the proper officer at any place, he may require the person in charge of the said conveyance to produce the documents prescribed under the said sub-section and devices for verification, and the said person shall be liable to produce the documents and devices and also allow the inspection of goods.

69. Power to arrest.—

(1) Where the Commissioner has reasons to believe that a person has committed any offence specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-

section (1) of section 132 which is punishable under clause (i) or (ii) of sub-section (1), or sub-section (2) of the said section, he may, by order, authorise any officer of central tax to arrest such person.

(2) Where a person is arrested under sub-section (1) for an offence specified under sub-section (5) of section 132, the officer authorised to arrest the person shall inform such person of the grounds of arrest and produce him before a Magistrate within twenty four hours.

(3) Subject to the provisions of the Code of Criminal Procedure, 1973,—

- (a) where a person is arrested under sub-section (1) for any offence specified under sub-section (4) of section 132, he shall be admitted to bail or in default of bail, forwarded to the custody of the Magistrate;
- (b) in the case of a non-cognizable and bailable offence, the Deputy Commissioner or the Assistant Commissioner shall, for the purpose of releasing an arrested person on bail or otherwise, have the same powers and be subject to the same provisions as an officer-in-charge of a police station.

70. Power to summon persons to give evidence and produce documents

- (1) 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 under the provisions of the Code of Civil Procedure, 1908.
- (2) Every such inquiry referred to in sub-section (1) shall be deemed to be a “judicial proceedings” within the meaning of section 193 and section 228 of the Indian Penal Code.

71. Access to business premises.—

- (1) Any officer under this Act, authorised by the proper officer not below the rank of Joint Commissioner, shall have access to any place of business of a registered person to inspect books of account, documents, computers, computer programs, computer software whether installed in a computer or otherwise and such other things as he may require and which may be available at such place, for the purposes of carrying out any audit, scrutiny, verification and checks as may be necessary to safeguard the interest of revenue.
- (2) Every person in charge of place referred to in sub-section (1) shall, on demand, make available to the officer authorised under sub-section (1) or the audit

party deputed by the proper officer or a cost accountant or chartered accountant nominated under section 66—

(i) such records as prepared or maintained by the registered person and declared to the proper officer in such manner as may be prescribed;

(ii) trial balance or its equivalent;

(iii) statements of annual financial accounts, duly audited, wherever required;

(iv) cost audit report, if any, under section 148 of the Companies Act, 2013;

(v) the income-tax audit report, if any, under section 44AB of the Income-tax

Act, 1961; and

(vi) any other relevant record,

for the scrutiny by the officer or audit party or the chartered accountant or cost accountant within a period not exceeding fifteen working days from the day when such demand is made, or such further period as may be allowed by the said officer or the audit party or the chartered accountant or cost accountant.

72. Officers to assist proper officers.—

- (1) All officers of Police, Railways, Customs, and those officers engaged in the collection of land revenue, including village officers, officers of State tax and officers of Union territory tax shall assist the proper officers in the implementation of this Act.
- (2) The Government may, by notification, empower and require any other class of officers to assist the proper officers in the implementation of this Act when called upon to do so by the Commissioner.

73. Determination of tax not paid... for any reason other than fraud or any wilful-misstatement or suppression of facts.

- (1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for any reason, other than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to

why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty leviable under the provisions of this Act or the rules made thereunder.

(2) The proper officer shall issue the notice under sub-section (1) at least three months prior to the time limit specified in sub-section (10) for issuance of order.

(3) Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax.

(4) The service of such statement shall be deemed to be service of notice on such person under sub-section (1), subject to the condition that the grounds relied upon for such tax periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.

(5) The person chargeable with tax may, before service of notice under subsection (1) or, as the case may be, the statement under sub-section (3), pay the amount of tax along with interest payable thereon under section

50 on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

- (6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1) or, as the case may be, the statement under sub-section (3), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.
- (7) Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.
- (8) Where any person chargeable with tax under sub-section (1) or sub-section (3) pays the said tax along with interest payable under section 50 within thirty days of issue of show cause notice, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded.
- (9) The proper officer shall, after considering the representation, if any, made by person chargeable with tax, determine the amount of tax, interest and a penalty equivalent to ten per cent. of tax or ten thousand rupees, whichever is higher, due from such person and issue an order.
- (10) The proper officer shall issue the order under sub-section (9) within three years from the due date for furnishing of annual return for the financial year

to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within three years from the date of erroneous refund.

- (11) Notwithstanding anything contained in sub-section (6) or sub-section (8), penalty under sub-section (9) shall be payable where any amount of self-assessed tax or any amount collected as tax has not been paid within a period of thirty days from the due date of payment of such tax.

Author Comment

Section 73 of the CGST Act is with respect to determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason other than fraud or any wilful misstatement or suppression of facts. This section key from the perspective of demand as no liability can be demanded unless SCN is issued. In Pre-GST regime similar provisions were in Finance Act, 1994. However, following key differences are required to be taken in to consideration with respect to Pre-GST provisions Vs Post GST provisions.

Subject	ST	GST
Section	73	73 and 74
Reason of SCN	Service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded	Tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilized
Time Limit of SCN	2.5 Years [not involving fraud etc] 5 years [Involving fraud etc]	3 months before the time limit for passing order [not involving fraud etc] [for 17-18 last date 07.11.2022] 6 months before the time limit for passing order [Involving fraud etc]] [for 17-18 last date 07.08.2024]
Time limit for issuance of Order	6 month from the date of notice [not involving fraud etc] 1 Year [Involving fraud etc]	3 years from the due date of annual return [not involving fraud etc] [for 17-18 due date AR -February 7, 2020 last date 07.02.2023] 5 years from the due of annual return [Involving fraud etc] [for 17-18 last date 07.02.2025]

74. Determination of tax not paid....by reason of fraud or any willful- misstatement or suppression of facts.—

(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.

(2) The proper officer shall issue the notice under sub-section (1) at least six months prior to the time limit specified in sub-section (10) for issuance of order.

(3) Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not

paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax.

(4) The service of statement under sub-section (3) shall be deemed to be service of notice under sub-section (1) of section 73, subject to the condition that the grounds relied upon in the said statement, except the ground of fraud, or any wilful-misstatement or suppression of facts to evade tax, for periods other than those covered under subsection (1) are the same as are mentioned in the earlier notice.

(5) The person chargeable with tax may, before service of notice under sub-section (1), pay the amount of tax along with interest payable under section 50 and a penalty equivalent to fifteen per cent. of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

(6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.

(7) Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall

proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.

(8) Where any person chargeable with tax under sub-section (1) pays the said tax along with interest payable under section 50 and a penalty equivalent to twenty-five per cent. of such tax within thirty days of issue of the notice, all proceedings in respect of the said notice shall be deemed to be concluded.

(9) The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order.

(10) The proper officer shall issue the order under sub-section (9) within a period of five years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within five years from the date of erroneous refund.

(11) Where any person served with an order issued under sub-section (9) pays the tax along with interest payable thereon under section 50 and a penalty equivalent to fifty per cent. of such tax within thirty days of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded.

Explanation 1.—For the purposes of section 73 and this section,—

(i) the expression —all proceedings in respect of the said notice|| shall not include proceedings under section 132;

(ii) where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under section 73 or section 74, the proceedings against all the persons liable to pay penalty under sections 122, 125, 129 and 130 are deemed to be concluded.

Explanation 2.—For the purposes of this Act, the expression “suppression” shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer.

Author Comment

Section 74 of the CGST Act is with respect to determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any wilful-misstatement or

suppression of facts. Thus, no liability can be raised unless SCN is issued. In Pre-GST regime similar provisions were in Finance Act, 1994. However, following key differences are required to be taken in to consideration with respect to Pre-GST provisions Vs Post GST provisions

Subject	ST	GST
Section	73	73 and 74
Reason of SCN	Service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded	Tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilized
Time Limit of SCN	2.5 Years [not involving fraud etc] 5 years [Involving fraud etc]	3 months before the time limit for passing order [not involving fraud etc] [for 17-18 last date 07.11.2022] 6 months before the time limit for passing order [Involving fraud etc]] [for 17-18 last date 07.08.2024]

Time limit for issuance of Order	6 month from the date of notice [not involving fraud etc] 1 Year [Involving fraud etc]	3 years from the due date of annual return [not involving fraud etc] [for 17-18 due date AR -February 7, 2020 last date 07.02.2023] 5 years from the due of annual return [Involving fraud etc] [for 17-18 last date 07.02.2025]
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Recently, Section 74 is proposed to be amended so as to make Seizure and Confiscation of goods and conveyances in transit separate from recovery of tax.

Clause 104 of the Bill seeks to amend section 74 of the Central Goods and Services Tax Act so as to make seizure and confiscation of goods and conveyances in transit a separate proceeding from the recovery of tax

This means conclusion of proceedings will now lead to conclusion of proceedings under section 73 or 74 and proceedings under section 122 and 125, however will not lead to conclusion of proceedings under section 129 and 130 of the CGST Act.

75. General provisions relating to determination of tax

(1) Where the service of notice or issuance of order is stayed by an order of a court or Appellate Tribunal, the period of such stay shall be excluded in computing the period specified in sub-sections (2) and (10) of section 73 or sub-sections (2) and (10) of section 74, as the case may be.

(2) Where any Appellate Authority or Appellate Tribunal or court concludes that the notice issued under sub-section (1) of section 74 is not sustainable for the reason that the charges of fraud or any wilful-misstatement or suppression of facts to evade tax has not been established against the person to whom the notice was issued, the proper officer shall determine the tax payable by such person, deeming as if the notice were issued under sub-section (1) of section 73.

(3) Where any order is required to be issued in pursuance of the direction of the Appellate Authority or Appellate Tribunal or a court, such order shall be issued within two years from the date of communication of the said direction.

(4) An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person.

(5) The proper officer shall, if sufficient cause is shown by the person chargeable with tax, grant time to the said person and adjourn the hearing for reasons to be recorded in writing:

Provided that no such adjournment shall be granted for more than three times to a person during the proceedings.

(6) The proper officer, in his order, shall set out the relevant facts and the basis of his decision.

(7) The amount of tax, interest and penalty demanded in the order shall not be in excess of the amount specified in the notice and no demand shall be confirmed on the grounds other than the grounds specified in the notice.

(8) Where the Appellate Authority or Appellate Tribunal or court modifies the amount of tax determined by the proper officer, the amount of interest and penalty shall stand modified accordingly, taking into account the amount of tax so modified.

(9) The interest on the tax short paid or not paid shall be payable whether or not specified in the order determining the tax liability.

(10) The adjudication proceedings shall be deemed to be concluded, if the order

is not issued within three years as provided for in sub-section (10) of section 73 or within five years as provided for in sub-section (10) of section 74.

(11) An issue on which the Appellate Authority or the Appellate Tribunal or the High Court has given its decision which is prejudicial to the interest of revenue in some other proceedings and an appeal to the Appellate Tribunal or the High Court or the Supreme Court against such decision of the Appellate Authority or the Appellate Tribunal or the High Court is pending, the period spent between the date of the decision of the Appellate Authority and that of the Appellate Tribunal or the date of decision of the Appellate Tribunal and that of the High Court or the date of the decision of the High Court and that of the Supreme Court shall be excluded in computing the period referred to in subsection (10) of section 73 or sub-section (10) of section 74 where proceedings are initiated by way of issue of a show cause notice under the said sections.

(12) Notwithstanding anything contained in section 73 or section 74, where any amount of self-assessed tax in accordance with a return furnished under section 39 remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be recovered under the provisions of section 79.

- (13) Where any penalty is imposed under section 73 or section 74, no penalty for the same act or omission shall be imposed on the same person under any other provision of this Act.

Author Comment

Section 75 of the CGST Act is with respect to General provisions relating to determination of tax. Section 75 of the CGST Act proposed to be amended so that self-assessed tax will also include the outward supplies shown as per the statement of outward supplies u/s. 37 i.e outward supplies as per GSTR-1 is higher than GSTR-3B.

Notes to clause with respect to this clause read as

Clause 105 of the Bill seeks to amend section 75 of the Central Goods and Services Tax Act so as to insert an Explanation in sub-section (12) to clarify that “self-assessed tax” shall include the tax payable in respect of details of outward supplies furnished under section 37, but not included in the return furnished under section 39.

76. Tax collected but not paid to Government.

(1) Notwithstanding anything to the contrary contained in any order or direction of any Appellate Authority or Appellate Tribunal or court or in any other provisions of this Act or the rules made thereunder or any other law for the time being in force, every person who has collected from any other person any amount as representing the tax under this Act, and has not paid the said amount to the Government, shall forthwith pay the said amount to the Government, irrespective of whether the supplies in respect of which such amount was collected are taxable or not.

(2) Where any amount is required to be paid to the Government under sub-section (1), and which has not been so paid, the proper officer may serve on the person liable to pay such amount a notice requiring him to show cause as to why the said amount as specified in the notice, should not be paid by him to the Government and why a penalty equivalent to the amount specified in the notice should not be imposed on him under the provisions of this Act.

(3) The proper officer shall, after considering the representation, if any, made by the person on whom the notice is served under sub-section (2), determine the amount due from such person and thereupon such person shall pay the amount so determined.

(4) The person referred to in sub-section (1) shall in addition to paying the amount referred to in sub-section (1) or sub-section (3) also be liable to pay interest thereon at the rate specified under section 50 from the date such amount was collected by him to the date such amount is paid by him to the Government.

(5) An opportunity of hearing shall be granted where a request is received in writing from the person to whom the notice was issued to show cause.

(6) The proper officer shall issue an order within one year from the date of issue of the notice.

(7) Where the issuance of order is stayed by an order of the court or Appellate Tribunal, the period of such stay shall be excluded in computing the period of one year.

(8) The proper officer, in his order, shall set out the relevant facts and the basis of his decision.

(9) The amount paid to the Government under sub-section (1) or sub-section (3) shall be adjusted against the tax payable, if any, by the person in relation to the supplies referred to in sub-section (1).

(10) Where any surplus is left after the adjustment under sub-section (9), the amount of such surplus shall either be credited to the Fund or refunded to the person who has borne the incidence of such amount.

(11) The person who has borne the incidence of the amount, may apply for the refund of the same in accordance with the provisions of section 54.

77. Tax wrongfully collected and paid to Central Government or State Government

(1) A registered person who has paid the Central tax and State tax or, as the case may be, the Central tax and the Union territory tax on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall be refunded the amount of taxes so paid in such manner and subject to such conditions as may be prescribed.

(2) A registered person who has paid integrated tax on a transaction considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall not be required to pay any interest on the amount of central tax and State tax or, as the case may be, the Central tax and the Union territory tax payable.

78. Initiation of recovery proceedings

Any amount payable by a taxable person in pursuance of an order passed under this Act shall be paid by such person within a period of three months from the date of service of such order failing which recovery proceedings shall be initiated:

Provided that where the proper officer considers it expedient in the interest of revenue, he may, for reasons to be recorded in writing, require the said taxable person to make such payment within such period less than a period of three months as may be specified by him.

79. Recovery of tax

(1) Where any amount payable by a person to the Government under any of the provisions of this Act or the rules made thereunder is not paid, the proper officer shall proceed to recover the amount by one or more of the following modes, namely:—

(a) the proper officer may deduct or may require any other specified officer to deduct the amount so payable from any money owing to such person which may be under the control of the proper officer or such other specified officer;

(b) the proper officer may recover or may require any other specified officer to recover the amount so payable by detaining and selling

any goods belonging to such person which are under the control of the proper officer or such other specified officer;

(c) (i) the proper officer may, by a notice in writing, require any other person from whom money is due or may become due to such person or who holds or may subsequently hold money for or on account of such person, to pay to the Government either forthwith upon the money becoming due or being held, or within the time specified in the notice not being before the money becomes due or is held, so much of the money as is sufficient to pay the amount due from such person or the whole of the money when it is equal to or less than that amount;

(ii) every person to whom the notice is issued under sub-clause (i) shall be bound to comply with such notice, and in particular, where any such notice is issued to a post office, banking company or an insurer, it shall not be necessary to produce any pass book, deposit receipt, policy or any other document for the purpose of any entry, endorsement or the like being made before payment is made, notwithstanding any rule, practice or requirement to the contrary;

(iii) in case the person to whom a notice under sub-clause (i) has been issued, fails to make the payment in pursuance thereof to the Government, he shall be deemed to be a defaulter in respect of the amount specified in the

notice and all the consequences of this Act or the rules made thereunder shall follow;

(iv) the officer issuing a notice under sub-clause (i) may, at any time, amend or revoke such notice or extend the time for making any payment in pursuance of the notice;

(v) any person making any payment in compliance with a notice issued under sub-clause (i) shall be deemed to have made the payment under the authority of the person in default and such payment being credited to the Government shall be deemed to constitute a good and sufficient discharge of the liability of such person to the person in default to the extent of the amount specified in the receipt;

(vi) any person discharging any liability to the person in default after service on him of the notice issued under sub-clause (i) shall be personally liable to the Government to the extent of the liability discharged or to the extent of the liability of the person in default for tax, interest and penalty, whichever is less;

(vii) where a person on whom a notice is served under sub-clause (i) proves to the satisfaction of the officer issuing the notice that the money demanded or any part thereof was not due to the person in default or that he did not hold any money for or on

(d) the proper officer may, in accordance with the rules to be made in this behalf, distrain any movable or immovable property belonging to or under the control of such person, and detain the same until the amount payable is paid; and in case, any part of the said amount payable or of the cost of the distress or keeping of the property, remains unpaid for a period of thirty days next after any such distress, may cause the said property to be sold and with the proceeds of such sale, may satisfy the amount payable and the costs including cost of sale remaining unpaid and shall render the surplus amount, if any, to such person;

(e) the proper officer may prepare a certificate signed by him specifying the amount due from such person and send it to the Collector of the district in which such person owns any property or resides or carries on his business or to any officer authorised by the Government and the said Collector or the said officer, on receipt of such certificate, shall proceed to recover from such person the amount specified thereunder as if it were an arrear of land revenue;

(f) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the proper officer may file an application to the appropriate Magistrate and such Magistrate shall proceed to recover from such person the amount specified thereunder as if it were a fine imposed by him.

(2) Where the terms of any bond or other instrument executed under this Act or any rules or regulations made thereunder provide that any amount due under such instrument may be recovered in the manner laid down in sub-section (1), the amount may, without prejudice to any other mode of recovery, be recovered in accordance with the provisions of that sub-section.

(3) Where any amount of tax, interest or penalty is payable by a person to the Government under any of the provisions of this Act or the rules made thereunder and which remains unpaid, the proper officer of State tax or Union territory tax, during the course of recovery of said tax arrears, may recover the amount from the said person as if it were an arrear of State tax or Union territory tax and credit the amount so recovered to the account of the Government.

(4) Where the amount recovered under sub-section (3) is less than the amount due to the Central Government and State Government, the amount to be credited to the account of the respective Governments shall be in proportion to the amount due to each such Government.

*[Explanation.—*For the purposes of this section, the word person shall include “distinct persons” as referred to in sub-section (4) or, as the case may be, sub-section (5) of section 25.]⁹⁷

80. Payment of tax and other amount in instalments.

On an application filed by a taxable person, the Commissioner may, for reasons to be recorded in writing, extend the time for payment or allow payment of any amount due under this Act, other than the amount due as per the liability self-assessed in any return, by such person in monthly instalments not exceeding twenty four, subject to payment of interest under section 50 and subject to such conditions and limitations as may be prescribed:

Provided that where there is default in payment of any one instalment on its due date, the whole outstanding balance payable on such date shall become due and payable forthwith and shall, without any further notice being served on the person, be liable for recovery.

81. Transfer of property to be void in certain cases.

Where a person, after any amount has become due from him, creates a charge on or parts with the property belonging to him or in his possession by way of sale, mortgage, exchange, or any other mode of transfer whatsoever of any of

⁹⁷ Inserted by The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018) –Brought into force w.e.f. 01st February, 2019.

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:

Provided that, such charge or transfer shall not be void if it is made for adequate consideration, in good faith and without notice of the pendency of such proceedings under this Act or without notice of such tax or other sum payable by the said person, or with the previous permission of the proper officer.

82. Tax to be first charge on property.

Notwithstanding anything to the contrary contained in any law for the time being in force, save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, any amount payable by a taxable person or any other person on account of tax, interest or penalty which he is liable to pay to the Government shall be a first charge on the property of such taxable person or such person.

83. Provisional attachment to protect revenue in certain cases.

- (1) Where during the pendency of any proceedings under section 62 or section 63 or section 64 or section 67 or section 73 or section 74, 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 in such manner as may be prescribed.

- (2) Every such provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the order made under sub-section (1).

Author Comment

Section 83 of the CGST Act empower the Authorities to attach provisionally any property, including bank account, belonging to the taxable person during the pendency of any proceedings under section 62 or section 63 or section 64 or section 67 or section 73 or section 74 if the Commissioner is of the opinion it is essential for the purpose of protecting the interest of the Government revenue.

However, practical approach of the Authorities is more aggressive than the power prescribed under this section and rules thereunder. Some of the court observations are key and required to taken in to consideration while handling litigation are as given below

<u>Case</u>	<u>Facts</u>	<u>Observation</u>
M/s. Radha Krishan Industries [2021-TIOL-179-SC-GST]		the power to order a provisional attachment of the property, including a bank account, is draconian

		<p>in nature and the conditions which are prescribed by the statute for a valid exercise of the power must be strictly fulfilled</p>
<p>SPNN Business Services (P.) [[W.P.(C) NO. 2435 OF 2021]</p>	<p>Writ for interim directions for lifting the provisional attachment so that the subject bank accounts could become operable, and able to pay the salaries</p>	<p>The Hon'ble Delhi High Court directed the Respondent to permit the Petitioner to collect a sum of Rs. 2 crores from bank accounts provisionally attached by the GST Dept, to pay salaries of employees.</p>
<p>Fine Exime Pvt Ltd [2021-TIOL-1703-HC-MUM-GST]</p>	<p>Petitioner had invoked the writ jurisdiction of this Court for quashing of order dated December 1, 2020 on</p>	<p><i>The order of provisional attachment was made not during pendency of any proceedings under Sections 62 or 63 or 64 or 67 or 73 or 74 of</i></p>

	the ground that the condition precedent for provisional attachment of a bank account was non-existent	<i>the CGST Act but was made in view of contemplation of proceedings under Section 73 thereof.</i>
M/s S S OFFSHORE PVT LTD [2021-TIOL-1641-HC-MUM-GST]	No proceedings are pending under Sections 62 or 63 or 64 or 67 or 73 or 74 of the CGST Act and, therefore, the jurisdictional fact for invocation of the power conferred by Section 83 of the CGST Act read with Rule 159(1) of the CGST Rules did not exist;	No proceedings under Sections 62 or 63 or 64 or 67 or 73 or 74 of the CGST Act were pending against the petitioner and, therefore, the order of provisional attachment of its bank account is illegal.

