

GOODS AND SERVICES TAX-II

M.Com. (Accountancy)

SEMESTER-IV, PAPER-III

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M.Com. (Accountancy) : Goods and Services Tax - II

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FOREWORD

Since its establishment in 1976, Acharya Nagarjuna University has been forging ahead in the path of progress and dynamism, offering a variety of courses and research contributions. I am extremely happy that by gaining 'A' grade from the NAAC in the year 2016, Acharya Nagarjuna University is offering educational opportunities at the UG, PG levels apart from research degrees to students from over 443 affiliated colleges spread over the two districts of Guntur and Prakasam.

The University has also started the Centre for Distance Education in 2003-04 with the aim of taking higher education to the door step of all the sectors of the society. The centre will be a great help to those who cannot join in colleges, those who cannot afford the exorbitant fees as regular students, and even to housewives desirous of pursuing higher studies. Acharya Nagarjuna University has started offering B.A., and B.Com courses at the Degree level and M.A., M.Com., M.Sc., M.B.A., and L.L.M., courses at the PG level from the academic year 2003-2004 onwards.

To facilitate easier understanding by students studying through the distance mode, these self-instruction materials have been prepared by eminent and experienced teachers. The lessons have been drafted with great care and expertise in the stipulated time by these teachers. Constructive ideas and scholarly suggestions are welcome from students and teachers involved respectively. Such ideas will be incorporated for the greater efficacy of this distance mode of education. For clarification of doubts and feedback, weekly classes and contact classes will be arranged at the UG and PG levels respectively.

It is my aim that students getting higher education through the Centre for Distance Education should improve their qualification, have better employment opportunities and in turn be part of country's progress. It is my fond desire that in the years to come, the Centre for Distance Education will go from strength to strength in the form of new courses and by catering to larger number of people. My congratulations to all the Directors, Academic Coordinators, Editors and Lesson-writers of the Centre who have helped in these endeavours.

*Prof. Raja Sekhar Patteti
Vice-Chancellor
Acharya Nagarjuna University*

M.Com. (Accountancy)
Semester-IV, Paper-III
403CO21 - GOODS & SERVICES TAX – II

Syllabus

Learning Outcomes:

After successful completion of this course, the students will be able to:

1. Acquire knowledge on registration of assets under Goods and Services Tax Act
2. Know the concepts relating to Administration ,levy and exemption of tax
3. Understand the Assessment and apportionment of GST

Unit –I: Registration and Filing-Registration of Assesses under GST Act – Persons liable for registration – Procedure for Registration and Cancellation – Deemed registration – Credit and Debit Notes, Accounts and Records – Retention of Records.

Unit- II: Administration: Officers under GST Act: Appointment of Officers – Powers of Officers – Delegation of powers – Search and Seizure, Inspection, Arrest and Prosecution, Confiscation and Fine, Liability to Pay in Certain Cases, Advance ruling – Central Vs. State Powers on GST – Role of GST Council.

Unit –III: Assessment: Filing of Returns – Self –Assessment - Provisional Assessment – Assessment of Non-filers of returns – Assessment of Unregistered Persons – Computation of Tax liability, TDS, TCS, Demand, Recovery and Adjudication, Refund – Audit by Tax Authorities – Appeals and Revisions – Appellate Authority and its powers – Miscellaneous Provisions.

Unit IV: Levy and Exemption of Tax: Chargeability under GST Act 2017 – Collection at source – GST on E-Commerce transactions - Composition Levy – Tax under Central GST and State GST – GST on Exports and Imports.

Unit-V: Apportionment of GST: Returns under GST – Remission of Tax – Payment of Tax – Adjustment and Refund of GST – The Goods and Services Tax (Compensation to States) Act 2017.

FURTHER READINGS:

1. Goods and Services Tax in India- Notifications on different dates
2. GST Bill 2012
3. The Central Goods and Services Tax Act, 2017, No.12 of 2017, Published by Authority, Ministry of Law and Justice, New Delhi, 12 April, 2017
4. Background Material on Model GST Law, Sahitya Bhavan Publications, Hospital Road, Agra-383 003
5. Customs Law Manual and Customs Tariff of India – R.K.JAIN.
6. The Central Goods and Services Tax Act, 2017, No.12 of 2017 published by Authority, Ministry of Law and Justice , New Delhi, 12th April, 2017.

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LESSON -1

INTRODUCTION OF GST

Learning Objectives

- To know the concept and Old Scheme of Indirect Taxation
- To understand the salient features and advantages of GST
- To explain some of the Major Changes made by Finance Act, 2013

Structure

- 1.1. Introduction
- 1.2. Concept of GST
- 1.3. The components of GST
- 1.4. Salient Features of GST
- 1.5. GST Law from a Constitutional Perspective
- 1.6. Some of the Major Changes made by Finance Act, 2013
- 1.7. Taxes to be Subsumed in GST
- 1.8. Summary
- 1.9. Technical Terms
- 1.10. Self-Assessment Questions
- 1.11. Suggested Readings

1.1. INTRODUCTION

In 2004, Kelkar Task Force recommended the idea of a fully integrated Goods and Services Tax (GST) on national basis. The Government accepted the recommendation of the Task force and fixed 1st April 2010 as the date for implementation of GST in India in the Union Budget for 2007-08. Thereafter, no significant progress was made due to lack of consensus among the stakeholder states. Ultimately, on 19th December 2014, the Constitution (122nd Amendment) Bill, 2014 on GST was tabled in the parliament. Lok Sabha passed the bill on 6th May 2015 and Rajya Sabha on 3rd August 2016. The President accorded his assent on 8th September 2016 after more than half of the stakeholder states had ratified the bill which became the Constitution (101st Amendment) Act, 2016, clearing the decks for introduction of GST in India. After several post-amendment meetings among the States and the Centre, four Central GST legislations the Central Goods and Services Tax (CGST) Bill, 2017, Integrated Goods and Services Tax (IGST) Bill, 2017, Union Territory Goods and Services Tax (UTGST) Bill, 2017 and Goods and Services Tax (Compensation to States) Bill, 2017 were introduced in the parliament on 27th March 2017 and promptly passed on 29th March 2017. The bills received the President's assent on 12th April 2017 resulting into enactment of the respective four Acts. Meanwhile, Telangana, Rajasthan, Chhattisgarh, Punjab, Goa and Bihar States passed their respective State GST laws. Finally, at the stroke of midnight on 1st July 2017, at a special session of the Parliament, India rolled out GST as its path breaking indirect tax reform on the principle of one nation -one tax.

1.1.1. Meaning of GST: GST stands for Goods and Services Tax. It is a value-added tax that is levied on the supply of goods and services in India. The GST was introduced in India on July 1, 2017, as a replacement for a complex and multi-layered system of indirect taxes that included several taxes such as excise duty, service tax, central sales tax, and state value-

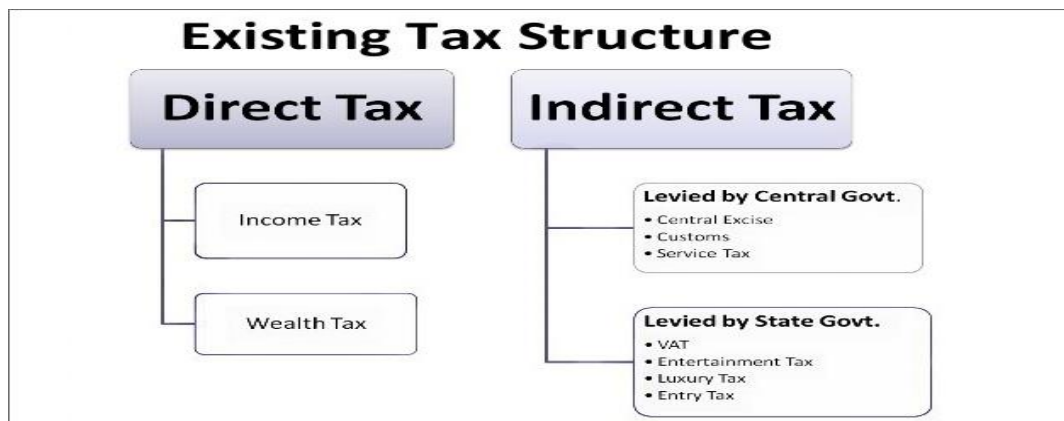
added tax, among others. The GST system in India is a comprehensive, multi-stage, destination-based tax that is applied on every value addition made to a product or service. It is levied at each stage of the supply chain, from the manufacturer or service provider to the end consumer. The GST system has simplified the tax structure in India, and it aims to eliminate tax cascading, reduce compliance costs, and increase revenue for the government. It has also helped to create a unified national market by removing inter-state barriers to trade, leading to a more efficient supply chain and a level playing field for businesses across India. Overall, the GST is a significant reform that has brought about a paradigm shift in India's tax system, and it is expected to have a positive impact on the economy by enhancing the ease of doing business, improving tax compliance, and promoting economic growth.

1.1.2. Needed Tax Reform: The Goods and Services Tax is a much needed tax reform, and if implemented correctly, can do wonders for India's economy. Along with eliminating double taxation and lowering product price, the GST can also assimilate the informal sector into the greater Indian economy and provide a much needed boost for India's flagging export market. Yet there are implementation issues that could be problematic for India's small businesses and, perhaps more importantly, undermine public trust in the GST. The issues surrounding the GSTN can be managed if more time is given for continued enrolment of taxpayers and thorough testing of the IT infrastructure. Additionally, giving more time for the CAG to conduct a thorough audit would allow for any functionality issues with the GSTN to be brought to light, preventing costly public trust issues. Similarly, the problems with the anti-profiteering clause can be ironed out with more time and the implementation of widespread education and price monitoring policies in the lead-up to the GST. The formation of a committee to handle all complaints, creation of an audit unit specifically geared towards anti-profiteering testing, and putting in place regulations outlining what specifically constitutes "anti-profiteering" can help build corporate and public trust in the GST. The documentation requirements and their subsequent effects on cash flow and small businesses are more difficult to sort out. Perhaps more time needs to be spent by the policymakers in the formulation of policies centred on the input tax credit and its documentation requirements. There is a commonality that can be found in the solutions for all three of the implementation issues currently plaguing the GST — time. The GST is an ambitious plan, and Prime Minister Narendra Modi's government has set similarly formidable benchmarks for its implementation. The wisest course of action, however, might be to delay the rollout of the GST for a few months in order to not repeat some of the mistakes that were made during demonetization. A poorly implemented version of the GST could negatively affect the Indian economy for years to come.

1.2. CONCEPT OF GST

Goods and Services Tax: An overview-The idea behind the Goods and Services Tax, at least in theory, is simple. To raise revenue for public expenditure, the Government of India levies a series of indirect taxes (along with direct taxes on Income and Capital Gains). The current indirect tax system is complex, with at least seven major multi-stage value added taxes levied on many financial transactions. This has led to an unreasonable burden on taxpayers, who have had to deal with administrative hassles, the detrimental effects of double taxation, and confusion over archaic regulations. ^[i] The GST aims to tackle many of the issues plaguing the current system by combining central and state indirect taxes. In their stead will stand two consolidated taxes: State Goods and Services Tax (SGST) and Central Goods and Services Tax (CGST). Under the new system, transactions will have both State GST and Central GST levied upon them, with 'slabs' of tax rates being applied depending on the type of Good or Service. The rates levied on goods and services will range from zero percent on items categorised as essential, to 28 percent on items deemed to be luxuries. ^[ii] The new

system is expected to bring down the average costs of goods and services across the country by eliminating double taxation (see Table 1).



Source: *Beginners Guide to Goods & Services*

1.2.1. Old Scheme of Indirect Taxation: Before the introduction of the Goods and Services Tax (GST), India had a complex and multi-layered system of indirect taxes that included several taxes at the central and state level. Some of the key taxes that were levied under the old indirect tax system in India were:

- Central Excise Duty:** This was a tax that was levied on the manufacture of goods within the country. The rate of excise duty varied depending on the nature of the product.
- Service Tax:** This was a tax that was levied on the provision of services within the country. The rate of service tax was initially 12.36%, but it was increased to 14% in 2015.
- Value Added Tax (VAT):** This was a tax that was levied on the sale of goods within the state. The rate of VAT varied from state to state, and it was levied on the value added at each stage of the supply chain.
- Central Sales Tax (CST):** This was a tax that was levied on inter-state sales of goods. The rate of CST was initially 4%, but it was reduced to 2% in 2010.
- Customs Duty:** This was a tax that was levied on the import of goods into the country. The rate of customs duty varied depending on the nature of the product.

The old indirect tax system in India was complex, had multiple tax rates, and involved a lot of paperwork and compliance. It also resulted in tax cascading, where the tax paid on inputs was added to the cost of the final product, making it more expensive. The introduction of GST has aimed to simplify the tax structure, reduce compliance costs, and eliminate tax cascading..

1.2.2. Implementation issues in India's GST: As 1 July approaches, India is girding itself for its second historical financial policy shift in the span of 12 months — the advent of the Goods and Services Tax. Unlike demonetisation which was announced by the prime minister without preamble, the implementation of the GST has long been in the works with initial discussions starting almost a decade ago. In formulating and implementing the GST—which is meant to streamline the country's indirect tax system by amalgamating its many central and state taxes — the government has set ambitious goals for itself.

Table 1: Potential savings as a result of GST Implementation

Add: VAT @ 12.5%	1,078.00	—
Add: CGST @ 12%	—	924.00
Add: SGST @ 12%	—	924.00
Invoice Value	9,702.00	9,548.00
Retailer to Consumer:		
COG to Retailer (b)	8,624.00	7,700.00
Add: Profit Margin	862.40	770.00
Total Value(c)	9,486.40	8,470.00
Add: VAT @ 12.5%	1,185.80	—
Add: CGST @ 12%	—	1,016.40
Add: SGST @ 12%	—	1,016.40
Total Price to the Final consumer	10,672.20	10,502.80
Cost saving to consumer	—	169.40
% Cost Saving	—	1.59

Source: *GST India*

Along with lower average costs and elimination of double taxation, there are additional ancillary benefits that the GST offers. Under previous legislation, companies with annual revenue under INR 1.5 crore were exempted from paying indirect taxes. This threshold has now been lowered to either INR 10 or 20 lakh, depending on the geographical location of the corporate entity. The lowering of the threshold considerably broadens the tax base, effectively bringing much of what was previously considered the informal sector into the folds of the formal sector.^[iii] Moreover, the GST is not applied to exported goods and services, which is expected to provide a marked boost for India's exports^[iv]. Implementation issues, however, could still cause extensive problems if they are not managed properly.

The potential benefits of the tax reform are undeniable: it will help bring India's informal sector into the fold, lower business costs across most sectors, increase exports, and reduce incidences of unnecessary double taxation. However, there are certain issues related to the implementation of the new tax system, among them — the problematic input tax credit issues, the uncertainty related to the functionality of the GST information technology system, and the ambiguity of the anti-profiteering clause. These challenges could result in the sinking of an otherwise promising policy endeavour.

a) Implementation issues: Input Tax Credit: The main problem that could hamper the implementation of the GST centres on the documentation requirements for Input Tax Credits and the stage at which said credit accrues. The objective of any value added tax system (such as the GST) is the avoidance of double taxation. This is done by providing credits along every step of the production chain, effectively taxing only the extent of the value that has been added. The easiest way to illustrate this is by examining international best practices. The GST will work using the same system of input tax credits along the production chain. The issue that arises under the Indian GST, however, is the onerous documentation requirement which can have a number of unintended consequences. Under Section 16 (11) of the Model GST Law, an input tax credit can only be received when: The buyer has received a tax invoice from the supplier, The buyer has received the goods/services; The taxes charged on the purchase have been deposited/paid by the supplier; The supplier has filed the GST Returns^[v]

b) Implementation Issues -Cash flow: The issue with Section 16 (11) is that it puts the administrative burden associated with the tax on the buyer rather than the supplier, which can be problematic for businesses. One potential issue that could arise as a result of the administrative shift is the non-payment of taxes by the supplier. In that case, the buyer will end up having to pay for not only her share of the tax, but also for the supplier's share of the

tax under the proposed tax code. Further, problems could arise, if for some reason there are inconsistencies found in the supplier's documentation at some later stage. Under this scenario, the buyer will be forced to pay back the tax reimbursement to the government with interest. This problem is usually fixed by market forces, however, as any non-compliant suppliers will soon find themselves losing customers as a result of their negligence. The government has also put in place a mechanism to help with the issue, by providing a publicly available compliance rating system which will allow consumers to pinpoint defaulters as the system starts to take effect over the coming years. More problematic, perhaps, will be the short-term cash flow issues caused by Section 16 (11). Most businesses strive to have efficient working capital (i.e., the amount of cash kept on hand to bridge the period between receiving cash from their customers and paying cash to their suppliers). If an entity can keep less cash on hand for day to day activities, it can invest more in other activities, which can be as ambitious as business expansion or as simple as an interest bearing savings account. The input tax credit issues associated with the GST could have a considerable impact on small enterprises. If proper outreach and education on GST is not conducted, it will likely result in significant short-term cash flow problems in the months after implementation, especially for small businesses. Further, the cumbersome administrative burden associated with buying from exempt entities could end up providing a major disincentive for businesses looking to conduct any kind of transactions with small enterprises, leading to a crowding out of Indian small business.

c) Implementation issues — GSTN functionality: Another key implementation issue could stem from the proposed technology backbone of the GST system. On 1 October 2013, halfway across the world, the most powerful nation in the world attempted to implement a landmark reform using technology. Along with the registration challenge, the GSTN has also been dealing with an auditing issue. Ascertaining and verifying the accuracy of the data within the GSTN would seem to be a Herculean task, given its 70 million expected users. In order to do so, the Comptroller and Auditor General of India (which has been tasked with the audit), would need access to all GSTN data. Yet, the GSTN has refused data access to the CAG for auditing purposes, citing its private entity status (51 percent of the organisation is owned by private Indian financial institutions) and stating that it is only acting as the “holder” of the information ^[x]. Without a proper audit of the data within the platform, there is no way to ascertain the functionality of the GSTN. Trust in the GSTN has already been brought up as an issue, with the lack of transparency into the majority privately owned organisation being cited as a crucial concern. If the delays in registering users causes a functionality issue or the GSTN is not able to properly support the rollout on 1st July, public trust issues could end up causing the failure of what could otherwise be a breakthrough financial reform.

d) Implementation issues — Anti-profiteering clause: There is another implementation issue that could prove to be a hurdle for the GST, albeit on a smaller scale than the documentation and technology factors. One of the touted benefits of the GST system is the lowering of prices for many goods and services across the economy. As illustrated in an earlier example, businesses will be able to cut down on the effects of double taxation which should then be passed on to the end user. Unfortunately, when VAT's have been implemented in other countries, businesses have kept prices the same and used the savings incurred from a change in tax systems to bolster their own profit margins. In order to stop undue profiteering from changes in tax systems, an anti-profiteering clause has been added to the GST ^[xi]. The clause requires that businesses pass any benefits from the change in tax systems to the end consumer. The clause does not, however, provide any mechanism for the monitoring of anti-profiteering activity. The clause, and any subsequent investigation, will instead be triggered by “credible complaints” according to Revenue Secretary Hasmukh Adhia. ^[xii] The uncertainty associated with the anti-profiteering clause can affect both

businesses and consumers. The private sector fears that ambiguity in the clause will lead to “witch-hunts” as tax authorities are given leeway to make subjective judgements as to whether a business is profiteering, without any regulations or laws to back their rulings. At the same time, consumers fear that ambiguous regulations or laws will lead to a lack of transparency and that decisions regarding the applicability of the anti-profiteering clause will be made on an *ad hoc* basis depending on political connections or even worse, outright corruption. The lack of clarity can, once again, have a detrimental effect on public perception regarding the GST. While public perception might seem like a trivial matter, it can often spell the difference between success and failure in the case of wide-scale implementation of policy reform, as the example of Obamacare showed.

1.3. THE COMPONENTS OF GST

CGST: It is the tax collected by the Central Government on an intra-state sale (e.g., a transaction happening within Maharashtra)

SGST: It is the tax collected by the state government on an intra-state sale (e.g., a transaction happening within Maharashtra)

IGST: It is a tax collected by the Central Government for an inter-state sale (e.g., Maharashtra to Tamil Nadu)

UTGST: The Union Territory Goods and Services Tax or UTGST is the counterpart of State Goods and Services Tax (SGST) which is levied on the supply of goods and/or services in the Union Territories (UTs) of India.

There are three taxes applicable under this system: CGST, SGST & IGST.

Types of GST	Authority which is benefitted	Priority of Tax Credit use	Who is it collected by!	Transactions which are applicable (Goods and Services)
CGST	Central Government	CGST IGST	Central Government	Within a single state, i.e. intrastate
SGST	State Government	SGST IGST	State Government	Within a single state, i.e. intrastate
IGST	Central & State Government	IGST,CGST, SGST	Central Government	Between two different states or a state and a Union Territory, i.e. interstate
UTGST/UGST	Union Territory (UT)	UTGST,IGST	Union Territory Government	Within a single Union Territory (UT)

1.4. SALIENT FEATURES OF GST

Goods and Services Tax (GST) is a comprehensive indirect tax levied on the supply of goods and services in India. Here are some of the salient features of GST:

- GST has led to the subsuming of 17 different indirect taxes at the Central and State level.
- GST is a consumption-based tax.
- GST led to a ‘one country one tax rate’ system implemented across the country.
- Taxes imposed on – the ‘supply of goods or services
- No differentiation between goods or services

- f) It is a comprehensive tax levied on all goods and services.
- g) Most importantly, it stopped the earlier tax on the tax structure.
- h) GST led to the free flow of credit.
- i) GST is collected on value addition at every step of the supply chain. GST is multistage; however, input tax credit mitigates the imposition of extra taxes.

1.5. GST LAW FROM A CONSTITUTIONAL PERSPECTIVE

Definition of GST- “Goods and services tax” means any tax on supply of goods, or services or both except taxes on the supply of the alcoholic liquor for human consumption. “Goods and Services tax” law while having unique principles, has significant elements of prior Central and State laws; and is also inspired by VAT/GST legislation of EU, Australia, Malaysia etc. along with International VAT/GST guidelines of OECD.

Sl No	Definition	Article	Definition
1.	Goods	366(12)	Includes all materials, commodities, and articles [Pre Existing Definition]
2.	Service	366 (26A)	Anything other than goods [Introduced vide 101 st Constitutional Amendment Act]
3.	State	366(26B)	With reference to articles 246A, 268, 269,269A and Article 279A includes a Union territory with Legislature. [Introduced vide 101 st Constitutional Amendment Act]

Some of the key constitutional challenges that have been raised with respect to GST are:

- a) Dual control of GST administration:** The GST is a concurrent tax system, meaning that it is administered by both the central and state governments. This has led to challenges in defining the respective roles and responsibilities of the central and state tax authorities.
- b) Revenue losses for states:** The introduction of GST has led to revenue losses for some states, particularly those that were previously reliant on taxes such as CST and octroi. To address this issue, the GST Council has provided compensation to states for a period of five years.
- c) Constitutional validity of GST rates:** There have been challenges to the constitutional validity of GST rates, particularly for essential goods and services that are subject to a higher tax rate.
- d) Inter-state transactions:** The GST has brought about a uniform tax system for inter-state transactions, but it has also created challenges in terms of defining the place of supply for goods and services.

In conclusion, while the GST has brought about significant changes to India's tax system, it has also faced several constitutional challenges. The resolution of these challenges will require a careful consideration of the constitutional division of taxation powers between the center and the states.

1.5.1. Constitutional Challenges of GST: The Goods and Services Tax (GST) has been hailed as one of the most significant reforms in India's tax system, but it has also faced several constitutional challenges. Here are some of the key constitutional challenges of GST from a legal perspective:

- a) Dual taxation power:** The Constitution of India provides that the power to tax is divided between the central and state governments. GST is a consumption-based tax, and therefore, it

is levied at both the central and state levels. This has led to a debate over the constitutional validity of dual taxation power.

b) Taxation of services: Under the previous tax regime, services were taxed at the central level, while the states had the power to tax goods. The GST, however, is a comprehensive tax that covers both goods and services, and this has led to a debate over the constitutional validity of taxing services at the state level.

c) Place of supply rules: The GST Act provides for place of supply rules, which determine the place where a transaction is deemed to have taken place for the purposes of GST. There have been challenges to the constitutional validity of these rules, as they impact the division of taxation powers between the center and the states.

d) Inclusion of petroleum products: The GST Act does not include petroleum products within its purview, and they continue to be taxed under the previous tax regime. There have been challenges to the constitutional validity of this exclusion, as it impacts the constitutional division of taxation powers.

e) Input tax credit: Under the GST, businesses can claim input tax credit for the tax paid on their inputs. However, there have been challenges to the constitutional validity of this provision, as it raises questions over the division of taxation powers between the center and the states.