Further, recently via Finance Act 2021 subsection (1) of Section 83 is substituted to widen the ambit of provisional attachment by way of substitution of section by chapters of the CGST Act. In this regard, notes to clauses read as,

Clause 106 of the Bill seeks to substitute sub-section (1) of section 83 of the Central Goods and Services Tax Act so as to provide that provisional attachment shall remain valid for the entire period starting from the initiation of any proceeding under Chapter XII, Chapter XIV or Chapter XV till the expiry of a period of one year from the date of order made thereunder.

Thus, earlier only in case of prescribed section authorities can provisionally attach bank account. However, now proposed amendment empower the officer to attach bank or property in case of proceeding under any sections of Chapter XII, Chapter XIV or Chapter XV. At present also, we observed that bank accounts are getting attached even for genuine cases and Authorities are misusing said powers. Going forward, using the power of bank attachment could increase and thus required to be extra careful while handling litigations.

84. Continuation and validation of certain recovery proceedings

Where any notice of demand in respect of any tax, penalty, interest or any other amount payable under this Act, (hereafter in this section referred to as “Government dues”, is served upon any taxable person or any other person and any appeal or revision application is filed or any other proceedings is initiated in respect of such Government dues, then

(a) where such Government dues are enhanced in such appeal, revision or other proceedings, the Commissioner shall serve upon the taxable person or any other person another notice of demand in respect of the amount by which such Government dues are enhanced and any recovery proceedings in relation to such Government dues as are covered by the notice of demand served upon him before the disposal of such appeal, revision or other proceedings may, without the service of any fresh notice of demand, be continued from the stage at which such proceedings stood immediately before such disposal;

(b) where such Government dues are reduced in such appeal, revision or in other proceedings—

(i) it shall not be necessary for the Commissioner to serve upon the taxable person a fresh notice of demand;

(ii) the Commissioner shall give intimation of such reduction to him and to the appropriate authority with whom recovery proceedings is pending;

(iii) 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.

85. Liability in case of transfer of business.

- (1) Where a taxable person, liable to pay tax under this Act, transfers his business in whole or in part, by sale, gift, lease, leave and license, hire or in any other manner whatsoever, the taxable person and the person to whom the business is so transferred shall, jointly and severally, be liable wholly or to the extent of such transfer, to pay the tax, interest or any penalty due from the taxable person upto the time of such transfer, whether such tax, interest or penalty has been determined before such transfer, but has remained unpaid or is determined thereafter.

- (2) Where the transferee of a business referred to in sub-section (1) carries on such business either in his own name or in some other name, he shall be liable to pay tax on the supply of goods or services or both effected by him with effect from the date of such transfer and shall, if he is a registered person under this Act, apply within the prescribed time for amendment of his certificate of registration.

86. Liability of agent and principal.

Where an agent supplies or receives any taxable goods on behalf of his principal, such agent and his principal shall, jointly and severally, be liable to pay the tax payable on such goods under this Act.

87. Liability in case of amalgamation or merger of companies

- (1) When two or more companies are amalgamated or merged in pursuance of an order of court or of Tribunal or otherwise and the order is to take effect from a date earlier to the date of the order and any two or more of such companies have supplied or received any goods or services or both to or from each other during the period commencing on the date from which the order takes effect till the date of the order, then such transactions of supply and receipt shall be included in the turnover of supply or receipt of the respective companies and they shall be liable to pay tax accordingly.
- (2) Notwithstanding anything contained in the said order, for the purposes of this Act, the said two or more companies shall be treated as distinct companies for the period up to the date of the said order and the registration certificates of the said companies shall be cancelled with effect from the date of the said order.

88. Liability in case of company in liquidation. —

- (1) When any company is being wound up whether under the orders of a court or Tribunal or otherwise, every person appointed as receiver of any assets of a company (hereafter in this section referred to as the —liquidator)), shall, within thirty days after his appointment, give intimation of his appointment to the Commissioner.
- (2) The Commissioner shall, after making such inquiry or calling for such information as he may deem fit, notify the liquidator within three months

from the date on which he receives intimation of the appointment of the liquidator, the amount which in the opinion of the Commissioner would be sufficient to provide for any tax, interest or penalty which is then, or is likely thereafter to become, payable by the company.

- (3) When any private company is wound up and any tax, interest or penalty determined under this Act on the company for any period, whether before or in the course of or after its liquidation, cannot be recovered, then every person who was a director of such company at any time during the period for which the tax was due shall, jointly and severally, be liable for the payment of such tax, interest or penalty, unless he proves to the satisfaction of the Commissioner that such non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

89. Liability of directors of private company.—

- (1) Notwithstanding anything contained in the Companies Act, 2013, where any tax, interest or penalty due from a private company in respect of any supply of goods or services or both for any period cannot be recovered, then, every person who was a director of the private company during such period shall, jointly and severally, be liable for the payment of such tax, interest or penalty unless he proves that the non-recovery cannot be attributed to any gross

neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

- (2) Where a private company is converted into a public company and the tax, interest or penalty in respect of any supply of goods or services or both for any period during which such company was a private company cannot be recovered before such conversion, then, nothing contained in sub-section (1) shall apply to any person who was a director of such private company in relation to any tax, interest or penalty in respect of such supply of goods or services or both of such private company:

Provided that nothing contained in this sub-section shall apply to any personal penalty imposed on such director.

90. Liability of partners of firm to pay tax.

Notwithstanding any contract to the contrary and any other law for the time being in force, where any firm is liable to pay any tax, interest or penalty under this Act, the firm and each of the partners of the firm shall, jointly and severally, be liable for such payment:

Provided that where any partner retires from the firm, he or the firm, shall intimate the date of retirement of the said partner to the Commissioner by a notice in that behalf in writing and such partner shall be liable to pay tax, interest or penalty due up to the date of his retirement whether determined or not, on that date:

Provided further that if no such intimation is given within one month from the date of retirement, the liability of such partner under the first proviso shall continue until the date on which such intimation is received by the Commissioner.

91. Liability of guardians, trustees, etc.

Where the business in respect of which any tax, interest or penalty is payable under this Act is carried on by any guardian, trustee or agent of a minor or other incapacitated person on behalf of and for the benefit of such minor or other incapacitated person, the tax, interest or penalty shall be levied upon and recoverable from such guardian, trustee or agent in like manner and to the same extent as it would be determined and recoverable from any such minor or other incapacitated person, as if he were a major or capacitated person and as if he were conducting the business himself, and all the provisions of this Act or the rules made thereunder shall apply accordingly.

92. Liability of Court of Wards, etc.

Where the estate or any portion of the estate of a taxable person owning a business in respect of which any tax, interest or penalty is payable under this Act is under the control of the Court of Wards, the Administrator General, the Official Trustee or any receiver or manager (including any person, whatever be

his designation, who in fact manages the business) appointed by or under any order of a court, the tax, interest or penalty shall be levied upon and be recoverable from such Court of Wards, Administrator General, Official Trustee, receiver or manager in like manner and to the same extent as it would be determined and be recoverable from the taxable person as if he were conducting the business himself, and all the provisions of this Act or the rules made thereunder shall apply accordingly.

93. Special provisions regarding liability to pay tax, interest or penalty in certain cases.

(1) Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, where a person, liable to pay tax, interest or penalty under this Act, dies, then—

—

(a) if a business carried on by the person is continued after his death by his legal representative or any other person, such legal representative or other person, shall be liable to pay tax, interest or penalty due from such person under this Act; and

(b) if the business carried on by the person is discontinued, whether before or after his death, his legal representative shall be liable to pay, out of the estate of the deceased, to the extent to which the estate is capable of meeting the charge, the tax, interest or penalty due from such person under

this Act, whether such tax, interest or penalty has been determined before his death but has

remained unpaid or is determined after his death.

(2) Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, where a taxable person, liable to pay tax, interest or penalty under this Act, is a Hindu Undivided Family or an association of persons and the property of the Hindu Undivided Family or the association of persons is partitioned amongst the various members or groups of members, then, each member or group of members shall, jointly and severally, be liable to pay the tax, interest or penalty due from the taxable person under this Act up to the time of the partition whether such tax, penalty or interest has been determined before partition but has remained unpaid or is determined after the partition.

(3) Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, where a taxable person, liable to pay tax, interest or penalty under this Act, is a firm, and the firm is dissolved, then, every person who was a partner shall, jointly and severally, be liable to pay the tax, interest or penalty due from the firm under this Act up to the time of dissolution whether such tax, interest or penalty has been determined before the dissolution, but has remained unpaid or is determined after dissolution.

(4) Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, where a taxable person liable to pay tax, interest or penalty under this Act,—

(a) is the guardian of a ward on whose behalf the business is carried on by the guardian; or

(b) is a trustee who carries on the business under a trust for a beneficiary, then, if the guardianship or trust is terminated, the ward or the beneficiary shall be liable to pay the tax, interest or penalty due from the taxable person upto the time of the termination of the guardianship or trust, whether such tax, interest or penalty has been determined before the termination of guardianship or trust but has remained unpaid or is determined thereafter.

94. Liability in other cases.

(1) Where a taxable person is a firm or an association of persons or a Hindu Undivided Family and such firm, association or family has discontinued business—

(a) the tax, interest or penalty payable under this Act by such firm, association or family up to the date of such discontinuance may be determined as if no such discontinuance had taken place; and

(b) every person who, at the time of such discontinuance, was a partner of such firm, or a member of such association or family, shall, notwithstanding such discontinuance, jointly and severally, be liable for the payment of tax and interest determined and penalty imposed and payable by such firm, association or family, whether such tax and interest has been determined or penalty imposed prior to or after such discontinuance and subject as aforesaid, the provisions of this Act shall, so far as may be, apply as if every such person or partner or member were himself a taxable person.

(2) 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, without prejudice to the provisions of section 90, jointly and severally, be liable to pay tax, interest or penalty due from such firm or association for any period before its reconstitution.

(3) The provisions of sub-section (1) shall, so far as may be, apply where the taxable person, being a firm or association of persons is dissolved or where the taxable person, being a Hindu Undivided Family, has effected partition with respect to the business carried on by it and accordingly

references in that sub-section to discontinuance shall be construed as reference to dissolution or to partition.

(4) *Explanation.* — For the purposes of this Chapter,—

(i) a ‘Limited Liability Partnership’ formed and registered under the provisions of the Limited Liability Partnership Act, 2008 shall also be considered as a firm;

(ii) ‘court’ means the District Court, High Court or Supreme Court.

95. Definitions of Advance Ruling

In this Chapter, unless the context otherwise requires,—

- (a) “advance ruling” means a decision provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant;
- (b) “Appellate Authority” means the Appellate Authority for Advance Ruling referred to in section 99;
- (c) “applicant” means any person registered or desirous of obtaining registration under this Act;
- (d) “application” means an application made to the Authority under sub-section (1) of section 97;
- (e) “Authority” means the Authority for Advance Ruling referred to in section 96;

96. Authority for advance ruling.

Subject to the provisions of this Chapter, for the purposes of this Act, the Authority for advance ruling constituted under the provisions of a State Goods and Services Tax Act or Union Territory Goods and Services Tax Act shall be

deemed to be the Authority for advance ruling in respect of that State or Union territory.

97. Application for advance ruling

(1) An applicant desirous of obtaining an advance ruling under this Chapter may make an application in such form and manner and accompanied by such fee as may be prescribed, stating the question on which the advance ruling is sought.

(2) The question on which the advance ruling is sought under this Act, shall be in respect of,—

- (a) classification of any goods or services or both;
- (b) applicability of a notification issued under the provisions of this Act;
- (c) determination of time and value of supply of goods or services or both;
- (d) admissibility of input tax credit of tax paid or deemed to have been paid;
- (e) determination of the liability to pay tax on any goods or services or both;

(f) whether applicant is required to be registered;

(g) whether any particular thing done by the applicant 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.

98. Procedure on receipt of application.—

- (1) On receipt of an application, the Authority shall cause a copy thereof to be forwarded to the concerned officer and, if necessary, call upon him to furnish the relevant records:

Provided that where any records have been called for by the Authority in any case, such records shall, as soon as possible, be returned to the said concerned officer.

- (2) The Authority may, after examining the application and the records called for and after hearing the applicant or his authorised representative and the concerned officer or his authorised representative, by order, either admit or reject the application:

Provided that the Authority shall not admit the application where the question raised in the application is already pending or decided in any proceedings in the case of an applicant under any of the provisions of this Act:

Provided further that no application shall be rejected under this sub-section unless an opportunity of hearing has been given to the applicant:

Provided also that where the application is rejected, the reasons for such rejection shall be specified in the order.

(3) A copy of every order made under sub-section (2) shall be sent to the applicant and to the concerned officer.

(4) Where an application is admitted under sub-section (2), the Authority shall, after examining such further material as may be placed before it by the applicant or obtained by the Authority and after providing an opportunity of being heard to the applicant or his authorised representative as well as to the concerned officer or his authorised representative, pronounce its advance ruling on the question specified in the application.

(5) Where the members of the Authority differ on any question on which the advance ruling is sought, they shall state the point or points on which they differ and make a reference to the Appellate Authority for hearing and decision on such question.

(6) The Authority shall pronounce its advance ruling in writing within ninety days from the date of receipt of application.

(7) A copy of the advance ruling pronounced by the Authority duly signed by the members and certified in such manner as may be prescribed shall

be sent to the applicant, the concerned officer and the jurisdictional officer after such pronouncement.

99. Appellate Authority for Advance Ruling

Subject to the provisions of this Chapter, for the purposes of this Act, the Appellate Authority for Advance Ruling constituted under the provisions of a State Goods and Services Tax Act or a Union Territory Goods and Services Tax Act shall be deemed to be the Appellate Authority in respect of that State or Union territory.

100. Appeal to Appellate Authority

- (1) The concerned officer, the jurisdictional officer or an applicant aggrieved by any advance ruling pronounced under sub-section (4) of section 98, may appeal to the Appellate Authority.

- (2) Every appeal under this section shall be filed within a period of thirty days from the date on which the ruling sought to be appealed against is communicated to the concerned officer, the jurisdictional officer and the applicant:

Provided that the Appellate Authority may, if it is satisfied that the appellant was prevented by a sufficient cause from presenting the appeal within the said period of thirty days, allow it to be presented within a further period not exceeding thirty days.

(3) Every appeal under this section shall be in such form, accompanied by such fee and verified in such manner as may be prescribed.

101. Orders of Appellate Authority

(1) The Appellate Authority may, after giving the parties to the appeal or reference an opportunity of being heard, pass such order as it thinks fit, confirming or modifying the ruling appealed against or referred to.

(2) The order referred to in sub-section (1) shall be passed within a period of ninety days from the date of filing of the appeal under section 100 or a reference under sub-section (5) of section 98.

(3) Where the members of the Appellate Authority differ on any point or points referred to in appeal or reference, it shall be deemed that no advance ruling can be issued in respect of the question under the appeal or reference.

(4) A copy of the advance ruling pronounced by the Appellate Authority duly signed by the Members and certified in such manner as may be prescribed shall be sent to the applicant, the concerned officer, the jurisdictional officer and to the Authority after such pronouncement.

102. Rectification of advance ruling.

The Authority or the Appellate Authority may amend any order passed by it under section 98 or section 101, so as to rectify any error apparent on the face

of the record, if such error is noticed by the Authority or the Appellate Authority on its own accord, or is brought to its notice by the concerned officer, the jurisdictional officer, the applicant or the appellant within a period of six months from the date of the order:

Provided that no rectification which has the effect of enhancing the tax liability or reducing the amount of admissible input tax credit shall be made unless the applicant or the appellant has been given an opportunity of being heard.

103. Applicability of advance ruling

- (1) The advance ruling pronounced by the Authority or the Appellate Authority under this Chapter shall be binding only—
 - (a) on the applicant who had sought it in respect of any matter referred to in sub-section (2) of section 97 for advance ruling;
 - (b) on the concerned officer or the jurisdictional officer in respect of the applicant.
- (2) The advance ruling referred to in sub-section (1) shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.

104. Advance ruling to be void in certain circumstances

- (1) Where the Authority or the Appellate Authority finds that advance ruling pronounced by it under sub-section (4) of section 98 or under sub-section (1) of section 101 has been obtained by the applicant or the appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void *ab-initio* and thereupon all the provisions of this Act or the rules made thereunder shall apply to the applicant or the appellant as if such advance ruling had never been made:

Provided that no order shall be passed under this sub-section unless an opportunity of being heard has been given to the applicant or the appellant.

Explanation.—The period beginning with the date of such advance ruling and ending with the date of order under this sub-section shall be excluded while computing the period specified in sub-sections (2) and (10) of section 73 or sub-sections (2) and (10) of section 74.

- (2) A copy of the order made under sub-section (1) shall be sent to the applicant, the concerned officer and the jurisdictional officer.

105. Powers of Authority and Appellate Authority

- (1) The Authority or the Appellate Authority shall, for the purpose of exercising its powers regarding—

- (a) discovery and inspection;
- (b) enforcing the attendance of any person and examining him on oath;
- (c) issuing commissions and compelling production of books of account and other records, have all the powers of a civil court under the Code of Civil Procedure, 1908.

(2) The Authority or the Appellate Authority shall be deemed to be a civil court for the purposes of section 195, but not for the purposes of Chapter XXVI of the Code of Criminal Procedure, 1973, and every proceeding before the Authority or the Appellate Authority shall be deemed to be a judicial proceedings within the meaning of sections 193 and 228, and for the purpose of section 196 of the Indian Penal Code.

106. Procedure of Authority and Appellate Authority

The Authority or the Appellate Authority shall, subject to the provisions of this Chapter, have power to regulate its own procedure.

107. Appeals to Appellate Authority

(1) Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person.

(2) The Commissioner may, on his own motion, or upon request from the Commissioner of State tax or the Commissioner of Union territory tax, call for and examine the record of any proceedings in which an adjudicating authority has passed any decision or order under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, for the purpose of satisfying himself as to the legality or propriety of the said decision or order and may, by order, direct any officer subordinate to him to apply to the Appellate Authority within six months from the date of communication of the said decision or order for the determination of such points arising out of the said decision or order as may be specified by the Commissioner in his order.

(3) Where, in pursuance of an order under sub-section (2), the authorised officer makes an application to the Appellate Authority, such application shall be dealt with by the Appellate Authority as if it were an appeal made against the decision or order of the adjudicating authority and such

authorised officer were an appellant and the provisions of this Act relating to appeals shall apply to such application.

(4) The Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months or six months, as the case may be, allow it to be presented within a further period of one month.

(5) Every appeal under this section shall be in such form and shall be verified in such manner as may be prescribed.

(6) No appeal shall be filed under sub-section (1), unless the appellant has paid—

(a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and

(b) a sum equal to ten per cent. of the remaining amount of tax in dispute arising from the said order, [subject to a maximum of twenty-five crore rupees]⁹⁸, in relation to which the appeal has been filed.

⁹⁸ Inserted by The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018) – Brought into force w.e.f. 01st February, 2019.

(7) Where the appellant has paid the amount under sub-section (6), the recovery proceedings for the balance amount shall be deemed to be stayed.

(8) The Appellate Authority shall give an opportunity to the appellant of being heard.

(9) The Appellate Authority may, if sufficient cause is shown at any stage of hearing of an appeal, grant time to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing: Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.

(10) The Appellate Authority may, at the time of hearing of an appeal, allow an appellant to add any ground of appeal not specified in the grounds of appeal, if it is satisfied that the omission of that ground from the grounds of appeal was not wilful or unreasonable.

(11) The Appellate Authority shall, after making such further inquiry as may be necessary, pass such order, as it thinks just and proper, confirming, modifying or annulling the decision or order appealed against but shall not refer the case back to the adjudicating authority that passed the said decision or order:

Provided that an order enhancing any fee or penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund or input tax credit shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed order:

Provided further that where the Appellate Authority is of the opinion that any tax has not been paid or short-paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised, no order requiring the appellant to pay such tax or input tax credit shall be passed unless the appellant is given notice to show cause against the proposed order and the order is passed within the time limit specified under section 73 or section 74.

(12) The order of the Appellate Authority disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for such decision.

(13) The Appellate Authority shall, where it is possible to do so, hear and decide every appeal within a period of one year from the date on which it is filed:

Provided that where the issuance of order is stayed by an order of a court or Tribunal, the period of such stay shall be excluded in computing the period of one year.

(14) On disposal of the appeal, the Appellate Authority shall communicate the order passed by it to the appellant, respondent and to the adjudicating authority.

(15) A copy of the order passed by the Appellate Authority shall also be sent to the jurisdictional Commissioner or the authority designated by him in this behalf and the jurisdictional Commissioner of State tax or Commissioner of Union Territory Tax or an authority designated by him in this behalf.

(16) Every order passed under this section shall, subject to the provisions of section 108 or section 113 or section 117 or section 118 be final and binding on the parties.

Author Comment

Section 107 of the CGST Act relates to provisions of appeals to Appellate Authority. In this regard, recently via Budget 2021, Section 107(6) inserted so that to revise pre-deposit for filling appeal before first appellate authority to 25% of the penalty imposed. Notes to clauses mention that,

Clause 107 of the Bill seeks to insert a new proviso in sub-section (6) of section 107 of the Central Goods and Services Tax Act so as to provide that no appeal shall be filed against an order made under sub-section (3) of section 129, unless a sum equal to twenty-five per cent. of the penalty has been paid by the appellant.