The introduction of GST in India involved significant constitutional amendments that required the approval of both the central and state governments. The main constitutional challenge to the GST was to reconcile the central and state government powers to tax, as well as to address the concerns of states regarding revenue losses.

1.5.2. Enactments Related to GST: The central government passed four set of Act for the smooth and effective working of GST in India. The said acts are as following:

a) The Central Goods and Services Tax Act, 2017 (The CGST Act) The CGST Act makes provisions for levy tax on intra-state supply of goods or services or both by the Central Government.

b) The Integrated Goods and Services Tax Act, 2017 (The IGST Act) IGST Act makes provisions for levy and collection of tax on inter-state supply of goods or services or both by the Central Government.

c) The Union Territory Goods and Services Tax Act, 2017 (The UTGST Act) makes provisions for levy on collection of tax on intra-UT supply of goods and services in the Union Territories without legislature. Union Territory GST is akin to States Goods and Services Tax (SGST) which shall be levied and collected by the States/Union Territories on intra-state supply of goods or services or both

d) The Goods and Services Tax (Compensation to the States) Act, 2017 (The Compensation Act) This Act provides 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 as per section 18 of the Constitution (One Hundred and First Amendment) Act, 2016.

1.6. SOME OF THE MAJOR CHANGES MADE BY FINANCE ACT, 2013

Before GST regime, fiscal powers between the Centre and the States were clearly demarcated in the Constitution with almost no overlap between the respective domains. The Centre had the powers to levy tax on the manufacture of goods (except alcoholic liquor for human consumption, opium, narcotics etc.) while the States had the powers to levy tax on sale of goods. In case of inter-State sales, the Centre had the power to levy a tax (the Central

Sales Tax) but, the tax was collected and retained entirely by the originating States. As for services, it was the Centre alone that was empowered to levy.

1.6.1.CGST Act, 2017: Supplier of goods can opt for composition scheme even if he is supplying goods through e-commerce operator – amendment to section 10(2)(d) and section 10(2A)(c) of CGST Act. If the recipient does not make payment to supplier of goods or services, he will pay amount equal to ITC with interest under section 50 of CGST Act – amendment to second and third provisos to section 16(2) of CGST Act. Proportionate reversal of Input Tax Credit will be required if there is supply of warehoused goods to any person before clearance for home consumption – Explanation to section 17(3) of CGST Act amended. [This transaction is specified in paragraph 8(a) of Schedule III of CGST Act. This activity is not ‘supply’ but still proportionate reversal of ITC is required].

a) CSR (Corporate Social Responsibility) activities: CSR (Corporate Social Responsibility) activities required under section 135 of Companies Act, 2013 not eligible for ITC – insertion of section 17(5)(fa) of CGST Act. Notwithstanding anything to the contrary contained in section 22(1) or section 24 of CGST Act, the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, specify the category of persons who may be exempted from obtaining registration under CGST Act – substitution of section 23(2) of CGST Act w.r.e.f. 1-7-2017. Person supplying goods which are not liable to GST or are wholly exempt and an agriculturist is not required to obtain GST Registration, even if he is liable under section 22(1) or section 24 of CGST Act will not require registration even if they are liable under reverse charge, or is Input Service Distributor or is a person supplying through e-commerce operator – section 23 of CGST Act substituted w.r.e.f. 1-7-2017 giving overriding effect.

b) Registered taxable person: Any registered taxable 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 such manner, within such time and subject to such conditions and restrictions, as may be prescribed – section 30(1) of CGST Act amended vide Finance Act, 2023 from date to be notified. The present words are – ‘in the prescribed manner within thirty days from the date of service of the cancellation order’.

c) GSTR-1 return cannot be filed after three years from due date: GSTR-1 return cannot be filed after three years from due date, unless specifically permitted by a notification – section 37(5) of CGST Act inserted. GSTR-3B, GSTR-4, GSTR-5, GSTR-5A, GSTR-6 and GSTR-7 returns cannot be filed after three years from due date, unless specifically permitted by a notification – section 39(11) of CGST Act inserted. GSTR-9, GSTR-9C returns cannot be filed after three years from due date, unless specifically permitted by a notification – section 44(2) of CGST Act inserted. GSTR-8 statement cannot be filed after three years from due date, unless specifically permitted by a notification – section 52(15) of CGST Act inserted. 90% of ITC refund on goods exported will be available without excluding amount of ITC provisionally accepted. The amendment is made as provision of self-assessment of ITC has been made and provisional assessment provision omitted – section 54(6) of CGST Act amended. Mode of calculating interest on delay in refund beyond 90 days will be as prescribed – section 56 of CGST Act amended.

d) Taxable person furnishes a valid return within sixty days of the service of the assessment: Where the taxable person furnishes a valid return within sixty days of the service of the assessment order under section 62(1) of Customs Act, the said assessment order (of non-filers of return) shall be deemed to have been withdrawn but the liability for payment of interest under section 50(1) of CGST Act or payment of late fee under section 47

of CGST Act will continue – section 62(2) of CGST Act as amended by Finance Act, 2023 from date to be notified. The present limit is 30 days.

e) Registered person fails to furnish a valid return within sixty days of the service of the assessment: Where the registered person fails to furnish a valid return within sixty days of the service of the assessment order under section 62(1), he may furnish the same within a further period of sixty days on payment of an additional late fee of one hundred rupees for each day of delay beyond sixty days of the service of the said assessment order and in case he furnishes valid return within such extended period, the said assessment order shall be deemed to have been withdrawn, but the liability to pay interest under section 50(1) of CGST Act or to pay late fee under section 47 of CGST Act shall continue – proviso to section 62(2) of CGST Act as amended by Finance Act, 2023 from date to be notified.

f) Some offences de-criminalized: Section 109 of CGST Act (Constitution of Appellate Tribunal and benches thereof) and section 110 of CGST Act (President and Members of Appellate Tribunal, their qualifications etc.) have been completely changed and entirely new provisions have been made by Finance Act, 2013 effective from date to be notified. Penalty on e-commerce operator if supply procured from unregistered supplier or details not correctly furnished in GSTR-8 – section 122(1B) of CGST Act inserted. Some offences de-criminalized. Monetary threshold for prosecution increased to two crores except in case of bogus invoices – amendment to section 132(1) of CGST Act. Provisions relating to composition of offence liberalised and compounding amount reduced – amendment to section 138(1) and 138(2) of CGST Act. Provision relating to Consent based sharing of information furnished by taxable person introduced to enable recipient and supplier to get specified details of his supplier and recipient for purpose of e-way bill, e-invoice etc. – section 158A of CGST Act inserted.

g) Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory: Following transactions appearing in Schedule III of CGST Act were not 'supply' and hence not taxable w.e.f. 1-2-2019 – Paragraph 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, paragraph 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. This exclusion will be from 1-7-2017 itself and hence will not be taxable even during period 1-7-2017 to 1-2-2019 – Amendment to Schedule III of CGST Act w.r.e.f. 1-7-2017.

1.6.2. IGST Act: Definition of 'non-taxable online recipient' simplified to cover any unregistered person and person liable under TDS only – section 2(16) of IGST Act substituted. Definition of OIDAR services amended by omitting the words 'essentially automated and involving minimal human intervention' – section 2(17) of IGST Act amended. If both supplier and recipient of services are in India, place of supply will be India even if goods are for exports and are destined out of India. If supplier and recipient of service are in same State, CGST and SGST/UTGST will be payable and if in different States, IGST will be payable – proviso to section 12(8) of IGST Act omitted. Section 13(9) of the IGST Act shall be omitted from date to be notified. Thus, in case of transportation of goods, residuary provision under section 13(2) of IGST Act i.e. location of recipient will be place of supply, where location of supplier or location of recipient of service is outside India.

1.6.3. GST Compensation Cess: Schedule to GST (Compensation to States) Act is amended vide Finance Act, 2023 w.e.f. 1-4-2023, to provide for payment of GST Compensation Cess

on basis of MRP printed on package, in case of Pan Masala and Tobacco and manufactured tobacco substitutes, including tobacco products.

1.7. TAXES TO BE SUBSUMED IN GST

a) Central taxes to be subsumed in GST: Following Central Taxes should be, to begin with, subsumed under the Goods and Services Tax:

i) Central Excise Duty (CENVAT)

ii) Additional Excise Duties iii) The Excise Duty levied under the Medicinal and Toiletries Preparations (Excise Duties) Act 1955 iv) Service Tax v) Additional Customs Duty, commonly known as Countervailing Duty (CVD)

b) State taxes to be subsumed in GST: Following State taxes and levies would be, to begin with, subsumed under GST: i) VAT / Sales tax Entertainment tax (unless it is levied by the local bodies) ii) Luxury tax Taxes on lottery, betting and gambling State Cesses and Surcharges in so far as they relate to supply of goods and services iii) Octroi and Entry Tax iv) Purchase Tax

1.7.1. Benefit to Consumers:

(i) Final price of goods is expected to be lower due to seamless flow of input tax credit between the manufacturer, retailer and service supplier;

(ii) It is expected that a relatively large segment of small retailers will be either exempted from tax or will suffer very low tax rates under a compounding scheme- purchases from such entities will cost less for the consumers;

(iii) Average tax burden on companies is likely to come down which is expected to reduce prices and lower prices mean more consumption.

1.7.2. Principles of Tax Subsumption

The various Central, State and Local levies were examined to identify their possibility of being subsumed under GST. While identifying, the following principles were kept in mind:

i) Taxes or levies to be subsumed should be primarily in the nature of indirect taxes, either on the supply of goods or on the supply of services.

ii) Taxes or levies to be subsumed should be part of the transaction chain which commences with import/ manufacture/ production of goods or provision of services at one end and the consumption of goods and services at the other.

iii) The subsumption should result in a free flow of tax credit in intra and inter-State levels.

iv) The taxes, levies and fees that are not specifically related to supply of goods & services should not be subsumed under GST.

v) Revenue fairness for both the Union and the states individually would need to be attempted.

1.7.3. Ease of Doing Business

(i) Simpler tax regime with fewer exemptions;

(ii) Reductions in the multiplicity of taxes that are at present governing our indirect tax system leading to simplification and uniformity;

(iii) Reduction in compliance costs - No multiple record keeping for a variety of taxes- so lesser investment of resources and manpower in maintaining records;

(iv) Simplified and automated procedures for various processes such as registration, returns, refunds, tax payments, etc;

- (v) All interaction to be through the common GSTN portal- so less public interface between the taxpayer and the tax administration;
- (vi) Will improve environment of compliance as all returns to be filed online, input credits to be verified online, encouraging more paper trail of transactions; (vii) Common procedures for registration of taxpayers, refund of taxes, uniform formats of tax return, common tax base, common system of classification of goods and services will lend greater certainty to taxation system;
- (viii) Timelines to be provided for important activities like obtaining registration, refunds, etc; (ix) Electronic matching of input tax credits all-across India thus making the process more transparent and accountable.

1.7.4. Different GST Rates & How To Calculate The GST Amount: There are different types of GST slab rates. These are 0%, 0.25%, 1.50%, 3%, 5%, 12%, 18% and 28%. The GST council revises these rates to ensure efficient pricing of these products. Here are the different slabs of GST and the various goods and services that fall under these categories.

How to calculate the GST amount: The following formula is needed for calculating the GST before the application of GST and after the removal of GST. Here's how GST is calculated.

Formulae for adding GST

$$\text{GST Amount} = (\text{Original Cost} \times \text{GST Rate})/100$$

$$\text{Net Price} = \text{Original Cost} + \text{GST Amount}$$

Formulae for removing GST

$$\text{GST Amount} = \text{Original Cost} - [\text{Original Cost} \times \{100/(100+\text{GST Rate})\}]$$

$$\text{Net Price} = \text{Original Cost} - \text{GST Amount.}$$

1.7.5. GST Subsumed the Following: GST is commonly described as indirect, comprehensive, broad-based consumption Tax. The Dual GST which would be implemented in India will subsume many consumption taxes. The objective is to remove the multiplicity of tax levies thereby reducing the complexity and remove the effect of Tax Cascading. The objective is to subsume all those taxes that are currently levied on the sale of goods or provision of services by either Central or State Government. The subsumption of a large number of taxes and other levies will allow free flow of a larger pool of tax credits at both Central and State level.



1.7.6. Timeline and Evolution of GST:

2000: An Empowered Committee consisting of State Finance Ministers is set up.

2006: The then Finance Minister, P Chidambaram, announced the implementation of GST on April 1, 2010.

2009: The Empowered Committee of State Finance Ministers submitted the first discussion paper on GST in India.

2010: President Pranab Mukherjee announced the delay in introducing GST, proposing to introduce it in April 2011.

2011: The Constitution (115th Amendment) Bill focused on the introduction of GST in India was introduced in the Lok Sabha.

The Lok Sabha then refers the Bill to the Standing Committee on Finance for a detailed examination.

2013: The Standing Committee on Finance submits the report on the Constitution (115th Amendment) Bill.

2014: The Lok Sabha dissolution leads to the lapse of the Bill. The Constitution (122nd Amendment) Bill introduced in the Lok Sabha focused on introducing GST.

2015: The Bill was passed by the Lok Sabha and referred to a Select Committee in the Rajya Sabha. The Select Committee submits the report. Chief Economic Advisor-led Committee submits a report on the possible GST rates.

2016: The Bill is passed by both the Lok Sabha and the Rajya Sabha and is then notified as the Constitution (101st Amendment) Bill. The first state to ratify the Bill in Assam. President Pranab Mukherjee gives his assent to the Bill. The Union Cabinet approves the setting up of the GST Council, following which the first GST Council meeting is held in New Delhi.

2017: The CGST Bill, IGST Bill, UTGST Bill, and GST (Compensation to States) Bill is introduced in the Lok Sabha. The Bills are passed by the Lok Sabha and the Rajya Sabha, after which the GST Acts are notified. The GST Council notifies GST rates and cess on goods and services. 1st July, the official rollout of GST.

2018: Introduction of TDS provisions along with the filing of GSTR-7. Introduction of E-way bill system for inter-state movement of goods.

2019: The reverse charge mechanism is made applicable- Restrictions on availment of ITC for Section 36(4)

2020: Introduction of e-invoicing voluntarily; Quarterly return monthly payment scheme; June – Relief to taxpayers in view of COVID-19

2021: Introduction of GSTR-8 and GST on service supplied by restaurants through e-commerce operators. GST on services supplied by State Govt. to their undertakings or PSUs by way of guaranteeing loans taken by them.

1.8. SUMMARY

This lesson makes mindful of what is GST and its assessment and the transformative phases and how it's been outlined and executed. The legal frame work of GST and its components examined for better understanding. Service tax. Since the States were not empowered to levy any tax on the sale or purchase of goods in the course of their importation into or exportation

from India, the Centre levied and collected this tax as additional duties of customs, which was in addition to the Basic Customs Duty. This additional duty of customs {commonly known as Counter Veiling Duty (CVD) and Special Additional Duty (SAD)} counter balances excise duties, sales tax, State VAT and other taxes levied on the like domestic product. Introduction of GST was requiring amendments in the Constitution so as to concurrently empower the Centre and the States to levy and collect the GST. The assignment of concurrent jurisdiction to the Centre and the States for the levy of GST required a unique institutional mechanism that would have ensured that decisions about the structure, design and operation of GST are taken jointly by the two. For it to be effective, such a mechanism also needed to have Constitutional force. This lesson makes mindful of what is GST and its assessment and the transformative phases and how it's been outlined and executed. The legal frame work of GST and its components examined for better understanding.

1.9. TECHNICAL TERMS

- 1 **Net Price:** A net price is the actual price a buyer pays for a product or service after all applicable discounts and expenses have been subtracted from the gross price. This concept is important in business and e-commerce because it allows both buyers and sellers to negotiate and agree on a fair and mutually beneficial price.
- 2 **CGST:** Section 2 (115) of the Central Goods and Services Tax (CGST) Act pertains to the definition of “Union Territory Tax.” The meaning and detailed explanation of this section given as under: 1. Union Territory Tax (UTT): Union Territory Tax refers to the tax levied under the Union Territory Goods and Services Tax (UTGST) Act.
- 3 **IGST:** Integrated Goods and Service Tax or IGST numerically equals= CGST+SGST. The movement of goods from New Delhi to Agra will attract IGST.
- 4 **SGST:** SGST, short for State Goods and Service Tax, is one of the three main categories of Goods and Service Tax, i.e. (CGST, IGST, and SGST) and carries a concept of one tax one nation. SGST falls under the State Goods and Service Tax Act 2016. The supplies under SGST do not include alcohol for human consumption.
- 5 **UGST:** The UGST full form or UTGST full form is Union Territory Goods and Services Tax (UTGST) is levied by the respective Union Territories. They will be levied on the transactions undertaken by the Union territories of India UGST in GST.

1.10. SELF ASSESSMENT QUESTIONS

1. What are the Types of GST?
2. What are the Salient features of GST?
3. What are the Principles of GST submission?
4. What are the components of GST?
5. Explain about GST Law from a Constitutional Perspective.
6. Discuss about some of the Major Changes made by Finance Act, 2013
7. What is the procedure for calculation GST?
8. What are the Advantages of GST?

1.11. SUGGESTED READINGS

1. Goods and Services Tax in India- Notifications on different dates
2. GST Bill 2012
3. The Central Goods and Services Tax Act, 2017, No.12 of 2017, Published by Authority, Ministry of Law and Justice, New Delhi, 12 April, 2017

4. Background Material on Model GST Law, Sahitya Bhavan Publications, Hospital Road, Agra-383 003
5. Customs Law Manual and Customs Tariff of India – R.K.JAIN.
6. The Central Goods and Services Tax Act, 2017, No.12 of 2017 published by Authority, Ministry of Law and Justice, New Delhi, 12th April, 2017.
7. <https://www.gst.gov.in/>
8. <https://cleartax.in/gst-number-search/>
9. GST ExCus by (R.K. Jain)eProducts.
10. GST Refunds by (Aditya Singhanian)Professional Books.
11. Changes in GST law made by Finance Act 2023
12. Nirmala Sitharaman, Minister of Finance, Government of India, presented Budget 2023-24 on 1-2-2023. Finance Bill, 2023 was also presented. Finance Bill, 2023 was passed by Parliament and became Finance Act, 2023 on 31-3-2023, after receiving assent of President. The changes will be effective from date to be notified. Some changes are w.r.e.f. 1-7-2017 itself.

Mr. M. RAVINDRA KUMAR

LESSON – 2

REGISTRATION AND FILLING GST

Learning Objectives:

- To know the concept and Registration & filling of GST returns.
- To understand the types of GST Registration.
- To understand the Need and Advantages of registration of GST.

Structure

2.1. Introduction

2.2. Types of GST Registration

2.3. Registration of assesses under GST

2.4. Persons Liable for Registration under GST (2023 Update)

2.5. What are GST Returns?

2.6. How to file GST Returns?

2.7. Different Types of GST Returns

2.8. Who should file for GST Returns?

2.9. Summary

2.10. Technical Terms

2.11. Self- Assessment Questions

2.12. Suggested Readings

2.1. INTRODUCTION

To apply for a GST number online, you can follow these steps: Go to the GST portal and create an account. Once you have created an account, login and click on the 'New Registration' tab select the appropriate category of registration for your business. Fill in the required details in the application form. Upload the required documents. All applications for GST registration and relevant supporting documents must be submitted online via mytax.iras.gov.sg. You can get your GST number or GSTIN by registering yourself under GST. The first 2 digit of GST number represents state in which tax payer is registered. Next 10 letters are PAN number of tax payer. Next 2 digits are for entity code and last digit is check sum number. The GST is a destination based tax on the consumer of the goods and services or both. Actual taxpayer, (the consumer) is different from the factual one (the supplier). Registration is the process to establish a chain between the Government vis-à-vis the supplier and the consumer. Registration helps the Government to identify taxpayers on the one hand and enables the tax payers to collect tax from the consumers on the other besides establishing a seamless flow for claiming credit of tax paid on inputs (ITC). This lesson takes a detailed look at the provisions relating to Registration, its need, advantages, liability for registration, exemption from registration, procedural aspect for registration and its modification or cancellation etc.

Filing is a see also of filling. Filling is a see also of filing. As nouns the difference between filling and filing is that filling is anything that is used to fill something while filing is any particle that has been removed by a file or similar implement; a shaving. As verbs the difference between filling and filing is that filling is (fill) while filing is (file). GST Returns are a type of form that a taxpayer has to file. There are around 22 types of GST forms available. From these 22 GST forms, there are 11 that are active, 8 view-only and 3

suspended. So the number and type of GST you have to file is based on the type of taxpayer you have registered. While you understand what GST returns are, it is also necessary to understand the type of taxpayers. There are 7 types of taxpayers. These are: Regular taxpayer; Composition taxable persons; TDS deductors; Non-resident taxpayer; Input Service Distributor; Casual taxable persons; E-commerce operators. It is also worth knowing that GST Returns are filed quarterly, monthly, or annually. So with this idea of what a GST return filing is, let's get started on understanding the different types of GST returns.

2.1.1. Features of GST Registration: Some of the features of GST registration are as follows: All registered people are expected to display their registration certificates and GSTIN at their primary place of business and also at every additional business location.

i) GST registration is PAN-based and state-specific.

ii) An individual who is registered in one state is termed an 'unregistered person' in another state.

iii) Suppliers must register in every state or union territory from which they supply services.

iv) In case a person owns a unit in a Special Economic Zone (SEZ) or is a SEZ developer and also owns a unit in a domestic tariff area (outside the SEZ) within the same state, they must register the SEZ unit separately.

2.1.2. Need and Advantages of registration: Registration is the process for obtaining a unique number from the Government by a supplier of goods or service or both. Registration authorizes the supplier to collect tax on behalf of the Government. It also enables the supplier to avail Input tax credit (ITC) for the taxes paid on his inward supplies. Without registration, a person can neither collect tax from his customers nor claim any input tax credit of tax paid by him. Registration confers the following advantages to a taxpayer:

a) Registration is an official recognition to a person as the supplier of goods or services or both.

b) A registered supplier is authorized to collect tax from the consumers.

c) The supplier may pass on credit of the taxes paid on the goods or services or both, supplied to the consumers.

d) The supplier may claim and utilize input tax credit of taxes paid towards the discharge of his liability for taxes due on supply of goods or services or both.

e) Registration acts as a catalyst in establishing a supply chain at the national level with a seamless flow of Input Tax Credit from suppliers to the consumers.

2.1.3. The effective date of registration: Where the application for registration has been submitted within thirty days from the date on which the person becomes liable to registration, the effective date of registration shall be the date on which he became liable for registration.

Where an application for registration has been submitted by the applicant after thirty days from the date of his becoming liable to registration, the effective date of registration shall be the date of grant of registration. In case of a person taking registration voluntarily while being within the threshold exemption limit for paying tax, the effective date of registration shall be the date of order of registration.

2.2. TYPES OF GST REGISTRATION

2.2.1. Normal Taxpayer: Registration is required when the threshold of 20 lac for special category states and 40 lac for normal category states is exceeded. Taxpayers are related to service industries other than the restaurant sector. Taxpayers registered under the regular regime are required to file monthly returns. A regular taxpayer can claim an input tax credit equal to GST for purchasing goods and/or services.

2.2.2. Composition scheme: Small taxpayers can get rid of tedious GST formalities and pay GST at a fixed turnover rate. Any taxpayer whose turnover is less than Rs 1.5 crore can opt for this scheme. The following are the benefits of registering under the composition scheme: i) Lesser compliance (returns, maintaining books of record, issuance of invoices);ii)Limited tax liability; iii) High liquidity

2.2.3. Compulsory Registration: Dealers are required to make compulsory registration regardless of turnover. For example Interstate sales of taxable goods, e-commerce operators, e-commerce sellers, etc.

2.2.4. Voluntary Registration: Companies that are not required to apply for compulsory registration may apply for registration voluntarily.

2.2.5. Casual Taxable Person: A person who occasionally provides goods or services in a GST area but does not have a fixed place of business. Such persons must be treated as Casual taxpayers. For example, a person carrying on business in Maharashtra and providing taxable consulting services in Delhi where he does not carry on business would be considered a casual taxpayer in Delhi.

2.2.6. Input Service Distributor: Input Service Distributor means a Goods/Services that receive a Tax Invoice upon receipt of an Input Service, issues a Tax Invoice and distributes credits of CGST/SGST/IGST paid for **such services to Branch Offices.**(Must be a supplier of taxable goods/services with the same PAN as the above entity). Credits can only be allocated to input services and not to input or capital goods.

2.2.7. Non-Resident Taxable Person: Where the non-resident provides goods or services in areas where GST applies but does not have a fixed place of business in India. He is treated as a non-resident taxpayer under his GST. Same as above except non-residents do not have a place of business in India.

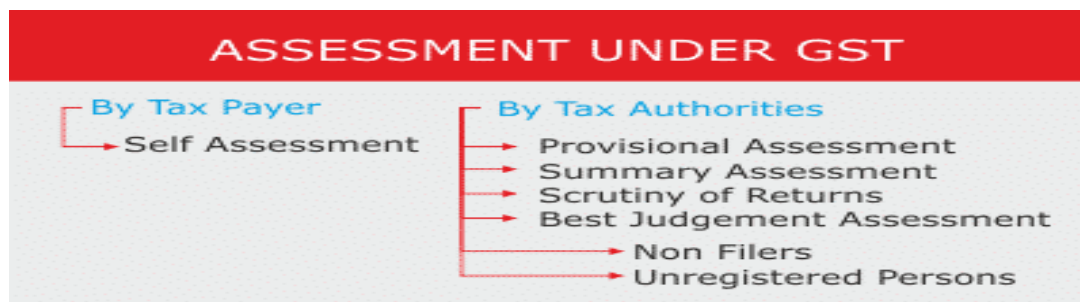
2.2.8. Non-Resident Online Service Distributor: Online content offerings of digital content (movies, television shows, music, data storage, games, etc.) refer to services made available by information technology over the Internet or other electronic networks ie. Cloud Services, eBooks, Movie Downloads, Software, and Online Advertising. Any person other than the registrant who provides online information and database access or retrieval services from outside India to persons in India must be registered with her GST as a provider of OIDAR services. This person is called a non-resident online service provider. All persons providing OIDAR services must be registered for GST, except registrants (non-resident online service providers).

2.2.9. Tax Deductor at Source (TDS) /Tax Collector at Source (TCS): All departments or branches of the Central/State Government, local governments, government agencies, and individuals or groups of individuals notified by the Central/State Government to make their contractual payments exceeding INR 2,500,000 to the Supplier. **Must** be registered as TDS under GST. The **government must deduct 1% CGST** and 1% SGST. For inter-state transactions, 2% IGST Act.

2.3. REGISTRATION OF ASSESSES UNDER GST

Registration of an Assessee or a 'taxable person' is the starting point in any tax law. It is the most fundamental requirement of identification of the business for tax purposes and monitoring compliance requirements. CGST Act provides for registration of every supplier effecting the taxable supplies. Every supplier having aggregate turnover exceeding ₹ 20 lakh in the financial year is required to be registered. This threshold limit of ₹ 20 lakh is reduced to ₹ 10 lakh in cases of supplies effected in the States of Himachal Pradesh, Uttarakhand, Manipur, Arunachal Pradesh, Assam, Jammu & Kashmir, Meghalaya, Mizoram, Nagaland,

Sikkim, and Tripura. For calculating the threshold limit, supply of goods by a registered Job-worker after completing job-work, shall be treated as the supply of goods by the "principal" and shall not be included in the aggregate turnover of the registered job-worker.



2.3.1. The different types of assessment under GST:

a) **Section 59- Self Assessment:** The taxable person is required to pay tax on the basis of self-assessment done by him. Hence, all GST return filings are based on self-assessment by the taxpayer. In other words; Every registered taxable person shall himself assess the taxes payable and furnish a return for each tax period.

b) **Section 60- Provisional Assessment:** Provisional assessment can be conducted for a taxable person when the taxpayer is unable to determine the value of goods or service or both or determine the rate of tax applicable thereto. Provisions of Provisional Assessment: i) Requests for provisional assessments will be given in writing; ii) The proper officer can allow paying tax on provisional basis at a rate or on a value specified by him; iii) Order will be passed within 90 days from date of request. iv) The taxable person has to issue a bond with a security promising to pay the difference between provisionally assessed tax and final assessed tax. v) Provisional assessments will be followed by final assessments. The proper officer can ask for information before final assessment.

Time Limit for Final Assessments: The final assessment will be done within 6 months of the provisional assessment. This can be extended for 6 months by the Joint/Additional Commissioner. However, the Commissioner can extend it for further 4 years as he seems fit.

Interest on Additional Tax Payable and Refunds: The tax payer will have to pay interest on any tax payable under provisional assessment which was not paid within the due date. Interest period will be calculated from the day when tax was first due on the goods/services (and not the date of provisional assessment) till the actual payment date, irrespective of payment being before or after final assessment. Rate of interest will be maximum 18%.

If the tax as per final assessment is less than provisional assessment then the taxable person will get a refund. He will also get interest on refund. Rate of interest will be maximum 6%.

c) **Section 61: Scrutiny of Tax Returns:** GST Officers can scrutinize a GST return and related particulars furnished by the registered person to verify the correctness of the return. This is called a scrutiny assessment. In case there is any discrepancies noticed by the officer, he/she would inform the same to the registered person and seek his explanation on the same. On the basis of the explanation received from the registered person, the officer can take following action:

i) If the explanation provided is satisfactory, the officer will inform about the same to the registered person and no further action will be taken in this regard.

ii) If the explanation provided is not satisfactory, The proper officer will take action-If the taxable person does not give a satisfactory explanation within 30 days Or He does not rectify the discrepancies within a reasonable time (not yet prescribed)

The officer may-a) Conduct audit of the tax payer u/s 65; b) Start Special Audit procedure u/s 66; c) Inspect and search the places of business of the tax payer; d) Start Demand and Recovery provisions.

d) Section 62 – Assessment of non-filers of tax returns: When a registered person fails to furnish the required returns, even after service of notice under Section 46 an assessment would be conducted by the GST Officer. In such cases, the GST officer would proceed to assess the tax liability of the taxpayer to the best of his judgment 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 for furnishing of the annual return for the financial year to which the tax not paid relates. On receipt of the said assessment order, if the registered person furnishes a valid return within a period of 30 days from the date of issuance of assessment order, then in such case, the assessment order would be deemed to have withdrawn. However, the registered person will be liable to pay interest under Section 50 (1) and/or liable to pay late fee under Section 47.

e) Section-63: Assessment of Unregistered persons: When a taxable person fails to obtain GST registration even though liable to do so or whose registration has been cancelled under section 29 (2) but who was liable to pay tax, the GST officer can 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. The proper officer may proceed to assess the tax liability of such person to the best of his judgment considering all the relevant material he has gathered within a period of 5 years from the due date of furnishing annual return for the financial year for which tax not paid relates. For passing the assessment order under this section, the proper officer will issue a notice in form ASMT-14, containing the grounds on which assessment is proposed to be made and after considering the reply proper officer will issue order in form ASMT-15.

f) Section 64 – Summary assessment: The authorized office is required to obtain prior permission of additional commissioner or joint commissioner to take this assessment. To protect the interest of revenue, a GST officer can proceed to assess the tax liability of a person showing a tax liability with any evidence. The officer can also issue an assessment order if he has proof that the delay in assessment can adversely affect the interest of revenue.

2.4. PERSONS LIABLE FOR REGISTRATION UNDER GST (2023 UPDATE)

Any tax law begins with the registration of a taxable person. This is the most basic requirement to identify a company for tax purposes and monitor compliance requirements.

Section 22 of the Central Goods and Service Tax (CGST) Act, 2017 lists the persons liable for obtaining GST registration –

1. Supplier engaged in the supply of goods whose aggregate turnover in the financial year exceeds forty lakh rupees.
2. Suppliers engaged in providing a taxable supply of goods are required to obtain GST registration in case the aggregate turnover exceeds INR 20/10 Lakhs in a financial year. (Some special category states i. e Puducherry, Meghalaya, Mizoram, Tripura, Manipur, Sikkim, Nagaland, Arunachal Pradesh, and Uttarakhand opted for a turnover limit of Rs 20 Lakhs whilst Kerala and Telangana limit of Rs. 10 Lakhs).
3. Suppliers provide a taxable supply of services in case the aggregate turnover exceeds 20 Lakhs in a financial year.
4. For special category state: supplier engaged in providing a taxable supply of services in case the aggregate turnover exceeds 10 Lakhs in a financial year.

5. Persons registered under the erstwhile law, on the day immediately preceding the appointment date.
6. The registered taxable person transfers the business to another person on a going concern basis, whether on account of succession or otherwise, in such case the transferee or the successor.
7. Transfer of the company in the event of an amalgamation or demerger under a high court, tribunal, or other order.

2.4.1. Persons Are Not Liable For Registration

Section 23 of CGST Act 2017 lists the persons not liable for registration.

The following persons are exempt from registration: a) Engaged exclusively in the supply of goods/ services/ both which are not liable to tax b) Engaged exclusively in the supply of the goods/ services/ both which are wholly exempt from tax c) Agriculturalists to the extent of supply of produce from land cultivation d) Specific categories as determined by the government.

2.4.2. Following are notified: i) Persons making only reverse charge supplies: persons engaged in making supplies of taxable goods and services or both the total tax on which is liable to be paid on a reverse charge basis by the recipient of such goods or services or both under section 9(3).

ii) Persons making interstate supplies of taxable services in a financial year (except in cases of special category states of Mizoram, Manipur, Tripura, and Nagaland the limit is Rs. 10 lakhs).

iii) For persons making interstate taxable supplies of notified handicraft goods up to Rs.20 lakhs in a financial year (except in cases of special category states of Mizoram, Manipur, Tripura, and Nagaland the limit is Rs. 10 lakhs).

iv) For casual taxable persons making interstate supplies of notified handicraft goods up to Rs.20 lakhs in a financial year (except in cases of special category states of Mizoram, Manipur, Tripura, and Nagaland the limit is Rs. 10 lakhs).

2.4.3. No Registration: The following groups of people do not require GST registration: i) Companies with gross turnover not exceeding Rs.40 in goods (Rs. 20 in special category states) or Rs. 20 in services (Rs. 10 in special category states) during the financial year. ii) Business that do not require compulsory registration. iii) Persons who sell goods or services that is exempt from GST or is not subject to GST. iv) Agriculturists for the supply of crops from the cultivation of land.

2.5. WHAT ARE GST RETURNS?

GST Returns are a type of form that a taxpayer has to file. There are around 22 types of GST forms available. From these 22 GST forms, there are 11 that are active, 8 view-only and 3 suspended. So the number and type of GST you have to file is based on the type of taxpayer you have registered. While you understand what GST returns are, it is also necessary to understand the type of taxpayers. There are 7 types of taxpayers. These are:

- Regular taxpayer
- Composition taxable persons
- TDS deductors
- Non-resident taxpayer
- Input Service Distributor
- Casual taxable persons
- E-commerce operators

It is also worth knowing that GST Returns are filed quarterly, monthly, or annually. So with this idea of what a GST return filing is, let's get started on understanding the different types of GST returns.

2.5.1. File GST Returns: GSTR-1: GSTR-3B or GSTR-4

When obtaining the GST registration, taxpayers must make a note of the specific GST returns that apply to them. To avoid interest and penalties, they must begin filing it within the specified deadlines. All GST returns can be filed on the GST portal, which is accessible to all taxpayers in India. Normal taxpayers must file GSTR-1 returns for sales details and GSTR-3B returns for a sales summary and ITC reporting. Pay your taxes and then submit GSTR-3B. All composition dealers must file a single GSTR-4 return once a quarter. Other additional returns are required by the act to be filed in certain circumstances. For example, an input service distributor must file GSTR-6 in order to allocate ITC amounts to each of its branches/units across India that have used the specific goods or services for which ITC is available. Some taxpayers may be required to file forms with the department on a regular basis.

Form ITC-04 is one example. The manufacturer files it on a quarterly basis to proclaim the position of goods sent on job work. Furthermore, the taxpayer must declare whether any ITC reversal is required due to a delay in the return of goods. Aside from these, special types of enrollments necessitate the submission of specific GST returns. Learn more about the various types of GST returns and who is required to file them. GST returns are different forms that a taxpayer has to file for every GSTIN to which he is registered. In this article, we have provided several important questions surrounding GST returns. These include: how many different types of forms there are, who needs to file which form, when do these forms need to be filled and so on. Let's get started, however, on what is GST Returns. Check it out!

2.6. HOW TO FILE GST RETURNS?

If you have been wondering how to file GST returns, it is not a laborious or confusing process. It can be filed with the software provided by the Goods and Services Tax Network (GSTN), which will auto-populate the forms. GST return online filing process:



How to File GST Returns in India - Step by Step Guide

a) **Online Filing Process:** The GST return online filing process can be completed in the following steps:

Step 1: Use the GST portal that is www.gst.gov.in.

Step 2: Based on your state code and PAN number, a 15 digit number will be issued.

Step 3: Each invoice that you have needs to be uploaded. Against each invoice, a reference number will be issued.

Step 4: After this, the next step is to file the outward returns, inward returns, and cumulative monthly returns. All errors can be rectified.

Step 5: File the outward supply returns of GSTR-1 using the information section at the GST Common Portal on or before the 10th of the month.

Step 6: The outward supplies furnished by the supplier will be gotten from the GSTR-2A.

Step 7: After this, the recipient has to verify the details of the outward supplies and file details of credit or debit notes.

Step 8: Next, supply details of the inward supplies of goods and services in the GSTR-2 form.

Step 9: Supplier can accept or reject the details provided by the inward supplies made apparent in the GSTR-1A.

b) Offline process: To file your GST returns in the offline mode, you need to visit and download the offline tool. Once you have downloaded this tool, you can easily fill in the GSTR-1 and GSTR-2 forms. All you have to do is follow the steps in the link provided above

c) How to download GST returns form? Here's how to download GST returns from the government portal. Follow these steps one after the other.

Step 1: Login to the GST portal.

Step 2: From there, go to the Service→ Returns→ Returns Dashboard.

Step 3: Choose the month and year from the drop-down.

Step 4: Hit "PREPARE OFFLINE."

Step 5: Navigate to "Download" and click on "GENERATE FILE."

Step 6: Click on the "Click Here" link and download the link. You should get a ZIP file.

Step 7: Open this file using the GST offline tool by clicking on "Open" under the Open Downloaded Return file from the GST portal.

Now that you know how to download the GST return file, follow the same procedure for every other GSTR file.

2.7. DIFFERENT TYPES OF GST RETURNS

Here is a look at the different types of GST returns.

1. GSTR-1: GSTR-1 has to be filed against all goods and services rendered by a company. This includes all the invoices raised as well as credit-debit notes against sales for a tax period.

2. GSTR-2A: GSTR 2A is a view-only GST return for buying goods and services. It contains the details of all purchases made by the recipient in any month. All kinds of inward supplies to the recipient can be viewed as purchases made from other GST registered suppliers.

3. GSTR- 2B: This is also a static, view-only GST return. It is important for buyers of goods and services. GSTR-2B is available every month from August 2020 and contains ITC data of any period when it is checked back.

4. GSTR- 3B: GSTR 3B is a monthly self-declaration. It furnishes the summarized details of: All outward supplies made; Input tax credit claimed; Tax liability ;Taxes paid

5. GSTR-4: GSTR-4 is an annual return to be filed by composition taxable persons. It is to be filed by April 30th following the relevant financial year. This return replaced GSTR-9A.

6. GSTR-5: GSTR-5 is for those non-resident foreign taxpayers who carry out transactions in India. What do these returns entail? They contain details of the following: Outward supplies made; Inward supplies received; Credit-debit notes; Tax liability ;Taxes paid

7. GSTR-5A: GSTR-5A summarises all the outward taxable supplies and tax payable by OIDAR, which stands for the Online Information and Database Access or Retrieval Services provider. You have to file this return by the 20th of every succeeding month.

8. GSTR-6: GSTR-6 must be filed by an Input Service Distributor (ISD) every month. Its composition details are: Input tax credit distributed and received by ISD; All the details of all documents related to the input tax credit. The due date of the GSTR-6 is the 13th of every succeeding month.

9. GSTR-7: GSTR-7 is to be filed by the persons who are required to deduct the TDS under GST. TDS stands for "Tax deducted at source." Here's what the GSTR-7 entails: Details of

TDS deducted; TDS liability payable and paid; TDS refund if any; The due date of the GSTR-7 is the 10th of every succeeding month.

10. GSTR-8: This form is required to be filed by the e-commerce operators registered under GST. They are usually required to collect tax at the source. All the details of supplies made through the e-commerce platform and the TCS on the same are recorded. It is to be filed by the 10th of every succeeding month.

11. GSTR-9: This is an annual return to be filed by taxpayers who are registered under GST. It is due by December 31st for the year following the specific financial year. What does the GSTR-9 contain? It consists of the following: Details of outward supplies made; Inward supplies received; Summary of supplies received under HSN code; Details of tax payable and paid.

12. GSTR-9C: It is a statement filed by all the taxpayers registered under GST whose turnover exceeds Rs. 2 crores in a financial year. This is a unique form in that it has to be certified by a Chartered Accountant or a Cost Management Accountant after a GST audit and looking over the GSTR-9. It is to be filed by December 31st of the year that follows the relevant financial year. However, as per the Union Budget 2021, the mandate for the GST audit by CAs and CMAs has been removed.

13. GSTR-10: The GSTR-10 form is to be filed by a person whose registration was surrendered or cancelled. It is also called a final return which needs to be filed within three months of the cancellation order or the date of cancellation, whichever comes first.

14. GSTR-11: GSTR-11 is for foreign diplomatic missions and embassies that do not pay tax in India but require a refund of taxes. It is filed by those persons who have been issued a Unique Identity Number (UIN) to get a refund for the goods and services incurred by them in India. These returns have details of the inward supplies received and refunds claimed. These were the different types of GST returns and who should file them.

2.8. WHO SHOULD FILE FOR GST RETURNS?

So ideally, who should file GST? Every supplier of goods or services is required to obtain registration in every state, where he makes taxable supply if his aggregate turnover exceeds the threshold limit. Here the threshold limit is 20 lakhs, and for the state of Manipur, Mizoram, Nagaland and Tripura the threshold limit reduces to 10 lakhs. A person engaged in exclusive supply of goods is required to obtain registration of aggregate turnover exceeding Rs 40 lakhs.

Here is a summary of who should file an annual return under GST.

2.8.1. What is the penalty for the late filing of GST returns? If you have failed to pay the GST returns, there is an interest and late fee to be paid. The interest is at 18% per annum to be calculated on the amount of outstanding tax. And under the CGST and SGST, there is a late fee of Rs.100 to be paid each day, so the total comes to Rs.200 per day.

Type of GST Form	Who should file the form?
GSTR-1	Every registered person should file this form
GSTR-2A	Autofill form that is view-only
GSTR 2B	View only form
GSTR 3B	Needs to be filled by the normal taxpayer

GSTR- 4	Needs to be filled by a composition dealer who has opted for a composition scheme
GSTR-5	Needs to be paid by those non-resident foreigners who have businesses in India
GSTR-5A	Non-resident OIDAR service providers
GSTR-6	Needs to be filed by an Input Service Distributor (ISD)
GSTR-7	Filed by those persons who need to deduct TDS under GST
GSTR-8	Filed by e-commerce operators
GSTR-9	Taxpayers registered under GST
GSTR 9C	Taxpayers registered under GST
GSTR-10	Paid by those persons whose GST registration was cancelled or surrendered
GSTR-11	For refund claims by foreign diplomatic missions and embassies

2.8.2. How to Check Status of GST Returns?

To check GST return status online, just follow these steps.

i) Open the portal <https://www.gst.gov.in/>

ii) Enter the details on the login page.

iii) Choose and click Service > Returns > Track Returns Status.

iv) From the drop-down, select “Status of Return.”

v) Click the Search button.

vi) The status may show up as TO BE FILED / SUBMITTED BUT NOT FILLED / FILED-INVALID / FILED-INVALID.

This is how to track GST return filing: In conclusion, GST returns filing used to be a tedious and laborious job. It has now become simplified by the process of online filling of the various forms. Once you have an idea of the various GST returns forms you have to fill, the process can become significantly simplified. So get your GST Returns filed today!

2.9. SUMMARY

This lesson knowledge’s about the GST registration process and the parties liable and not liable for registration of GST. The overview of registration proceedings and required documents explained in details for self understanding and to initiate for self registration and filing of GST process. The researchers and students also need to know the concept and Registration & filling of GST returns. The student is able to understand the types of GST Registration. As well as understand the Need and Advantages of registration of GST. Along with this information all the stakeholders is observed that Types of GST Registration; Registration of assesses under GST; Persons Liable for Registration under GST (2023

Update); what are GST Returns? How to file GST returns? Different Types of GST Returns; who should file for GST returns?

2.10. TECHNICAL TERMS

Provisional assessment: Provisional Assessment is an optional form of assessment that the taxpayer can use in specific circumstances. The tax liability is final in self-assessment and cannot be disputed by the taxpayer or the tax authorities unless an appropriate legal process is followed.

Self assessment: Self-assessment is the ability to examine yourself to find out how much progress you have made. It is a skill that helps individuals monitor their own work or abilities, find out what their weaknesses and strengths are, and self-diagnose relevant solutions.

Input Service Distributor: As per Section 2 (61) of CGST Act, 2017, Input Service Distributor means : (b) The said office receives tax invoices towards receipt of input services (c) The said office distributes credit of CGST/SGST/IGST/UTGST to a supplier of goods/services having same PAN

Voluntary Registration: Voluntary registration is an option for any business under the VAT threshold. The name says it all: companies may choose to charge VAT, even when trading below the compulsory VAT level. There are various reasons they might do this.

Normal Taxpayer: The meaning of NORMAL TAX is a basic rate of taxation (as on income) applied to large groups of taxpayers to which varying surtaxes may be added for smaller subgroups.

2.11. SELF-ASSESSMENT QUESTIONS

1. What are the types of GST Registration? Briefly explain it.
2. What is Registration? How the registration of assesses under GST
3. What is Persons Liabe for Registration under GST ?
4. What are GST Returns?
5. How to file GST returns?
6. Discuss Different Types of GST Returns.
7. Who should file for GST returns?
8. How the Registration and filling of GST is?
9. What are the Features of GST Registration?
10. Who are the Persons are liabe not liabe for registration?

2.12. SUGGESTED READINGS

1. Goods and Services Tax in India- Notifications on different dates
2. GST Bill 2012
3. The Central Goods and Services Tax Act, 2017, No.12 of 2017, Published by Authority, Ministry of Law and Justice, New Delhi, 12 April, 2017
4. Background Material on Model GST Law, Sahitya Bhavan Publications, Hospital Road, Agra-383 003
5. Customs Law Manual and Customs Tariff of India – R.K.JAIN.
6. The Central Goods and Services Tax Act, 2017, No.12 of 2017 published by Authority, Ministry of Law and Justice , New Delhi, 12th April, 2017.
7. <https://www.gst.gov.in/>
8. <https://cleartax.in/gst-number-search/>
9. <https://gsthero.com/>
10. GST on Services by (S.S. Gupta) Professional Books.
11. GST Avam Custom Kanoon by (Shripal Saklecha, Anit Saklecha)Academic Book

LESSON -3

REGISTRATION CANCELLATION PROCEDURE UNDER GST

Learning Objectives:

To know the concept and Cancellation of GST- Registration

To understand the Process & Cancellation of GST registration

To understand the circumstances for Rejection of application for GST

Structure

3.1. Introduction

3.2. The registered person can apply for cancellation/ surrender of GST registration

3.3. Cancellation of registration under GST | Provisions

3.4. Cancellation of GST registration under GST | Applicability

3.5. Circumstances when a proper officer cancels the GST registration

3.6. Procedure for Cancellation

3.7. The procedure for cancellation/ surrender of GST registration by the registered person

3.8. The procedure for cancellation of GST registration by the proper officer

3.9. The process for cancellation of GST registration involves the following steps

3.10. Steps to follow to cancel the GST registration

3.11. Process for Cancellation of GST Registration on GST Portal

3.12. Rejection of application for GST cancellation

3.13. Revocation of GST Cancellation

3.14. Summary

3.15. Technical Terms

3.16. Self-Assessment Questions

3.17. Suggested Readings

3.1. INTRODUCTION

Cancellation of GST Registration means the GST Number or GSTIN of a registered taxpayer becomes inactive. The taxpayer will not have to pay or collect GST or file returns, after the cancellation of Registration. Who can apply for the Cancellation of GST Registration? Who can apply for Cancellation of GST Registration? Due date to file an application for revocation of cancellation of registration falling between 15th April 2021 up to 29th June 2021 is 30th June 2021. Cancellation of GST registration simply means that the taxpayer will not be a GST registered person anymore. In case of no stock, the taxpayer shall input no amount in the value of the stock section. Within what time a taxpayer must apply for cancellation of registration? A taxpayer should apply for cancellation of GST registration within 30 days from the date from which the registration is liable to be cancelled. The legal heirs can file for cancellation of registration of the proprietorship firm in case of death of a sole proprietor. The taxpayer or legal heir can cancel GST Registration by filing Form REG-16 on the GST Portal. GST Portal and login using a valid username and password.