Before this amendment, the pre-deposit was only to the extent of 10% of Tax Liability in case of dispute which is now proposed to be 25% of the penalty amount in case of detention and seizure of conveyance and goods during transit.

Following are certain key documents and notifications are issued with respect to this section

RDO-05/2019

- Application for revocation of cancellation of registration - file by 22-07-2019

RDO-09/2019-CT

- Calculating time limit for filing appeal

RDO-01/2020-CT

- Period of 30 days calculation for revocation of cancellation order

Cir-132/2/2020-GST

- Clarification in respect of Appellate Tribunal and limitation on filing appeal

108. Powers of Revisional Authority.

- (1) Subject to the provisions of section 121 and any rules made thereunder, the Revisional Authority may, on his own motion, or upon information received by him or on request from the Commissioner of State tax, or the Commissioner of Union territory tax, call for and examine the record of any proceedings, and if he considers that any decision or order passed under this Act or under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by any officer subordinate to him is erroneous in so far as it is prejudicial to the interest of revenue and is illegal or improper or has not taken into account certain material facts, whether available at the time of issuance of the said order or not or in consequence of an observation by the Comptroller and Auditor General of India, he may, if necessary, stay the operation of such decision or order for such period as he deems fit and after giving the person concerned an opportunity of being heard and after making such further inquiry as may be necessary, pass such order, as he thinks just and proper, including enhancing or modifying or annulling the said decision or order.
- (2) The Revisional Authority shall not exercise any power under sub-section (1), if—
- (a) the order has been subject to an appeal under section 107 or section 112 or section 117 or section 118; or

(b) the period specified under sub-section (2) of section 107 has not yet expired or more than three years have expired after the passing of the decision or order sought to be revised; or

(c) the order has already been taken for revision under this section at an earlier stage; or

(d) the order has been passed in exercise of the powers under sub-section (1):

Provided that the Revisional Authority may pass an order under sub-section (1) on any point which has not been raised and decided in an appeal referred to in clause (a) of sub-section (2), before the expiry of a period of one year from the date of the order in such appeal or before the expiry of a period of three years referred to in clause (b) of that subsection, whichever is later.

(3) Every order passed in revision under sub-section (1) shall, subject to the provisions of section 113 or section 117 or section 118, be final and binding on the parties.

(4) If the said decision or order involves an issue on which the Appellate Tribunal or the High Court has given its decision in some other proceedings and an appeal to the High Court or the Supreme Court against such decision of the Appellate Tribunal or the High Court is pending, the period

spent between the date of the decision of the Appellate Tribunal and the date of the decision of the High Court or the date of the decision of the High Court and the date of the decision of the Supreme Court shall be excluded in computing the period of limitation referred to in clause (b) of sub-section (2) where proceedings for revision have been initiated by way of issue of a notice under this section.

(5) Where the issuance of an order under sub-section (1) is stayed by the order of a court or Appellate Tribunal, the period of such stay shall be excluded in computing the period of limitation referred to in clause (b) of sub-section (2).

(6) For the purposes of this section, the term,—

(i) “record” shall include all records relating to any proceedings under this Act available at the time of examination by the Revisional Authority;

(ii) “decision” shall include intimation given by any officer lower in rank than the Revisional Authority.

109. Constitution of Appellate Tribunal and Benches thereof

(1) The Government shall, on the recommendations of the Council, by notification, constitute with effect from such date as may be specified therein, an Appellate

Tribunal known as the Goods and Services Tax Appellate Tribunal for hearing appeals against the orders passed by the Appellate Authority or the Revisional Authority.

(2) The powers of the Appellate Tribunal shall be exercisable by the National Bench and Benches thereof (hereinafter in this Chapter referred to as “Regional Benches”, State Bench and Benches thereof (hereafter in this Chapter referred to as “Area Benches”).

(3) The National Bench of the Appellate Tribunal shall be situated at New Delhi which shall be presided over by the President and shall consist of one Technical Member (Centre) and one Technical Member (State).

(4) The Government shall, on the recommendations of the Council, by notification, constitute such number of Regional Benches as may be required and such Regional Benches shall consist of a Judicial Member, one Technical Member (Centre) and one Technical Member (State).

(5) The National Bench or Regional Benches of the Appellate Tribunal shall have jurisdiction to hear appeals against the orders passed by the Appellate Authority or the Revisional Authority in the cases where one of the issues involved relates to the place of the Supply

(6) The Government shall, by notification, specify for each State or Union territory, ~~[[*****]]~~⁹⁹⁹⁴ a Bench of the Appellate Tribunal (hereafter in this Chapter, referred to as —State Bench~~||~~) for exercising the powers of the Appellate Tribunal within the concerned State or Union territory:

~~[[*****]]~~¹⁰⁰¹⁰¹

[Provided further that]¹⁰² the Government shall, on receipt of a request from any State Government, constitute such number of Area Benches in that State, as may be recommended by the Council:

⁹⁹ Inserted —except for the State of Jammu and Kashmir,~~||~~ by The Central Goods and Services Tax (Extension to Jammu and Kashmir) Act, 2017 (No. 26 of 2017) – Brought into force w.e.f. 8th July, 2017. ⁹⁴ Omitted —except for the State of Jammu and Kashmir~~||~~ by The Finance Act, 2020 (No. 12 of 2020)– Brought into force w.e.f. 30.06.2020.

¹⁰⁰ Inserted —Provided that for the State of Jammu and Kashmir, the State Bench of the Goods and Services Tax Appellate Tribunal constituted under this Act shall be the State Appellate Tribunal constituted under the Jammu and Kashmir Goods and Services Tax Act, 2017:~~||~~ by The Central Goods and Services Tax (Extension to Jammu and Kashmir) Act, 2017 (No. 26 of 2017) – Brought into force w.e.f. 8th July, 2017.

¹⁰¹ Omitted —Provided that for the State of Jammu and Kashmir, the State Bench of the Goods and Services Tax Appellate Tribunal constituted under this Act shall be the State Appellate Tribunal constituted under the Jammu and Kashmir Goods and Services Tax Act, 2017:~~||~~ by The Finance Act, 2020 (No. 12 of 2020)– Brought into force w.e.f. 30.06.2020.

¹⁰² Substituted by The Central Goods and Services Tax (Extension to Jammu And Kashmir) Act, 2017 (No. 26 of 2017) received the assent of the President on the 23rd August, 2017 whereby a new proviso was inserted – Brought into force w.e.f. 8th July, 2017.

Provided [also that]¹⁰³ the Government may, on receipt of a request from any State, or on its own motion for a Union territory, notify the Appellate Tribunal in a State to act as the Appellate Tribunal for any other State or Union territory, as may be recommended by the Council, subject to such terms and conditions as may be prescribed.

(6) The State Bench or Area Benches shall have jurisdiction to hear appeals against the orders passed by the Appellate Authority or the Revisional Authority in the cases involving matters other than those referred to in subsection (5).

(7) The President and the State President shall, by general or special order, distribute the business or transfer cases among Regional Benches or, as the case may be, Area Benches in a State.

(8) Each State Bench and Area Benches of the Appellate Tribunal shall consist of a Judicial Member, one Technical Member (Centre) and one Technical Member (State) and the State Government may designate the senior most Judicial Member in a State as the State President.

¹⁰³ Substituted by The Central Goods and Services Tax (Extension to Jammu And Kashmir) Act, 2017 (No. 26 of 2017) – Brought into force w.e.f. 8th July, 2017.

(9) In the absence of a Member in any Bench due to vacancy or otherwise, any appeal may, with the approval of the President or, as the case may be, the State President, be heard by a Bench of two Members:

Provided that any appeal where the tax or input tax credit involved or the difference in tax or input tax credit involved or the amount of fine, fee or penalty determined in any order appealed against, does not exceed five lakh rupees and which does not involve any question of law may, with the approval of the President and subject to such conditions as may be prescribed on the recommendations of the Council, be heard by a bench consisting of a single member.

(10) If the Members of the National Bench, Regional Benches, State Bench or Area Benches differ in opinion on any point or points, it shall be decided according to the opinion of the majority, if there is a majority, but if the Members are equally divided, they shall state the point or points on which they differ, and the case shall be referred by the President or as the case may be, State President for hearing on such point or points to one or more of the other Members of the National Bench, Regional Benches, State Bench or Area Benches and such point or points shall be decided according to the opinion of the majority of Members who have heard the case, including those who first heard it.

(11) The Government, in consultation with the President may, for the administrative convenience, transfer—

(a) any Judicial Member or a Member Technical (State) from one Bench to another Bench, whether National or Regional; or

(b) any Member Technical (Centre) from one Bench to another Bench, whether National, Regional, State or Area.

(13) The State Government, in consultation with the State President may, for the administrative convenience, transfer a Judicial Member or a Member Technical (State) from one Bench to another Bench within the State.

(14) No act or proceedings of the Appellate Tribunal shall be questioned or shall be invalid merely on the ground of the existence of any vacancy or defect in the constitution of the Appellate Tribunal.

110. President and Members of Appellate Tribunal, their qualification, appointment, conditions of service, etc.

(1) A person shall not be qualified for appointment as—

(a) the President, unless he has been a Judge of the Supreme Court or is or has been the Chief Justice of a High Court, or is or has been a Judge of a High Court for a period not less than five years;

- (b) a Judicial Member, unless he—
- (i) has been a Judge of the High Court; or
 - (ii) is or has been a District Judge qualified to be appointed as a Judge of a High Court; or
 - (iii) is or has been a Member of Indian Legal Service and has held a post not less than Additional Secretary for three years;
- (c) a Technical Member (Centre) unless he is or has been a member of Indian Revenue (Customs and Central Excise) Service, Group A, and has completed at least fifteen years of service in Group A;
- (d) a Technical Member (State) unless he is or has been an officer of the State Government not below the rank of Additional Commissioner of Value Added Tax or the State goods and services tax or such rank as may be notified by the concerned State Government on the recommendations of the Council with at least three years of experience in the administration of an existing law or the State Goods and Services Tax Act or in the field of finance and taxation.
- (2) The President and the Judicial Members of the National Bench and the Regional Benches shall be appointed by the Government after consultation with the Chief Justice of India or his nominee:

Provided that in the event of the occurrence of any vacancy in the office of the President by reason of his death, resignation or otherwise, the senior most Member of the National Bench shall act as the President until the date on which a new President, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office:

Provided further that where the President is unable to discharge his functions owing to absence, illness or any other cause, the senior most Member of the National Bench shall discharge the functions of the President until the date on which the President resumes his duties.

(3) The Technical Member (Centre) and Technical Member (State) of the National Bench and Regional Benches shall be appointed by the Government on the recommendations of a Selection Committee consisting of such persons and in such manner as may be prescribed.

(4) The Judicial Member of the State Bench or Area Benches shall be appointed by the State Government after consultation with the Chief Justice of the High Court of the State or his nominee.

(5) The Technical Member (Centre) of the State Bench or Area Benches shall be appointed by the Central Government and Technical Member

(State) of the State Bench or Area Benches shall be appointed by the State Government in such manner as may be prescribed.

(6) No appointment of the Members of the Appellate Tribunal shall be invalid merely by the reason of any vacancy or defect in the constitution of the Selection Committee.

(7) Before appointing any person as the President or Members of the Appellate Tribunal, the Central Government or, as the case may be, the State Government, shall satisfy itself that such person does not have any financial or other interests which are likely to prejudicially affect his functions as such President or Member.

(8) The salary, allowances and other terms and conditions of service of the President, State President and the Members of the Appellate Tribunal shall be such as may be prescribed:

Provided that neither salary and allowances nor other terms and conditions of service of the President, State President or Members of the Appellate Tribunal shall be varied to their disadvantage after their appointment.

(9) The President of the Appellate Tribunal shall hold office for a term of three years from the date on which he enters upon his office, or until he attains the age of seventy years, whichever is earlier and shall be eligible for reappointment.

(10) The Judicial Member of the Appellate Tribunal and the State President shall hold office for a term of three years from the date on which he enters upon his office, or until he attains the age of sixty-five years, whichever is earlier and shall be eligible for reappointment.

(11) The Technical Member (Centre) or Technical Member (State) of the Appellate Tribunal shall hold office for a term of five years from the date on which he enters upon his office, or until he attains the age of sixty-five years, whichever is earlier and shall be eligible for reappointment.

(12) The President, State President or any Member may, by notice in writing under his hand addressed to the Central Government or, as the case may be, the State Government resign from his office:

Provided that the President, State President or Member shall continue to hold office until the expiry of three months from the date of receipt of such notice by the Central Government, or, as the case may be, the State 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.

(13) The Central Government may, after consultation with the Chief Justice of India, in case of the President, Judicial Members and Technical Members of the National Bench, Regional Benches or Technical Members (Centre) of the State Bench or Area Benches, and the State Government may, after

consultation with the Chief Justice of High Court, in case of the State President, Judicial Members, Technical Members (State) of the State Bench or Area Benches, may remove from the office such President or Member, who—

- (a) has been adjudged an insolvent; or
- (b) has been convicted of an offence which, in the opinion of such Government involves moral turpitude; or
- (c) has become physically or mentally incapable of acting as such President, State President or Member; or
- (d) has acquired such financial or other interest as is likely to affect prejudicially his functions as such President, State President or Member; or
- (e) has so abused his position as to render his continuance in office prejudicial to the public interest:

Provided that the President, State 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.

(14) Without prejudice to the provisions of sub-section (13),—

(a) the President or a Judicial and Technical Member of the National Bench or Regional Benches, Technical Member (Centre) of the State Bench or Area Benches shall not be removed from their office except by an order made by the Central Government on the ground of proved misbehaviour or incapacity after an inquiry made by a Judge of the Supreme Court nominated by the Chief Justice of India on a reference made to him by the Central Government and of which the President or the said Member had been given an opportunity of being heard;

(b) the Judicial Member or Technical Member (State) of the State Bench or Area Benches shall not be removed from their office except by an order made by the State Government on the ground of proved misbehaviour or incapacity after an inquiry made by a Judge of the concerned High Court nominated by the Chief Justice of the concerned High Court on a reference made to him by the State Government and of which the said Member had been given an opportunity of being heard.

(15) The Central Government, with the concurrence of the Chief Justice of India, may suspend from office, the President or a Judicial or Technical Members of the National Bench or the Regional Benches or the Technical Member (Centre) of the State Bench or Area Benches in respect of whom a

reference has been made to the Judge of the Supreme Court under sub-section (14).

(16) The State Government, with the concurrence of the Chief Justice of the High Court, may suspend from office, a Judicial Member or Technical Member (State) of the State Bench or Area Benches in respect of whom a reference has been made to the Judge of the High Court under sub-section (14).

(17) Subject to the provisions of article 220 of the Constitution, the President, State President or other Members, on ceasing to hold their office, shall not be eligible to appear, act or plead before the National Bench and the Regional Benches or the State and the Area Benches thereof where he was the President or, as the case may be, a Member.

111. Procedure before Appellate Tribunal.

- (1) The Appellate Tribunal shall not, while disposing of any proceedings before it or an appeal before it, be bound by the procedure laid down in the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and subject to the other provisions of this Act and the rules made thereunder, the Appellate Tribunal shall have power to regulate its own procedure.
- (2) The Appellate Tribunal shall, for the purposes of discharging its functions under this Act, have the same powers as are vested in a civil court under the Code of

Civil Procedure, 1908 while trying a suit in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of any person and examining him on oath;
 - (b) requiring the discovery and production of documents;
 - (c) receiving evidence on affidavits;
 - (d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or a copy of such record or document from any office;
 - (e) issuing commissions for the examination of witnesses or documents;
 - (f) dismissing a representation for default or deciding it *ex parte*;
 - (g) setting aside any order of dismissal of any representation for default or any order passed by it *ex parte*; and
 - (h) any other matter which may be prescribed.
- (3) Any order made by the Appellate Tribunal may be enforced by it in the same manner as if it were a decree made by a court in a suit pending therein, and it

shall be lawful for the Appellate Tribunal to send for execution of its orders to the court within the local limits of whose jurisdiction,—

(a) in the case of an order against a company, the registered office of the company is situated; or

(b) in the case of an order against any other person, the person concerned voluntarily resides or carries on business or personally works for gain.

- (4) All proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228, and for the purposes of section 196 of the Indian Penal Code, and the Appellate Tribunal shall be deemed to be civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

112. Appeals to Appellate Tribunal

(1) Any person aggrieved by an order passed against him under section 107 or section 108 of this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act may appeal to the Appellate Tribunal against such order within three months from the date on which the order sought to be appealed against is communicated to the person preferring the appeal.

(2) The Appellate Tribunal may, in its discretion, refuse to admit any such appeal where the tax or input tax credit involved or the difference in tax or input tax credit involved or the amount of fine, fee or penalty determined by such order, does not exceed fifty thousand rupees.

(3) The Commissioner may, on his own motion, or upon request from the Commissioner of State tax or Commissioner of Union territory tax, call for and examine the record of any order passed by the Appellate Authority or the Revisional Authority under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act for the purpose of satisfying himself as to the legality or propriety of the said order and may, by order, direct any officer subordinate to him to apply to the Appellate Tribunal within six months from the date on which the said order has been passed for

determination of such points arising out of the said order as may be specified by the Commissioner in his order.

(4) Where in pursuance of an order under sub-section (3) the authorised officer makes an application to the Appellate Tribunal, such application shall be dealt with by the Appellate Tribunal as if it were an appeal made against the order under sub-section (11) of section 107 or under sub-section (1) of section 108 and the provisions of this Act shall apply to such application, as they apply in relation to appeals filed under sub-section (1).

(5) On receipt of notice that an appeal has been preferred under this section, the party against whom the appeal has been preferred may, notwithstanding that he may not have appealed against such order or any part thereof, file, within forty-five days of the receipt of notice, a memorandum of cross-objections, verified in the prescribed manner, against any part of the order appealed against and such memorandum shall be disposed of by the Appellate Tribunal, as if it were an appeal presented within the time specified in sub-section (1).

(6) The Appellate Tribunal may admit an appeal within three months after the expiry of the period referred to in sub-section (1), or permit the filing of a memorandum of cross-objections within forty-five days after the expiry of the period referred to in sub-section (5) if it is satisfied that there was sufficient cause for not presenting it within that period.

(7) An appeal to the Appellate Tribunal shall be in such form, verified in such manner and shall be accompanied by such fee, as may be prescribed.

(8) No appeal shall be filed under sub-section (1), unless the appellant has paid—

(a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him, and

(b) a sum equal to twenty per cent. of the remaining amount of tax in dispute, in addition to the amount paid under sub-section (6) of section 107, arising from the said order, [subject to a maximum of fifty crore rupees]¹⁰⁴, in relation to which the appeal has been filed.

(9) Where the appellant has paid the amount as per sub-section (8), the recovery proceedings for the balance amount shall be deemed to be stayed till the disposal of the appeal.

(10) Every application made before the Appellate Tribunal,—

(a) in an appeal for rectification of error or for any other purpose; or

¹⁰⁴ Inserted by The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018) – Brought into force w.e.f. 01st February, 2019.

(b) for restoration of an appeal or an application, shall be accompanied by such fees as may be prescribed.

113. Orders of Appellate Tribunal.

(1) The Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the decision or order appealed against or may refer the case back to the Appellate Authority, or the Revisional Authority or to the original adjudicating authority, with such directions as it may think fit, for a fresh adjudication or decision after taking additional evidence, if necessary.

(2) The Appellate Tribunal may, if sufficient cause is shown, at any stage of hearing of an appeal, grant time to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing:

Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.

(3) The Appellate Tribunal may amend any order passed by it under sub-section (1) so as to rectify any error apparent on the face of the record, if such error is noticed by it on its own accord, or is brought to its notice by the Commissioner or the Commissioner of State tax or the Commissioner of the Union territory tax or the other party to the appeal within a period of three months from the date of the order:

Provided that no amendment which has the effect of enhancing an assessment or reducing a refund or input tax credit or otherwise increasing the liability of the other party, shall be made under this sub-section, unless the party has been given an opportunity of being heard.

(4) The Appellate Tribunal shall, as far as possible, hear and decide every appeal within a period of one year from the date on which it is filed.

(5) The Appellate Tribunal shall send a copy of every order passed under this section to the Appellate Authority or the Revisional Authority, or the original adjudicating authority, as the case may be, the appellant and the jurisdictional Commissioner or the Commissioner of State tax or the Union territory tax.

(6) Save as provided in section 117 or section 118, orders passed by the Appellate Tribunal on an appeal shall be final and binding on the parties.

114. Financial and administrative powers of President

The President shall exercise such financial and administrative powers over the National Bench and Regional Benches of the Appellate Tribunal as may be prescribed:

Provided that the President shall have the authority to delegate such of his financial and administrative powers as he may think fit to any other Member or

any officer of the National Bench and Regional Benches, subject to the condition that such Member or officer shall, while exercising such delegated powers, continue to act under the direction, control and supervision of the President.

115. Interest on refund of amount paid for admission of appeal.

Where an amount paid by the appellant under sub-section (6) of section 107 or sub-section (8) of section 112 is required to be refunded consequent to any order of the Appellate Authority or of the Appellate Tribunal, interest at the rate specified under section 56 shall be payable in respect of such refund from the date of payment of the amount till the date of refund of such amount.

116. Appearance by authorised representative

- (1) Any person who is entitled or required to appear before an officer appointed under this Act, or the Appellate Authority or the Appellate Tribunal in connection with any proceedings under this Act, may, otherwise than when required under this Act to appear personally for examination on oath or affirmation, subject to the other provisions of this section, appear by an authorised representative.
- (2) For the purposes of this Act, the expression —authorised representative|| shall mean a person authorised by the person referred to in sub-section (1) to appear on his behalf, being—

(a) his relative or regular employee; or

(b) an advocate who is entitled to practice in any court in India, and who has not been debarred from practicing before any court in India; or

(c) any chartered accountant, a cost accountant or a company secretary, who holds a certificate of practice and who has not been debarred from practice; or

(d) a retired officer of the Commercial Tax Department of any State Government or Union territory or of the Board who, during his service under the Government, had worked in a post not below the rank than that of a Group-B Gazetted officer for a period of not less than two years:

Provided that such officer shall not be entitled to appear before any proceedings under this Act for a period of one year from the date of his retirement or resignation; or

(e) any person who has been authorised to act as a goods and services tax practitioner on behalf of the concerned registered person.

(3) No person,—

(a) who has been dismissed or removed from Government service; or

(b) who is convicted of an offence connected with any proceedings under this Act, the State Goods and Services Tax Act, the Integrated Goods and Services Tax Act or the Union Territory Goods and Services Tax

Act, or under the existing 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 or services or both; or

(c) who is found guilty of misconduct by the prescribed authority;

(d) who has been adjudged as an insolvent, shall be qualified to represent any person under sub-section (1)

(i) for all times in case of persons referred to in clauses (a), (b) and (c);
and

(ii) for the period during which the insolvency continues in the case of a person referred to in clause (d).

(4) Any person who has been disqualified under the provisions of the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act shall be deemed to be disqualified under this Act.

117. Appeal to High Court.

(1) Any person aggrieved by any order passed by the State Bench or Area Benches of the Appellate Tribunal may file an appeal to the High Court and the High Court may admit such appeal, if it is satisfied that the case involves a substantial question of law.

(2) An appeal under sub-section (1) shall be filed within a period of one hundred and eighty days from the date on which the order appealed against is received by the aggrieved person and it shall be in such form, verified in such manner as may be prescribed:

Provided that the High Court may entertain an appeal after the expiry of the said period if it is satisfied that there was sufficient cause for not filing it within such period.

(3) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question and the appeal shall be heard only on the question so formulated, and the respondents shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question:

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question.

(4) The High Court shall decide the question of law so formulated and deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit.

(5) The High Court may determine any issue which—

(a) has not been determined by the State Bench or Area Benches; or

(b) has been wrongly determined by the State Bench or Area Benches, by reason of a decision on such question of law as herein referred to in sub-section (3).

(6) Where an appeal has been filed before the High Court, it shall be heard by a Bench of not less than two Judges of the High Court, and shall be decided in accordance with the opinion of such Judges or of the majority, if any, of such Judges.

(7) Where there is no such majority, the Judges shall state the point of law upon which they differ and the case shall, then, be heard upon that point only, by one or more of the other Judges of the High Court and such point shall be decided according to the opinion of the majority of the Judges who have heard the case including those who first heard it.

(8) Where the High Court delivers a judgment in an appeal filed before it under this section, effect shall be given to such judgment by either side on the basis of a certified copy of the judgment.

(9) Save as otherwise provided in this Act, the provisions of the Code of Civil Procedure, 1908, relating to appeals to the High Court shall, as far as may be, apply in the case of appeals under this section.

118. Appeal to Supreme Court.

(1) An appeal shall lie to the Supreme Court—

(a) from any order passed by the National Bench or Regional Benches of the Appellate Tribunal; or

(b) from any judgment or order passed by the High Court in an appeal made under section 117 in any case which, on its own motion or on an application made by or on behalf of the party aggrieved, immediately after passing of the judgment or order, the High Court certifies to be a fit one for appeal to the Supreme Court.

(2) The provisions of the Code of Civil Procedure, 1908, relating to appeals to the Supreme Court shall, so far as may be, apply in the case of appeals under this section as they apply in the case of appeals from decrees of a High Court.

(3) Where the judgment of the High Court is varied or reversed in the appeal, effect shall be given to the order of the Supreme Court in the manner provided in section 117 in the case of a judgment of the High Court.

119. Sums due to be paid notwithstanding appeal, etc.

Notwithstanding that an appeal has been preferred to the High Court or the Supreme Court, sums due to the Government as a result of an order passed by

the National or Regional Benches of the Appellate Tribunal under sub-section (1) of section 113 or an order passed by the State Bench or Area Benches of the Appellate Tribunal under sub-section (1) of section 113 or an order passed by the High Court under section 117, as the case may be, shall be payable in accordance with the order so passed.

120. Appeal not to be filed in certain cases.

- (1) The Board may, on the recommendations of the Council, from time to time, issue orders or instructions or directions fixing such monetary limits, as it may deem fit, for the purposes of regulating the filing of appeal or application by the officer of the central tax under the provisions of this Chapter.
 - (2) Where, in pursuance of the orders or instructions or directions issued under sub-section (1), the officer of the central tax has not filed an appeal or application against any decision or order passed under the provisions of this Act, it shall not preclude such officer of the central tax from filing appeal or application in any other case involving the same or similar issues or questions of law.
- (3) Notwithstanding the fact that no appeal or application has been filed by the officer of the central tax pursuant to the orders or instructions or directions issued under sub-section (1), no person, being a party in appeal or application

shall contend that the officer of the central tax has acquiesced in the decision on the disputed issue by not filing an appeal or application.

(4) The Appellate Tribunal or court hearing such appeal or application shall have regard to the circumstances under which appeal or application was not filed by the officer of the central tax in pursuance of the orders or instructions or directions issued under sub-section (1).

121. Non-appealable decisions and orders.

Notwithstanding anything to the contrary in any provisions of this Act, no appeal shall lie against any decision taken or order passed by an officer of central tax if such decision taken or order passed relates to any one or more of the following matters, namely:—

(a) an order of the Commissioner or other authority empowered to direct transfer of proceedings from one officer to another officer; or

(b) an order pertaining to the seizure or retention of books of account, register and other documents; or

(c) an order sanctioning prosecution under this Act; or

(d) an order passed under section 80.

122. Penalty for certain offences.

(1) Where a taxable person who—

(i) supplies any goods or services or both without issue of any invoice or issues an incorrect or false invoice with regard to any such supply;

(ii) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act or the rules made thereunder;

(iii) collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;

(iv) collects any tax in contravention of the provisions of this Act but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;

(v) fails to deduct the tax in accordance with the provisions of sub-section (1) of section 51, or deducts an amount which is less than the amount required to be deducted under the said sub-section, or where he fails to pay to the Government under sub-section (2) thereof, the amount deducted as tax;

(vi) fails to collect tax in accordance with the provisions of sub-section (1) of section 52, or collects an amount which is less than the amount required to be collected under the said sub-section or where he fails to pay to the Government the amount collected as tax under sub-section (3) of section 52;

(vii) takes or utilises 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;

(viii) fraudulently obtains refund of tax under this Act;

(ix) takes or distributes input tax credit in contravention of section 20, or the rules made thereunder;

(x) falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information or return with an intention to evade payment of tax due under this Act;

(xi) is liable to be registered under this Act but fails to obtain registration;

(xii) furnishes any false information with regard to registration particulars, either at the time of applying for registration, or subsequently;

(xiii) obstructs or prevents any officer in discharge of his duties under this Act;

(xiv) transports any taxable goods without the cover of documents as may be specified in this behalf;

(xv) suppresses his turnover leading to evasion of tax under this Act;

(xvi) fails to keep, maintain or retain books of account and other documents in accordance with the provisions of this Act or the rules made thereunder;

(xvii) 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;

(xviii) supplies, transports or stores any goods which he has reasons to believe are liable to confiscation under this Act;

(xix) issues any invoice or document by using the registration number of another registered person;

(xx) tampers with, or destroys any material evidence or document;

(xxi) disposes off or tampers with any goods that have been detained, seized, or attached under this Act, he shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the 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.

[(1A) Any person who retains the benefit of a transaction covered under clauses (i), (ii), (vii) or clause (ix) of sub-section (1) and at whose instance such transaction is conducted, shall be liable to a penalty of an amount equivalent to the tax evaded or input tax credit availed of or passed on.]¹⁰⁵

(2) Any 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,—

(a) for any reason, other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable

¹⁰⁵ Inserted by The Finance Act, 2020 (No. 12 of 2020) – Brought into force w.e.f. 01st January, 2021.

to a penalty of ten thousand rupees or ten per cent. of the tax due from such person, whichever is higher;

(b) for reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty equal to ten thousand rupees or the tax due from such person, whichever is higher.

(3) Any person who—

(a) aids or abets any of the offences specified in clauses (i) to (xxi) of subsection (1);

(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 he knows or has reasons to believe are liable to confiscation under this Act or the rules made thereunder;

(c) 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;

- (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 of this Act or the rules made thereunder or fails to account for an invoice in his books of account, shall be liable to a penalty which may extend to twenty-five thousand rupees.

123. Penalty for failure to furnish information return.

If a person who is required to furnish an information return under section 150 fails to do so within the period specified in the notice issued under sub-section (3) thereof, the proper officer may direct that such person shall be liable to pay a penalty of one hundred rupees for each day of the period during which the failure to furnish such return continues:

Provided that the penalty imposed under this section shall not exceed five thousand rupees.

124. Fine for failure to furnish statistics.

If any person required to furnish any information or return under section 151,

- (a) without reasonable cause fails to furnish such information or return as may be required under that section, or

- (b) wilfully furnishes or causes to furnish any information or return which he knows to be false, he shall be punishable with a fine which may extend to ten thousand rupees and in case of a continuing offence to a further fine which may extend to one hundred rupees for each day after the first day during which the offence continues subject to a maximum limit of twenty- five thousand rupees.

125. General penalty

Any person, who contravenes any of the provisions of this Act or any rules made thereunder for which no penalty is separately provided for in this Act, shall be liable to a penalty which may extend to twenty-five thousand rupees.

126. General disciplines related to penalty

- (1) No officer under this Act shall impose any penalty 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.

Explanation.—For the purpose of this sub-section,

- (a) a breach shall be considered a minor breach if the amount of tax involved is less than five thousand rupees;

(b) an omission or mistake in documentation shall be considered to be easily rectifiable if the same is an error apparent on the face of record.

(2) The penalty imposed under this Act shall depend on the facts and circumstances of each case and shall be commensurate with the degree and severity of the breach.

(3) No penalty shall be imposed on any person without giving him an opportunity of being heard.

(4) The officer under this Act shall while imposing penalty in an order for a breach of any law, regulation or procedural requirement, specify the nature of the breach and the applicable law, regulation or procedure under which the amount of penalty for the breach has been specified.

(5) When a person voluntarily discloses to an officer under this Act the circumstances of a breach of the tax law, regulation or procedural requirement prior to the discovery of the breach by the officer under this Act, the proper officer may consider this fact as a mitigating factor when quantifying a penalty for that person.

(6) The provisions of this section shall not apply in such cases where the penalty specified under this Act is either a fixed sum or expressed as a fixed percentage.

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.

128. Power to waive penalty or fee or both.

The Government may, by notification, waive in part or full, any penalty referred to in section 122 or section 123 or section 125 or any late fee referred to in section 47 for such class of taxpayers and under such mitigating circumstances as may be specified therein on the recommendations of the Council.

129. Detention, seizure and release of goods and conveyances in transit.

(1) Notwithstanding anything contained in this Act, 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, all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure and after detention or seizure, shall be released,—

(a) on payment of the applicable tax and penalty equal to one hundred per cent. of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such tax and penalty;

(b) on payment of the applicable tax and penalty equal to the fifty per cent. of the value of the goods reduced by the tax amount paid thereon and, in case of exempted goods, on payment of an amount equal to five per cent. of the value of goods or twentyfive thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such tax and penalty;

(c) upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) in such form and manner as may be prescribed: Provided that no such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods.

(2) The provisions of sub-section (6) of section 67 shall, *mutatis mutandis*, apply for detention and seizure of goods and conveyances.

(3) The proper officer detaining or seizing goods or conveyances shall issue a notice specifying the tax and penalty payable and thereafter, pass an

order for payment of tax and penalty under clause (a) or clause (b) or clause (c).

(4) No tax, interest or penalty shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard.

(5) On payment of amount referred in sub-section (1), all proceedings in respect of the notice specified in sub-section (3) shall be deemed to be concluded.

(6) Where the person transporting any goods or the owner of the goods fails to pay the amount of tax and penalty as provided in sub-section (1) within [fourteen days]¹⁰⁶ of such detention or seizure, further proceedings shall be initiated in accordance with the provisions of section 130:

Provided that 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 [fourteen days]¹⁰⁷ may be reduced by the proper officer.

¹⁰⁶ Substituted for —seven days|| by The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018) – Brought into force w.e.f. 01st February, 2019.

¹⁰⁷ Substituted for —seven days|| by The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018) – Brought into force w.e.f. 01st February, 2019.

Author Comment

Section 129 of the CGST Act relates to provisions with respect to Detention, seizure and **release of goods and conveyances in transit.**

Following are legal provisions which are required to be taken in to consideration along with Section 129 of the CGST Act while handing litigations

Section 68 of CGST Act

- Inspection of goods in movement

Section 122 of CGST Act

- Penalty for certain offences.

Section 125 of CGST Act

- General penalty

Section 126 of CGST Act

- General disciplines related to penalty.

Section 129 of CGST Act

- Detention, seizure and release of goods and conveyances in transit.

Section 130 of CGST Act

- Confiscation of goods or conveyances and levy of penalty.

Further, rules given below are key rules from the perspective of E-way bill related litigations

Rule 55A

- Tax Invoice or bill of supply to accompany transport of goods.-

Rule 138

- Information to be furnished prior to generation of e-way bill.

Rule 138A.

- Documents and devices to be carried by a person-in-charge of a conveyance.-

Rule 138B.

- Verification of documents and conveyances.

Rule 138E.

- Restriction on furnishing of information in PART A of FORM GST EWB-01

Rule 139

- Inspection, search and seizure.

Rule 140

- Bond and security for release of seized goods.

Rule 141

- Procedure in respect of seized goods.-

Additionally, below are the key notifications which are required to be considered

NT-07/2017-IT <ul style="list-style-type: none">• Registration Exemption-Job Worker	NT-27/2017-CT <ul style="list-style-type: none">• E-way bill rules notified.	NT-32/2017-CT <ul style="list-style-type: none">• Exemption for handicraft goods if turnover is <20 lakhs.
NT-34/2017-CT <ul style="list-style-type: none">• inserts provisos in Rule 138(1) and amends Form GST	NT-38/2017-CT <ul style="list-style-type: none">• Amends notification 32/2017	NT-03/2018-CT <ul style="list-style-type: none">• Rule is substituted with effect from 01-02-2018.
NT-12/2018-CT- <ul style="list-style-type: none">• Rule Amended	NT-26/2018-CT- <ul style="list-style-type: none">• Rule amended	NT-56/2018-CT <ul style="list-style-type: none">• Casual Taxable Persons exempted from registration
NT-03/2018-IT <ul style="list-style-type: none">• Exempts Casual Taxable persons from registration	NT-74/2018-CT <ul style="list-style-type: none">• Explanation -1 replaced in Rule 138(1)	NT-31/2019-CT <ul style="list-style-type: none">• Sub rule (10) amended multi dimensional ship
NT-47/2020-CT <ul style="list-style-type: none">• Proviso to NT-35/2020-CT is substituted	NT-94/2020-CT <ul style="list-style-type: none">• Amends Kms per day to 200 kms	

Also, circulars given below are issued to clarify differed aspect with respect to E-way bill

Circular No-3/3/2017

- Proper Officers

Circular No-10/10/2017

- Supply on Approval Basis

Circular No-22/22/2017

- Supply by an artist

Circular No-38/12/2018

- Clarification regarding Job Work

Circular No-41/15/2018

- Procedure for inspection of conveyance

Circular No-47/21/2018

- Moulds

Circular No-49/23/2018

- Amendment in Circular No-41/15/2018

Circular No-61/34/2018

- E-way bill in case of storing goods in godown of transporter

Circular No-64/38/2018

- Procedure for interception of conveyances

Circular No-136/06/2020

- Measures pronounced - COVID-19

Circular No-88/07/2019

- Amendment in Circular No-41/15/2018

PR

- Bill to Ship to

However, recently via Budget 2021, Section 129 of the CGST Act proposed to be amended and brief synopsis of amendments are

1. to remove word Tax and Interest. It means now for release of conveyance only penalty is required to be paid. However, Penalty is increased to 200% from 100%.
2. Subsection (2) is omitted. Thus, now conveyance and goods detained cannot be released on merely on execution of bond and bank guarantee as security.
3. Subsection 3 is substituted so that to prescribe time frame. The proper officer detaining or seizing goods or conveyance is now required to issue a notice within seven days of such detention and thereafter, pass an order within a period of seven days from the date of service of such notice.
4. Subsection 6 has been substituted. As per new subsection the goods or conveyance detained or seized shall become liable to be sold or disposed off if payment of imposed penalty is not made within 15

days from the date of receipt of copy of the order imposing such penalty.

In this regard, notes to clauses mention that,

Clause 108 of the Bill seeks to amend section 129 of the Central Goods and Services Tax Act so as to delink the proceedings under that section relating to detention, seizure and release of goods and conveyances in transit, from the proceedings under section 130 relating to confiscation of goods or conveyances and levy of penalty.

Thus, it seems that Section 129 is further strengthened. Even it seems that tax and interest is not required to be paid for real ease of conveyance, however penalty is increased to 200%. Also, now merely execution of bond and bank guarantee as security will not lead to release of goods detained. Table given below will help to understand more

Existing provision	Proposed amendment
When owner comes forward [Sec 129(1)(a)]:	

Taxable goods- **Tax + penalty** equal to **100%** of tax payable

Exempted goods – Lowest of 2% of the value of goods or Rs. 25,000/-

Taxable goods – **Penalty** equal to **200%** of tax payable

Exempted goods – Lowest of 2% of the value of goods or Rs. 25,000/-

When owner does not come forward [Sec 129(1)(b)]:

Taxable goods – **Tax + penalty** equal to 50% of value of goods **reduced by tax paid.**

Exempted goods – Lowest of 5% of the value of goods or Rs. 25,000/-

Taxable goods – **Penalty** equal to higher of 50% of value of goods **or 200% of the tax payable on such goods.**

Exempted goods – Lowest of 5% of the value of goods or Rs. 25,000/-

130. Confiscation of goods or conveyances and levy of penalty

(1) Notwithstanding anything contained in this Act, if any person—

- (i) supplies or receives any goods in contravention of any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or

(ii) does not account for any goods on which he is liable to pay tax under this Act; or

(iii) supplies any goods liable to tax under this Act without having applied for registration; or

(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 the 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.

- (2) Whenever confiscation of any goods or conveyance is authorised by this Act, the officer adjudging it shall give to the owner of the goods an option to pay in lieu of confiscation, such fine as the said officer thinks fit:

Provided that such fine leviable shall not exceed the market value of the goods confiscated, less the tax chargeable thereon:

Provided further that the aggregate of such fine and penalty leviable shall not be less than the amount of penalty leviable under sub-section (1) of section 129:

Provided also that where any such conveyance is used for the carriage of the goods or passengers for hire, the owner of the conveyance shall be given an option to pay in lieu of the confiscation of the conveyance a fine equal to the tax payable on the goods being transported thereon.

(3) Where any fine in lieu of confiscation of goods or conveyance is imposed under sub-section (2), the owner of such goods or conveyance or the person referred to in sub-section (1), shall, in addition, be liable to any tax, penalty and charges payable in respect of such goods or conveyance.

(4) No order for confiscation of goods or conveyance or for imposition of penalty shall be issued without giving the person an opportunity of being heard.

(5) Where any goods or conveyance are confiscated under this Act, the title of such goods or conveyance shall thereupon vest in the Government.

(6) The proper officer adjudging confiscation shall take and hold possession of the things confiscated and every officer of Police, on the requisition of such proper officer, shall assist him in taking and holding such possession.

(7) The proper officer may, after satisfying himself that the confiscated goods or conveyance are not required in any other proceedings under this Act and after giving reasonable time not exceeding three months to pay fine in lieu of confiscation, dispose of such goods or conveyance and deposit the sale proceeds thereof with the Government.

Author Comment

Section 130 of the CGST Act relates to provisions with respect to Confiscation of goods or conveyances and levy of penalty. From the date of implementation of E-way bill numerous cases are launched. Below are some of the key observations of the court which can be useful while handling litigations

Citation`	Judgement
Pragati Enterprises [2018 (12) G.S.T.L. 9 (All.)	Wrong declaration of date in E-way Bill

<p>TIME TO TIME LOGISTICS [2018 (11) G.S.T.L. 259 (All.)]</p>	<p>The non-filling of the vehicle number, address and name of the driver</p>
<p>GATI KINTETSU EXPRESS PVT. LTD [GATI KINTETSU EXPRESS PVT. LTD</p>	<p>Failure to fill vehicle number in part B of E-way Bill</p>
<p>CATERPILLAR INDIA PVT. LTD. [2019 (27) G.S.T.L. 4 (Mad.)]</p>	<p>The facility for Extention of validity of E-way bill is not exercised [Rule 138(10)]</p>
<p>ASIANET DIGITAL NETWORK PVT. LTD.[2020 (32) G.S.T.L. 44 (Ker.)]</p>	<p>Difference in value in E-way Bill and Delivery Challan during transfer of stock liable to penalty to extent value not reflected</p>

<p>KANNANGAYATHU METALS [2019 (31) G.S.T.L. 391 (Ker.)]</p>	<p>Transit of goods by alternate way</p> <p>If there is an attempt at transportation contrary to the e-Way Bill, then penalty can be levied. In the instant case, there is no such indication.</p>
<p>VST And Sons Pvt Ltd [2021-TIOL-1588-HC-KERALA-GST]</p>	<ul style="list-style-type: none"> • Goods that are classifiable as used personal and household effect falls under Rule 138(14) (a) of the Kerala Goods and Services Tax Rules, 2017 and are exempted from the requirement of e-way bill. • A temporary registration was also taken apart from the motor vehicle insurance. • In the decision in KUN Motor Company's case (supra) [Kerala HC TS-661-HC-2018(KER)-NT], the Division Bench of this Court had in an almost identical situation

	<p>observed as :-Used vehicles, even if it has run only negligible distances are to be categorized as 'used personal effects'.</p> <ul style="list-style-type: none"> • There is no merit in this appeal and the same is dismissed.
<p>Siddhballi Stone Gallery [2019-TIOL-2362-HC-AHM-GST]</p>	<ul style="list-style-type: none"> • The documents reveal that the petitioner had paid IGST on the goods in question at the time of import. • The fact that after the conveyance came to be intercepted, the petitioner has paid the tax and penalty on such goods as computed by the respondent authorities, by way of ad-interim relief the respondents are directed to forthwith release the conveyance being truck number GJ-12- AZ-5184 along with the

	<p>goods contained therein, subject to the final outcome of the petition</p>
<p>Ram Charitra Ram Harihar Prasad [2019-TIOL-2063-HC-PATNA-GST]</p>	<ul style="list-style-type: none"> • Section 129(1)(a) relates to goods on which tax is yet to be paid. In other words the stipulations present in Section 129(1)(a) regulates the exercise in so far as it concerns non-tax paid goods and in which event the tax to be imposed is to be 100% with equal penalty thereon unless the goods being transported or found to be exempted from the tax • <i>In so far as the present case is concerned, the document at Annexure -A series would confirm that the goods were tax paid and thus the exercise had to be regulated under the provisions of Section 129(1)(b) which</i>

	<p><i>provides for a lenient applicability of the penal provisions and understandably because the tax amount on the goods has already been paid by the dealer.</i></p> <ul style="list-style-type: none"><i>• Once the assessing authority i.e. the Deputy Commissioner, State Tax has recorded in his proceedings on 26.04.2019 that the E-WAY BILL has been generated, meaning thereby the goods carried a valid E-WAY BILL,.</i><i>• We quash the proceedings in its entirety together with the demand dated 07.05.2019 impugned at Annexure-5 which is accordingly quashed and set aside.</i>
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Recently, via Budget 2021 Section 130 amended

1. to substitute the word “Notwithstanding anything contained in this Act, if ”, with word “Where”. Thus, now this section does not have

any overriding impact. Clause 109 of the Bill seeks to amend section 130 of the Central Goods and Services Tax Act, so as to delink the proceedings under that section relating to confiscation of goods or conveyances and levy of penalty from the proceedings under section 129 relating to detention, seizure and release of goods and conveyances in transit.