The GST registration of any taxpayer becomes liable to suo moto cancellation according to the provisions of section 29 (2), and Rule 21. These two provisions call for cancellation after suspension. Before such cancellation, the proper officer has to first suspend the registration

under subrule (2) of rule 21A. Cancellation of GST registration simply means that the taxpayer will not be a GST registered person anymore. (c) the taxable person is no longer liable to be registered u/s 22 or 24 or intends to opt-out of the registration voluntarily made u/s 25(3) Provided, 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. As we know, a specified procedure needs to be followed for obtaining registration under Goods and Services Tax (GST). Similarly, a specified procedure also needs to be followed while **cancellation of registration under GST**. Cancellation of GST registration is a process of de-registering a business entity from the Goods and Services Tax (GST) system. GST registration is mandatory for businesses that have an annual turnover exceeding a certain threshold limit. The cancellation of registration under the SGST Act/ UTGST Act, as the case may be, shall be deemed to be a cancellation of registration under the CGST Act. u equivalent to the ITC w.r.t. inputs held in stock and ITC contained in semi-finished or finished goods held in stock or capital goods or plant and machinery.

To cancel the GST registration, the business entity must file an application in the prescribed form (Form GST REG-16) on the GST portal. The application for cancellation of GST registration must be filed within 30 days from the date on which the cancellation of registration is required. Once the application is filed, the GST officer may request additional information or documents for processing the application. If the officer is satisfied that all the conditions are met, the GST registration will be cancelled within a period of 30 days from the date of application. Before the GST registration is cancelled, the business entity must file all the pending GST returns and pay any outstanding taxes, interest or penalties before the cancellation is effective.

3.2. THE REGISTERED PERSON CAN APPLY FOR CANCELLATION/ SURRENDER OF GST REGISTRATION

The registered person can apply for cancellation/ surrender of GST registration under the following circumstances –

- a) The business has been discounted;
- b) On account of transfer of business (which also includes the death of a proprietor);
- c) The business is completely amalgamated, demerged or disposed of;
- d) The person is no longer liable to the registered under GST [i.e. either turnover is below the minimum threshold limit or the person is no longer covered under provisions of **section 24** (compulsory registration)].

3.2.1. GST registration can be cancelled for various reasons: A GST registration can be cancelled for various reasons, including: i) Closure of business operations. ii) Change in business ownership or structure. iii) Change in the nature of business activities. iv) Non-compliance with GST regulations. v) Transfer of business ownership.

3.2.2. Provisions: Provisions relating to the requirement of furnishing of Final return vis-à-vis cancellation of GST registration.

- i) Provisions of **section 45** of the CGST read with rule 81 of the CGST deal with the requirement of furnishing of Final Return. The same is simplified hereunder
- ii) The taxable person whose registration is cancelled or surrendered under GST is liable to furnish Final Return in Form GSTR-10; iii) The Final Return in **Form GSTR-10** is to be filed within a **period of three months** from the date of cancellation.

3.3 CANCELLATION OF REGISTRATION UNDER GST | PROVISIONS

Following provisions of the Central Goods and Services Tax Act, 2017 mainly governs **cancellation of GST registration under GST**

Section 29 – Cancellation or suspension of registration;

Rule 20 – Application for cancellation of registration;

Rule 22 – Cancellation of registration.

3.4. CANCELLATION OF GST REGISTRATION UNDER GST | APPLICABILITY

The basic provisions of **surrender** and cancellation of registration under GST as covered under section 29 of the Central Goods and Services Tax Act, 2017 prescribes as under –

- i) The proper officer may on his own motion cancel the **GST registration**; or
- ii) The proper officer may on an application filed by the registered person or the legal heirs (**in case of death of the registered person**) cancel the GST registration.

Thus, GST registration can be cancelled either when a registered person wants the registration to be cancelled or when the proper officer (on his own motion) cancels the same.

3.5. CIRCUMSTANCES WHEN A PROPER OFFICER CANCELS THE GST REGISTRATION

Rule 21 of the Central Goods and Services Tax Rules, 2017 demonstrates the circumstances when the registration granted to the person is liable to be cancelled. The said circumstances are highlighted hereunder –

- i) The registered person has not conducted any business from the declared place of business;
- ii) The registered person is involved in issuing invoices or bill without actual **supply of goods** or services or both;
- iii) There is a violation of provisions of section 171 of the Central Goods and Services Tax Act, 2017 (i.e. Anti-profiteering measures) or the rules made thereunder;
- iv) There is a violation of provisions of rule 10A of the Central Goods and Services Tax Rules, 2017 (i.e. Furnishing of Bank Account Details);
- v) There is a violation of provisions of rule 86B of the Central Goods and Services Tax Rules, 2017 (i.e. Restrictions on the use of amount available in **electronic credit ledger**);
- vi) The registered person avails **input tax credit** in violation of provisions of section 16 of the Central Goods and Services Tax Act, 2017 or the rules made thereunder;
- vii) Details of outward supplies furnished via Form GSTR-1 is in excess of details of outward supplies declared in **Form GSTR-3B** for one or more tax periods; viii) The registered person failed to furnish the monthly return in Form GSTR-3B for a continuous period of six months;
- ix) The registered person failed to furnish quarterly returns in Form GSTR-3B for a continuous period of two tax periods.

Additionally, going through the provisions of section 29(2) of the Central Goods and Services Tax Act, 2017, the registration of the person can be cancelled under the following circumstances also – i) A composition scheme dealer has not furnished the returns for consecutive **three tax periods**; ii) Any other registered person (other than **composition scheme** dealer) has not furnished the returns for a continuous period of six months; iii) The person has not commenced business within a period of six months from the date of registration; iv) The registration has been obtained by the person by means of fraud, suppression of facts or willful misstatement.

3. 6. PROCEDURE FOR CANCELLATION

The cancellation of registration under the GST is a process by which the concerned authority terminates the registration of a taxable person. The registration authority can cancel the registration on its own accord or by an application filed by the taxable person. The registration of a business under the GST regime is a mandatory requirement; however, there are certain conditions under which the registration can be cancelled. The cancellation of registration is governed by the provisions of section 29 of the CGST Act, 2017. The reasons for cancellation of registration can be broadly classified into two categories: (i) Voluntary Cancellation and (ii) Involuntary Cancellation.

(i) Voluntary Cancellation: The registered person can make voluntary cancellation of registration on their own accord. The registered person must inform the proper officer in writing about their intention to cancel the registration. After due verification, the appropriate officer shall cancel the registration.

(ii) Involuntary Cancellation: The proper officer can initiate involuntary cancellation of registration on specific grounds, such as if the registered person has not furnished the return for a continuous period of six months or more or if the registered person has obtained registration by furnishing false information, etc. Cancellation of registration has specific implications, such as the person shall not be eligible for an input tax credit, they shall not be allowed to collect tax from their customers, etc. Hence, it is essential to understand the grounds and implications of it under GST before taking any decision. a) Cancellation of registration under GST is a process by which a registered person can get their registration cancelled. b) It is allowed only in some instances, such as when the registered person has ceased to exist or is no longer required to be registered. c) It can be made online, and the registered person must provide their GST number, PAN number, and other details. d) Once the registration is cancelled, the registered person will no longer be liable to pay GST on their supplies.

3.7. THE PROCEDURE FOR CANCELLATION/ SURRENDER OF GST REGISTRATION BY THE REGISTERED PERSON

The registered person willing to apply for cancellation/ surrender of GST registration needs to follow the below-mentioned steps-

Step-1: Electronically furnish an application in Form GST REG-16;

Step-2: Additional details to be furnished along with the application in Form GST REG-16

Step-3: Details of inputs held in stock;

Step-4: Details of inputs contained in semi-finished or finished goods held in stock;

Step-5: Details of capital goods held in stock.

3.8. THE PROCEDURE FOR CANCELLATION OF GST REGISTRATION BY THE PROPER OFFICER

As and when the proper officer has a reason to believe that the GST registration of the person needs to be cancelled (as per any of the circumstances stated above) Then, the proper officer needs to follow the below-mentioned procedure as prescribed under rule 22 of the Central Goods and Services Tax Rules, 2017 –

Rule-1: Issue a **show cause notice** in Form GST REG-17;

Rule-2: The registered person, on receipt of notice in Form GST REG-17, needs to reply via Form GST REG-18 within a period of seven working days;

Rule-3: Post submission of reply, if the proper officer is not satisfied and concludes that registration is liable to be cancelled. Then, the proper officer is required to issue an order in Form GST REG-19, within a **period of 30 days**, cancelling the registration;

Rule-4: However, if the proper officer is satisfied with the reply, then, he is required to drop the proceedings by issuing an order in Form GST REG-20.

3.9. THE PROCESS FOR CANCELLATION OF GST REGISTRATION INVOLVES THE FOLLOWING STEPS: Sparsh wadhwa

Process for cancellation of GST registration Sparsh wadhwa| Goods and Services Tax - Cancellation of GST registration is a process of de-registering a business entity from the Goods and Services Tax (GST) system. GST registration is mandatory for businesses that have an annual turnover exceeding a certain threshold limit.

- 1. Log in to the GST portal:** The first step is to log in to the GST portal using the registered user ID and password.
- 2. Go to the Services menu:** Click on the “Services” tab and then select “Registration” from the drop-down menu.
- 3. Choose the Cancellation of Registration option:** Under the “Registration” tab, select “Application for Cancellation of Registration” option.
- 4. Fill in the Form GST REG-16:** Fill in the Form GST REG-16 with all the required details, such as the reason for cancellation, the date from which cancellation is required, and the details of the authorized signatory.
- 5. Submit the application:** After filling in the details, submit the application along with the required supporting documents.
- 6. Follow up on the application:** Once the application is submitted, it will be verified by the GST officer. In case of any deficiencies, the officer may request additional documents or information. The applicant must respond promptly to any such requests to avoid any delay in processing the application.
- 7. Receive the cancellation order:** If the GST officer is satisfied with the application and supporting documents, he/she will issue an order for cancellation of GST registration. The order will be issued within a period of 30 days from the date of application.

3.10. STEPS TO FOLLOW TO CANCEL THE GST REGISTRATION

STEP-1: Application at GST Common Portal: The applicant declare his Permanent Account Number, mobile number, e-mail address and place of registration in Part A of Form GST REG-01 at the GST common portal. The Permanent Account Number shall be validated online by the common portal from the database maintained by the Central Board of Direct Taxes. The mobile number shall be verified through a one-time password sent to the said mobile number; The e-mail address declared shall be verified through a separate one-time password sent to the said e-mail address. On successful verification of PAN, Mobile Number and E-mail address, a Temporary Reference Number (TRN) shall be generated and communicated to the applicant on mobile number and e-mail address.

STEP-2: Submission of Documents at GST Common Portal: Using the Temporary Reference Number (TRN), the applicant has to submit an application in Part B of Form GST REG-01 with required documents at the common portal duly signed and verified with Digital Signature

STEP-3: Acknowledgement of Application: On receipt of an application an acknowledgement shall be issued electronically to the applicant in Form GST REG-02.

STEP-4: Verification of the application and approval: The proper officer shall examine the application and the submitted documents within three days application and if the same are found to be in order, shall approve the grant of registration to the applicant. The timeline may vary from time to time. However the result of processing will be generally available in 7-10 working days of application. If there is any deficiency in the application or if the officer requires any clarification on any information provided in the application or documents furnished, he may issue a notice to the applicant electronically in FORM GST REG-03. The Applicant has to file required details and clarification documents electronically, in FORM GST REG-04 within a period of 7 working days from the date of receipt of such notice. If there no reply is furnished by the applicant within the stipulated time or where the proper officer is not satisfied with the clarification, the application shall be rejected by the officer and the same will be communicated to the applicant electronically in Form GST REG-05.

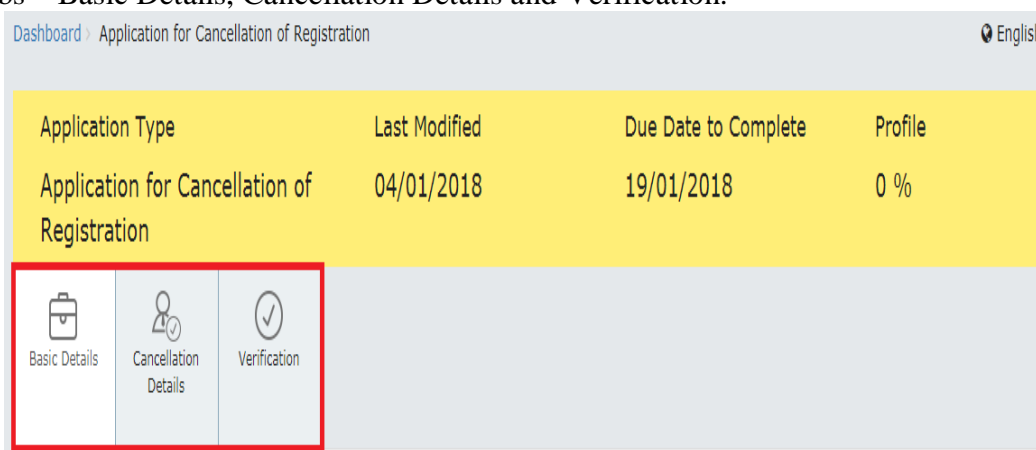
STEP-5: Issue of GST Registration certificate: After verification of the application by the officer and if the application has been approved, a certificate of registration in Form GST REG 6 shall be issued to the applicant on the common portal and a Goods and Services Tax Identification Number (GSTIN) shall be assigned to the applicant. Certificate of GST Registration shall be duly signed or verified through electronic verification code by the officer under the Act. There will not be any physical certificate issued by the GST Department. Certificate of GST Registration shall be duly signed or verified through electronic verification code by the officer under the Act. There will not be any physical certificate issued by the GST Department. There are different procedures for registration for a non-resident taxable person, casual taxable persons, deductors of tax, collectors of tax and supplier of Online Information Database Access and Retrieval (OIDAR) services and other suppliers. Some relevant provisions have been dealt with separately at the appropriate places. For all other suppliers the following will be the procedure for registration.

3.11. PROCESS FOR CANCELLATION OF GST REGISTRATION ON GST PORTAL

3.11.1. Login to GST Portal: Go to the GST Portal and login using a valid username and password. Go to Services > Registration > Application for Cancellation of Registration. Navigate to the option 'Application for Cancellation of Registration' under the tab Services.



3.11.2. Basic Details, Cancellation Details, Verification: The cancellation form comprises of 3 tabs – Basic Details, Cancellation Details and Verification.



3.11.3. Enter details in tab – Basic Details: Under the first tab of Basic Details, enter the following: a. Address of future correspondence, b. Mobile Number, c. Email Address. **Enter details in tab – Cancellation Details:** Under the second tab of Cancellation Details, select the reason for cancellation from the drop-down. For each reason selected, enter additional details as mentioned in the table under next topic.

3.11.4. Verification: Under the last tab of Verification, select the name of authorized signatory from the drop-down and enter the place of declaration. Submit the application using DSC or EVC.

3.11.5. Success Message: A success message is displayed on the successful submission of the

Dashboard > Registration > Track Application Status

Track Application Status • indicates mandatory fields

ARN
 Submission Period

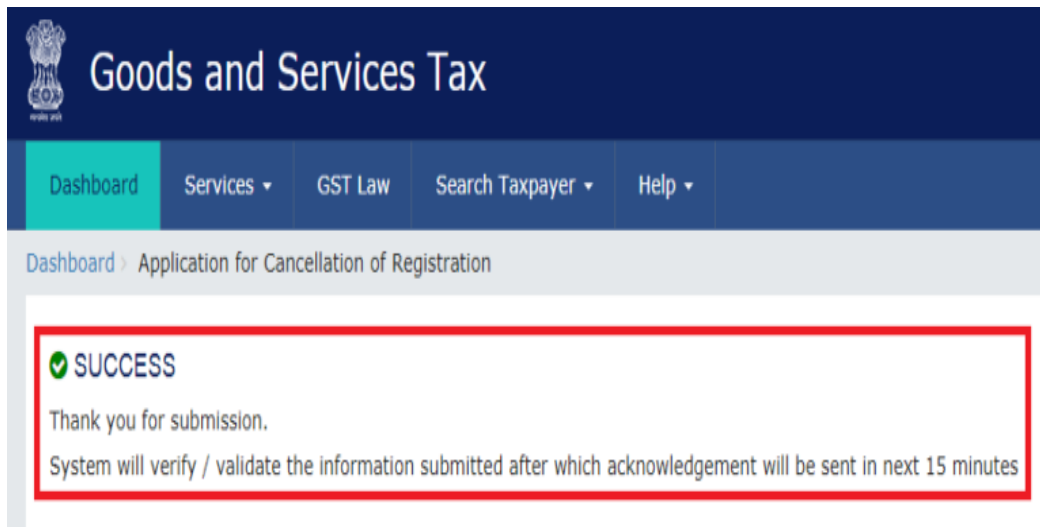
Submission Period *

From: 01/01/2018
 To: 05/01/2018

Search Result based on Submission Period : 01/01/2018 - 05/01/2018

ARN ^	Form No.	Form Description	Submission Date v	Status	Assigned To
AA370118000014	GST REG-16	Application for Cancellation of Registration	04/01/2018	Pending for Processing i	STATE

application.



3.11.6. Track status of application: To track the status of the ARN, go to Services > Registration > Track Application Status.

3.12. REJECTION OF APPLICATION FOR GST CANCELLATION

In some instances, the concerned Officer may decide to reject the application for the following reasons. The submitted application is incomplete. In the transfer, merger, or amalgamation of business, the new entity has not registered with the tax authority before applying. In such circumstances, the concerned Officer provides an intimation in writing to the applicant regarding the discrepancy's nature. The applicant must respond to the same within seven days of the date of receipt of the letter. If the applicant fails to do the same, he may reject the application after providing him/her with an opportunity to be heard..

3.13. REVOCATION OF GST CANCELLATION

a) Revocation of GST cancellation means that the cancellation decision has been overturned, and the registration remains valid. This only applies when a tax officer cancels a taxable person's registration on his initiative. A taxpayer can apply within thirty days of receiving the cancellation order for revocation of the order. The following are the steps to file for revocation of GST cancellation:

b) If a registered person's registration has been cancelled suo-moto by the proper Officer, an application for revocation of cancellation in form GST REG-21 can be filed within 30 days of cancellation order.

c) If the GST Officer is satisfied, he or she can rescind the cancellation of registration within 30 days of receiving the application by issuing an order in form GST REG-22. Reasons for registration revocation or cancellation must be documented in writing.

d) Further, the Officer can also issue an order in form GST REG-05 rejecting the revocation application and informing the applicant. However, before rejecting an application, the Officer must send the applicant a show-cause notice in GST REG-23, asking them to explain why the application should not be refused. Within seven working days of receiving the notice, the applicant must respond in form GST REG-24. The proper officer will decide within 30 days of receiving the applicant's clarification in form GST REG-24.

3.14. SUMMARY

The learning objectives of the present lesson are: 1. to know the concept and Cancellation of GST- Registration; 2. to understand the Process & Cancellation of GST registration; 3. to understand the circumstances for Rejection of application for GST. This lesson explains how the cancellation can be done and what the provisions, applicability's are explained in detail for awareness. The Process of rejection of GST cancellation elaborated in a clear manner to ensure the end to end knowledge on the process. This lesson is also covered the following aspects such as: The registered person can apply for cancellation/ surrender of GST registration; Cancellation of registration under GST | Provisions; Cancellation of GST registration under GST | Applicability; Circumstances when a proper officer cancels the GST registration; Procedure for Cancellation; The procedure for cancellation/ surrender of GST registration by the registered person; The procedure for cancellation of GST registration by the proper officer; The process for cancellation of GST registration involves the following steps; Steps to follow to cancel the GST registration; Process for Cancellation of GST Registration on GST Portal; Rejection of application for GST cancellation; Revocation of GST Cancellation

3.15. TECHNICAL TERMS

Procedure: A procedure is a tried and true process or method used to accomplish a particular task. Using sharp metal picks, dentists scrape the plaque from their patients' teeth. While effective, it's a procedure most people despise.

Process: A process is a procedure, something you do in order to achieve a certain result. Some people try to carefully follow all the steps in a process. Other people just wing it.

Rejection: Meaning of rejection In English. 0 the act of refusing to accept, use, or believe someone or something: The government's rejection of the plans is a setback for us. I've applied for ten jobs, but I've had ten rejections/rejection letters. He never asked her to marry him out of fear of rejection.

Revocation: The term "revocation" refers to the recall, cancellation, or annulment of something that has been granted, such as a privilege, an offer, or a contract. There are many forms of revocation, and the term applies to issues in civil as well as criminal law. For example, an offer may be revoked, privileges in military service may be revoked, and the right to hold a driver's license may be revoked.

Cancellation of registration: Such a taxpayer had to submit an application electronically in the form GST REG-29 at the GST portal. The proper officer shall, after conducting an enquiry as required would cancel the registration. The Cancellation page opens. Your GSTIN and name of business will show automatically. You are required to give a reason for cancellation.

Form GST REG-05: Form GST REG-05 is an order issued by the proper officer rejecting the application for registration, amendment, cancellation of registration or revocation of cancellation of registration.

3.16. SELF ASSESSMENT QUESTIONS

1. How the registered person can apply for cancellation/ surrender of GST registration?
2. What is the Provisions of Cancellation of registration under GST?
3. Applicability of Cancellation of GST registration under GST. Explain.
4. When a proper officer cancels the GST registration
5. Briefly discuss about Procedure for Cancellation.
6. What is the procedure for cancellation/ surrender of GST registration by the registered person?
7. What is the procedure for cancellation of GST registration by the proper officer?

8. What is the process for cancellation of GST registration?
9. What are the Steps to follow to cancel the GST registration?
10. What is the Process for Cancellation of GST Registration on GST Portal?
11. Rejection of application for GST cancellation-Explain.
12. Revocation of GST Cancellation- Discuss.
13. How about the Cancellation of registration and its provisions?
14. What about the Steps to follow to cancel the GST registration?
15. How the Revocation of GST Cancellation process is?

3.17. SUGGESTED READINGS:

1. Goods and Services Tax in India- Notifications on different dates
2. GST Bill 2012
3. The Central Goods and Services Tax Act, 2017, No.12 of 2017, Published by Authority, Ministry of Law and Justice, New Delhi, 12 April, 2017
4. Background Material on Model GST Law, Sahitya Bhavan Publications, Hospital Road, Agra-383 003
5. Customs Law Manual and Customs Tariff of India – R.K.JAIN.
6. The Central Goods and Services Tax Act, 2017, No.12 of 2017 published by Authority, Ministry of Law and Justice , New Delhi, 12th April, 2017.
7. <https://www.gst.gov.in/>
8. <https://cleartax.in/gst-number-search/>
9. <https://gsthero.com>
10. GST on Services by (S.S. Gupta) Professional Books.
11. GST Avam Custom Kanoon by (Shripal Saklecha, Anit Saklecha)Academic Book
12. <https://www.gst.gov.in/>
13. <https://www.taxclub.in/> <https://gsthero.com/>
14. <http://www.gstclub.in/home>
15. GST guide for students: Making GST- Good and Simple Tax, Publisher: Neelam Book House
16. <https://taxguru.in/goods-and-service-tax/process-cancellation-gst-registration.html>

Mr. M. RAVINDRA KUMAR

LESSON -4

**DEEMED REGISTRATION (DR), DEBIT NOTES
(DN), ACCOUNTS & RECORDS (A&R),
RETENTION OF RECORDS (RR)**

Learning Objectives:

To know the concept Debit and Credit Notes.

To understand the process of Deemed Registration

To understand the procedure for better way of maintaining of Accounts & Records

Structure

4.1. Introduction

4.2. Deemed Registration

4.3. Debit Notes

4.4. Credit Note

4.5. Accounts & Records

4.6. Period of Retention of Accounts & Records

4.7. Summary

4.8. Technical Terms

4.9. Self- Assessment Questions

4.10. Suggested Readings

4.1. INTRODUCTION

Overall, the word deemed is the past tense of the word deem, a verb that means to judge or regard something in a certain way. This word is very versatile, and can be used as a transitive verb on a person, place, or thing. Deeming means to count the income and assets of another household member when determining eligibility for a client. For each client who has an asset limit, deem the assets of: The client's spouse. The client's sponsor and sponsor's spouse, if the client is a sponsored immigrant. Governments, too, may take action to boost domestic production of goods that are deemed essential or important to national competitiveness, reshaping industries in ways that market forces alone would not. Denying justice to victims of police brutality is an inescapable outcome when the word of a law enforcement officer is categorically deemed more credible than that of a victim.

Synonyms for registration include registry, enrollment, enrolment, listing, matriculation, enlisting, action, authorizing, authorizing and booking. The indirect taxes comprise the charges on registration; stamps; customs; and a group of taxes specially described as indirect taxes. recording;-- applied to instruments; having an apparatus which registers; as, a registering thermometer. See Recording Verb form of the word register. The registering of the birth is easy as we can do it online together. An administrative tribunal called the cour des corn ptes subjects the accounts of the state's financial agents (trsorierspayeurs, receveurs of registration fees, of customs, of indirect taxes, &c.) and of the communes to a close investigation, and a vote of definitive settlement is finally passed by parliament.