2. Section 130 (3) (c) is omitted. Thus, now there will not be any additional tax, penalty and charges in respect of such goods or conveyance

Notes to clauses prescribe that,

Clause 109 of the Bill seeks to amend section 130 of the Central Goods and Services Tax Act, so as to delink the proceedings under that section relating to confiscation of goods or conveyances and levy of penalty from the proceedings under section 129 relating to detention, seizure and release of goods and conveyances in transit.

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.

132. Punishment for certain offences.

(1) [Whoever commits, or causes to commit and retain the benefits arising out of, any of the following offences]¹⁰⁸, namely:—

(a) supplies any goods or services or both without issue of any invoice, in violation of the provisions of this Act or the rules made thereunder, with the intention to evade tax;

(b) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment or utilisation of input tax credit or refund of tax;

¹⁰⁸ Substituted for —Whoever commits any of the following offences|| by The Finance Act, 2020 (No. 12 of 2020) – Brought into force w.e.f. 01st January, 2021.

(c) [avails input tax credit using the invoice or bill referred to in clause (b) or fraudulently avails input tax credit without any invoice or bill;]¹⁰⁹

(d) collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;

(e) evades tax [*****]¹¹⁰ or fraudulently obtains refund and where such offence is not covered under clauses (a) to (d);

(f) falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information with an intention to evade payment of tax due under this Act;

(g) obstructs or prevents any officer in the discharge of his duties under this Act;

¹⁰⁹ Substituted for —(c) avails input tax credit using such invoice or bill referred to in clause (b);|| by The Finance Act, 2020 (No. 12 of 2020) – Brought into force w.e.f. 01st January, 2021.

¹¹⁰ Omitted —, fraudulently avails input tax credit|| by The Finance Act, 2020 (No. 12 of 2020) – Brought into force w.e.f. 01st January, 2021.

(h) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with, any goods which he knows or has reasons to believe are liable to confiscation under this Act or the rules made thereunder;

(i) receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reasons to believe are in contravention of any provisions of this Act or the rules made thereunder;

(j) tampers with or destroys any material evidence or documents;

(k) fails to supply any information which he is required to supply under this Act or the rules made thereunder or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information; or

(l) attempts to commit, or abets the commission of any of the offences mentioned in clauses (a) to (k) of this section, shall be punishable—

(i) in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund

wrongly taken exceeds five hundred lakh rupees, with imprisonment for a term which may extend to five years and with fine;

(ii) in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds two hundred lakh rupees but does not exceed five hundred lakh rupees, with imprisonment for a term which may extend to three years and with fine;

(iii) in the case of any other offence where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds one hundred lakh rupees but does not exceed two hundred lakh rupees, with imprisonment for a term which may extend to one year and with fine;

(iv) in cases where he commits or abets the commission of an offence specified in clause (f) or clause (g) or clause (j), he shall be punishable with imprisonment for a term which may extend to six months or with fine or with both.

(2) Where any person convicted of an offence under this section is again convicted of an offence under this section, then, he shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend to five years and with fine.

(3) The imprisonment referred to in clauses (i), (ii) and (iii) of sub-section (1) and sub-section (2) shall, in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court, be for a term not less than six months.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences under this Act, except the offences referred to in sub-section (5) shall be non-cognizable and bailable.

(5) The offences specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) and punishable under clause (i) of that sub-section shall be cognizable and non-bailable.

(6) A person shall not be prosecuted for any offence under this section except with the previous sanction of the Commissioner.

Explanation.— For the purposes 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 the provisions of this Act, the State Goods and Services Tax Act, the Integrated Goods and Services Tax Act or the Union Territory Goods and Services Tax Act and cess levied under the Goods and Services Tax (Compensation to States) Act.

133. Liability of officers and certain other persons.—

- (1) Where any person engaged in connection with the collection of statistics under section 151 or compilation or computerisation thereof or if any officer of central tax having access to information specified under subsection (1) of section 150, or if any person engaged in connection with the provision of service on the common portal or the agent of common portal, wilfully discloses any information or the contents of any return furnished under this Act or rules made thereunder otherwise than in execution of his duties under the said sections or for the purposes of prosecution for an offence under this Act or under any other Act for the time being in force, he shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to twenty-five thousand rupees, or with both.
- (2) Any person—
- (a) who is a Government servant shall not be prosecuted for any offence under this section except with the previous sanction of the Government;
 - (b) who is not a Government servant shall not be prosecuted for any offence under this section except with the previous sanction of the Commissioner.

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.

135. Presumption of culpable mental state.

In any prosecution for an offence under this Act which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state but it shall be a defence 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.

Explanation.—For the purposes of this section,—

- (i) the expression —culpable mental state|| includes intention, motive, knowledge of a fact, and belief in, or reason to believe, a fact;
- (ii) 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.

136. Relevancy of statements under certain circumstances.

A statement made and signed by a person on appearance in response to any summons issued under section 70 during the course of any inquiry or proceedings under this Act shall be relevant, for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains,—

(a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable; or

(b) when the person who made the statement is examined as a witness in the case before the court and the court is of the opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interest of justice.

137. Offences by companies.

- (1) Where an offence committed by a person under this Act is a company, every person who, at the time the offence was committed 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 to be proceeded against and punished accordingly.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any negligence on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(3) Where an offence under this Act has been committed by a taxable person being a partnership firm or a Limited Liability Partnership or a Hindu Undivided Family or a 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 and the provisions of sub-section (2) shall, *mutatis mutandis*, apply to such persons.

(4) Nothing contained in this section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

Explanation.—For the purposes of this section,—

- (i) “company” means a body corporate and includes a firm or other association of individuals; and
- (ii) “director”, in relation to a firm, means a partner in the firm.

138. Compounding of offences.

- (1) Any offence under this Act may, either before or after the institution of prosecution, be compounded by the Commissioner on payment, by the person accused of the offence, to the Central Government or the State Government, as the case be, of such compounding amount in such manner as may be prescribed:

Provided that nothing contained in this section shall apply to—

- (a) a person who has been allowed to compound once in respect of any of the offences specified in clauses (a) to (f) of sub-section (1) of section 132 and the offences specified in clause (l) which are relatable to offences specified in clauses (a) to (f) of the said sub-section;
- (b) a person who has been allowed to compound once in respect of any offence, other than those in clause (a), under this Act or under the provisions of any State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act or the Integrated Goods and Services Tax Act in respect of supplies of value exceeding one crore rupees;

(c) a person who has been accused of committing an offence under this Act which is also an offence under any other law for the time being in force;

(d) a person who has been convicted for an offence under this Act by a court;

(e) a person who has been accused of committing an offence specified in clause (g) or clause (j) or clause (k) of sub-section (1) of section 132; and

(f) any other class of persons or offences as may be prescribed:

Provided further that any compounding allowed under the provisions of this section shall not affect the proceedings, if any, instituted under any other law:

Provided also that compounding shall be allowed only after making payment of tax, interest and penalty involved in such offences.

- (2) The amount for compounding of offences under this section shall be such as may be prescribed, subject to the minimum amount not being less than ten thousand rupees or fifty per cent. of the tax involved, whichever is higher, and

the maximum amount not being less than thirty thousand rupees or one hundred and fifty per cent. of the tax, whichever is higher.

(3) On payment of such compounding amount as may be determined by the Commissioner, no further proceedings shall be initiated under this Act against the accused person in respect of the same offence and any criminal proceedings, if already initiated in respect of the said offence, shall stand abated.

139. Migration of existing taxpayers.

- (1) On and from the appointed day, every person registered under any of the existing laws and having a valid Permanent Account Number shall be issued a certificate of registration on provisional basis, subject to such conditions and in such form and manner as may be prescribed, which unless replaced by a final certificate of registration under sub-section (2), shall be liable to be cancelled if the conditions so prescribed are not complied with.

(2) The final certificate of registration shall be granted in such form and manner and subject to such conditions as may be prescribed.

- (3) The certificate of registration issued to a person under sub-section (1) shall be deemed to have not been issued if the said registration is cancelled in pursuance of an application filed by such person that he was not liable to registration under section 22 or section 24.

140. Transitional arrangements for input tax credit

- (1) A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, the amount of CENVAT credit [of eligible duties]¹¹¹ carried forward in the return relating to

¹¹¹ Inserted w.e.f. 01st July, 2017 by The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018) – Brought into force w.e.f. 01st February, 2019.

the period ending with the day immediately preceding the appointed day, furnished by him under the existing law [within such time and]¹¹²¹¹³in such manner as may be prescribed:

Provided that the registered person shall not be allowed to take credit in the following circumstances, namely:—

- (i) where the said amount of credit is not admissible as input tax credit under this Act; or
- (ii) where he has not furnished all the returns required under the existing law for the period of six months immediately preceding the appointed date; or
- (iii) where the said amount of credit relates to goods manufactured and cleared under such exemption notifications as are notified by the Government.

(2) A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, credit of the unavailed CENVAT credit in respect of capital goods, not carried forward

¹¹² Inserted w.e.f. 01.07.2017 by The Finance Act, 2020 (No. 12 of 2020)—Brought into force w.e.f

¹¹³ .05.2020.

in a return, furnished under the existing law by him, for the period ending with the day immediately preceding the appointed day [within such time and]¹¹⁴ in such manner as may be prescribed:

Provided that the registered person shall not be allowed to take credit unless the said credit was admissible as CENVAT credit under the existing law and is also admissible as input tax credit under this Act.

Explanation.—For the purposes of this sub-section, the expression “unavailed CENVAT credit” means the amount that remains after subtracting the amount of CENVAT credit already availed in respect of capital goods by the taxable person under the existing law from the aggregate amount of CENVAT credit to which the said person was entitled in respect of the said capital goods under the existing law.

(3) A registered person, who was not liable to be registered under the existing law, or who was engaged in the manufacture of exempted goods or provision of exempted services, or who was providing works contract service and was availing of the benefit of notification No. 26/2012—Service Tax, dated the 20th June, 2012 or a first stage dealer or a second stage dealer or a registered importer or a depot of a manufacturer, shall be

¹¹⁴ Inserted w.e.f. 01.07.2017 by The Finance Act, 2020 (No. 12 of 2020)—Brought into force w.e.f 18.05.2020.

entitled to take, in his electronic credit ledger, credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished [goods held in stock on the appointed day, within such time and in such manner as may be prescribed, subject to]¹¹⁵ the following conditions, namely:—

(i) such inputs or goods are used or intended to be used for making taxable supplies under this Act;

(ii) the said registered person is eligible for input tax credit on such inputs under this Act;

(iii) the said registered person is in possession of invoice or other prescribed documents evidencing payment of duty under the existing law in respect of such inputs;

(iv) such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day; and

(v) the supplier of services is not eligible for any abatement under this Act:

¹¹⁵ Substituted w.e.f. 01.07.2017 for —goods held in stock on the appointed day subject to by The Finance Act, 2020 (No. 12 of 2020)—Brought into force w.e.f 18.05.2020.

Provided that where a registered person, other than a manufacturer or a supplier of services, is not in possession of an invoice or any other documents evidencing payment of duty in respect of inputs, then, such registered person shall, subject to such conditions, limitations and safeguards as may be prescribed, including that the said taxable person shall pass on the benefit of such credit by way of reduced prices to the recipient, be allowed to take credit at such rate and in such manner as may be prescribed.

(4) A registered person, who was engaged in the manufacture of taxable as well as exempted goods under the Central Excise Act, 1944 or provision of taxable as well as exempted services under Chapter V of the Finance Act, 1994, but which are liable to tax under this Act, shall be entitled to take, in his electronic credit ledger,—

(a) the amount of CENVAT credit carried forward in a return furnished under the existing law by him in accordance with the provisions of sub-section (1); and

(b) the amount of CENVAT credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished

goods held in stock on the appointed day, relating to such exempted goods or services, in accordance with the provisions of sub-section (3).

(5) A registered person shall be entitled to take, in his electronic credit ledger, credit of eligible duties and taxes in respect of inputs or input services received on or after the appointed day but the duty or tax in respect of which has been paid by the supplier under the [existing law, within such time and in such manner as may be prescribed,]¹¹⁶ subject to the condition that the invoice or any other duty or tax paying document of the same was recorded in the books of account of such person within a period of thirty days from the appointed day:

Provided that the period of thirty days may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding thirty days:

Provided further that said registered person shall furnish a statement, in such manner as may be prescribed, in respect of credit that has been taken under this subsection.

(6) A registered person, who was either paying tax at a fixed rate or paying a fixed amount in lieu of the tax payable under the existing law shall

¹¹⁶ Substituted w.e.f. 01.07.2017 for —existing law by The Finance Act, 2020 (No. 12 of 2020) –Brought into force w.e.f 18.05.2020.

be entitled to take, in his electronic credit ledger, credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished [goods held in stock on the appointed day, within such time and in such manner as may be prescribed, subject to]¹¹⁷ the following conditions, namely:—

(i) such inputs or goods are used or intended to be used for making taxable supplies under this Act;

(ii) the said registered person is not paying tax under section 10;

(iii) the said registered person is eligible for input tax credit on such inputs under this Act;

(iv) the said registered person is in possession of invoice or other prescribed documents evidencing payment of duty under the existing law in respect of inputs; and

(v) such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day.

¹¹⁷ Substituted w.e.f. 01.07.2017 for —goods held in stock on the appointed day, subject to by The Finance Act, 2020 (No. 12 of 2020)—Brought into force w.e.f 18.05.2020.

Notwithstanding anything to the contrary contained in this Act, the input tax credit on account of any services received prior to the appointed day by an Input Service Distributor shall be eligible for distribution as [credit under this Act, within such time and in such manner as may be prescribed, even if]¹¹⁸ the invoices relating to such services are received on or after the appointed day.

¹¹⁸ Substituted w.e.f. 01.07.2017 for —credit under this Act even if by The Finance Act, 2020 (No. 12 of 2020)—Brought into force w.e.f 18.05.2020.

(7) Where a registered person having centralised registration under the existing law has obtained a registration under this Act, such person shall be allowed to take, in his electronic credit ledger, credit of the amount of CENVAT credit carried forward in a return, furnished under the existing law by him, in respect of the period ending with the day immediately preceding the appointed day [within such time and in such manner]¹¹⁹ as may be prescribed:

Provided that if the registered person furnishes his return for the period ending with the day immediately preceding the appointed day within three months of the appointed day, such credit shall be allowed subject to the condition that the said return is either an original return or a revised return where the credit has been reduced from that claimed earlier:

Provided further that the registered person shall not be allowed to take credit unless the said amount is admissible as input tax credit under this Act:

¹¹⁹ Substituted w.e.f. 01.07.2017 for —in such manner by The Finance Act, 2020 (No. 12 of 2020)—Brought into force w.e.f 18.05.2020.

Provided also that such credit may be transferred to any of the registered persons having the same Permanent Account Number for which the centralised registration was obtained under the existing law.

- (8) Where any CENVAT credit availed for the input services provided under the existing law has been reversed due to non-payment of the consideration within a period of three months, such [credit can be reclaimed, within such time and in such manner as may be prescribed, subject to]¹²⁰ the condition that the registered person has made the payment of the consideration for that supply of services within a period of three months from the appointed day.

(9) The amount of credit under sub-sections (3), (4) and (6) shall be calculated in such manner as may be prescribed.

Explanation 1.—For the purposes of sub-sections (3), (4) and (6), the expression “eligible duties” means

- (i) the additional duty of excise leviable under section 3 of the

Additional Duties of Excise (Goods of Special Importance) Act, 1957;

¹²⁰ Substituted w.e.f. 01.07.2017 for —credit can be reclaimed subject to by The Finance Act, 2020 (No. 12 of 2020) Brought into force w.e.f 18.05.2020.

- (ii) the additional duty leviable under sub-section (1) of section 3 of the Customs Tariff Act, 1975;
- (iii) the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, 1975;
- (iv) [*****]¹²¹;
- (v) the duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985;
- (vi) the duty of excise specified in the Second Schedule to the Central Excise Tariff Act, 1985; and
- (vii) the National Calamity Contingent Duty leviable under section 136 of the Finance Act, 2001, in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day.

Explanation 2.—For the purposes of sub-section (5), the expression “eligible duties and taxes” means

¹²¹ Omitted w.e.f. 01st July, 2017 by The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018) Brought into force w.e.f. 01st February, 2019.

- (i) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957;
- (ii) the additional duty leviable under sub-section (1) of section 3 of the Customs Tariff Act, 1975;
- (iii) the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, 1975;
- (iv) [*****]¹²²;
- (v) the duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985;
- (vi) the duty of excise specified in the Second Schedule to the Central Excise Tariff Act, 1985;
- (vii) the National Calamity Contingent Duty leviable under section 136 of the Finance Act, 2001; and
- (viii) the service tax leviable under section 66B of the Finance Act, 1994, in respect of inputs and input services received on or after the appointed day.

¹²² Omitted w.e.f. 01st July, 2017 by The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018) – Brought into force w.e.f. 01st February, 2019.

*[Explanation 3.—For removal of doubts, it is hereby clarified that the expression eligible duties and taxes|| excludes any cess which has not been specified in Explanation 1 or Explanation 2 and any cess which is collected as additional duty of customs under sub-section (1) of section 3 of the Customs Tariff Act, 1975.]*¹²³

141. Transitional provisions relating to job work.

- (1) Where any inputs received at a place of business had been removed as such or removed after being partially processed to a job worker for further processing, testing, repair, reconditioning or any other purpose in accordance with the provisions of existing law prior to the appointed day and such inputs are returned to the said place on or after the appointed day, no tax shall be payable if such inputs, after completion of the job work or otherwise, are returned to the said place within six months from the appointed day:

Provided that the period of six months may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding two months:

¹²³ Inserted w.e.f. 01st July, 2017 by The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018) Brought into force w.e.f. 01st February, 2019.

Provided further that if such inputs are not returned within the period specified in this sub-section, the input tax credit shall be liable to be recovered in accordance with the provisions of clause (a) of sub-section (8) of section 142.

- (2) Where any semi-finished goods had been removed from the place of business to any other premises for carrying out certain manufacturing processes in accordance with the provisions of existing law prior to the appointed day and such goods (hereafter in this section referred to as —the said goods¹¹) are returned to the said place on or after the appointed day, no tax shall be payable, if the said goods, after undergoing manufacturing processes or otherwise, are returned to the said place within six months from the appointed day:

Provided that the period of six months may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding two months:

Provided further that if the said goods are not returned within the period specified in this sub-section, the input tax credit shall be liable to be recovered in accordance with the provisions of clause (a) of sub-section (8) of section 142:

—

Provided also that the manufacturer may, in accordance with the provisions of the existing law, transfer the said goods to the premises of any registered person for the purpose of supplying therefrom on payment of tax in India or without payment of tax for exports within the period specified in this subsection.

- (3) Where any excisable goods manufactured at a place of business had been removed without payment of duty for carrying out tests or any other process not amounting to manufacture, to any other premises, whether registered or not, in accordance with the provisions of existing law prior to the appointed day and such goods, are returned to the said place on or after the appointed day, no tax shall be payable if the said goods, after undergoing tests or any other process, are returned to the said place within six months from the appointed day:

Provided that the period of six months may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding two months:

—

Provided further that if the said goods are not returned within the period specified in this sub-section, the input tax credit shall be liable to be recovered in accordance with the provisions of clause (a) of sub-section (8) of section 142:

Provided also that the manufacturer may, in accordance with the provisions of the existing law, transfer the said goods from the said other premises on payment of tax in India or without payment of tax for exports within the period specified in this sub-section.

- (4) The tax under sub-sections (1), (2) and (3) shall not be payable, only if the manufacturer and the job worker declare the details of the inputs or goods held in stock by the job worker on behalf of the manufacturer on the appointed day in such form and manner and within such time as may be prescribed.

—

142. Miscellaneous transitional provisions.

- (1) Where any goods on which duty, if any, had been paid under the existing law at the time of removal thereof, not being earlier than six months prior to the appointed day, are returned to any place of business on or after the appointed day, the registered person shall be eligible for refund of the duty paid under the existing law where such goods are returned by a person, other than a registered person, to the said place of business within a period of six months from the appointed day and such goods are identifiable to the satisfaction of the proper officer:

Provided that if the said goods are returned by a registered person, the return of such goods shall be deemed to be a supply.

- (2) (a) where, in pursuance of a contract entered into prior to the appointed day, the price of any goods or services or both is revised upwards on or after the appointed day, the registered person who had removed or provided such goods or services or both shall issue to the recipient a supplementary invoice or debit note, containing such particulars as may be prescribed, within thirty days of such price revision and for the purposes of this Act such supplementary invoice or debit note shall be deemed to have been issued in respect of an outward supply made under this Act;

(b) where, in pursuance of a contract entered into prior to the appointed day, the price of any goods or services or both is revised downwards on or after the appointed day, the registered person who had removed or provided such goods or services or both may issue to the recipient a credit note, containing such particulars as may be prescribed, within thirty days of such price revision and for the purposes of this Act such credit note shall be deemed to have been issued in respect of an outward supply made under this Act:

Provided that the registered person shall be allowed to reduce his tax liability on account of issue of the credit note only if the recipient of the credit note has reduced his input tax credit corresponding to such reduction of tax liability.

(3) Every claim for refund filed by any person before, on or after the appointed day, for refund of any amount of CENVAT credit, duty, tax, interest or any other amount paid under the existing law, shall be disposed of in accordance with the provisions of existing law and any amount eventually accruing to him shall be paid in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944:

Provided that where any claim for refund of CENVAT credit is fully or partially rejected, the amount so rejected shall lapse:

Provided further that no refund shall be allowed of any amount of CENVAT credit where the balance of the said amount as on the appointed day has been carried forward under this Act.

(4) Every claim for refund filed after the appointed day for refund of any duty or tax paid under existing law in respect of the goods or services exported before or after the appointed day, shall be disposed of in accordance with the provisions of the existing law:

Provided that where any claim for refund of CENVAT credit is fully or partially rejected, the amount so rejected shall lapse:

Provided further that no refund shall be allowed of any amount of CENVAT credit where the balance of the said amount as on the appointed day has been carried forward under this Act.

(5) Every claim filed by a person after the appointed day for refund of tax paid under the existing law in respect of services not provided shall be disposed of in accordance with the provisions of existing law and any amount eventually accruing to him shall be paid in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944.

(6) (a) every proceeding of appeal, review or reference relating to a claim for

CENVAT credit initiated whether before, on or after the appointed day under the existing law shall be disposed of in accordance with the provisions of existing law, and any amount of credit found to be admissible to the claimant shall be refunded to him in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of subsection (2) of section 11B of the Central Excise Act, 1944 and the amount rejected, if any, shall not be admissible as input tax credit under this Act:

Provided that no refund shall be allowed of any amount of CENVAT credit where the balance of the said amount as on the appointed day has been carried forward under this Act;

(b) every proceeding of appeal, review or reference relating to recovery of CENVAT credit initiated whether before, on or after the appointed day under the existing law shall be disposed of in accordance with the provisions of existing law and if any amount of credit becomes recoverable as a result of such appeal, review or reference, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under this Act and the amount so recovered shall not be admissible as input tax credit under this Act.

- (7) (a) every proceeding of appeal, review or reference relating to any output duty or tax liability initiated whether before, on or after the appointed day under the existing law, shall be disposed of in accordance with the provisions of the existing law, and if any amount becomes recoverable as a result of such appeal, review or reference, the same shall, unless recovered under the existing law, be recovered as an arrear of duty or tax under this Act and the amount so recovered shall not be admissible as input tax credit under this Act.
- (b) every proceeding of appeal, review or reference relating to any output duty or tax liability initiated whether before, on or after the appointed day under the existing law, shall be disposed of in accordance with the provisions of the existing law, and any amount found to be admissible to the claimant shall be refunded to him in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 and the amount rejected, if any, shall not be admissible as input tax credit under this Act.
- (8) (a) where in pursuance of an assessment or adjudication proceedings instituted, whether before, on or after the appointed day, under the existing law, any amount of tax, interest, fine or penalty becomes recoverable from the person, the same shall, unless recovered under the existing law, be recovered as an

arrear of tax under this Act and the amount so recovered shall not be admissible as input tax credit under this Act;

(b) where in pursuance of an assessment or adjudication proceedings instituted, whether before, on or after the appointed day, under the existing law, any amount of tax, interest, fine or penalty becomes refundable to the taxable person, the same shall be refunded to him in cash under the said law, notwithstanding anything to the contrary contained in the said law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 and the amount rejected, if any, shall not be admissible as input tax credit under this Act.

(9) (a) where any return, furnished under the existing law, is revised after the appointed day and if, pursuant to such revision, any amount is found to be recoverable or any amount of CENVAT credit is found to be inadmissible, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under this Act and the amount so recovered shall not be admissible as input tax credit under this Act;

(b) where any return, furnished under the existing law, is revised after the appointed day but within the time limit specified for such revision under the existing law and if, pursuant to such revision, any amount is found to be refundable or CENVAT credit is found to be admissible to any taxable person, the same shall

be refunded to him in cash under the existing law, notwithstanding anything to the contrary contained in the said law other than the provisions of subsection (2) of section 11B of the Central Excise Act, 1944 and the amount rejected, if any, shall not be admissible as input tax credit under this Act.

(10) Save as otherwise provided in this Chapter, the goods or services or both supplied on or after the appointed day in pursuance of a contract entered into prior to the appointed day shall be liable to tax under the provisions of this Act.

(11) (a) notwithstanding anything contained in section 12, no tax shall be payable on goods under this Act to the extent the tax was leviable on the said goods under the Value Added Tax Act of the State;

(b) notwithstanding anything contained in section 13, no tax shall be payable on services under this Act to the extent the tax was leviable on the said services under Chapter V of the Finance Act, 1994;

(c) where tax was paid on any supply both under the Value Added Tax Act and under Chapter V of the Finance Act, 1994, tax shall be leviable under this Act and the taxable person shall be entitled to take credit of value added tax or service tax paid under the existing law to the extent of supplies made

after the appointed day and such credit shall be calculated in such manner as may be prescribed.

(12) Where any goods sent on approval basis, not earlier than six months before the appointed day, are rejected or not approved by the buyer and returned to the seller on or after the appointed day, no tax shall be payable thereon if such goods are returned within six months from the appointed day: Provided that the said period of six months may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding two months:

Provided further that the tax shall be payable by the person returning the goods if such goods are liable to tax under this Act, and are returned after a period specified in this sub-section:

Provided also that tax shall be payable by the person who has sent the goods on approval basis if such goods are liable to tax under this Act, and are not returned within a period specified in this sub-section.

(13) Where a supplier has made any sale of goods in respect of which tax was required to be deducted at source under any law of a State or Union territory relating to Value Added Tax and has also issued an invoice for the

same before the appointed day, no deduction of tax at source under section 51 shall be made by the deductor under the said section where payment to the said supplier is made on or after the appointed day.

Explanation.—For the purposes of this Chapter, the expressions “capital goods”, “Central Value Added Tax (CENVAT) credit”, “first stage dealer”, “second stage dealer”, or “manufacture” shall have the same meaning as respectively assigned to them in the Central Excise Act, 1944 or the rules made thereunder.

143. Job work procedure

(1) A registered person (hereafter in this section referred to as the —principal|||) may under intimation and subject to such conditions as may be prescribed, send any inputs or capital goods, without payment of tax, to a job worker for job work and from there subsequently send to another job worker and likewise, and shall,—

(a) bring back inputs, after completion of job work or otherwise, or capital goods, other than moulds and dies, jigs and fixtures, or tools, within one year and three years, respectively, of their being sent out, to any of his place of business, without payment of tax;

(b) supply such inputs, after completion of job work or otherwise, or capital goods, other than moulds and dies, jigs and fixtures, or tools, within one year and three years, respectively, of their being sent out from the place of business of a job worker on payment of tax within India, or with or without payment of tax for export, as the case may be:

Provided that the principal shall not supply the goods from the place of business of a job worker in accordance with the provisions of this clause unless the said principal declares the place of business of the job worker as his additional place of business except in a case—

- (i) where the job worker is registered under section 25; or
- (ii) where the principal is engaged in the supply of such goods as may be notified by the Commissioner:

[Provided further that the period of one year and three years may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding one year and two years respectively.]¹²⁴

(2) The responsibility for keeping proper accounts for the inputs or capital goods shall lie with the principal.

(3) Where the inputs sent for job work are not received back by the principal after completion of job work or otherwise in accordance with the provisions of clause (a) of sub-section (1) or are not supplied from the place of business of the job worker in accordance with the provisions of clause (b) of sub-section (1) within a period of one year of their being sent out, it shall be deemed that such inputs had been supplied by the principal to the job worker on the day when the said inputs were sent out.

(4) Where the capital goods, other than moulds and dies, jigs and fixtures, or tools, sent for job work are not received back by the principal in accordance with the provisions of clause (a) of sub-section (1) or are not

¹²⁴ Inserted by The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018) –Brought into force w.e.f. 01st February, 2019.

supplied from the place of business of the job worker in accordance with the provisions of clause (b) of sub-section (1) within a period of three years of their being sent out, it shall be deemed that such capital goods had been supplied by the principal to the job worker on the day when the said capital goods were sent out.

(5) Notwithstanding anything contained in sub-sections (1) and (2), 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.

Explanation.—For the purposes of job work, input includes intermediate goods arising from any treatment or process carried out on the inputs by the principal or the job worker.

144. Presumption as to documents in certain cases.—

Where any document—

(i) is produced by any person under this Act or any other law for the time being in force; or

(ii) has been seized from the custody or control of any person under this Act or any other law for the time being in force; or

(iii) has been received from any place outside India in the course of any proceedings under this Act or any other law for the time being in force, 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—

(a) unless the contrary is proved by such person, presume—

(i) the truth of the contents of such document;

(ii) that the signature and every other part of such document which purports to be in the handwriting of any particular person or which the court may reasonably assume to have been signed by, or to be in the handwriting of, any particular person, is in that person's handwriting, and in the case of a document executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested;

(b) admit the document in evidence notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence.

145. Admissibility of micro films, facsimile copies of documents and computer printouts as documents and as evidence.

(1) Notwithstanding anything contained in any other law for the time being in force,—

- (a) a micro film of a document or the reproduction of the image or images embodied in such micro film (whether enlarged or not); or
- (b) a facsimile copy of a document; or
- (c) a statement contained in a document and included in a printed material produced by a computer, subject to such conditions as may be prescribed; or
- (d) any 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.

(2) In any proceedings under this Act or the rules made thereunder, where it is desired to give a statement in evidence by virtue of this section, a certificate,—

- (a) identifying the document containing the statement and describing the manner in which it was produced;
- (a) 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 be evidence of any matter stated in the certificate and for the purposes of this sub-section it shall be

sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

146. Common Portal

The Government may, on the recommendations of the Council, notify the Common Goods and Services Tax Electronic Portal 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.

147 Deemed exports.

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.

148. Special procedure for certain processes.

The Government may, on the recommendations of the Council, and subject to such conditions and safeguards as may be prescribed, notify certain classes of registered persons, and the special procedures to be followed by such persons including those with regard to registration, furnishing of return, payment of tax and administration of such persons.

149. Goods and services tax compliance rating.

- (1) 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.
- (2) The goods and services tax compliance rating score may be determined on the basis of such parameters as may be prescribed.
- (3) The goods and services tax 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.

150. Obligation to furnish information return.

- (1) Any person, being—
 - (a) a taxable person; or
 - (b) a local authority or other public body or association; or
 - (c) any authority of the State Government responsible for the collection of value added tax or sales tax or State excise duty or an authority of the Central Government responsible for the collection of excise duty or customs duty; or

- (d) an income tax authority appointed under the provisions of the Income-tax Act, 1961; or
- (e) a banking company within the meaning of clause (a) of section 45A of the Reserve Bank of India Act, 1934; or
- (f) a State Electricity Board or an electricity distribution or transmission licensee under the Electricity Act, 2003, or any other entity entrusted with such functions by the Central Government or the State Government; or
- (g) the Registrar or Sub-Registrar appointed under section 6 of the Registration Act, 1908; or
- (h) a Registrar within the meaning of the Companies Act, 2013; or
- (i) the registering authority empowered to register motor vehicles under the Motor Vehicles Act, 1988; or
- (j) the Collector referred to in clause (c) of section 3 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013; or
- (k) the recognised stock exchange referred to in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956; or

- (l) a depository referred to in clause (e) of sub-section (1) of section 2 of the Depositories Act, 1996; or
 - (m) an officer of the Reserve Bank of India as constituted under section 3 of the Reserve Bank of India Act, 1934; or
 - (n) the Goods and Services Tax Network, a company registered under the Companies Act, 2013; or
 - (o) a person to whom a Unique Identity Number has been granted under sub-section (9) of section 25; or
 - (p) any other person as may be specified, on the recommendations of the Council, by the Government, who is responsible for maintaining record of registration or statement of accounts or any periodic return or document containing details of payment of tax and other details of transaction of goods or services or both or transactions related to a bank account or consumption of electricity or transaction of purchase, sale or exchange of goods or property or right or interest in a property under any law for the time being in force, shall furnish an information return of the same in respect of such periods, within such time, in such form and manner and to such authority or agency as may be prescribed.
- (2) Where the Commissioner, or an officer authorised by him in this behalf, considers that the information furnished in the information return is defective,

he may intimate the defect to the person who has furnished such information return and give him an opportunity of rectifying the defect within a period of thirty days from the date of such intimation or within such further period which, on an application made in this behalf, the said authority may allow and if the defect is not rectified within the said period of thirty days or, the further period so allowed, then, notwithstanding anything contained in any other provisions of this Act, such information return shall be treated as not furnished and the provisions of this Act shall apply.

- (3) Where a person who is required to furnish information return has not furnished the same within the time specified in sub-section (1) or sub-section (2), the said authority may serve upon him a notice requiring furnishing of such information return within a period not exceeding ninety days from the date of service of the notice and such person shall furnish the information return.

151. Power to collect statistics.

- (1) The Commissioner may, if he considers that it is necessary so to do, by notification, direct that statistics may be collected relating to any matter dealt with by or in connection with this Act.
- (2) Upon such notification being issued, the Commissioner, or any person authorised by him in this behalf, may call upon the concerned persons to

furnish such information or returns, in such form and manner as may be prescribed, relating to any matter in respect of which statistics is to be collected.

Author Comment

In Budget 2021, Section 151 of the CGST Act amended grant wide powers to the concerned jurisdictional commissioner. Notes to clauses prescribe as *Clause 110 of the Bill seeks to substitute section 151 of the Central Goods and Services Tax Act so as to empower the jurisdictional commissioner to call for information from any person relating to any matters dealt with in connection with the Act*

152. Bar on disclosure of information

- (1) No information of any individual return or part thereof with respect to any matter given for the purposes of section 150 or section 151 shall, without the previous consent in writing of the concerned person or his authorised representative, be published in such manner so as to enable such particulars to be identified as referring to a particular person and no such information shall be used for the purpose of any proceedings under this Act.

- (2) Except for the purposes of prosecution under this Act or any other Act for the time being in force, no person who is not engaged in the collection of statistics under this Act or compilation or computerisation thereof for the purposes of this Act, shall be permitted to see or have access to any information or any individual return referred to in section 151.
- (3) Nothing in this section shall apply to the publication of any information relating to a class of taxable persons or class of transactions, if in the opinion of the Commissioner, it is desirable in the public interest to publish such information.

Author Comment

In Budget 2021, Section 152 of the CGST Act has proposed to be amended to include personal hearing, Thus, this section is amended in consensus with section 151. Now as per proposed section information received shall not be permitted to be used for the purpose of any proceedings under this Act without giving an opportunity of being heard.

153. Taking assistance from an expert

Any officer not below the rank of Assistant Commissioner may, having regard to the nature and complexity of the case and the interest of revenue, take

assistance of any expert at any stage of scrutiny, inquiry, investigation or any other proceedings before him.

154. Power to take samples

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.

155. Burden of proof

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.

156. Persons deemed to be public servants

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.

157. Protection of action taken under this Act. —

- (1) 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.

- (2) 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.

158. Disclosure of information by a public servant

- (1) All particulars contained in any statement made, return furnished or accounts or documents produced in accordance with this Act, or in any record of evidence given in the course of any proceedings under this Act (other than proceedings before a criminal court), or in any record of any proceedings under this Act shall, save as provided in sub-section (3), not be disclosed.
- (2) Notwithstanding anything contained in the Indian Evidence Act, 1872, no court shall, save as otherwise provided in sub-section (3), require any officer appointed or authorised under this Act to produce before it or to give evidence before it in respect of particulars referred to in sub-section (1).
- (3) Nothing contained in this section shall apply to the disclosure of,—
 - (a) any particulars in respect of any statement, return, accounts, documents, evidence, affidavit or deposition, for the purpose of any prosecution under the Indian Penal Code or the Prevention of Corruption Act, 1988, or any other law for the time being in force; or

- (b) any particulars to the Central Government or the State Government or to any person acting in the implementation of this Act, for the purposes of carrying out the objects of this Act; or
- (c) any particulars when such disclosure is occasioned by the lawful exercise under this Act of any process for the service of any notice or recovery of any demand; or
- (d) any particulars to a civil court in any suit or proceedings, to which the Government or any authority under this Act is a party, which relates to any matter arising out of any proceedings under this Act or under any other law for the time being in force authorising any such authority to exercise any powers thereunder; or
- (e) any particulars to any officer appointed for the purpose of audit of tax receipts or refunds of the tax imposed by this Act; or
- (f) any particulars where such particulars are relevant for the purposes of any inquiry into the conduct of any officer appointed or authorised under this Act, to any person or persons appointed as an inquiry officer under any law for the time being in force; or

- (g) any such particulars to an officer of the Central Government or of any State Government, as may be necessary for the purpose of enabling that Government to levy or realise any tax or duty; or
- (h) any particulars when such disclosure is occasioned by the lawful exercise by a public servant or any other statutory authority, of his or its powers under any law for the time being in force; or
- (i) any particulars relevant to any inquiry into a charge of misconduct in connection with any proceedings under this Act against a practising advocate, a tax practitioner, a practising cost accountant, a practising 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, as the case may be; or
- (j) 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; or
- (k) any particulars to an officer of the Government as may be necessary for the purposes of any other law for the time being in force; or

- (1) any information relating to any class of taxable persons or class of transactions for publication, if, in the opinion of the Commissioner, it is desirable in the public interest, to publish such information.

159. Publication of information in respect of persons in certain cases

- (1) 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 such name and particulars in such manner as it thinks fit.
- (2) 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.

Explanation.—In the case of firm, company or other association of persons, the names of the partners of the firm, directors, managing agents, secretaries and treasurers 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, or any other officer authorised by him in this behalf, circumstances of the case justify it.

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

- (1) No assessment, re-assessment, adjudication, review, revision, appeal, rectification, notice, summons or other proceedings done, accepted, made, issued, initiated, or purported to have been done, accepted, made, issued, initiated in pursuance of any of the provisions of this Act shall be invalid or deemed to be invalid merely by reason of any mistake, defect or omission therein, if such assessment, re-assessment, adjudication, review, revision, appeal, rectification, notice, summons or other proceedings are in substance and effect in conformity with or according to the intents, purposes and requirements of this Act or any existing law.

- (2) The service of any notice, order or communication shall not be called in question, if the notice, order or communication, as the case may be, 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 earlier proceedings commenced, continued or finalised pursuant to such notice, order or communication.

161. Rectification of errors apparent on the face of record.

Without prejudice to the provisions of section 160, and notwithstanding anything contained in any other provisions of this Act, 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 decision or order or notice or certificate or any other document, either on its own motion or where such error is brought to its notice by any officer appointed under this Act or an officer appointed under the State Goods and Services Tax Act or an officer appointed under the Union Territory Goods and Services Tax Act or by the affected person within a period of three months from the date of issue of such decision or order or notice or certificate or any other document, as the case may be:

Provided that no such rectification shall be done after a period of six months from the date of issue of such decision or order or notice or certificate or any other document:

Provided further that the said period of six 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:

Provided also that where such rectification adversely affects any person, the principles of natural justice shall be followed by the authority carrying out such rectification.

162. Bar on jurisdiction of civil courts.

Save as provided in sections 117 and 118, no civil court shall have jurisdiction to deal with or decide any question arising from or relating to anything done or purported to be done under this Act.

163. Levy of fee

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.

164. Power of Government to make rules

- (1) The Government may, on the recommendations of the Council, by notification, make rules for carrying out the provisions of this Act.
- (2) Without prejudice to the generality of the provisions of sub-section (1), the Government may make rules for all or any of the matters which by this Act are required to be, or may be, prescribed or in respect of which provisions are to be or may be made by rules.

- (3) The power to make rules conferred by this section shall include the power to give retrospective effect to the rules or any of them from a date not earlier than the date on which the provisions of this Act come into force.
- (4) Any rules made under sub-section (1) or sub-section (2) may provide that a contravention thereof shall be liable to a penalty not exceeding ten thousand rupees.

165. Power to make regulations.

The Board may, by notification, make regulations consistent with this Act and the rules made thereunder to carry out the provisions of this Act.

166. Laying of rules, regulations and notifications.

Every rule made by the Government, every regulation made by the Board and every notification issued by the Government under this Act, shall be laid, as soon as may be after it is made or issued, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or in the notification, as the case may be, or both Houses agree that the rule or regulation or the notification should not be made, the rule or regulation or notification, as the case may be, shall thereafter have effect only in such modified form or be

of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation or notification, as the case may be.

167. Delegation of powers.

The Commissioner may, by notification, direct that subject to such conditions, if any, as may be specified in the notification, any power exercisable by any authority or officer under this Act may be exercisable also by another authority or officer as may be specified in such notification.

168. Power to issue instructions or directions

- (1) The Board may, if it considers it necessary or expedient so to do for the purpose of uniformity in the implementation of this Act, issue such orders, instructions or directions to the central tax officers as it may deem fit, and thereupon all such officers and all other persons employed in the implementation of this Act shall observe and follow such orders, instructions or directions.
- (2) The Commissioner specified in clause (91) of section 2, sub-section (3) of section 5, clause (b) of sub-section (9) of section 25, sub-sections (3) and (4) of section 35, sub-section (1) of section 37, sub-section (2) of section 38, sub-section (6) of section 39, [sub-section (1) of section 44, sub-sections (4)

and (5) of section 52]¹²⁵, [sub-section (1) of section 143, except the second proviso thereof]¹²⁶, sub-section (1) of section 151, clause (1) of sub-section (3) of section 158 and section 167 shall mean a Commissioner or Joint Secretary posted in the Board and such Commissioner or Joint Secretary shall exercise the powers specified in the said sections with the approval of the Board.