As per Section 25 (10) of the CGST Act 2017, read with Rule 9 of CGST Rules 2017, there is a proviso for deemed approval of the GST registration application. In case the proper officer fails to process the GST application within the period of 3 working days, the said application

is deemed approved by the GST department. The Goods and Services Tax (GST) authority has lifted the ban on deemed approval for GST registrations. The ban was imposed during the lockdown period in the view that the facility could be misused as the GST departments across the country were not properly functioning. Any rejection or, approval of amendments under the State Goods and Services Tax Act or Union Territory Goods and Services Act shall be deemed to be a rejection or approval of amendments under the Central Goods and Services Tax Act. Rule 19 of the CGST Rules, 2017 provide for the detailed process of amendment of registration under GST.

4.2. DEEMED REGISTRATION

Section 26 – Deemed registration: (1) The grant of registration or the Unique Identity Number under the Central 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. (2) Notwithstanding anything contained in sub-section (10) of section 25, any rejection of application for registration or the Unique Identity Number under the Central Goods and Services Tax Act shall be deemed to be a rejection of application for registration under this Act. There are linking provisions between the Central Goods and Services Tax and State/Union Territory Goods and Services Tax Act. Thus, if a supplier takes a registration under one Act it shall be deemed that the registration has also been obtained under the other Act and vice-versa. Even otherwise the registration must be taken on the common portal and is based on the PAN hence the registration will remain common across various Acts. If an application for registration has been rejected under State/Union Territory Goods and Services Tax Act then it shall be deemed that the same has been rejected under the Central Goods and Services Tax Act.

4.2.1. Implementation of Deemed Approval of Registration on GST Portal (Ca Kushal Fofaria): Under GST law, there is a provision of deemed approval of fresh registration and amendment of registration in case the departmental officer fails to take any action on the taxpayer's application within the prescribed period. This provision is being there in the law since the inception of GST but it was not in practical application on the GST Portal. The registration was not provided even after the passage of the prescribed period of approval or rejection of application by the departmental officer. Now this provision of providing the deemed approval of the application has been actually implemented on the GST Portal.

Provisions of Deemed Approval of Registration under GST Law: The provisions under the CGST Act, 2017 read with CGST Rules, 2017 (as amended) with respect to deemed approvals of registration application areas under:

4.2.2 A. Fresh GST Registration: Section 25(10) of the CGST Act, 2017: 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. – [Prescribed under Rule 9(1)]

i) Rule 9(1) of the CGST Rules, 2017: The application shall be forwarded to the proper officer who shall examine the application and the accompanying documents and if the same are found to be in order, approve the grant of registration to the applicant within a period of seven working days from the date of submission of the application. Provided that where- (a) a person, other than a person notified under sub-section (6D) of section 25, fails to undergo authentication of Aadhaar number as specified in sub-rule (4A) of rule 8 or does not opt for authentication of Aadhaar number; or (b) the proper officer, with the approval of an officer authorised by the Commissioner not below the rank of Assistant Commissioner, deems it fit to carry out physical verification of places of business, the registration shall be granted within thirty days of submission of application, after physical verification of the place of business in

the presence of the said person, in the manner provided under rule 25 and verification of such documents as the proper officer may deem fit.

ii) Section 25(12) of the CGST Act, 2017: 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.

iii) Rule 9(5) of the CGST Rules, 2017: If the proper officer fails to take any action, – (a) within a period of seven working days from the date of submission of the application in cases where the person is not covered under proviso to sub-rule (1); or (b) within a period of thirty days from the date of submission of the application in cases where a person is covered under proviso to sub-rule (1); or (c) within a period of seven working days from the date of the receipt of the clarification, information or documents furnished by the applicant under sub-rule (2), the application for grant of registration shall be deemed to have been approved.

4.2.2. B. Amendment of GST Registration: Section 28(2) of the CGST Act, 2017: 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. – [Prescribed under Rule 19(2)]

i) Rule 19(2) of the CGST Rules, 2017: Where the proper officer is of the opinion that the amendment sought under sub-rule (1) is either not warranted or the documents furnished therewith are incomplete or incorrect, he may, within a period of fifteen working days from the date of the receipt of the application in FORM GST REG-14, serve a notice in FORM GST REG-03, requiring the registered person to show cause, within a period of seven working days of the service of the said notice, as to why the application submitted under sub-rule (1) shall not be rejected.

ii) Rule 19(5) of the CGST Rules, 2017: If the proper officer fails to take any action,- (a) within a period of fifteen working days from the date of submission of the application, or (b) within a period of seven working days from the date of the receipt of the reply to the notice to show cause under sub-rule (3), the certificate of registration shall stand amended to the extent applied for and the amended certificate shall be made available to the registered person on the common portal. Thus, in case of fresh registration or amendment of registration, if the departmental officer fails to take any action within seven or fifteen or thirty days as may be applicable, the applicant shall be provided deemed approval of the application and registration certificate shall be issued to him on the GST Portal.

4.2.2. C. Practical Implementation on GST Portal: The GST Portal has started issuing the certificates to the applicants if the departmental officer fails to take any action within the time prescribed. The certificates are being issued by the GST Portal itself without any approval from the departmental officer. It is being specifically mentioned on the registration certificate that the registration is issued based on deemed approval of application and no particulars of the jurisdictional approval authority are mentioned on the registration certificate. The certificates are being issued by the GST Portal immediately once the prescribed time limit expires. Below are the images of GST registration certificates in two different scenarios – one in case of approval by jurisdictional officer and another in case of deemed approval? GST Certificate in Case of Approval by Jurisdictional Officer ; GST Certificate in Case of Deemed Approval. This is a good sign in the current period when the new applicants and the existing registered taxpayers are facing many difficulties in GST registrations and its amendments due to requirements of various documents and physical visits being conducted by the departmental officers. ***** (Author can be reached at cakushalfofaria@gmail.com)

4.3. DEBIT NOTES

Debit note' as defined under section 2(38) of the Central Goods and Services Tax Act, 2017 means a document issued by a registered person under section 34(3). In simple terms, a 'debit note' comes into the picture when the taxable value/ tax charged in the tax invoice is less as compared to the actual taxable value/ tax payable in respect of the supply. 'Debit note' is also popularly known as supplementary invoice as the issuance of a debit note creates additional tax liability. Hence, the treatment of debit note is the same as that of any tax invoice. Accordingly, a 'debit note' issued by the supplier under section 34(3) is one of the documents on the basis of which input tax credit is available to the buyer/ recipient. If you work in the B2B world, this concept is nothing new to you; however there might be some things that you didn't know about debit notes. So let's take a look at them! Even though you might already be very familiar with the concept, let's just run through it one more time. A debit note, or memo, is a physical or electronic document used to remind a buyer of money they owe. Or in certain cases it could be a document used by the buyer when they return goods they bought with loans. Debit notes are used most commonly in B2B transactions because sometimes one company receives a product or service before paying, ergo the need for a system of reminders.

4.3.1. Meaning of Debit Note: Debit Note is a document/voucher given by a party to other party stating that such other party's account is debited in the books of sender. **Debit note'** as defined under section 2(38) of the Central Goods and Services Tax Act, 2017 means a document issued by a registered person under section 34(3). In simple terms, a 'debit note' comes into the picture when the taxable value/ tax charged in the tax invoice is **less** as compared to the actual taxable value/ tax payable in respect of the supply. 'Debit note' is also popularly known as supplementary invoice as the issuance of a debit note creates additional tax liability. Hence, the treatment of debit note is the same as that of any tax invoice. Accordingly, a 'debit note' issued by the supplier under section 34(3) is one of the documents on the basis of which **input tax credit** is available to the buyer/ recipient.

a) For example: A trader "ABC" purchases goods from "XYZ". After receiving the material, ABC finds that the goods contain some defective goods of value of Rs. 10,000. Now ABC has to reduce the liability standing in his books as payment due to creditor XYZ. Therefore ABC sends a debit note amounting to Rs. 10,000 to XYZ stating that he has debited his account in his books

b) Accounting Entry for Debit Note: It is a simple accounting entry in which the person to whom debit note is to be issued is debited and the account due to which it is issued is credited. For example entry in above case will be

	XYZ	Dr
To Purchase Return A/c	10,000	10,000

c) Common Reasons for which Debit Note is issued: i) By buyer, on purchase return; ii) By buyer, on receiving damaged goods or short quantity; iii) By buyer, if he is overcharged or seller agrees to give discount; iv) By seller, if he by mistake undercharged the buyer. **d) When we issue debit note in GST:** Some of the common situations wherein the debit note is required to be issued are highlighted hereunder The supplier has wrongly declared the taxable value which is less than the actual value of goods or services; i) The supplier has **wrongly declared** the lower tax rate as compared to the actual tax rate applicable to the goods or services; ii) The quantity received by the recipient is more than the actual quantity declared by the supplier in the tax invoice; iii) Any other similar reason.

4.3.2. Debit note format under GST: GST law doesn't prescribe any specific format of debit note, however, as per rule 53(1A) of the Central Goods and Services Tax Rules, 2017 the debit note should contain the following particulars: i) Name, address, GSTIN (Goods and Services Tax Identification Number) of the supplier; ii) A consecutive serial number; iii) Date of issue; iv) Name, address, GSTIN of the recipient (if registered) or address of delivery, State name and State code (if unregistered); v) Serial number and date of corresponding relevant tax invoice/ bill of supply; vi) Value of the taxable supply, rate of tax and the amount of tax credited to the recipient; vii) Signature/ digital signature

4.3.3. What is the time limit for issuance of debit note: A specific time limit for the issuance of debit note is also not prescribed under the GST law. However, the provisions of section 34(4) of the Central Goods and Services Tax Act, 2017 states that as and when the debit note is issued the same is to be reflected while GST returns filing of the respective month. Notably, as per provisions of section 16(4) of the Central Goods and Services Tax Act, input tax credit in respect of debit note of the respective Financial Year will not be available if the same is not issued within the following time limit. Earlier of 30th November following the end of the Financial Year to which such debit note pertains; or Date of furnishing of relevant annual return.

4.3.4. Reflection of debit note in GST return: As seen above, the debit note, being one of the input tax credit availment document, it is important to duly reflect the same in the GST return. The reflection of the debit note in the GST returns of the supplier as well as the recipient is highlighted hereunder. i) The supplier will provide the details of the debit note while filing the return in Form GSTR-1; ii) Supplier will pay the differential tax while filing return in Form GSTR-3B; iii) Based on the details furnished by the supplier, the details of the input tax credit will get auto-populated in Form GSTR-2B of the recipient; iv) The recipient will avail input tax credit while filing return in Form GSTR-3B.

4.4. CREDIT NOTE

A credit note, sometimes called a credit note or credit memorandum, is a document that allows you to change an invoice after it has been issued or paid. When you issue a credit note, you are essentially deleting an amount from an invoice (and your financial records) without deleting the invoice itself. Credit notes notify the business, in a formal and orderly manner, the mistake the company incurred. Businesses in this way are informed right away and would be able to get those problems solved. A free note prevents businesses to lose the loyalty of their customers or clients. The two main reasons for issuing a credit note are to make appropriate adjustments to the books, and to notify/promise to the buyer that an amount of money will be either returned or will be adjusted in a subsequent transaction (if you collaborate on a monthly basis). Here are some common ones: A credit note is furnished by the supplier when the goods supplied are damaged or when a wrong item is delivered to the buyer. When a seller charges more than the actual price of the goods or services being rendered, he/she issues a memo to reverse the extra sum, which is known as a credit note. They both contain basically the same information. The only difference is that the credit note should include a reference to the original invoice. Here's the essential information to include on all credit notes:

4.4.1. Meaning of Credit Note: Credit Note is a document/voucher given by a party to other party stating that such other party's account is credited in the books of sender. Credit note' as defined under section 2(37) of the Central Goods and Services Tax Act, 2017 means a document issued by a registered person under section 34(1). Putting up simply, 'credit note' comes into picture when taxable value/ tax charged in the tax invoice is **more** as compared to actual taxable value/ tax payable in respect of the supply. For example in above given

example the XYZ finds out that the material dispatched is defective. Therefore he issues credit note to ABC, thereby reducing the amount of debtors. It is opposite of debit note.

a) Accounting Entry for Credit Note: It is a simple accounting entry in which the person to whom credit note is to be issued is credited and the account due to which it is issued is debited.

For example entry in above case will be

Sales Return A/c Dr 10,000
To ABC A/c 10,000

b) Common Reasons for which Credit Note is issued: By seller, on sales return. By seller, if he has overcharged. By seller, if he has to give discount or a scheme benefit. By buyer, if he by mistake undercharged the seller.

4.4.2. When we issued credit note: Figuring out some of the common situations when the credit note is required to be issued – i) Supplier has wrongly declared the tax rate and the said tax rate is higher than actual tax rate applicable to the goods/ services; ii) **Supplier has wrongly declared** the taxable value and the said taxable value is more than the actual value of the goods/ services; iii) The quality of goods/ services so supplied by the supplier is not satisfactory to the recipient and hence resulting into partial or total reimbursement on the invoice value; iv) The actual quantity received by the recipient is less as compared to the quantity declared by the supplier in the tax invoice; v) Supplier has given post sale discount to the buyer/ recipient; vi) Sales return; vii) Any other similar reason

4.4.3. Credit note format under GST: Importantly, GST law doesn't prescribe the specific format of credit note in GST. However, as per rule 53(1A) of the Central Goods and Services Tax Rules, 2017 the credit note should contain the following particulars: i) Name, address, GSTIN (Goods and Services Tax Identification Number) of the supplier; ii) A consecutive serial number; iii) Date of issue; iv) Name, address, GSTIN of the recipient (if registered) or address of delivery, State name and State code (if unregistered); v) Serial number and date of corresponding relevant tax invoice/ bill of supply (if possible). Importantly, one-to-one correlation of tax invoice vis-à-vis credit note is not required; vi) Value of taxable supply, rate of tax and the amount of tax credited to the recipient; Signature/digital signature

4.4.4. The time limit of issuance of credit note: GST law doesn't prescribe any time limit for issuance of credit note. However, as per provisions of section 34(2) of the Central Goods and Services Tax Act, 2017, the registered person is required to reflect the details of credit note in the return within earlier of the following dates 30th November following the end of the respective Financial Year; or The date of furnishing of the relevant annual return. Hence, it can be concluded that credit note for any relevant Financial Year should be issued and reflected within the above mentioned dates.

4.4.5. Reflection of credit note in GST return: As and when the credit note is issued, the same is to be reflected while filing return in Form GSTR-1. Accordingly, once the details are furnished in Form GSTR-1, corresponding effect of the same will be auto-populated in Form GSTR-2B of the recipient. **Hence, issuance of the credit note will have following effect –** Supplier will provide the details of the same while filing return in Form GSTR-1; Based on the details furnished by the supplier, the same will get auto-populated in Form GSTR-2B.

4.5. ACCOUNTS & RECORDS

The Assessment under GST is mainly focused on the self-assessment by the taxpayer where the taxpayer self-assesses his tax liability for the tax period by himself and pays the same. For the sake of compliance verification, scrutiny, audit and or investigation are done by the department based on the documentary checks rather than

physical records. This led to frame a certain obligation to be complied with by the taxpayer for the purpose of keeping and maintaining accounts and records.

4.5.1. Required to maintain Accounts and Records: Every person registered under the GST act is required to keep and maintain all records at his principal place of business. It is the responsibility of the following a person to maintain certain records: i) Owner; ii) The operator of the warehouse or godown or any other place where goods are stored; iii) Every Transporter. Irrespective of the fact whether he is a registered person or not, He shall maintain records of the consignor, consignee, and other relevant facts or goods in such manner as may be prescribed. Every Registered Person having a turnover exceeding Rs.2 Crore during the financial year has to get his accounts audited by a chartered accountant or a cost accountant and shall submit a copy of audited annual accounts, the reconciliation statement and such other documents as may be prescribed.

4.5.2. Records to be maintained under GST: As per section 35 of CGST act, every Registered person shall keep and maintain the following records: i) Production or manufacture of goods; ii) Supply of goods or services or both; iii) Stock of goods; iv) Input tax credit availed; v) Output tax payable and paid and vi) Such other particulars as may be prescribed. In addition to the above, every registered person shall keep and maintain records of a) Goods or services imported or exported; b) Supplies on which reverse charge mechanism applies; c) Invoices, bills of supply, delivery challans, credit notes, debit notes, receipt, vouchers, payment vouchers, refund vouchers, and e-way bills and such other documents that are relevant to the above.

4.5.3. Accounts to be maintained under GST: Following accounts are required to be maintained by every registered person: Stock register account containing information's with respect to stock opening balance, receipt, supply, goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples and balance of stock which includes raw materials, finished goods, scrap, and wastage thereof a) Tax accounts containing details of output tax payable, Input tax credit, etc., b) Supplier accounts from whom taxable goods or services purchased; c) Debtor accounts to whom taxable goods or services supplied; d) And such other records as may be specified under the act.

4.5.4. Section 35: Accounts and other records: i) 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.

1) 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 persons 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) 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 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.

4.5.5. Key points to consider while maintaining the GST accounts: i) The GST accounts and records, as well as the accounting books, have to be maintained at the principal place of business (along with records relating to the additional place of business). ii) Each volume of books consisting of GST records is required to be numbered manually. iii) Any entry requiring erasure, effacing or overwriting shall be scored out under attestation, followed by updating of correct entry. iv) In the case of E-ledgers, the taxpayer is required to keep a log of every edit or deletion of entry made in the ledger. v) Also, the electronic records are required to be authenticated with a digital signature of the taxpayer.

4.5.6. Additional GST accounts: As per the Accounts and Records Maintenance Rules under GST, all taxable persons registered under GST are required to maintain the following accounts in addition to the records mentioned above. According to the GST Accounts and Records Rules, if any taxable goods are found to be stored at any place(s) other than those declared by the taxpayer in his/her accounts or records, without any other proof or valid documents; Then, the Officer would be empowered to levy tax, as if such goods have been supplied by the registered person. Hence, it's important to maintain a proper record of inventory and goods-in-transit under GST.

4.6. PERIOD OF RETENTION OF ACCOUNTS & RECORDS

Section 36 - Period of retention of accounts & records: Assessment in GST is mainly focused on self-assessment by the taxpayers themselves. Every taxpayer is required to self-assess the tax payable and furnish a return for each tax period i.e. the period for which return is required to be filed. The compliance verification is done by the department through scrutiny of returns, audit and/or investigation. Thus the compliance verification is to be done through documentary checks rather than physical controls. This requires certain obligation to be cast on the taxpayer for keeping and maintaining accounts and records. Section 35 of the CGST Act, 2017 and Rules 56, 57 and 58 of CGST Rules, 2017 ["Accounts and Records"] provide that every registered person shall keep and maintain all records at his principal place of business. Everything you want to know about for GST Section 36, in this section we find complete details. Section 36 of GST - Period of retention of accounts. Everything you want to know about for GST Section 36, in this section we find complete details. || Section 36 of GST - Period of retention of accounts. Everything you want to know about for GST Section 36, in this section we find complete details. || Section 36 of GST - Period of retention of accounts. Everything you want to know about for GST Section 36, in this section we find complete details.

4.6.1. Location of the Records: The books of account shall be kept at the principal place of business and at every additional place(s) of business mentioned in the certificate of registration and such books of account shall include any electronic form of data stored on any electronic devices. The data so stored shall be authenticated by way of digital signature. Unless proved otherwise, if any documents, registers, or any books of account belonging to a registered person are found at any premises other than those mentioned in the certificate of registration, they shall be presumed to be maintained by the said registered person. If any taxable goods are found to be stored at any place(s) other than those declared without the cover of any valid documents, the proper officer shall determine the amount of tax payable on such goods as if such goods have been supplied by the registered person. i) Following

excpetions have been provided from maintenance of records at each additional place of business; ii) Circular No. 23/23/2017-GST dated 21.12.2017 provides that principal and auctioneer of tea, coffee, rubber, etc. can maintain books of accounts relating to warehouse declared as additional place of business can be maintained at their principal place of business; iii) Circular No. 61/35/2018-GST dated 04.09.2018 provides that books of accounts in relation to goods stored at the transporter's godown (i.e. the recipient taxpayer's additional place of business) by the recipient taxpayer may be maintained by him at his principal place of business instead of at the transporter's godown declared as additional place of business.

4.6.2. Corrections in the records: Any entry in registers, accounts and documents shall not be erased, effaced or overwritten, and all incorrect entries, otherwise than those of clerical nature, shall be scored out under attestation and thereafter correct entry shall be recorded, and where the registers and other documents are maintained electronically, a log of every entry edited or deleted shall be maintained. Further each volume of books of account maintained manually by the registered person shall be serially numbered.

4.6.3. Electronic records: The following requirements have been prescribed for maintenance of records in electronic form: • Proper electronic back-up of records in such manner that, in the event of destruction of such records due to accidents or natural causes, the information can be restored within a reasonable period of time. • Produce, on demand, the relevant records or documents, duly authenticated, in hard copy or in any electronically readable format. • Where the accounts and records are stored electronically by any registered person, he shall, on demand, provide the details of such files, passwords of such files and explanation for codes used, where necessary, for access and any other information which is required for such access along with a sample copy in print form of the information stored in such files.

4.6.4. Consequences of irregular maintenance of GST account and records: As per the GST Act, it is mandatory for every registered taxable person to maintain the accounts books and records for at least 72 months (6 years). The period will be counted from the last date of filing of Annual Return for the given financial year. In scenarios, wherein the taxpayer fails to maintain proper records in respect of goods/services, the authorized officer shall treat such unaccounted goods/services as if the taxpayer had supplied them. The officer will determine the tax liability on such unaccounted goods. These tax liabilities shall be calculated along with penalty, payable by the taxpayer. If the taxpayer fails to maintain proper records in respect of goods/services, then the proper officer shall determine the amount of tax payable on the goods or services or both 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.

4.7. SUMMARY

The present lesson Learning Objectives are: To know the concept Debit and Credit notes; To understand the process of Deemed Registration; to understand the procedure for better way of maintaining of Accounts & Records. An account can be many things — such as a story, like if you give a friend an account of what happened at the party she missed. It can also be a business arrangement, like a bank account or an email account. Account is one of those seemingly simple words that have a mass of different meanings. An account can be a narrative or story — a biography, for example, is an account of someone's life. Account can also mean an explanation of something, as in the phrase, "How do you account for that?" An account is also a handy arrangement whereby a store agrees to provide you goods on credit, but then you might have to account for all that debt. Official Records include court judgments, deeds, liens, marriage licenses, mortgages, plats and tax deeds. Digital images are available of documents dating back to 1968 (marriage license listings date back to 1909; plat and right-of-way maps date back to the late 1800's).

4.8. TECHNICAL TERMS

Electronic Cash Ledger: Electronic Cash Ledger is an account of the taxpayer maintained by GST system reflecting the cash deposits in recognized Banks and payments of taxes and other dues made by the taxpayer. The Tax Deducted at Source (TDS) and Tax Collected at Source (TCS) are also accounted for in the Electronic Cash Ledger as cash deposits of the taxpayer.

Deemed Registration: This is for animals that have not been registered by the original breeder. These registrations granted on deemed basis require verifications to ascertain that they have genuine business or intends to carry out so. In order to complete the verification of such registrants, following instructions are issued for immediate compliance:

Deemed GST Registration: Section 26 provides that the grant of registration or the Unique Identity Number under the State Act or the Union Territory GST 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 25 (1).

Debit Note: A debit note or debit memorandum (memo) is a commercial document issued by a buyer to a seller as a means of formally requesting a credit note. Debit note acts as the Source document to the Purchase returns journal. In other words it is an evidence for the occurrence of a reduction in expenses.

Credit Note: A credit note is also known as a credit memo, which is short for “credit memorandum.” It’s a document sent by a seller to the buyer, notifying them that a credit has been added to the customer’s account for goods returned. In this article, we will explain how to post credit notes correctly.

Supplementary Invoice: A supplementary invoice makes good all deficiencies related to an original tax invoice under GST. There can be some situations where taxable value of the goods or services has been undermined in the original tax invoice, resulting in lesser amount of tax being charged or other such deficiencies.

Electronic Credit Ledger: An E-Credit Ledger or Electronic Credit Ledger under GST is the ledger where a taxpayer can view the input tax credit of GST claimed in GSTR-3B (on account of purchases and expenses). It is maintained on the GST Portal.

Electronic Liability Ledger: Every registered taxpayer has access to electronic ledgers in order to make tax payment under GST. These ledgers include (i) Electronic Cash Ledger (ii) Electronic Credit Ledger and (iii) Electronic Liability Ledger. So, the electronic cash ledger reflects the cash available to settle the tax liability online. Whereas, the electronic credit ledger reflects the amount of input tax credit available to settle the output tax liability of the taxpayer. Finally, electronic liability ledger showcases the amount of tax payable by the registered taxpayer. This ledger contains the details of GST liability. It showcases the way in which the GST liability has been set off, that is, through cash or credit. All the amounts payable by a registered taxable person shall be debited to the electronic liability register. So let’s understand what an electronic liability register is and what the purpose of such a register is.