[168A. Power of Government to extend time limit in special circumstances. —

- (1) Notwithstanding anything contained in this Act, the Government may, on the recommendations of the Council, by notification, extend the time limit specified in, or prescribed or notified under, this Act in respect of actions which cannot be completed or complied with due to force majeure.
- (2) The power to issue notification under sub-section (1) shall include the power to give retrospective effect to such notification from a date not earlier than the date of commencement of this Act.

¹²⁵ Inserted by The Finance (No. 2) Act, 2019 (No. 23 of 2019) – Brought into force w.e.f. 01st January, 2020.

¹²⁶ Substituted for —sub-section (5) of section 66, sub-section (1) of section 143|| by The Finance Act, 2020 (No. 12 of 2020) –Brought into force w.e.f. 30.06.2020.

Explanation.— For the purposes of this section, the expression “force majeure” means a case of war, epidemic, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature or otherwise affecting the implementation of any of the provisions of this Act.]¹²⁷

169. Service of notice in certain circumstances.

(1) 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, namely:—

(a) 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

¹²⁷ Inserted by The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 published in the Gazette of India, Extraordinary, Part II, Section 1, dated 29th September, 2020 - Brought into force w.e.f. 31st March, 2020.

- (b) 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) by sending a communication to his e-mail address provided at the time of registration or as amended from time to time; or
 - (d) by making it available on the common portal; or
 - (e) 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) 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.
- (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 in the manner provided in sub-section (1).
- (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.

170. Rounding off of tax, etc.

The amount of tax, interest, penalty, fine or any other sum payable, and the amount of refund or any other sum due, under the provisions of this Act shall be rounded off to the nearest rupee and, for this purpose, where such amount contains a part of a rupee consisting of paise, then, if such part is fifty paise or more, it shall be increased to one rupee and if such part is less than fifty paise it shall be ignored.

171. Antiprofitereering measure.

- (1) 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.
- (2) 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.
- (3) The Authority referred to in sub-section (2) shall exercise such powers and discharge such functions as may be prescribed.

[(3A) Where the Authority referred to in sub-section (2), after holding examination as required under the said sub-section 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:

Provided that no penalty shall be leviable if the profiteered amount is deposited within thirty days of the date of passing of the order by the Authority.

Explanation.—For the purposes of this section, the expression —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]¹²⁸.

172. Removal of difficulties.—

- (1) If any difficulty arises in giving effect to any provisions 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

¹²⁸ Inserted by The Finance (No. 2) Act, 2019 (No. 23 of 2019) – Brought into force w.e.f. 01st January, 2020.

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]¹²⁹ from the date of commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be, after it is made, before each House of Parliament.

173. Amendment of Act 32 of 1994.

Save as otherwise provided in this Act, Chapter V of the Finance Act, 1994 shall be omitted.

174. Repeal and saving

(1) Save as otherwise provided in this Act, on and from the date of commencement of this Act, the Central Excise Act, 1944 (except as respects goods included in entry 84 of the Union List of the Seventh Schedule to the Constitution), the Medicinal and Toilet Preparations (Excise Duties) Act, 1955, the Additional Duties of Excise (Goods of Special Importance) Act, 1957, the

¹²⁹ Substituted for —three years|| by The Finance Act, 2020 (No. 12 of 2020) – Brought into force w.e.f. 30.06.2020.

Additional Duties of Excise (Textiles and Textile Articles) Act, 1978, and the Central Excise Tariff Act, 1985 (hereafter referred to as the repealed Acts) are hereby repealed.

(2) The repeal of the said Acts and the amendment of the Finance Act, 1994 (hereafter referred to as “such amendment” or “amended Act”, as the case may be) to the extent mentioned in the sub-section (1) or section 173 shall not—

- (a) revive anything not in force or existing at the time of such amendment or repeal; or
- (b) affect the previous operation of the amended Act or repealed Acts and orders or anything duly done or suffered thereunder; or
- (c) affect any right, privilege, obligation, or liability acquired, accrued or incurred under the amended Act or repealed Acts or orders under such repealed or amended Acts:

Provided that any tax exemption granted as an incentive against investment through a notification shall not continue as privilege if the said notification is rescinded on or after the appointed day; or

- (d) affect any duty, tax, surcharge, fine, penalty, interest as are due or may become due or any forfeiture or punishment incurred or inflicted in respect of

any offence or violation committed against the provisions of the amended Act or repealed Acts; or

- (e) affect any investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and any other legal proceedings or recovery of arrears or remedy in respect of any such duty, tax, surcharge, penalty, fine, interest, right, privilege, obligation, liability, forfeiture or punishment, as aforesaid, and any such investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and other legal proceedings or recovery of arrears or remedy may be instituted, continued or enforced, and any such tax, surcharge, penalty, fine, interest, forfeiture or punishment may be levied or imposed as if these Acts had not been so amended or repealed;
- (f) affect any proceedings including that relating to an appeal, review or reference, instituted before on, or after the appointed day under the said amended Act or repealed Acts and such proceedings shall be continued under the said amended Act or repealed Acts as if this Act had not come into force and the said Acts had not been amended or repealed.

(3) The mention of the particular matters referred to in sub-sections (1) and (2) shall not be held to prejudice or affect the general application of section 6 of the

General Clauses Act, 1897 with regard to the effect of
repeal.

SCHEDULE I

SCHEDULE I

[See section 7]

ACTIVITIES TO BE TREATED AS SUPPLY EVEN IF MADE WITHOUT CONSIDERATION

1. Permanent transfer or disposal of business assets where input tax credit has been availed on such assets.
2. Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business:

Provided that gifts not exceeding fifty thousand rupees in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.

3. Supply of goods—
 - (a) by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or
 - (b) by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.

4. Import of services by a [person]¹³⁰ from a related person or from any of his other establishments outside India, in the course or furtherance of business.

SCHEDULE II

[See section 7]

ACTIVITIES [OR TRANSACTIONS]¹³¹ TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES

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

¹³⁰ Substituted for —taxable person by The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018) – Brought into force w.e.f. 01st February, 2019.

¹³¹ Inserted w.e.f. 01st July, 2017 by The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018) – Brought into force w.e.f. 01st February, 2019.

2. Land and Building

(a) any lease, tenancy, easement, licence to occupy land is a supply of services;

(b) any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly, is a supply of services.

3. Treatment or process

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

4. Transfer of business assets

(a) where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, [*****]¹³² such transfer or disposal is a supply of goods by the person;

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

¹³² Omitted —whether or not for a consideration,|| w.e.f. 01st July, 2017 by The Finance Act, 2020 (No. 12 of 2020) – Brought into force w.e.f. 01st January, 2021.

or made available to any person for use, for any purpose other than a purpose of the business, [*****]¹³³ the usage or making available of such goods is a supply of services;

- (c) where any person ceases to be a taxable person, any goods forming part of the assets of any business carried on by him shall be deemed to be supplied by him in the course or furtherance of his business immediately before he ceases to be a taxable person, unless—
- (i) the business is transferred as a going concern to another person; or
- (ii) the business is carried on by a personal representative who is deemed to be a taxable person.

5. Supply of services

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

- (a) renting of immovable property;
- (b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after

¹³³ Omitted —whether or not for a consideration,|| w.e.f. 01st July, 2017 by The Finance Act, 2020 (No. 12 of 2020) – Brought into force w.e.f. 01st January, 2021.

issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.

Explanation.—For the purposes of this clause

(1) the expression "competent authority" means the Government or any authority authorised to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely:—

(i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972; or

(ii) a chartered engineer registered with the Institution of Engineers (India);
or

(iii) a licensed surveyor of the respective local body of the city or town or village or development or planning authority;

(2) the expression "construction" includes additions, alterations, replacements or remodelling of any existing civil structure;

(c) temporary transfer or permitting the use or enjoyment of any intellectual property right;

(d) development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software;

- (e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act; and
- (f) transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration.

5. Composite supply

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

- (a) works contract as defined in clause (119) of section 2; and
- (b) supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration.

7. Supply of Goods

The following shall be treated as supply of goods, namely Supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.

SCHEDULE III

[See section 7]

ACTIVITIES OR TRANSACTIONS WHICH SHALL BE TREATED NEITHER AS A SUPPLY OF GOODS NOR A SUPPLY OF SERVICES

1. Services by an employee to the employer in the course of or in relation to his employment.
2. Services by any court or Tribunal established under any law for the time being in force.
3. (a) the functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities;

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

(c) the duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause.
4. Services of funeral, burial, crematorium or mortuary including transportation of the deceased.

5. Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.
6. Actionable claims, other than lottery, betting and gambling.
7. [Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India.
8. (a) Supply of warehoused goods to any person before clearance for home consumption;

(b) Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption.]¹³⁴

*Explanation [1]*¹³⁵.—For the purposes of paragraph 2, the term "court" includes District Court, High Court and Supreme Court.

¹³⁴ Inserted by The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018) – Brought into force w.e.f. 01st February, 2019.

¹³⁵ Inserted by The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018) – Brought into force w.e.f. 01st February, 2019.

*[Explanation 2.—For the purposes of paragraph 8, the expression “warehoused goods” shall have the same meaning as assigned to it in the Customs Act, 1962.]*¹³⁶

¹³⁶ Inserted by The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018) – Brought into force w.e.f. 01st February, 2019.

MINISTRY OF LAW AND JUSTICE
(Legislative Department)

New Delhi, the 12th April, 2017/Chaitra 22, 1939 (Saka) The following Act of Parliament received the assent of the President on the 12th April, 2017, and is hereby published for general information:—

THE INTEGRATED GOODS AND SERVICES TAX ACT, 2017 NO. 13 OF 2017
[12th April, 2017.]

An Act to make a provision for levy and collection of tax on inter-State supply of goods or services or both by the Central Government and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Sixty-eighth Year of the Republic of India as follows:—

CHAPTER I
PRELIMINARY

1. Short title, extent and commencement.

- (1) This Act may be called the Integrated Goods and Services Tax Act, 2017.
- (2) It shall extend to the whole of India [*****]¹³⁷.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

¹³⁷ Omitted —except the State of Jammu and Kashmir| by The Integrated Goods and Services Tax (Extension to Jammu and Kashmir) Act, 2017 (No. 27 of 2017) – Brought into force w.e.f. 8th July, 2017.

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

2. Definitions.—

In this Act, unless the context otherwise requires,—

- (1) “Central Goods and Services Tax Act” means the Central Goods and Services Tax Act, 2017;
- (2) “Central tax” means the tax levied and collected under the Central Goods and Services Tax Act;
- (3) “Continuous journey” means a journey for which a single or more than one ticket or invoice is issued at the same time, either by a single supplier of service or through an agent acting on behalf of more than one supplier of service, and which involves no stopover between any of the legs of the journey for which one or more separate tickets or invoices are issued.

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

- (4) “customs frontiers of India” means the limits of a customs area as defined in section 2 of the Customs Act, 1962;
- (5) “export of goods” with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India;
- (6) “export of services” means the supply of any service when,—
 - (i) the supplier of service is located in India;
 - (ii) the recipient of service is located outside India;
 - (iii) the place of supply of service is outside India;
 - (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange [or in Indian rupees wherever permitted by the Reserve Bank of India]¹³⁸; and

¹³⁸ Inserted by The Integrated Goods and Services Tax (Amendment) Act, 2018 (No. 32 of 2018) – Brought into force w.e.f. 01st February, 2019.

- (v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with *Explanation 1* in section 8;
- (7) “fixed establishment” means a place (other than the registered place of business) which is characterised by a sufficient degree of permanence and suitable structure in terms of human and technical resources to supply services or to receive and use services for its own needs;
- (8) “Goods and Services Tax (Compensation to States) Act” means the Goods and Services Tax (Compensation to States) Act, 2017;
- (9) “Government” means the Central Government;
- (10) “import of goods” with its grammatical variations and cognate expressions, means bringing goods into India from a place outside India;
- (11) “import of services” means the supply of any service, where—
- (i) the supplier of service is located outside India;
 - (ii) the recipient of service is located in India; and
 - (iii) the place of supply of service is in India;
- (12) “integrated tax” means the integrated goods and services tax levied under this Act;
- (13) “intermediary” means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account;
- (14) “location of the recipient” of services¹¹ means,—
- (a) where a supply is received at a place of business for which the registration has been obtained, the location of such place of business;
 - (b) where a supply is received at a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;
 - (c) where a supply is received at more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the receipt of the supply; and
 - (d) in absence of such places, the location of the usual place of residence of the recipient;
- (15) “location of the supplier of services” means,—

- (a) where a supply is made from a place of business for which the registration has been obtained, the location of such place of business;
 - (b) where a supply is made from a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;
 - (c) where a supply is made from more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the provision of the supply; and
 - (d) in absence of such places, the location of the usual place of residence of the supplier;
- (16) “non-taxable online recipient” means any Government, local authority, governmental authority, an individual or any other person not registered and receiving online information and database access or retrieval services in relation to any purpose other than commerce, industry or any other business or profession, located in taxable territory.

Explanation.—For the purposes of this clause, the expression —governmental authority means an authority or a board or any other body,

(i) set up by an Act of Parliament or a State Legislature; or

(ii) established by any Government, with ninety per cent. or more participation by way of equity or control, to carry out any function entrusted [to a Panchayat under article 243G or]¹³⁹ to a municipality under article 243W of the Constitution;

- (17) “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 essentially automated and involving minimal human intervention and impossible to ensure in the absence of information technology and includes electronic services such as,—
- (i) advertising on the internet;
 - (ii) providing cloud services;

¹³⁹ Inserted by The Integrated Goods and Services Tax (Amendment) Act, 2018 (No. 32 of 2018) – Brought into force w.e.f. 01st February, 2019.

- (iii) provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet;
 - (iv) providing data or information, retrievable or otherwise, to any person in electronic form through a computer network;
 - (v) online supplies of digital content (movies, television shows, music and the like);
 - (vi) digital data storage; and
 - (vii)online gaming;
- (18) “output tax”, in relation to a taxable person, means the integrated tax chargeable under this Act on taxable supply of goods or services or both made by him or by his agent but excludes tax payable by him on reverse charge basis;
- (19) “Special Economic Zone” shall have the same meaning as assigned to it in clause (za) of section 2 of the Special Economic Zones Act, 2005;
- (20) “Special Economic Zone” developer shall have the same meaning as assigned to it in clause (g) of section 2 of the Special Economic Zones Act, 2005 and includes an Authority as defined in clause (d) and a Co-Developer as defined in clause (f) of section 2 of the said Act;
- (21) “supply” shall have the same meaning as assigned to it in section 7 of the Central Goods and Services Tax Act;
- (22) “taxable territory” means the territory to which the provisions of this Act apply;
- (23) “zero-rated supply” shall have the meaning assigned to it in section 16;
- (24) words and expressions used and not defined in this Act but defined in the Central Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act shall have the same meaning as assigned to them in those Acts;
- (25) any reference in this Act to a law which is not in force in the State of Jammu and Kashmir, shall, in relation to that State be construed as a reference to the corresponding law, if any, in force in that State.

CHAPTER II

ADMINISTRATION

3. Appointment of Officers.

The Board may appoint such central tax officers as it thinks fit for exercising the powers under this Act.

4. Authorisation of officers of State tax or Union territory tax as proper officer in certain circumstances.—

Without prejudice to the provisions of this Act, the officers appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act are authorised to be the proper officers for the purposes of this Act, subject to such exceptions and conditions as the Government shall, on the recommendations of the Council, by notification, specify.

CHAPTER III

LEVY AND COLLECTION OF TAX

5. Levy and collection

- (1) Subject to the provisions of sub-section (2), there shall be levied a tax called the integrated goods and services tax on all inter-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 of the Central Goods and Services Tax Act and at such rates, not exceeding forty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person:

Provided that the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 on the value as determined under the said Act at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962.

- (2) The integrated tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council.
- (3) The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.
- [(4) The Government may, on the recommendations of the Council, by notification, specify a class of registered persons who shall, in respect of supply of specified categories of goods or services or both received from an unregistered supplier, pay the tax on reverse charge basis as the recipient of such supply of goods or services or both, and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to such supply of goods or services or both.]¹⁴⁰
- (5) The Government may, on the recommendations of the Council, by notification, specify categories of services, the tax on inter-State supplies of which shall be paid by the electronic commerce operator if such services are supplied through it, and all the provisions of this Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services:
- Provided that where an electronic commerce operator does not have a physical presence in the taxable territory, any person representing such electronic

¹⁴⁰ Substituted for —

(4) The integrated tax in respect of the supply of taxable goods or services or both by a supplier, who is not registered, to a registered person shall be paid by such person on reverse charge basis as the recipient and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.|| by The Integrated Goods and Services Tax (Amendment) Act, 2018 (No. 32 of 2018) – Brought into force w.e.f. 01st February, 2019.

commerce operator for any purpose in the taxable territory shall be liable to pay tax:

Provided further that where an electronic commerce operator does not have a physical presence in the taxable territory and also does not have a representative in the said territory, such electronic commerce operator shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax.

6. Power to grant Exemption from tax

- (1) Where the Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by notification, exempt generally, either absolutely or subject to such conditions as may be specified therein, goods or services or both of any specified description from the whole or any part of the tax leviable thereon with effect from such date as may be specified in such notification.
- (2) Where the Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by special order in each case, under circumstances of an exceptional nature to be stated in such order, exempt from payment of tax any goods or services or both on which tax is leviable.
- (3) The Government may, if it considers necessary or expedient so to do for the purpose of clarifying the scope or applicability of any notification issued under subsection (1) or order issued under sub-section (2), insert an *Explanation* in such notification or order, as the case may be, by notification at any time within one year of issue of the notification under sub-section (1) or order under sub-section (2), and every such *Explanation* shall have effect as if it had always been the part of the first such notification or order, as the case may be.

Explanation.—For the purposes of this section, where an exemption in respect of any goods or services or both from the whole or part of the tax leviable thereon has been granted absolutely, the registered person supplying such goods or services or both shall not collect the tax, in excess of the effective rate, on such supply of goods or services or both.

CHAPTER IV
DETERMINATION OF NATURE OF SUPPLY

7. Inter-State supply.

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

8. Intra-State supply.

(1) Subject to the provisions of section 10, supply of goods where the location of the supplier and the place of supply of goods are in the same State or same Union territory shall be treated as intra-State supply:

Provided that the following supply of goods shall not be treated as intra-State supply, namely:—

(i) supply of goods to or by a Special Economic Zone developer or a Special Economic Zone unit;

(ii) goods imported into the territory of India till they cross the customs frontiers of India; or

(iii) supplies made to a tourist referred to in section 15.

(2) Subject to the provisions of section 12, supply of services where the location of the supplier and the place of supply of services are in the same State or same Union territory shall be treated as intra-State supply:

Provided that the intra-State supply of services shall not include supply of services to or by a Special Economic Zone developer or a Special Economic Zone unit.

Explanation 1.—For the purposes of this Act, where a person has,— (i) an establishment in India and any other establishment outside India;

(ii) an establishment in a State or Union territory and any other establishment outside that State or Union territory; or

(iii) an establishment in a State or Union territory and any other establishment [****]*¹⁴¹registered within that State or Union territory, then such establishments shall be treated as establishments of distinct persons. *Explanation 2.*—A 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.

¹⁴¹ Omitted —being a business verticalall by The Integrated Goods and Services Tax (Amendment) Act, 2018 (No. 32 of 2018) – Brought into force w.e.f. 01st February, 2019.

9. Supplies in territorial waters.

Notwithstanding anything contained in this Act,—

(a) where the location of the supplier is in the territorial waters, the location of such supplier; or

(b) where the place of supply is in the territorial waters, the place of supply, shall, for the purposes of this Act, be deemed to be in the coastal State or Union territory where the nearest point of the appropriate baseline is located.

CHAPTER V

PLACE OF SUPPLY OF GOODS OR SERVICES OR BOTH

10. Place of supply of goods other than supply of goods imported into, or exported from India.—

(1) The place of supply of goods, other than supply of goods imported into, or exported from India, shall be as under,—

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

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

(c) where the supply does not involve movement of goods, whether by the supplier or the recipient, the place of supply shall be the location of such goods at the time of the delivery to the recipient;

(d) where the goods are assembled or installed at site, the place of supply shall be the place of such installation or assembly;

- (e) where the goods are supplied on board a conveyance, including a vessel, an aircraft, a train or a motor vehicle, the place of supply shall be the location at which such goods are taken on board.
- (2) Where the place of supply of goods cannot be determined, the place of supply shall be determined in such manner as may be prescribed.

11. Place of supply of goods imported into, or exported from India.

The place of supply of goods,—

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

12. Place of supply of services where location of supplier and recipient is in India.

- (1) The provisions of this section shall apply to determine the place of supply of services where the location of supplier of services and the location of the recipient of services is in India.
- (2) The place of supply of services, except the services specified in sub-sections (3) to (14),—
-
- (a) made to a registered person shall be the location of such person;
- (b) made to any person other than a registered person shall be,— (i) the location of the recipient where the address on record exists; and (ii) the location of the supplier of services in other cases.
- (3) The place of supply of services,—
- (a) directly in relation to an immovable property, including services provided by architects, interior decorators, surveyors, engineers and other related experts or estate agents, any service provided by way of grant of rights to use immovable property or for carrying out or co-ordination of construction work; or
- (b) by way of lodging accommodation by a hotel, inn, guest house, home stay, club or campsite, by whatever name called, and including a house boat or any other vessel; or
- (c) by way of accommodation in any immovable property for organising any marriage or reception or matters related thereto, official, social, cultural,

religious or business function including services provided in relation to such function at such property; or

(d) any services ancillary to the services referred to in clauses (a), (b) and (c), shall be the location at which the immovable property or boat or vessel, as the case may be, is located or intended to be located:

Provided that if the location of the immovable property or boat or vessel is located or intended to be located outside India, the place of supply shall be the location of the recipient.