Location of the Records: Record location means the location by book and page, document number, electronic retrieval code, or other specific place of a document in the public records accessible in the same recording office in this State where the document containing the reference to the location is found.

Retention of Records: Retention Period The period of time a record should be kept or retained both electronically and in paper format. (Also see "Disposition Date") Review of Records A procedure involving the analysis and evaluation of records to determine whether the records should be destroyed or archived after the end of its retention period or disposition date.

4.9. SELF ASSESSMENT QUESTIONS

1. How about the Accounting Records to be maintained under GST?
2. What about the Additional GST accounts are?
3. What is Electronic Cash, Credit Ledger & Electronic Liability Ledger?
4. What is the importance of Location of the Records?
5. What are the Consequences of irregular maintenance of GST account and records?
6. What is the period for Retention of records as per GST norms?
7. What is the Deemed Registration?
8. What is Debit and Credit notes with example?
9. What are the Supplementary invoice and its uses?
10. What are the differences between revised invoice and Supplementary Invoice?

4.10. SUGGESTED READINGS

1. Goods and Services Tax in India- Notifications on different dates
2. GST Bill 2012
3. The Central Goods and Services Tax Act, 2017, No.12 of 2017, Published by Authority, Ministry of Law and Justice, New Delhi, 12 April, 2017
4. Background Material on Model GST Law, Sahitya Bhavan Publications, Hospital Road, Agra-383 003
5. Customs Law Manual and Customs Tariff of India – R.K.JAIN.
6. The Central Goods and Services Tax Act, 2017, No.12 of 2017 published by Authority, Ministry of Law and Justice , New Delhi, 12th April, 2017.
7. <https://www.gst.gov.in/>
8. <https://tax2win.in/guide/debit-note-and-credit-note-under-gst>
9. <https://taxadda.com/meaning-of-debit-note-and-credit-note/>
10. A Practical Guide to GST Audits and Certification (September 2018)
11. Summary book of GST, Publishing house: Mukhaksh, Author: CA Nikhil Singhal
12. <https://www.gst.gov.in/>
13. <https://tax2win.in/guide/debit-note-and-credit-note-under-gst>
14. <https://taxguru.in/goods-and-service-tax/implementation-deemed-approval-registration-gst-portal.html>

Mr. M. RAVINDRA KUMAR

LESSON -5

APPOINTMENT, POWERS OF OFFICERS & DELEGATION OF POWERS UNDER GST ACT 2017

Aims and Objectives

After studying this lesson student should be able to:

- Know the concept of appointment of officers under Goods and Services Act (GST)
- Understand the Powers of Officers under Goods and Services Act (GST)
- Importance of delegation of Powers of Officers under Goods and Services Act (GST)

Structure


- 5.1. Introduction: Jurisdiction of Officers of Central Tax under GST**
- 5.2. The Central Goods and Services Tax (CGST) Act, 2017**
- 5.3. Classes of Officers under the Central Goods and Services Tax Act**
- 5.4. Appointment of Officers under the Central Goods and Services Tax Act**
- 5.5. Powers of Officers under the Central Goods and Services Tax Act**
- 5.6. Classes of Officers under the State Goods and Services Tax Act**
- 5.7. Appointment of Officers under the State Goods and Services Tax Act**
- 5.8. Powers of Officers under the State Goods and Services Tax Act**
- 5.9. Powers of SGST/CGST Officers under the Act (Draft I)**
- 5.10. Powers of SGST/CGST Officers under the Act (Draft Ii)**
- 5.11. Powers of Officers | GST Bill**
- 5.12. Delegation of Powers under GST Act 2017**
- 5.13. Summary**
- 5.14. Technical Terms**
- 5.15. Self Assessment Questions**
- 5.16. Suggested Readings**

5.1. INTRODUCTION

5.1.1 What is GST Act 2017 –The Central government passed four sets of GST Acts in the Budget session this year. These were Central GST Act, 2017; Integrated GST Act, 2017; Union Territory GST Act, 2017 and GST (Compensation to States) Act, 2017. The Acts were approved by the Parliament after they were introduced as the part of the Money Bill. Following the passage of the GST Acts, the GST Council decided the rate slabs for the Goods and Services to be taxed under the GST regime.


Here are some details of the decisions taken by GST Council: The threshold limit for exemption from levy of GST is Rs 20 lakh for the States except for the Special Category, where it is Rs 10 Lakh. The Council has adopted a four slab tax rate structure of 5%, 12%, 18% and 28% for GST. A separate cess would be levied on certain goods such as luxury cars, aerated drinks, pan masala and tobacco products, over and above the GST rate of 28% for payment of compensation to the states. GST is considered to be the biggest tax reform in India since independence. It will help realise the goal of “One Nation-One Tax-One Market.” GST is expected to benefit all the stakeholders – industry, government and consumer. Experts believe that GST will lower the cost of goods and services, boost to the economy and make


Indian products and services globally competitive, and even boost initiatives like ‘Make in India’.



What is GST?

GST (Goods and Services Tax) amalgamates Central & State Taxes. It mitigates double taxation and makes Indian products more competitive.






State Taxes to be subsumed within GST

What are the benefits of GST?

- Final price of goods to be lower
- Relatively large segment of small retailers will either be exempted from tax or will suffer very low tax rates
- Will boost foreign investment
- Generate more employment
- Average Tax burden on firms to come down

- State Tax
- Central Sales Tax
- Purchase Tax
- Luxury Tax
- Entry Tax
- Entertainment Tax
- Taxes on Advertisements
- Taxes on Lotteries, Betting and Gambling

 /AkashvaniAIR

GST Launch: Sand Art by Sudarshan Patnaik on historic GST launch. (Twitter)

According to Ministry of Finance, “GST will make India a common market with common tax rates and procedures and remove economic barriers.” GST is expected to improve ease of doing business in India. In the GST regime, exports will be zero-rated in entirety. This is unlike the present system where refund of some of the taxes does not take place due to fragmented nature of indirect taxes between the Centre and the States.

GST Rules: All GST-related rules can be read on this link: <http://www.cbec.gov.in/htdocs-cbec/gst/draft-rules-format> (copy paste in a separate window). The GST needs to file via a common portal to be run by GSTN, promoted by the central and state governments. The link for **GST Act 2017 PDF** is: <http://www.cbec.gov.in/resources/htdocs-cbec/gst/consti-amend-act-101-2016.pdf> (Copy paste the link in a separate window. Under GST, a normal taxpayer would have to furnish three returns monthly and one annual return. There are also separate returns for a taxpayer registered under the composition scheme, a taxpayer registered as an Input Service Distributor a person liable to deduct or collect the tax.

5.1.2 Jurisdiction of Officers of Central Tax Under GST: Sushil Kumar Antal| Goods and Services Tax - Articles| Download PDF 02 Mar 2023 3,375 Views 0 comment The Chapter II (Administration) of the Central Goods and Services Tax, Act, 2017 (CGST, Act, 2017) provides existence of a post/class of officers, appointment of officers and assignment of specific function under GST Law. Section 3 of the CGST Act, 2017 creates the post / class of officers and appointment thereof. Under the said section total eight class of officer/post has been provided which can be filled through a notification by the Government. Furthermore, despite these eight posts/class of officer, the Government has power to notify other class of officer/post.

The word jurisdiction is defined as legal power. It is a term which is used in the field of law to refer to the rights and powers of those professionals who are from the field of law to interpret the law and then to apply the law. jurisdiction, in law, the authority of a court to hear

and determine cases. This authority is constitutionally based. Examples of judicial jurisdiction are: appellate jurisdiction, in which a superior court has power to correct legal errors made in a lower court; concurrent jurisdiction, in which a suit might be brought to any of two or more courts; and federal jurisdiction. Jurisdiction may be defined as the power of a government to create legal interests, and the Court has long held that the Due Process Clause limits the abilities of states to exercise this power. 899 In the famous case of *Pennoyer v. What does jurisdiction mean in Canada?* “Jurisdiction” refers to the legal authority or power of the court over the subject matter, time and location, the persons connected to the proceeding. Jurisdiction is intimately tied with the state based on a geographic region or territory. This is known as the “principle of territoriality”.

The following class of officer/post has been prescribed under section 3 –

1. Principal Chief Commissioner of Central Tax or Principal Directors General of Central Tax
2. Chief Commissioner of Central Tax or Directors General of Central Tax
3. Principal Commissioner of Central Tax or Principal Additional Directors General of Central Tax
4. Commissioner of Central Tax or Additional Directors General of Central Tax,
5. Additional Commissioner of Central Tax or Additional Directors General of Central Tax,
6. Joint Commissioner of Central Tax or Joint Directors General of Central Tax,
7. Deputy Commissioner of Central Tax or Deputy Directors General of Central Tax,
8. Assistant Commissioner of Central Tax or Assistant Directors General of Central Tax.

It is to be noted that the officer appointed under the Central Excise Act, 1944 shall be deemed to be the officers appointed under the CGST Act, 2017 (proviso to section 3 of the CGST Act, 2017) Section 4 of the CGST Act, 2017 provides for appointment of additional officers by the Central Board of Exercise and Customs (‘Board’). Please note that person appointed under section 3 and 4 of the CGST Act, 2017 are officers of central tax. Under section 5 of the CGST Act, 2017, these officers of central tax may exercise the powers and discharge the duties conferred or imposed on them under this act. It is also interesting to note that these officers of central tax may also exercise the powers and discharge the duties conferred or imposed under this act on any other officer of central tax who is subordinate to them. But, an Appellate Authority shall not exercise the powers and discharge the duties conferred on any other officer of central tax. It is also to be point out herein that the commissioner may delegate his powers (with conditions and limitation, if any) to any other officer who is subordinate to him. Please note that the Board vide Notification No. 02/2017-Central Tax dated June 19, 2017 has appointed certain class of officers to exercise powers and discharge the duties under this act. In exercise of the powers under section 3 read with section 5 of the CGST Act, 2017 and section 3 of the Integrated Goods and Services Tax Act, 2017 (IGST Act, 2017), the Board has appointed the following:

- (a) Principal Chief Commissioners of Central Tax and Principal Directors General of Central Tax
- (b) Chief Commissioners of Central Tax and Directors General of Central Tax
- (c) Principal Commissioners of Central Tax and Principal Additional Directors General of Central Tax
- (d) Commissioners of Central Tax and Additional Directors General of Central Tax
- (e) Additional Commissioners of Central Tax and Additional Directors of Central Tax
- (f) Joint Commissioners of Central Tax and Joint Directors of Central Tax
- (g) Deputy Commissioners of Central Tax and Deputy Directors of Central Tax
- (h) Assistant Commissioners of Central Tax and Assistant Directors of Central Tax
- (i) Commissioners of Central Tax (Audit)

(j) Commissioners of Central Tax (Appeals)

(k) Additional Commissioners of Central Tax (Appeals)

(l) Joint Commissioner of Central Tax (Appeals). and the central tax officers sub-ordinate to them as central tax officers and vests them with all the powers under both the said Acts (i.e. CGST and IGST) and the rules made there under with respect to the jurisdiction specified in the Tables given in the said notification.

The Table I of the above said notification provides territorial jurisdiction of Principal Chief Commissioner/Chief Commissioner of Central Tax over-

(a) Principal Commissioners of Central Tax and Commissioners of Central Tax;

(b) Commissioners of Central Tax (Appeals);

(c) Additional Commissioner of Central Tax (Appeals);

(d) Joint Commissioner of Central Tax (Appeals); and

(e) Commissioners of Central Tax (Audit)

For example: Chief Commissioner MEERUT is having jurisdiction over

(a) Principal Commissioner Meerut, Principal Commissioner Noida, Commissioner Ghaziabad, Commissioner Gautam Budh Nagar, Commissioner Dehradun;

b) Commissioner (Appeals) Meerut and Additional Commissioner (Appeals) or Joint Commissioner (Appeal) Meerut, Commissioner (Appeals) Noida and Additional Commissioner (Appeals) or Joint Commissioner (Appeal) Noida; Commissioner (Appeals) Dehradun and Additional Commissioner (Appeals) or Joint Commissioner (Appeal) Dehradun;

(c) Commissioner (Audit) Meerut, Commissioner (Audit) Noida, Commissioner (Audit) Dehradun,

The Table II of the above said notification provides territorial jurisdiction of Principal Commissioner/ Commissioner of Central Tax and central tax officer subordinate to them. For Example: Principal Commissioner/ Commissioner of Central Tax of MEERUT is having territorial jurisdiction of –Districts of Meerut, Baghpat, Muzaffarnagar, Saharanpur, Shamli, Amroha, Moradabad, Bijnore and Rampur in the State of Uttar Pradesh. Principal Commissioner/ Commissioner of Central Tax of GHAZIABAD is having territorial jurisdiction of –Districts of Ghaziabad in the State of Uttar Pradesh.

The Table III of the above said notification provides territorial jurisdiction of Commissioner of Central Tax (Appeals)/ Additional Commissioner or Joint Commissioner of Central Tax (Appeals) and central tax officer subordinate to them. For example: Commissioner of Central Tax (Appeals)/ Additional Commissioner or Joint Commissioner of Central Tax (Appeals) MEERUT is having territorial jurisdiction of- – Principal Commissioner or Commissioner of Central Tax of MEERUT, and – Principal Commissioner or Commissioner of Central Tax of GHAZIABAD;

The Table IV of the above said notification provides territorial jurisdiction of Commissioner of Central Tax (Audit) and central tax officer subordinate to them. For example: Commissioner of Central Tax (Audit) MEERUT is having territorial jurisdiction of- – Principal Commissioner or Commissioner of Central Tax of MEERUT; and – Principal Commissioner or Commissioner of Central Tax of GHAZIABAD; It is also pertinent to mention that vide Notification No. 02/2017-Central Tax dated June 19, 2017 issued under Section 3 read with Section 5, the Central Government appointed classes of officers for Central Tax and vested them with all the powers in respect of the territory specified. However, these provisions do not provide for assignment / entrustment / investment of powers. The Central Government issued another Notification No. 14/2017-Central Tax dated

July 1, 2017 under Section 3 read with 5 of the CGST Act notifying equivalent class / posts for officers in Directorate General of Goods and Services Tax Intelligence (DGGI). Thus, officers of DGGI became Central Tax officers of specified class / post.

5.2. THE CENTRAL GOODS AND SERVICES TAX (CGST) ACT, 2017

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. For inter-state transactions and imported goods or services, an Integrated GST (IGST) is levied by the Central Government. GST is a consumption-based tax/destination-based tax, therefore, taxes are paid to the state where the goods or services are consumed not the state in which they were produced.

(1) This Act may be called the Central Goods and Services Tax Act, 2017. 1(Amendment) Act, 2018.

(2) It extends to the whole of India 2 except the State of Jammu and Kashmir. 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. CGST ACT 2017 Section 2 – Definitions (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 Excise and Customs”, 2 1[Central Board of Indirect Taxes and Customs], the Revisional Authority, the Authority for Advance Ruling, the Appellate Authority and the Appellate Tribunal 4 the Appellate Authority “for Advance Ruling,2[the National Appellate Authority for Advance Ruling,] 3[the Appellate Authority, the Appellate Tribunal and the Authority referred to in sub-section (2) of section 171];

Section 3 – Officers under this Act(CGST ACT 2017) 1 The Government shall, by notification, 2 appoint the following classes of officers for the purposes of this Act, name–3 4

- (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 5Additional 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:

5.3. CLASSES OF OFFICERS UNDER THE CENTRAL GOODS AND SERVICES TAX ACT

(1) There shall be the following classes of officers under the Central Goods and Services Tax Act, namely;

- (a) Principal Chief Commissioners of CGST or Principal Directors General of CGST,
- (b) Chief Commissioners of CGST or Directors General of CGST,
- (c) Principal Commissioners of CGST or Principal Additional Directors General of CGST,
- (d) Commissioners of CGST or Additional Directors General of CGST,
- (e) Additional Commissioners of CGST or Additional Directors of CGST,

- (f) Joint Commissioners of CGST or Joint Directors of CGST,
- (g) Deputy Commissioners of CGST or Deputy Directors of CGST,
- (h) Assistant Commissioners of CGST or Assistant Directors of CGST, and
- (i) Such other class of officers as may be appointed for the purposes of this Act.

5.4. APPOINTMENT OF OFFICERS UNDER THE CENTRAL GOODS AND SERVICES TAX ACT

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. Delegation of Powers under GST Act 2017

(1) The Board may appoint such persons as it may think fit to be officers under the Central Goods and Services Tax Act. PROVIDED that the persons appointed as officers under the State Goods and Services Tax Act of a State shall be deemed to be appointed as officers under this Act for the purposes of section 7 of this Act.

(2) Without prejudice to the provisions of sub-section (1), the Board may authorize a Principal Chief Commissioner/Chief Commissioner of Central Goods and Services Tax or a Principal Commissioner/Commissioner of Central Goods and Services Tax or an Additional/Joint or Deputy/Assistant Commissioner of Central Goods and Service Tax to appoint officers of Central Goods and Services Tax below the rank of Assistant Commissioner of Central Goods and Services Tax. [CGST]

5.5. POWERS OF OFFICERS UNDER THE CENTRAL GOODS AND SERVICES TAX ACT Feb 12, 2023

Powers and duties of corporation directors and officers. The statutes generally provide that a board of directors may consist of one or more

(1) Subject to such conditions and limitations as the Board may impose, an officer of the Central Goods and Services Tax may exercise the powers and discharge the duties conferred or imposed on him under this Act.

(2) An officer of Central Goods and Services Tax may exercise the powers and discharge the duties conferred or imposed under this Act on any other officer of Central Goods and Services 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 its powers to any other officer subordinate to him.

(4) Notwithstanding anything contained in this section, a First Appellate Authority shall not exercise the powers and discharge the duties conferred or imposed on an officer of Central Goods and Services Tax other than those specified in section 98 of this Act. [CGST Act]

5.5.1. Revisional Powers of Chief Commissioner or Commissioner: Subject to the provisions of section 112 and any rules made there under, the Chief Commissioner or Commissioner may on his own motion, or upon information received by him or on request from the Commissioner of [SGST/CGST], call for and examine the record of any proceeding, and if he considers that any decision or order passed under this Act or under the [SGST/CGST] Act as authorized under section 7 of the [SGST/CGST] Act by any officer subordinate to him is erroneous in so far as it is prejudicial to the interest of the revenue and is illegal or improper 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.

The Chief Commissioner or Commissioner shall not exercise any power under sub-section (1), if- the order has been subject to an appeal under section 98 or under section 101 or under section 106 or under section 107 ; or the period specified under sub-section (2) of section 98 has not yet expired or more than three years have expired after the passing of the decision or order sought to be revised. the order has already been taken for revision under this section at any earlier stage. Notwithstanding anything contained in sub-section (2), the Chief Commissioner or Commissioner 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 subsection (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 sub-section, whichever is later. Every order passed in revision under sub-section (1) shall, subject to the provisions of sections 102, 106 or 107, be final.

If the said decision or order involves an issue on which 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 High Court or the Supreme Court against such decision of the Appellate Tribunal or as the case may be, 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 as the case may be, 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 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. Where the issuance of an order under sub-section (1) is stayed by the order of a Court or Tribunal, the period of such stay shall be excluded in computing the period referred to in clause (b) of sub-section (2). For the purposes of this section, 'record' shall include all records relating to any proceedings under this Act available at the time of examination by the Chief Commissioner or Commissioner. For the purposes of this section, 'decision' shall include intimation given by any officer lower in rank than the Chief Commissioner or, as the case may be Commissioner. 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

5.6. CLASSES OF OFFICERS UNDER THE STATE GOODS AND SERVICES TAX ACT

Avails or use Input Tax Credit without actual receipt of goods and services either fully or partially. The above-discussed powers (Powers of GST Officers) are the critical powers that have been specified under GST Act, and for the GST officers, there are other general powers as well which are conferred on the proper officers.

There shall be the following classes of officers and persons under the State Goods and Services Tax Act namely.

- (a) [Principal/Chief] Commissioner of SGST,
- (b) Special Commissioners of SGST,
- (c) Additional Commissioners of SGST,
- (d) Joint Commissioners of SGST,

- (e) Deputy Commissioners of SGST,
- (f) Assistant Commissioners of SGST, and
- (g) Such other class of officers and persons as may be appointed for the purposes of this Act.

The Commissioner shall have jurisdiction over the whole of the State of (É.). All other officers shall have jurisdiction over the whole of the State or over such areas as the Commissioner may, by notification, specify.

5.7. APPOINTMENT OF OFFICERS UNDER THE STATE GOODS AND SERVICES TAX ACT

(1) The Government may appoint such persons as it may think fit to be officers under the State Goods and Services Tax Act: PROVIDED that the persons appointed as officers under the Central Goods and Services Tax Act shall be deemed to be appointed as officers under this Act for the purposes of section 7 of this Act.

(2) The Commissioner shall have jurisdiction over the whole of the State, the Special Commissioner and an Additional Commissioner shall have jurisdiction over the whole of the State or where the State Government so directs, over any local area thereof, and all other officers shall, subject to such conditions as may be specified, have jurisdiction over the whole of the State or over such local areas as the State Government may specify. [SGST]

5.8. POWERS OF OFFICERS UNDER THE STATE GOODS AND SERVICES TAX ACT

It also protects the GST taxpayer from any misguided inquiry and assessment. If taxpayers are fully aware of the powers of officers under the GST Act, tax authorities and their powers under GST, GST anti-evasion department powers, GST inspector power, appointment and powers of officers under GST. GST officers can arrest people who do not follow the rules of their law, or if the taxpayer commits any offence, they have the power to ask for all the documents and evidence of goods/services if necessary. Suppose the Commissioner has reason to believe that a taxpayer has committed an offence that is punishable under the CGST Act.

Power equivalent to that of the Court: For the purpose of this Act, a Tax Officer shall have the power to issue summons, record statements, receive evidence and cause to submit documents from the concerned person in the same manner as vested in a court. © 31A.

(1) Subject to such conditions and limitations as the Commissioner may impose, an officer of the State Goods and Services Tax may exercise the powers and discharge the duties conferred or imposed on him under this Act.

(2) An officer of State Goods and Services Tax may exercise the powers and discharge the duties conferred or imposed under this Act on any other officer of State Goods and Services 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 subordinate to him. [SGST Act]

5.9. POWERS OF SGST/CGST OFFICERS UNDER THE ACT (DRAFT I)

(1) Notwithstanding anything contained in this Act, the proper officers for the purposes of any one or more sections (.....) of the {SGST/CGST Act}, shall be deemed to be the proper officers for the purposes of the corresponding section or sections, as the case may be, of th is Act to such extent and subject to such conditions as may be prescribed in the rules made in this behalf.

(2) Where any proper officer issues an order or acts under any one or more sections of this Act, he shall also issue an order or take action, as he may deem fit, under the corresponding section of the {SGST/CGST} Act as being the proper officer under sub-section Error! Reference source not found. of the SGST/CGST Act as a part of his order or action under this Act, under intimation to the jurisdictional SGST/CGST officer.

(3) Any proceeding for rectification, appeal and revision, wherever applicable, of any order issued under sub-section (2) shall lie before the officer appointed under section 4 of this Act.

(4) Where a proper officer under the SGST/CGST Act has initiated a proceeding on a subject matter under any one or more sections (.....) of this Act, no action under the relevant section shall be initiated under this Act on the same subject matter.

5.10. POWERS OF SGST/CGST OFFICERS UNDER THE ACT (DRAFT II)

Powers of SGST/CGST officers under the Act (Draft II) The officers appointed under the SGST Acts shall, , to such extent and subject to such conditions, as may be prescribed in the rules made in this behalf, be the proper officers for the purposes of sections (.) of this Act.

The officers appointed under the SGST Acts shall, , to such extent and subject to such conditions, as may be prescribed in the rules made in this behalf, be the proper officers for the purposes of sections (.) of this Act.] Source- Revised Model Draft GST Law Released by CBEC Tags: Goods And Services Tax, GST Kindly Refer to Privacy Policy & Complete Terms of Use and Disclaimer. Join Taxguru's Network for Latest updates on Income Tax, GST, Company Law, Corporate Laws and other related subjects.

5.11. POWERS OF OFFICERS | GST BILL

GST Bill or Goods and Services Tax Bill is one of the biggest reform in India's indirect tax structure. The GST Bill empower both the Centre and the states to levy GST since the Centre cannot impose any tax on goods beyond manufacturing or primary import stage, while states do not have the power to tax services. The proposed GST would sum-up various central as well as state-level indirect taxes. Now we shall move to the various powers of officers as specified in the sections –

5.11.1. CGST: Assigning Jurisdiction And Power To Officers Of Various Directorates:

(1) The Government may appoint such persons as it may think fit to be officers under the State Goods and Services Tax Act: PROVIDED that the persons appointed as officers under the Central Goods and Services Tax Act shall be deemed to be appointed as officers under this Act for the purposes of section 7 of this Act. 7. Powers of SGST/CGST officers under the Act (Draft II) The officers appointed under the SGST Acts shall, , to such extent and subject to such conditions, as may be prescribed in the rules made in this behalf, be the proper officers for the purposes of sections (.) of this Act.