Explanation.—Where the immovable property or boat or vessel is located in more than one State or Union territory, the supply of services shall be treated as made in each of the respective States or Union territories, in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.

- (4) The place of supply of restaurant and catering services, personal grooming, fitness, beauty treatment, health service including cosmetic and plastic surgery shall be the location where the services are actually performed.
- (5) The place of supply of services in relation to training and performance appraisal to,—
- (a) a registered person, shall be the location of such person;
 - (b) a person other than a registered person, shall be the location where the services are actually performed.
- (6) The place of supply of services provided by way of admission to a cultural, artistic, sporting, scientific, educational, entertainment event or amusement park or any other place and services ancillary thereto, shall be the place where the event is actually held or where the park or such other place is located.
- (7) The place of supply of services provided by way of,—
- (a) organisation of a cultural, artistic, sporting, scientific, educational or entertainment event including supply of services in relation to a conference, fair, exhibition, celebration or similar events; or

(b) services ancillary to organisation of any of the events or services referred to in clause (a), or assigning of sponsorship to such events,—

(i) to a registered person, shall be the location of such person;

(ii) to a person other than a registered person, shall be the place where the event is actually held and if the event is held outside India, the place of supply shall be the location of the recipient.

Explanation.—Where the event is held in more than one State or Union territory and a consolidated amount is charged for supply of services relating to such event, the place of supply of such services shall be taken as being in each of the respective States or Union territories in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.

(8) The place of supply of services by way of transportation of goods, including by mail or courier to,—

(a) a registered person, shall be the location of such person;

(b) a person other than a registered person, shall be the location at which such goods are handed over for their transportation.

[Provided that where the transportation of goods is to a place outside India, the place of supply shall be the place of destination of such goods.]¹⁴²

(9) The place of supply of passenger transportation service to,—

(a) a registered person, shall be the location of such person;

(b) a person other than a registered person, shall be the place where the passenger embarks on the conveyance for a continuous journey:

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

Explanation.—For the purposes of this sub-section, the return journey shall be treated as a separate journey, even if the right to passage for onward and return journey is issued at the same time.

¹⁴² Inserted by The Integrated Goods and Services Tax (Amendment) Act, 2018 (No. 32 of 2018) – Brought into force w.e.f. 01st February, 2019.

- (10) The place of supply of services on board a conveyance, including a vessel, an aircraft, a train or a motor vehicle, shall be the location of the first scheduled point of departure of that conveyance for the journey.
- (11) The place of supply of telecommunication services including data transfer, broadcasting, cable and direct to home television services to any person shall,—
- (a) in case of services by way of fixed telecommunication line, leased circuits, internet leased circuit, cable or dish antenna, be the location where the telecommunication line, leased circuit or cable connection or dish antenna is installed for receipt of services;
 - (b) in case of mobile connection for telecommunication and internet services provided on post-paid basis, be the location of billing address of the recipient of services on the record of the supplier of services;
 - (c) in cases where mobile connection for telecommunication, internet service and direct to home television services are provided on pre-payment basis through a voucher or any other means,—
 - (i) through a selling agent or a re-seller or a distributor of subscriber identity module card or re-charge voucher, be the address of the selling agent or re-seller or distributor as per the record of the supplier at the time of supply; or
 - (ii) by any person to the final subscriber, be the location where such prepayment is received or such vouchers are sold;
 - (d) in other cases, be the address of the recipient as per the records of the supplier of services and where such address is not available, the place of supply shall be location of the supplier of services:

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

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

Explanation.—Where the leased circuit is installed in more than one State or Union territory and a consolidated amount is charged for supply of services relating to such circuit, the place of supply of such services shall be taken as being in each of the respective States or Union territories in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.

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

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

- (13) The place of supply of insurance services shall,—
- (a) to a registered person, be the location of such person;
 - (b) to a person other than a registered person, be the location of the recipient of services on the records of the supplier of services.
- (14) The place of supply of advertisement services to the Central Government, a State Government, a statutory body or a local authority meant for the States or Union territories identified in the contract or agreement shall be taken as being in each of such States or Union territories and the value of such supplies specific to each State or Union territory shall be in proportion to the amount attributable to services provided by way of dissemination in the respective States or Union territories as may be determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.

13. Place of supply of services where location of supplier or location of recipient is outside India.

(1) The provisions of this section shall apply to determine the place of supply of services where the location of the supplier of services or the location of the recipient of services is outside India.

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

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

(3) The place of supply of the following services shall be the location where the services are actually performed, namely:—

(a) services supplied in respect of goods which are required to be made physically available by the recipient of services to the supplier of services, or to a person acting on behalf of the supplier of services in order to provide the services:

Provided that when such services are provided from a remote location by way of electronic means, the place of supply shall be the location where goods are situated at the time of supply of services:

[Provided further that nothing contained in this clause shall apply in the case of services supplied in respect of goods which are temporarily imported into India for repairs or for any other treatment or process and are exported after such repairs or treatment or process without being put to any use in India, other than that which is required for such repairs or treatment or process;]¹⁴³

(b) services supplied to an individual, represented either as the recipient of services or a person acting on behalf of the recipient, which require the physical presence of the recipient or the person acting on his behalf, with the supplier for the supply of services.

¹⁴³ Substituted for —Provided further that nothing contained in this clause shall apply in the case of services supplied in respect of goods which are temporarily imported into India for repairs and are exported after repairs without being put to any other use in India, than that which is required for such repairs;|| by The Integrated Goods and Services Tax (Amendment) Act, 2018 (No. 32 of 2018) – Brought into force w.e.f. 01st February, 2019

(4) The place of supply of services supplied directly in relation to an immovable property, including services supplied in this regard by experts and estate agents, supply of accommodation by a hotel, inn, guest house, club or campsite, by whatever name called, grant of rights to use immovable property, services for carrying out or co-ordination of construction work, including that of architects or interior decorators, shall be the place where the immovable property is located or intended to be located.

(5) The place of supply of services supplied by way of admission to, or organisation of a cultural, artistic, sporting, scientific, educational or entertainment event, or a celebration, conference, fair, exhibition or similar events, and of services ancillary to such admission or organisation, shall be the place where the event is actually held.

(6) Where any services referred to in sub-section (3) or sub-section (4) or subsection (5) is supplied at more than one location, including a location in the taxable territory, its place of supply shall be the location in the taxable territory.

(7) Where the services referred to in sub-section (3) or sub-section (4) or subsection (5) are supplied in more than one State or Union territory, the place of supply of such services shall be taken as being in each of the respective States or Union territories and the value of such supplies specific to each State or Union territory shall be in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.

(8) The place of supply of the following services shall be the location of the supplier of services, namely:—

- (a) services supplied by a banking company, or a financial institution, or a nonbanking financial company, to account holders;
- (b) intermediary services;
- (c) services consisting of hiring of means of transport, including yachts but excluding aircrafts and vessels, up to a period of one month.

Explanation.— For the purposes of this sub-section, the expression,—

- (a) “account” means an account bearing interest to the depositor, and includes a non-resident external account and a non-resident ordinary account;

(b) “banking company” shall have the same meaning as assigned to it under clause (a) of section 45A of the Reserve Bank of India Act, 1934;

(c) “financial institution” shall have the same meaning as assigned to it in clause (c) of section 45-I of the Reserve Bank of India Act, 1934;

(d) “non-banking financial company” means,—

(i) a financial institution which is a company;

(ii) a non-banking institution which is a company and which has as its principal business the receiving of deposits, under any scheme or arrangement or in any other manner, or lending in any manner; or

(iii) such other non-banking institution or class of such institutions, as the Reserve Bank of India may, with the previous approval of the Central Government and by notification in the Official Gazette, specify.

(9) The place of supply of services of transportation of goods, other than by way of mail or courier, shall be the place of destination of such goods.

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

(11) The place of supply of services provided on board a conveyance during the course of a passenger transport operation, including services intended to be wholly or substantially consumed while on board, shall be the first scheduled point of departure of that conveyance for the journey.

(12) The place of supply of online information and database access or retrieval services shall be the location of the recipient of services.

Explanation.—For the purposes of this sub-section, person receiving such services shall be deemed to be located in the taxable territory, if any two of the following noncontradictory conditions are satisfied, namely:—

(a) the location of address presented by the recipient of services through internet is in the taxable territory;

(b) the credit card or debit card or store value card or charge card or smart card or any other card by which the recipient of services settles payment has been issued in the taxable territory;

(c) the billing address of the recipient of services is in the taxable territory;

(d) the internet protocol address of the device used by the recipient of services is in the taxable territory;

(e) the bank of the recipient of services in which the account used for payment is maintained is in the taxable territory;

(f) the country code of the subscriber identity module card used by the recipient of services is of taxable territory;

(g) the location of the fixed land line through which the service is received by the recipient is in the taxable territory.

(13) In order to prevent double taxation or non-taxation of the supply of a service, or for the uniform application of rules, the Government shall have the power to notify any description of services or circumstances in which the place of supply shall be the place of effective use and enjoyment of a service.

14. Special provision for payment of tax by a supplier of online information and database access or retrieval services.—

(1) On supply of online information and database access or retrieval services by any person located in a non-taxable territory and received by a non-taxable online recipient, the supplier of services located in a nontaxable territory shall be the person liable for paying integrated tax on such supply of services:

Provided that in the case of supply of online information and database access or retrieval services by any person located in a non-taxable territory and received by a nontaxable online recipient, an intermediary located in the non-taxable territory, who arranges or facilitates the supply of such services, shall be deemed to be the recipient of such services from the supplier of services in non-taxable territory and supplying such services to the non-taxable online recipient except when such intermediary satisfies the following conditions, namely:—

(a) the invoice or customer's bill or receipt issued or made available by such intermediary taking part in the supply clearly identifies the service in question and its supplier in non-taxable territory;

(b) the intermediary involved in the supply does not authorise 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 nontaxable online recipient and the supplier of such services;

(c) the intermediary involved in the supply does not authorise delivery; and
(d) the general terms and conditions of the supply are not set by the

intermediary involved in the supply but by the supplier of services.

(2) The supplier of online information and database access or retrieval services referred to in sub-section (1) shall, for payment of integrated tax, take a single registration under the Simplified Registration Scheme to be notified by the Government:

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

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

CHAPTER VI

REFUND OF INTEGRATED TAX TO INTERNATIONAL TOURIST

15. Refund of integrated tax paid on supply of goods to tourist leaving India.—

The integrated tax paid by tourist leaving India on any supply of goods taken out of India by him shall be refunded in such manner and subject to such conditions and safeguards as may be prescribed.

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

CHAPTER VII

ZERO RATED SUPPLY

16. Zero rated supply.—

(1) “zero rated supply” means any of the following supplies of goods or services or both, namely:—

(a) export of goods or services or both; or

(b) supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit.

(2) Subject to the provisions of sub-section (5) of section 17 of the Central Goods and Services Tax Act, credit of input tax may be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply.

(3) A registered person making zero rated supply shall be eligible to claim refund under either of the following options, namely:—

(a) he may supply goods or services or both under bond or Letter of Undertaking, subject to such conditions, safeguards and procedure as may be prescribed, without payment of integrated tax and claim refund of unutilised input tax credit; or

(b) he may supply goods or services or both, subject to such conditions, safeguards and procedure as may be prescribed, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder.

Author Comment

In Budget 2021, Section 16 of the IGST Act proposed to be amended. ‘Notes on clauses’ with respect to amendment of section 16 of the IGST Act read as

Clause 114 of the Bill seeks to amend section 16 of the Integrated Goods and Services Tax Act, 2017 so as to make provisions for restricting the zero rated supply on payment of integrated tax only to specified class of taxpayers or specified supplies of goods or services. It further provides to link the foreign exchange remittance in case of export of goods with refund and further restricting zero rating of supplies made to special economic zone only when such supplies are for authorised operations.

Sub section (1) (b) of section 16 is proposed to amend so that to restrict the enjoyment of benefit to the supplies to SEZ developer or SEZ Unit which are for authorised operations.

Further subsection (3) is substituted. As per proposed amendment only notified class of taxpayer or goods or services will be eligible for claiming refund in case the export with payment of tax.

Alternatively, it can be said that now the taxpayers will have to export without payment of tax and claim refund of the accumulated ITC. Also, subsection (3) now mandates the realisation of sales proceeds otherwise the refund claimed will be liable to be deposited back in the treasury of the government along with the interest u/s. 50.

CHAPTER VIII

APPORTIONMENT OF TAX AND SETTLEMENT OF FUNDS

17. Apportionment of tax and settlement of funds.—

(1) Out of the integrated tax paid to the Central Government,—

(a) in respect of inter-State supply of goods or services or both to an unregistered person or to a registered person paying tax under section 10 of the Central Goods and Services Tax Act;

(b) in respect of inter-State supply of goods or services or both where the registered person is not eligible for input tax credit;

(c) in respect of inter-State supply of goods or services or both made in a financial year to a registered person, where he does not avail of the input tax credit within the specified period and thus remains in the integrated tax account after expiry of the due date for furnishing of annual return for such year in which the supply was made;

(d) in respect of import of goods or services or both by an unregistered person or by a registered person paying tax under section 10 of the Central Goods and Services Tax Act;

(e) in respect of import of goods or services or both where the registered person is not eligible for input tax credit;

(f) in respect of import of goods or services or both made in a financial year by a registered person, where he does not avail of the said credit within the specified period and thus remains in the integrated tax account after expiry of the due date for furnishing of annual return for such year in which the supply was received, the amount of tax calculated at the rate equivalent to the central tax on similar intra-State supply shall be apportioned to the Central Government.

(2) The balance amount of integrated tax remaining in the integrated tax account in respect of the supply for which an apportionment to the Central Government has been done under sub-section (1) shall be apportioned to the

(a) State where such supply takes place; and

(b) Central Government where such supply takes place in a Union territory:

Provided that where the place of such supply made by any taxable person cannot be determined separately, the said balance amount shall be apportioned to,—

(a) each of the States; and

(b) Central Government in relation to Union territories, in proportion to the total supplies made by such taxable person to each of such States or Union territories, as the case may be, in a financial year:

Provided further that where the taxable person making such supplies is not identifiable, the said balance amount shall be apportioned to all States and the Central Government in proportion to the amount collected as State tax or, as the case may be, Union territory tax, by the respective State or, as the case may be, by the Central Government during the immediately preceding financial year.

[(2A). The amount not apportioned under sub-section (1) and sub-section (2) may, for the time being, on the recommendations of the Council, be apportioned at the rate of fifty per cent. to the Central Government and fifty per cent. to the State Governments or the Union territories, as the case may be, on *ad hoc* basis and shall be adjusted against the amount apportioned under the said sub-sections.]¹⁴⁴

(3) The provisions of sub-sections (1) and (2) relating to apportionment of integrated tax shall, *mutatis mutandis*, apply to the apportionment of interest, penalty and compounding amount realised in connection with the tax so apportioned.

(4) Where an amount has been apportioned to the Central Government or a State Government under sub-section (1) or sub-section (2) or sub-section (3), the amount collected as integrated tax shall stand reduced by an amount equal to the amount so apportioned and the Central Government shall transfer to the central tax account or Union territory tax account, an amount equal to the respective amounts apportioned to the Central Government and shall transfer to the State tax account of the respective States an amount equal to the amount apportioned to that State, in such manner and within such time as may be prescribed.

(5) Any integrated tax apportioned to a State or, as the case may be, to the Central Government on account of a Union territory, if subsequently found to be refundable to any person and refunded to such person, shall be reduced from the amount to be apportioned under this section, to such State, or Central Government on account of such Union territory, in such manner and within such time as may be prescribed.

¹⁴⁴ Inserted by The Integrated Goods and Services Tax (Amendment) Act, 2018 (No. 32 of 2018) – Brought into force w.e.f. 01st February, 2019.

[17A. **Transfer of Certain Amounts-** Where any amount has been transferred from the electronic cash ledger under this Act to the electronic cash ledger under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, the Government shall transfer to the State tax account or the Union territory tax account, an amount equal to the amount transferred from the electronic cash ledger, in such manner and within such time, as may be prescribed.]¹⁴⁵

18. Transfer of input tax credit

On utilisation of credit of integrated tax availed under this Act for payment of,—

(a) central tax in accordance with the provisions of sub-section (5) of section 49 of the Central Goods and Services Tax Act, the amount collected as integrated tax shall stand reduced by an amount equal to the credit so utilised and the Central Government shall transfer an amount equal to the amount so reduced from the integrated tax account to the central tax account in such manner and within such time as may be prescribed;

(b) Union territory tax in accordance with the provisions of section 9 of the Union Territory Goods and Services Tax Act, the amount collected as integrated tax shall stand reduced by an amount equal to the credit so utilised and the Central Government shall transfer an amount equal to the amount so reduced from the integrated tax account to the Union territory tax account in such manner and within such time as may be prescribed;

(c) State tax in accordance with the provisions of the respective State Goods and Services Tax Act, the amount collected as integrated tax shall stand reduced by an amount equal to the credit so utilised and shall be apportioned to the appropriate State Government and the Central Government shall transfer the amount so apportioned to the account of the appropriate State Government in such manner and within such time as may be prescribed.

¹⁴⁵ Inserted by The Finance (No. 2) Act, 2019 (No. 23 of 2019) – Brought into force w.e.f. 01st January, 2020.

Explanation.—For the purposes of this Chapter, —appropriate State in relation to a taxable person, means the State or Union territory where he is registered or is liable to be registered under the provisions of the Central Goods and Services Tax Act.

19. Tax wrongfully collected and paid to Central Government or State Government

- (1) A registered person who has paid integrated tax on a supply considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall be granted refund of the amount of integrated tax so paid in such manner and subject to such conditions as may be prescribed.
- (2) A registered person who has paid central tax and State tax or Union territory tax, as the case may be, on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall not be required to pay any interest on the amount of integrated tax payable.

CHAPTER IX MISCELLANEOUS

20. Application of provisions of Central Goods and Services Tax Act.

Subject to the provisions of this Act and the rules made thereunder, the provisions of Central Goods and Services Tax Act relating to,—

- (i) scope of supply;
- (ii) composite supply and mixed supply;
- (iii) time and value of supply;
- (iv) input tax credit;
- (v) registration;
- (vi) tax invoice, credit and debit notes;
- (vii) accounts and records;
- (viii) returns, other than late fee;
- (ix) payment of tax;
- (x) tax deduction at source;
- (xi) collection of tax at source;
- (xii) assessment;

- (xiii) refunds;
- (xiv) audit;
- (xv) inspection, search, seizure and arrest;
- (xvi) demands and recovery;
- (xvii) liability to pay in certain cases;
- (xviii) advance ruling;
- (xix) appeals and revision;
- (xx) presumption as to documents;
- (xxi) offences and penalties;
- (xxii) job work;
- (xxiii) electronic commerce;
- (xxiv) transitional provisions; and
- (xxv) miscellaneous provisions including the provisions relating to the imposition of interest and penalty, shall, *mutatis mutandis*, apply, so far as may be, in relation to integrated tax as they apply in relation to central tax as if they are enacted under this Act:

Provided that in the case of tax deducted at source, the deductor shall deduct tax at the rate of two per cent. from the payment made or credited to the supplier:

Provided further that in the case of tax collected at source, the operator shall collect tax at such rate not exceeding two per cent, as may be notified on there commendations of the Council, of the net value of taxable supplies:

Provided also that for the purposes of this Act, the value of a supply shall include any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier:

Provided also that in cases where the penalty is leviable under the Central Goods and Services Tax Act and the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, the penalty leviable under this Act shall be the sum total of the said penalties.

[Provided also that where the appeal is to be filed before the Appellate Authority or the Appellate Tribunal, the maximum amount payable shall be fifty crore rupees and one hundred crore rupees respectively.]¹⁴⁶

21. Import of services made on or after the appointed day.

Import of services made on or after the appointed day shall be liable to tax under the provisions of this Act regardless of whether the transactions for such import of services had been initiated before the appointed day:

Provided that if the tax on such import of services had been paid in full under the existing law, no tax shall be payable on such import under this Act:

Provided further that if the tax on such import of services had been paid in part under the existing law, the balance amount of tax shall be payable on such import under this Act.

Explanation.—For the purposes of this section, a transaction shall be deemed to have been initiated before the appointed day if either the invoice relating to such supply or payment, either in full or in part, has been received or made before the appointed day.

22. Power to make rules.

(1) The Government may, on the recommendations of the Council, by notification, make rules for carrying out the provisions of this Act.

(2) Without prejudice to the generality of the provisions of sub-section (1), the Government may make rules for all or any of the matters which by this Act are required to be, or may be, prescribed or in respect of which provisions are to be or may be made by rules.

(3) The power to make rules conferred by this section shall include the power to give retrospective effect to the rules or any of them from a date not earlier than the date on which the provisions of this Act come into force.

(4) Any rules made under sub-section (1) may provide that a contravention thereof shall be liable to a penalty not exceeding ten thousand rupees.

¹⁴⁶ Inserted by The Integrated Goods and Services Tax (Amendment) Act, 2018 (No. 32 of 2018) – Brought into force w.e.f. 01st February, 2019.

23. Power to make regulations

The Board may, by notification, make regulations consistent with this Act and the rules made thereunder to carry out the provisions of this Act.

24. Laying of rules, regulations and notifications.

Every rule made by the Government, every regulation made by the Board and every notification issued by the Government under this Act, shall be laid, as soon as may be, after it is made or issued, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or in the notification, as the case may be, or both Houses agree that the rule or regulation or the notification should not be made, the rule or regulation or notification, as the case may be, shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation or notification, as the case may be.

25. Removal of difficulties.—

- (1) 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]¹⁴⁷ ~~three years~~ from the date of commencement of this Act.

¹⁴⁷ th Substituted for —three years by The Finance Act, 2020 (No.12 of 2020) –
Brought into force w.e.f. 30 June, 2020.

(2) Every order made under this section shall be laid, as soon as may be, after it is made, before each House of Parliament.