G.S.R. 818(E).- In exercise of the powers conferred under section 3 read with section 5 of the Central Goods and Services Tax Act, 2017 (12 of 2017) and section 3 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), the Central Board of Excise and Customs hereby appoints the officers in the Directorate General of Goods and Services Tax Intelligence, Directorate General of Goods and Services Tax and Directorate General of Audit as specified in column (2) of the Table below, as central tax officers and invests them with all the powers under the Central Goods and Services Tax Act, 2017 and the Integrated Goods and Services Tax Act, 2017 and the rules made there under, throughout the territory of India, as are exercisable by the central tax officers of the corresponding rank as specified in column (3) of the said Table, namely:-

TABLE

Sl. No.	Officers	Officers whose powers are to be exercised
1	Principal Director General, Goods and Services Tax Intelligence or Principal Director General, Goods and Services Tax Principal	Chief Commissioner
2	Director General, Audit	Chief Commissioner
3	Principal Additional Director General, Goods and Services Tax Intelligence or Principal Additional Director General, Goods and Services Tax or Principal, Additional Director General, Audit	Principal Commissioner
4	Additional Director General, Goods and Services Tax Intelligence or Additional Director General, Goods and Services Tax or Additional Director General, Audit	Commissioner
5	Additional Director, Goods and Services Tax Intelligence or Additional Director, Goods and Services Tax or Additional Director, Audit	Additional Commissioner
6	Joint Director, Goods and Services Tax Intelligence or Joint Director, Goods and Services Tax or Joint Director, Audit	Joint Commissioner
7	Deputy/Assistant Director, Goods and Services Tax Intelligence or Deputy/Assistant Director, Goods and Services Tax or Deputy/Assistant Director, Audit	Deputy Commissioner or Assistant Commissioner
8	Senior Intelligence Officer, Goods and Services Tax Intelligence or Superintendent, Goods and Services Tax or Superintendent, Audit	Superintendent
9	Intelligence Officer, Goods and Services Tax Intelligence or Inspector, Goods and Services Tax or Inspector, Audit	Inspector

5.12. DELEGATION OF POWERS UNDER GST ACT 2017

Delegation may be defined as the entrusting, by a person or body of persons, of the exercise of Page 24 of 45 a power residing in that person or body of persons, to another person or body of persons, with complete power of revocation or amendment remaining in the grantor or delegator

Thus, the distinguishing feature is that so far as the CGST Act is concerned, the power of delegation under Section 5 (3) of the Act therein is with the Commissioner in the Board and not the Commissioner of the Central Tax. Who can delegate powers under GST? Section 5. Powers of officers under GST.— (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. Section 167. Delegation of powers.—

5.12.1. Analysis of Delegation of Power under GST: Relevant Statutory Provisions : Thus, the distinguishing feature is that so far as the CGST Act is concerned, the power of

delegation under Section 5 (3) of the Act therein is with the Commissioner in the Board and not the Commissioner of the Central Tax. It was held that no rules can be framed under the guise of such power which curtails the right of the taxpayer which is otherwise absolute in the Code. V. Prospective areas to challenge validity of delegated legislation under GST Legislative Competence of Rule 86Awr.

Section 5 Powers of officers under GST.— (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.

a) Section 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.

b) Section 168 of CGST Act: Power to issue 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]119, [sub-section (1) of section 143, except the second proviso thereof]120, 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. Section 2(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 Section 2(25) —Commissioner in the Board means the Commissioner referred to in section 168.

c) Section 168 of State GST Act: Power to issue instructions or directions — The Commissioner may, if he 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 State 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.

5.12. 2. Meaning of the Term Delegation

The term 'delegation' has neither been defined in CGST Act nor in IGST Act. Let's find the general meaning of the term 'delegation'. Delegation is the act of making or commissioning a delegate. It generally means parting of powers by the person who grants the delegation and conferring of an authority to do things which otherwise that person would have to do himself. Delegation is defined in Black's Law Dictionary as "the act of entrusting another with authority by the empowering another to act as an agent or representative". In P. Ramanatha Aiyar's, The Law Lexicon, "delegation is the act of making or commissioning a delegate. Delegation generally means parting of powers by the person who grants the delegation, but it also means conferring of an authority to do things which otherwise that person would have to do himself". Justice Mathew in Gwalior Rayon Silk Manufacturing (Wvg.) Co. Ltd. v. The Assistant Commissioner of Sales Tax and Others [1974 (4) SCC 98], has succinctly discussed the concept of delegation.

Paragraph 37 reads as follows: "37. ... Delegation is not the complete handing over or transference of a power from one person or body of persons to another. Delegation may be

defined as the entrusting, by a person or body of persons, of the exercise of Page 24 of 45 a power residing in that person or body of persons, to another person or body of persons, with complete power of revocation or amendment remaining in the grantor or delegator. It is important to grasp the implications of this, for, much confusion of thought has unfortunately resulted from assuming that delegation involves or may involve, the complete abdication or abrogation of a power. This is precluded by the definition. Delegation often involves the granting of discretionary authority to another, but such authority is purely derivative. The ultimate power always remains in the delegator and is never renounced.”

As a general rule, whatever a person has power to do himself, he may do by means of an agent. This broad rule is limited by the operation of the principle that a delegated authority cannot be re-delegated, *delegatus non potest delegare*. The naming of a delegate to do an act involving a discretion indicates that the delegate was selected because of his peculiar skill and the confidence reposed in him and there is a presumption that he is required to do the act himself and cannot re-delegate his authority. As a general rule, “if the statute directs that certain acts shall be done in a specified manner or by certain persons, their performance in any other manner than that specified or by any other person than one of those named is impliedly prohibited.

Normally, a discretion entrusted by the Parliament to an administrative organ must be exercised by that organ itself. At the same time, it is settled position of law that the maxim “*delegatus non potest delegare*” must not be pushed too far. The maxim does not embody a rule of law. It indicates a rule of construction of a statute or other instrument conferring an authority. *Prima facie*, a discretion conferred by a statute on any authority is intended to be exercised by that authority and by no other. However, the intention may be negated by any contrary indications in the language, scope or object of the statute. The construction that would best achieve the purpose and object of the statute should be adopted.”

5.12. 3. Comparison of Central and State Law

Section 5(3) of both the Central and State law uses the word ‘Commissioner’ who may delegate his powers to any other officer who is subordinate to him. The word Commissioner has been defined in Section 2(24) of the central CGST Act to mean that Commissioner includes Principal Commissioner appointed u/s 3 of the Act. The word Commissioner in Board has been defined in Section 2(25) of the central CGST Act to mean that the Commissioner referred to in section 168. The comparison of the provisions of the State GST Act and the CGST would indicate that there is a vast difference between the two. Section 168(2) of the CGST Act clarifies that the Commissioner specified in subsection (3) of Section 5 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 section with the approval of the Board. Thus, the distinguishing feature is that so far as the CGST Act is concerned, the power of delegation under Section 5(3) of the Act therein is with the Commissioner in the Board and not the Commissioner of the Central Tax. Whereas, so far as Section 5(3) of the State GST Act is concerned, the Commissioner would be the Commissioner of the State Tax.

5.12. 4. Delegation to Exercise Power U/S 83 – Whether Valid: The term ‘delegation’ has neither been defined in CGST Act nor in IGST Act. Lets find the general meaning of the term ‘delegation’. Delegation is the act of making or commissioning a delegate. It generally means parting of powers by the person who grants the delegation and conferring of an authority to do things which otherwise that person would have to do himself. Delegation is defined in Black’s Law Dictionary as “the act of entrusting another with authority by the empowering another to act as an agent or representative”. In P. Ramanatha Aiyar’s, *The Law Lexicon*, “delegation is the act of making or commissioning a delegate. Delegation generally means parting of powers by the person who grants the delegation, but it also means conferring of an

authority to do things which otherwise that person would have to do himself". J.W. Hampton, Jr., & Co. v. United States, 276 U.S. 394, 409 (1928) ("If Congress shall lay down by legislative act an intelligible principle to which the person or body authorized . . . is directed to conform, such legislative action is not a forbidden delegation of legislative power."). Many State governments, by issuing notification or order, have delegated powers of Commissioner exercisable under section 83, to his subordinate officers. The moot question here is whether such delegation is permissible under law keeping in view the provisions of section 83 which specifically empowers the commissioner to form his opinion while exercising power u/s 83. Section 83 makes it abundantly clear that it is the Commissioner's opinion which is relevant. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives. The Legislature has thought fit to confer this power upon the Commissioner. Whether such power conferred upon the Commissioner by the legislature could have been delegated to the three subordinate officers referred to above by virtue of an order or notification passed in exercise of power under subsection (3) of Section 5 read with clause 19 of Section 2 of the Act and the rules framed there under. Let's see whether it will stand the judicial scrutiny.

5.12. 5. Delegation of Power U/S 167

Let's dissect the provisions u/s 167 contained in both central as well as state law. 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. Let's analyze now. Section 167 of central law and state law are the same and Para material to each other. The only exception is the meaning of the word commissioner employed in both the laws. The word Commissioner employed in section 167 of the central law shall mean 'Commissioner in Board' by virtue of sec 168(2) of CGST Act. The word Commissioner employed in section 167 of the state law shall mean 'Commissioner of State Tax' as defined in section 2(24) of the State GST Act. Direction must be exercised by the commissioner only issuing a notification. Meaning of 'any power exercisable by any authority or officer under this Act' – There must be a power already given to any officer or any officer or any authority. Such power can also be given to another authority or other officer, but under the act only. Both the laws have used the word 'also' before the expression 'by another authority or officer'. The use of the word 'also' makes it abundantly clear that commissioner can assign power exercisable by one authority or officer to another authority or officer. The use of Marginal Note – 'Delegation of Power' in section 167 is unnecessarily creating confusion. There is no provision in the body of the section for delegation of power rather it talks of additional assignment of power to one which is already assigned to another.

5.13. SUMMARY

After studying this lesson student should be able to: Know the concept of appointment of officers under Goods and Services Act (GST) -Understand the Powers of Officers under Goods and Services Act (GST)-Importance of delegation of Powers of Officers under Goods and Services Act (GST). In addition to that the following aspects covered such as: Introduction: Jurisdiction of Officers of Central Tax Under GSK- The **Central** Goods and Services Tax (CGST) Act, 2017- Classes of Officers under the **Central** Goods and Services Tax Act - **Appointment** of Officers under the **Central** Goods and Services Tax Act - **Powers** of Officers under the **Central** Goods and Services Tax Act - Classes of Officers under the **State** Goods and Services Tax Act -

The Board may appoint such persons as it may think fit to be officers under the Central Goods and Services Tax Act. Provisions under Section 5 of the Central Goods and Services Tax (CGST) Act, 2017 relating to "Powers of Officers": (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. BE it enacted by Parliament in the Sixty-eighth Year of the Republic of India as follows:— Short title, extent and commencement.—(1) This Act may be called the Central Goods and Services Tax Act, 2017. It extends to the whole of India 1***.

Appointment of Officers under the **State Goods and Services Tax Act - Powers of Officers** under the **State Goods and Services Tax Act - Powers of SGST/CGST Officers** under the Act (Draft I) -Powers of SGST/CGST Officers under the Act (Draft II) - Powers of Officers | GST Bill-Delegation of Powers under GST Act 2017

5.14. TECHNICAL TERMS

Jurisdiction: The word jurisdiction is defined as legal power. It is a term which is used in the field of law to refer to the rights and powers of those professionals who are from the field of law to interpret the law and then to apply the law.

Classes: a set or category of things having some property or attribute in common and differentiated from others by kind, type, or quality: "the accommodations were good for a hotel of this class"

Appointment: A standing appointment means you have an appointment somewhere at the same time every day, week or month.

Power: Power is the ability to influence other people. It refers to the capacity to affect the behaviour of the subordinate with the control of resources. It is an exchange relationship that occurs in transactions between an agent and a target.

5.15. SELF ASSESSMENT QUESTIONS:

1. What is Jurisdiction? Explain the Jurisdiction of Officers of Central Tax under GST.
2. Explain about the Central Goods and Services Tax (CGST) Act, 2017.
3. What are the Classes of Officers under the Central Goods and Services Tax Act?
4. How to Appointment of Officers under the Central Goods and Services Tax Act?
5. What are the Powers of Officers under the Central Goods and Services Tax Act?
6. What are the Classes of Officers under the State Goods and Services Tax Act?
7. How to Appointment of Officers under the State Goods and Services Tax Act?
8. What are the Powers of Officers under the State Goods and Services Tax Act?
9. What are the Powers of SGST/CGST Officers under the Act (Draft I)?
10. What are the Powers of SGST/CGST Officers under the Act (Draft II)?
11. Explain about the Delegation of Powers under GST Act 2017

5.16. SUGGESTED READINGS

1. Goods and Services Tax in India- Notifications on different dates
2. GST Bill 201
3. The Central Goods and Services Tax Act, 2017, No.12 of 2017, Published by Authority, Ministry of Law and Justice, New Delhi, 12 April, 2017
4. Background Material on Model GST Law, Sahitya Bhavan Publications, Hospital Road, Agra-383 003
5. Customs Law Manual and Customs Tariff of India – R.K.JAIN.
6. The Central Goods and Services Tax Act, 2017, No.12 of 2017 published by Authority, Ministry of Law and Justice , New Delhi, 12th April, 2017.
7. Read more at: <https://taxguru.in/goods-and-service-tax/class-appointment-power-of-sgst-cgst-officers-under-revised-model-gst-law.html>- Copyright © Taxguru.in
8. Anil Kumar Agrawal : “Analysis of Delegation of Power under GST”| Goods and Services Tax - Articles| Download PDF 05 Dec 2021

LESSON-6

INSPECTION, SEARCH & SEIZURE, ARREST AND PROSECUTION UNDER GST ACT 2017

Aims and Objectives

After studying this lesson student should be able to:

- Know the concept of Provisions regarding initiation of ‘Search and Seizure’ proceedings in GST
- Understand the Guidelines for Launching of Prosecution under the CGST Act, 2017
- Importance of Inspection under GST

Structure:

6.1. Introduction

6.2. Inspection under GST

6.2. 1. Provisions regarding initiation of ‘Inspection’ under GST

6.2.2. Some of the key aspects of the above provisions are as under

6.2.3. Rule 139 of the CGST Rules

6.3. Search under GST

6.3.1. Provisions regarding initiation of ‘Search and Seizure’ proceedings in GST

6.4. Arrest or Prosecution

6.4.1. Guidelines for Launching of Prosecution under the CGST Act, 2017

6.5. Summary

6.6. Technical Terms

6.7. Self –Assessment Questions

6.8. Suggested Readings

6.1. INTRODUCTION

According to the provisions of the Anti-Tax Evasion of Scheme of the Government of India, GST has also mandated strict guidelines for the inspection, search, and seizure of businesses involved in any sort of alleged tax evasion. What is Inspection? The term ‘Inspection’ refers to the act of examining something. Under GST, inspection, as well as search, can be carried out only after authorization by a proper officer not below the rank of Joint Commissioner and such proper officer must have reason to believe for the existence of exceptional circumstances to justify invoking provisions of Search and Seizure. A Joint Commissioner of State Goods and Service Tax or Central Goods and Service Tax or Any Authorized Officer under GST can conduct a Search and seize the documents and goods discovered. What is a Seizure? The term ‘seizure’ is not specifically defined under the Goods and Service Tax Act. It should be remembered that any officer who does not have the level of Joint Commissioner can only conduct a search and seizure with the permission of a higher-ranking officer. Sub-section (1) of section 67 of the CGST Act empowers proper officer to conduct an inspection at the business place of the taxpayer.

a) GST Inspection, Search and Seizure: GST Search Seizure Summon & Arrest presents a detailed commentary on search, seizure, summons and arrest proceedings under Goods and Services Tax Law. This book covers Sections 67, 69, 70, 83 & 132-138 of the Central Goods

and Services Tax Act, 2017 and the corresponding Rules made there under. In any tax administration the provisions for Inspection, Search and Seizure are provided to protect the interest of genuine taxpayers as the Tax evaders by evading the tax get an unfair advantage over the genuine taxpayers. These provisions are also required to safeguard and protect interest of revenue. It may be mentioned that the options of Inspection, Search and Seizure should be exercised only in exceptional circumstances and as a last resort.

Thus, to ensure that these provisions are used properly, effectively and the rights of taxpayers are also protected, it is stipulated that Inspection, Search or Seizure can only be carried out by a proper officer as envisaged by legislatures (i.e. rank of Joint Commissioner or above in GST law), only when such proper officer has 'reasons to believe' regarding the existence of such exceptional circumstances.

It is well-settled law that search and seizure being an inroad on the fundamental right of citizen who adversely affects his reputation and paralyze his business. Therefore, while exercising such powers, the authorities should be rather careful and cautious and must exercise it strictly under the authority of the law.

b) Difference between Inspection and Search: 'Inspection' is a softer provision than search which enables officers to access any place of business of a taxable person or of a person engaged in transporting goods or who is an owner or an operator of a warehouse or godown, whereas 'Search', in simple language, denotes an action of government machinery to go, look through or examine carefully a place, area, person, object etc. in order to find something concealed or for the purpose of discovering evidence of a crime.

Under GST, inspection, as well as search, can be carried out only after authorization by a proper officer not below the rank of Joint Commissioner and such proper officer must have reason to believe for the existence of exceptional circumstances to justify invoking provisions of Search and Seizure. Sections 67 to 72 of the CGST Act read with rules 139 to 141 of CGST Rules deal with powers and procedure of Inspection, Search & Seizure. It is imperative to mention here that application of the provisions of the Code of Criminal Procedure arises only when the premises are searched and not inspected. Inspection, search and seizure under GST By Annapoorna: Keeping in mind the government's anti-tax evasion scheme, GST also has strict provisions to inspect and search places of business for suspected tax evaders.

6.2. INSPECTION UNDER GST

When does inspection under GST occur? A Joint Commissioner (or an officer of higher rank) may have "reasons to believe" that in order to evade tax, any person has done the following-

i. Suppressed any transaction of supply; ii. Suppressed stock in hand; iii. Claimed input tax credit in excess; iv. Violated of any of the provisions; v. Any transporter or owner/operator of a warehouse has kept goods that have escaped tax payment or have kept accounts and/or goods in such a way as to evade tax. Then he can authorise any officer in Form GST INS-01 to inspect places of businesses of: the taxable person or the transporter or owner/operator of warehouse. He can also examine any other place if he sees fit. 'Reason to believe' means having knowledge of facts (although does not mean having direct knowledge), that would make any reasonable person, knowing the same facts, to reasonably conclude the same thing. As per the Indian Penal Code, 1860, "A person is said to have 'reason to believe' a thing, if he has sufficient cause to believe that thing but not otherwise." Reason to believe is a determination based on intelligent examination and evaluation. It is different from a purely subjective consideration, i.e., an opinion. It is based on facts rather than an interpretation of facts. Is it necessary to record the 'reasons to believe' in writing, before issuing order for Inspection/Search/Seizure? GST Act does not mention recording the reasons to believe. In

fact, Finance Act 2017 has amended Sec 132(1) & (1A) of Income Tax Act retrospectively stating, that reason to believe, shall not be disclosed to any person or any authority or the Appellate Tribunal.

6.2. 1. Provisions Regarding Initiation of ‘Inspection’ Under GST: Sub-section (1) of section 67 of the CGST Act empowers proper officer to conduct an inspection at the business place of the taxpayer. Section 67(1) reads as below: “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 there under 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 authorize 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.”

6.2.2. Some of the Key Aspects of the Above Provisions are as under: (a) Authorisation of Inspection has to be given by the officer of the rank of Joint Commissioner and above. (b) Authorising officer must have reason to believe about Taxable person that— (i) Suppressing of any transaction relating to the supply of goods or services or both; or (ii) Suppressing Stock in hand; or (iii) Claiming of excess Input Tax Credit; or (iv) Indulging in contravention of any of the provisions of the law to evade tax; or (c) Authorising officer must have reason to believe that, transporter is keeping the goods which has escaped tax or has kept his accounts or goods in such a manner as is likely to cause evasion of tax; or (d) Authorising officer must have reason to believe that owner or operator of warehouse or godown or any other place is keeping the goods which has escaped tax or has kept his accounts or goods in such a manner as is likely to cause evasion of tax. It needs to be noted here that, Authorisation for the purpose of Inspection under section 67(1) of the CGST Act, should be in writing and in prescribed form³. Rule 139 of the CGST Rules envisage procedural aspects of Inspection, Search and Seizure.

6.2.3. Rule 139 of the CGST Rules read as follows:

(1) Where the proper officer not below the rank of a Joint Commissioner has reasons to believe that a place of business or any other place is to be visited for the purposes of inspection or search or, as the case may be, seizure in accordance with the provisions of section 67, he shall issue an authorisation in FORM GST INS-01 authorising any other officer subordinate to him to conduct the inspection or search or, as the case may be, seizure of goods, documents, books or things liable to confiscation.

(2) Where any goods, documents, books or things are liable for seizure under sub-section (2) of section 67, the proper officer or an authorised officer shall make an order of seizure in FORM GST INS-02.

(3) The proper officer or an authorised officer may entrust upon the owner or the custodian of goods, from whose custody such goods or things are seized, the custody of such goods or things for safe upkeep and the said person shall not remove, part with, or otherwise deal with the goods or things except with the previous permission of such officer.

(4) Where it is not practicable to seize any such goods, the proper officer or the authorised officer may serve on the owner or the custodian of the goods, an order of prohibition in FORM GST INS-03 that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer.

(5) The officer seizing the goods, documents, books or things shall prepare an inventory of such goods or documents or books or things containing, inter alia, description, quantity or unit, make, mark or model, where applicable, and get it signed by the person from whom such goods or documents or books or things are seized.”

It is pertinent to note that, section 67(1) categorically provides that Inspection can be at the place of business of the assessee. It further needs to be noted here that section 2(85) of the CGST Act defines the phrase ‘place of business’ which reads as follows: “‘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;’

Definition of the place of business is inclusive which includes godown or any other place where a taxable person stores his goods or maintains his books of accounts or place of agent. Accordingly, if books of accounts are being maintained or kept at residence of director or any other key managerial person the same may be treated as place of business and inspection can be carried out there as well.

6.3. SEARCH UNDER GST

The term ‘seizure’ has not been specifically defined in GST. In legal parlance, seizure is the act of taking over something or someone by force through legal process, such as the seizure of evidence found at the scene of a crime. It generally implies taking possession forcibly against the wishes of the owner.

‘Search’ involves an attempt to find something. Search, in tax/legal parlance, is an action of a government official (a tax officer or a police officer, depending on the case) to go and look through or examine carefully a place, person, object etc. in order to find something concealed or to discover evidence of a crime. The search can only be done under the proper and valid authority of law. ‘Inspection’ is the act of examining something, often closely. In tax/legal language, it is a softer provision than search. It enables officers to access any place of business of a taxable person and also any place of business of a person engaged in transporting goods or who is an owner/operator of a warehouse or godown. On the basis of results of inspection or any other reason, Joint Commissioner of SGST/CGST or a superior officer can order for a search if he has “reasons to believe” –There are goods which are liable for confiscation. Any documents or books or other things which will be useful during proceedings and are hidden somewhere. He can, on his own or through an authorized officer, search and seize the goods and documents.

a) **What is the difference between Seizure and Detention?** Not allowing the owner any access to the seized goods by a legal order/notice is called detention. However, the ownership & possession of goods still lie with the owner. It is issued when it is suspected that the goods are liable to confiscation. Seizure is taking over or actual possession of the goods by the department. But the ownership is still with the owner. Seizure can be made only after inquiry/investigation that the goods are liable to confiscation.

b) **What are the powers of the officer authorized to search?** The officer authorized to search will have the power to seal the door of the premises. He can also break open the door of any premises if access is denied. He can also break open any cupboard or box in which goods, books, documents etc. are suspected to be concealed.

c) What happens if it is not possible to seize the goods? If it is not practicable to seize the goods, the proper officer will order the owner not to remove these goods without prior permission of the officer. The officer will issue an order of prohibition in FORM GST INS-03.

How long will the books/documents remain with the officer? The officer will keep the books and documents as long as it is necessary for examination and inquiry. Other books which are not relevant to the issue of notice will be returned within 30 days from the date of notice. The seized goods can be released on a provisional basis against a bond for the value of the goods in FORM GST INS-04. The owner must also furnish a security in the form of a bank guarantee for the amount due (applicable tax, interest and penalty payable). If the owner fails to produce the provisionally released goods at the appointed date and place then the security will be encashed and adjusted against the amount due.

d) What happens after seizure? The person, whose documents are seized, can make copies only in the presence of an officer. If notice is not issued within six months (extendable by 6 more months) of the seizing the goods, they will be returned. The Government can issue a list of hazardous or perishable goods which can be disposed off as soon as they are seized. All goods seized will be listed properly by the officer. Does the Code of Criminal Procedure apply in such cases? The provisions of the Code of Criminal Procedure will apply to search and seizure. **Other ways to check/inspect:** The Commissioner or an authorized officer can purchase any goods and/or services from a taxable person. This will be done to check the issue of tax invoices, whether they are maintained correctly, and whether GST amount is clearly displayed. When the goods are returned, the amount will have to be refunded by the taxable person and the sales invoice will be canceled.

e) Some of the key aspects of the above provisions are as under: Authorisation of Search and Seizure has to be given by the officer of the rank of Joint Commissioner and above. Authorising officer must have reason to believe about: (i) Goods liable for confiscation are secreted in any place; (ii) books, documents or something, which is useful or relevant for proceeding under GST law, are secreted in any place. Authorisation should be in writing in Form GST INS-01 for Search. In case of Seizure, Order of Seizure is to be issued in Form GST INS-02.

f) Latest updates on Seizure: 21st December 2021: The officer can issue notice u/s 74 to multiple persons for tax short paid or excess ITC claims by fraud. From 1st January 2022, it is amended that the officer can confiscate and seize goods or vehicles even after concluding proceedings against all persons liable to pay specific or general penalties. 1st February 2021: Union Budget 2021 Outcome: 1) With respect to orders received on detention and seizure of goods and conveyance, 25% of penalty needs to be paid for making an application for appeals under section 107 of the CGST Act. Date of applicability is yet to be notified. 2) Seizure and confiscation of goods and conveyances in transit are now made a separate proceeding from the recovery of tax from Section 74. 3) Section 129 is delinked from Section 130. Accordingly, proceedings relating to detention, seizure and release of goods and conveyances in transit will be separate from the levy of penalty for the confiscation of goods and conveyance.

6.3.1. Provisions Regarding Initiation of ‘Search and Seizure’ Proceedings in GST: Sub-section (2) of section 67 of the CGST Act empowers proper officer not below the rank of Joint Commissioner to carry out search proceeding, provided that Joint Commissioner has reason to believe that any goods liable to be confiscation or any documents/books which in opinion are relevant for the proceedings under the Act but such documents/books/things/goods are secreted at any place. Section 67(2) and 67(3) of the CGST Act reads as follows: “(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.”

6.4. ARREST OR PROSECUTION

Arrest under GST: If the Commissioner believes a person has committed an offence u/s 132, the offender can be arrested under GST. Read our article to know more about arrest under GST. GST also has provisions for interception and inspection of goods in transit. The CBIC (Central Board of Indirect Taxes) has inspected the above judgment and issued various instructions and guidelines for launching PROSECUTION OR ARREST under the CGST (Central Goods and Excise Tax) Act, 2017. The current instruction is issued on 1 st September 2022 as Instruction No.4/2022-23.

The following are the key provisions with respect to arrest under the CGST Act:

a) Section 69 of CGST Act, 2017

b) Section 132 of CGST Act, 2017 Section 132 lists out the offences under the CGST Act,. The major offences are listed below.

i) Supplies any goods or services or both without issue of any invoice. Thus, in the case of Companies, both the legal person as well as natural person is liable for prosecution under section 132 of the CGST Act. Similarly, under sub-section (3) of section 137, the provisions have been made for partnership firm or a Limited Liability Partnership or a Hindu Undivided Family or a Trust.

ii) Procedure for Prosecution under GST If any arrests have been made and no bail has been granted during an investigation, then a complaint shall be filed in court within 60 days of arrest. In other cases of arrest, the prosecution complaint shall be filed within a reasonable time.

6.4.1. Guidelines for Launching of Prosecution under the CGST, 2017: Prosecution is the institution or commencement of legal proceeding; the process of exhibiting formal charges against the offender. Section 132 of the Central Goods and Services Tax Act, 2017 (CGST Act, 2017) codifies the offences under the Act which warrant institution of criminal proceedings and Whoever commits any of the offences specified under sub-section (1) and sub-section (2) of section 132 of the CGST Act, 2017, can be prosecuted.

a) Sanction of prosecution: Sanction of prosecution has serious repercussions for the person involved; therefore, the nature of evidence collected during the investigation should be carefully assessed. One of the important considerations for deciding whether prosecution should be launched is the availability of adequate evidence. The standard of proof required in a criminal prosecution is higher than adjudication proceeding as the case has to be established beyond reasonable doubt. Therefore, even cases where demand is confirmed in adjudication proceedings, evidence collected should be weighed so as to likely meet the above criteria for

recommending prosecution. Decision should be taken on case-to-case basis considering various factors, such as, nature and gravity of offence, quantum of tax evaded, or ITC wrongly availed, or refund wrongly taken and the nature as well as quality of evidence collected.

Prosecution should not be filed merely because a demand has been confirmed in the adjudication proceedings. Prosecution should not be launched in cases of technical nature, or where additional claim of tax is based on a difference of opinion regarding interpretation of law. Further, the evidence collected should be adequate to establish beyond reasonable doubt that the person had guilty mind, knowledge of the offence, or had fraudulent intention or in any manner possessed mens-rea for committing the offence. It follows, therefore, that in the case of public limited companies, prosecution should not be launched indiscriminately against all the Directors of the company but should be restricted to only persons who oversaw day-to-day operations of the company and have taken active part in committing the tax evasion etc. or had connived at it.

b) Decision on prosecution: Decision on prosecution should normally be taken immediately on completion of the adjudication proceedings, except in cases of arrest where prosecution should be filed as early as possible. Hon'ble Supreme Court of India in the case of Radheshyam Kejriwal [2011 (266) ELT 294 (SC)] has, inter-alia, observed the following: (i) Adjudication proceedings and criminal proceedings can be launched simultaneously; (ii) Decision in adjudication proceedings is not necessary before initiating criminal prosecution; (iii) Adjudication proceedings and criminal proceedings are independent in nature to each other; (iv) The findings against the person facing prosecution in the adjudication proceedings is not binding on the proceeding for criminal prosecution; (v) The finding in the adjudication proceedings in favour of the person facing trial for identical violation will depend upon the nature of finding. If the exoneration in adjudication proceedings is on technical ground and not on merit, prosecution may continue; and (vi) In case of exoneration, however, on merits where the allegation is found to be not sustainable at all and the person held innocent, criminal prosecution on the same set of facts and circumstances cannot be allowed to continue, the underlying principle being the higher standard of proof in criminal cases. In view of the above observations of Hon'ble Supreme Court, prosecution complaint may even be filed before adjudication of the case, especially where offence involved is grave, or qualitative evidences are available, or it is apprehended that the concerned person may delay completion of adjudication proceedings. In cases where any offender is arrested under section 69 of the CGST Act, 2017, prosecution complaint may be filed even before issuance of the Show Cause Notice.

c) Monetary limits: Prosecution should normally be launched where amount of tax evasion, or misuse of ITC, or fraudulently obtained refund in relation to offences specified under sub-section (1) of section 132 of the CGST Act, 2017 is more than Five Hundred Lakh rupees. However, in following cases, the said monetary limit shall not be applicable: (i) Habitual evaders: Prosecution can be launched in the case of a company/taxpayer habitually involved in tax evasion or misusing Input Tax Credit (ITC) facility or fraudulently obtained refund. A company/taxpayer would be treated as habitual evader, if it has been involved in two or more cases of confirmed demand (at the first adjudication level or above) of tax evasion/fraudulent refund or misuse of ITC involving fraud, suppression of facts etc. in past two years such that the total tax evaded and/or total ITC misused and/or fraudulently obtained refund exceeds Five Hundred Lakh DIGIT database may be used to identify such habitual evaders. (ii) Arrest Cases: Cases where during the course of investigation, arrests have been made under section 69 of the CGST Act.

d) Authority to sanction prosecution: The prosecution complaint for prosecuting a person should be filed only after obtaining the sanction of the Pr. Commissioner/Commissioner of CGST in terms of sub-section (6) of section 132 of CGST Act, 2017. 6.2 In respect of cases investigated by DGGI, the prosecution complaint for prosecuting a person should be filed only after obtaining the sanction of Pr. Additional Director General/Additional Director General, Directorate General of GST Intelligence (DGGI) of the concerned zonal unit/ Hqrs.

e) Procedure for sanction of prosecution: 1 in cases of arrest(s) made under section 69 of the CGST Act, 2017:

i) Where during the course of investigation, arrest(s) have been made and no bail has been granted, all efforts should be made to file prosecution complaint in the Court within sixty (60) days of arrest. In all other cases of arrest, prosecution complaint should also be filed within a definite time frame. The proposal of filing complaint in the format of investigation report prescribed in Annexure-I, should be forwarded to the Pr. Commissioner/Commissioner, within fifty (50) days of arrest. The Pr. Commissioner/ Commissioner shall examine the proposal and take decision as per section 132 of CGST Act, 2017. If prosecution sanction is accorded, he shall issue a sanction order along with an order authorizing the investigating officer (at the level of Superintendent) of the case to file the prosecution complaint in the competent court. In cases investigated by DGGI wherever an arrest has been made, procedure as detailed in para i) should be followed by officers of equivalent rank of DGGI. The Additional/ Joint Commissioner or Additional / Joint Director in the case of DGGI, must ensure that all the documents/ evidence and list of witnesses are kept ready before forwarding the proposal of filing complaint to Pr. Commissioner/ Commissioner or Pr. ADG/ ADG of DGGI.

ii) In case of filing of prosecution against legal person, including natural person:

a) Section 137 (1) of the Act provides that where an offence under this Act has been committed by a company, every person who, at the time offence was committed was in charge of and was responsible to, the company for the conduct of the 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. Section 137 (2) of the Act provides that 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 neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. Thus, in the case of Companies, both the legal person as well as natural person are liable for prosecution under section 132 of the CGST Act. Similarly, under sub-section (3) of section 137, the provisions have been made for partnership firm or a Limited Liability Partnership or a Hindu Undivided Family or a Trust.

b) Where it is deemed fit to launch prosecution before adjudication of the case, the Additional/Joint Commissioner or Additional/Joint Director, DGGI, as the case may be, supervising the investigation, shall record the reason for the same and forward the proposal to the sanctioning authority. The decision of the sanctioning authority shall be informed to the concerned adjudicating authority so that there is no need for him to examine the case again from the perspective of prosecution.

c) In all cases (other than those mentioned at para 7.2.2 and arrests where prosecution complaint has already been filed before adjudication), the adjudicating authority should invariably indicate at the time of passing the order itself whether it considers the case fit for prosecution, so that it can be further processed and sent to the Pr. Commissioner/ Commissioner for obtaining his sanction of prosecution.

d) In cases, where Show Cause Notice has been issued by DGGI, the recommendation of adjudicating authority for filing of prosecution shall be sent to the Pr. Additional Director General/Additional Director General, DGGI of the concerned zonal unit/ Hqrs.

e) Where at the time of passing of adjudication order, no view has been taken on prosecution by the Adjudicating Authority, the adjudication branch shall re-submit the file within 15 days from the date of issue of adjudication order to the Adjudicating Authority to take view on prosecution.

f) Pr. Commissioner/ Commissioner or Pr. Additional Director General/ Additional Director General of DGGI may on his own motion also, taking into consideration inter alia, the seriousness of the offence, examine whether the case is fit for sanction of prosecution irrespective of whether the adjudicating authority has recommended prosecution or not.

g) An investigation report for the purpose of launching prosecution should be carefully prepared in the format given in Annexure-I, within one month of the date of receipt of the adjudication order or receipt of recommendation of Adjudicating Authority, as the case may be. Investigation report should be signed by an Deputy/Assistant Commissioner, endorsed by the jurisdictional Additional/ Joint Commissioner, and sent to the Pr. Commissioner/ Commissioner for taking a decision on sanction for launching prosecution. In respect of cases booked by DGGI, the said report shall be prepared by the officers of DGGI, signed by the Deputy/ Assistant Director, endorsed by the supervising Additional/ Joint Director and sent to the Pr. Additional Director General/ Additional Director General of DGGI for taking a decision on sanction for launching prosecution. Thereafter, the competent authority shall follow the procedure as mentioned in para -a

h) Once the sanction for prosecution has been obtained, prosecution in the court of law should be filed as early as possible, but not beyond a period of sixty days by the duly authorized officer (of the level of Superintendent). In case of delay in filing complaint beyond 60 days, the reason for the same shall be brought to the notice of the sanctioning authority i.e., Pr. Commissioner/ Commissioner or Pr. Additional Director General/ Additional Director General, by the officer authorised for filing of the complaint.

i) In the cases investigated by DGGI, except for cases pertaining to single/multiple taxpayer(s) under Central Tax administration in one Commissionerate where arrests have not been made and the prosecution is not proposed prior to issuance of show cause notice, prosecution complaints shall be filed and followed up by DGGI. In other cases, the complaint shall be filed by the officer at level of Superintendent of the jurisdictional Commissionerate, authorized by Pr. Commissioner/ Commissioner of CGST. However, in all cases investigated by DGGI, the prosecution shall continue to be sanctioned by appropriate officer of DGGI.

iii) Appeal against Court order in case of inadequate punishment/acquittal:

a) The Prosecution Cell in the Commissionerate shall examine the judgment of the Court and submit their recommendations to the Pr. Commissioner/ Commissioner. Where Pr. Commissioner/ Commissioner is of the view that the accused person has been let off with lighter punishment than what is envisaged in the Act or has been acquitted despite the evidence being strong, filing of appeal should be considered against the order within the stipulated time. Before filing of appeal in such cases, concurrence of Pr. CC/CC should be obtained. Sanction for appeal in such cases shall, however, be accorded by Pr. Commissioner/ Commissioner.

b) In respect of cases booked by DGGI, the Prosecution Cell in the Directorate shall examine the judgment of the court and submit their recommendations to the Pr. Additional Director General/ Additional Director General who shall take a view regarding acceptance of the order or filing of appeal. However, before filing of appeal, concurrence of DG or Pr. DG (for cases booked by HQ Unit) should be obtained.

iv) Procedure for withdrawal of prosecution: Procedure for withdrawal of sanction-order of prosecution:

a) In cases where prosecution has been sanctioned but complaint has not been filed and new facts or evidence have come to light necessitating review of the sanction for prosecution, the Commissionerate should immediately bring the same to the notice of the sanctioning authority. After considering the new facts and evidence, the sanctioning authority, if satisfied, may recommend to the jurisdictional Pr. Chief Commissioner/ Chief Commissioner that the sanction for prosecution be withdrawn who shall then take a decision.

b) In the cases investigated by DGGI, such withdrawal of sanction order may be made with the approval of Director General of DGGI of concerned sub-national unit. In the cases booked by DGGI, Hqrs., Pr. Director General shall be competent to approve the withdrawal of sanction order.

c) Procedure for withdrawal of complaint already filed for prosecution: Attention is invited to judgment of Hon'ble Supreme Court on the issue of relation between adjudication proceedings and prosecution in the case of Radheshyam Kejriwal, supra. Hon'ble Supreme Court in para 43 have observed as below: "In our opinion, therefore, the yardstick would be to judge as to whether allegation in the adjudication proceeding as well as proceeding for prosecution is identical and the exoneration of the person concerned in the adjudication proceeding is on merits. In case it is found on merit that there is no contravention of the provisions of the Act in the adjudication proceeding, the trial of the person concerned shall be in abuse of the process of the court." The said ratio is equally applicable to GST Law. Therefore, where it is found on merit that there is no contravention of the provisions of the Act in the adjudication proceedings and such order has attained finality, Pr. Commissioner/ Commissioner or Pr. Additional Director General/ Additional Director General after taking approval of Pr. Chief Commissioner/ Chief Commissioner or Pr. Director General/ Director General, as the case may be, would ensure filing of an application through Public Prosecutor in the court to allow withdrawal of prosecution in accordance with law. The withdrawal can only be affected with the approval of the court.

iv) General guidelines: a) It has been reported that delay in the Court proceedings is often due to non-availability of the records required to be produced before the Court or due to delay in drafting of the complaint, listing of the exhibits etc. It shall be the responsibility of the officer who has been authorized to file complaint, to take charge of all documents, statements and other exhibits that would be required to be produced before a Court. The list of exhibits etc. should be finalized in consultation with the Public Prosecutor at the time of drafting of the complaint. No time should be lost in ensuring that all exhibits are kept in safe custody. Where a complaint has not been filed even after a lapse of 60 days from the receipt of sanction for prosecution, the reason for delay shall be brought to the notice of the Pr. Commissioner/ Commissioner or the Pr. Additional Director General/ Additional Director General of DGGI by the Additional/ Joint Commissioner in charge of the Commissionerate or Additional/ Joint Director of DGGI, responsible for filing of the complaint.

b) Filing of prosecution need not be kept in abeyance on the ground that the taxpayer has gone in appeal/ revision. However, to ensure that the proceeding in appeal/revision are not unduly delayed because the case records are required for the purpose of prosecution, a parallel file containing copies of essential documents relating to adjudication should be maintained.

c) The Superintendent in-charge of adjudication section should endorse copy of all adjudication orders to the prosecution section. The Superintendent in charge of prosecution section should monitor receipt of all serially numbered adjudication orders and obtain copies of adjudication orders of missing serial numbers from the adjudication section every month. In respect of adjudication orders related to DGGI cases, Superintendent in charge of

adjudication section should ensure endorsing a copy of adjudication order to DGGI. Concerned Zonal Units/ Hqrs. of DGGI shall also follow up the status of adjudication of the case from the concerned Commissionerate or adjudicating authority.

v) Publication of names of persons convicted: Section 159 of the CGST Act, 2017 grants power to the Pr. Commissioner/Commissioner or any other officer authorised by him on his behalf to publish name and other particulars of the person convicted under the Act. It is directed that in deserving cases, the department should invoke this section in respect of all persons who are convicted under the Act.

vi) Monitoring of prosecution: Prosecution, once launched, should be vigorously followed. The Pr. Commissioner/Commissioner of CGST or Pr. Additional Director General/ Additional Director General of DGGI should monitor cases of prosecution at monthly intervals and take the corrective action wherever necessary to ensure that the progress of prosecution is satisfactory. In DGGI, an Additional/ Joint Director in each zonal unit and DGGI (Hqrs) shall supervise the prosecution related work and take stock of the pending prosecution cases. For keeping a track of prosecution cases, entries of all prosecution cases should promptly be made in DIGIT/ Investigation Module, within 48 hours of sanction of prosecution and the entries must be updated from time to time. Additional/ Joint Commissioner or Additional/ Joint Director, in-charge of supervising prosecution cases shall ensure making timely entries in the database.

vii) Compounding of offence: Section 138 of the CGST Act, 2017 provides for compounding of offences by the Pr. Commissioner/ Commissioner on payment of compounding amount. The provisions regarding compounding of offence should be brought to the notice of person being prosecuted and such person be given an offer of compounding by Pr. Commissioner/ Commissioner or Pr. Additional Director General/Additional Director General of DGGI, as the case may be.

viii) Transitional Provisions: All cases where sanction for prosecution is accorded after the issue of these instructions shall be dealt in accordance with the provisions of these instructions irrespective of the date of the offence. Cases where prosecution has been sanctioned but no complaint has been filed before the magistrate shall also be reviewed by the prosecution sanctioning authority considering the provisions of these instructions.

ix) Inspection of prosecution work by the Directorate General of Performance Management: Director General, Directorate General of Performance Management and Pr. Chief Commissioners/Chief Commissioners, who are required to inspect the Commissionerates, should specifically check whether instructions in this regard are being followed scrupulously and make a mention of the implementation of the guidelines in their inspection report apart from recording of statistical data. Similarly exercise should also be carried out in DGGI.

x) Considered suitable for launching prosecution : Where a case is considered suitable for launching prosecution and where adequate evidence is forthcoming, securing conviction largely depends on the quality of It is, therefore, necessary for senior officers to take personal interest in the investigation of important cases of GST evasion and in respect of cases having money laundering angle and to provide guidance and support to the investigating officers.

xi) Proper training to the officers posted for prosecution work: To ensure proper training to the officers posted for prosecution work, the Pr. Director General, National Academy of Customs, Indirect Taxes and Narcotics (NACIN), Faridabad, should organize separate training courses on prosecution/arrests etc. from time to time and should incorporate a series of lectures on this issue in the courses organized for investigation. The Pr. Commissioner / Commissioner or Pr. ADG/ ADG of DGGI should judiciously sponsor officers for such courses.

xii) Guidelines may be circulated to all: These instructions/guidelines may be circulated to all the formations under your charge for strict compliance. Difficulties, if any, in implementation of the aforesaid instructions/guidelines may be brought to the notice of the Board.

xiii) Receipt of this Instruction: Receipt of this Instruction may please be acknowledged. Hindi version will follow. (Vijay Mohan Jain) Commissioner (GST-Investigation), CBIC Tel. No.: 011-21400623 Email id: gstinvcbic@gov.in To

1. Principal Director General [DGGI], New Delhi/All DGs (SNIT), DGGI.
2. Principal Chief Commissioner(s)/ Chief Commissioner(s) of CGST, All Zones.
3. Webmaster, CBIC (www.cbic.gov.in) for uploading on the website of CBIC under Instructions.

Copy to: 1. Director-General, National Academy of Customs, Indirect taxes and Narcotics, Faridabad. 2. Director-General, Directorate General of Performance Management, New Delhi.

6.5. SUMMARY

Inspection is the critical appraisal of materials, items, or systems involving examination, testing, and gauging. Inspectors take measurements and make comparisons. Inspections are formal evaluations or organized examination exercises. Search the world's information, including WebPages, images, videos and more. Google has many special features to help you find exactly what you're looking for. Doctors classify seizures based on whether they start in one or both sides of the brain. Seizures are changes in the brain's electrical activity. These changes can cause dramatic, noticeable symptoms or no symptoms at all. The symptoms of a severe seizure include violent shaking and a loss of control. After studying this lesson student should be able to: Know the concept of Provisions regarding initiation of 'Search and Seizure' proceedings in GST, Understand the Guidelines for Launching of Prosecution under the CGST Act, 2017, Importance of Inspection under GST. Further, it is also covered that Inspection under GST, Search under GST and Arrest or Prosecution.

6.6. TECHNICAL TERMS

Inspection: An inspection involves checking something, i.e., examining and assessing something. We may inspect a building or organization to make sure that it meets specific standards. The inspectors need to ensure that nothing is faulty and that nobody is breaking any laws. They also have to make sure that whatever they are inspecting is safe.

Search & Seizure: Search and seizure, in criminal law, is used to describe a law enforcement agent's examination of a person's home, vehicle, or business to find evidence that a crime has been committed.

Arrest or Prosecution: An arrest is a procedure in a criminal justice system; sometimes it is also done after a court warrant for the arrest. Police and various other officers have powers of arrest.

6.7. SELF –ASSESSMENT QUESTIONS

1. What is Inspection under GST?
2. Provisions regarding initiation of 'Inspection' under GST
3. Some of the key aspects of the above provisions are as under
4. Search under GST
5. Provisions regarding initiation of 'Search and Seizure' proceedings in GST
6. Arrest or Prosecution
7. Guidelines for Launching of Prosecution under the CGST Act, 2017

8. Difference between Inspection and Search
9. Meaning of Reason to believe
10. Term 'Secreted Place' under Section 67(2) is really secreted?

6.8 SUGGESTED READINGS

1. Goods and Services Tax in India- Notifications on different dates
2. The Central Goods and Services Tax Act, 2017, No.12 of 2017, Published by Authority, Ministry of Law and Justice, New Delhi, 12 April, 2017
3. Background Material on Model GST Law, Sahitya Bhavan Publications, Hospital Road, Agra-383 003
4. Customs Law Manual and Customs Tariff of India – R.K.JAIN.
5. The Central Goods and Services Tax Act, 2017, No.12 of 2017 published by Authority, Ministry of Law and Justice , New Delhi, 12th April, 2017.
6. Read more at: <https://taxguru.in/goods-and-service-tax/class-appointment-power-of-sgst-cgst-officers-under-revised-model-gst-law.html>- Copyright © Taxguru.in
7. Anil Kumar Agrawal : “Analysis of Delegation of Power under GST”| Goods and Services Tax - Articles| Download PDF 05 Dec 2021
8. <https://taxguru.in/goods-and-service-tax/guidelines-launching-prosecution-cgst-act-2017.html>, Copyright © Taxguru.in

Dr. KRISHNA BANANA

LESSON-7

ADVANCE RULING, CONFISCATION AND FINE & LIABILITY TO PAY IN CERTAIN CASES

Aims and Objectives

After studying this lesson student should be able to:

- Know the concept of How to pay IGST fees for advance ruling application?
- Understand the Confiscation and Fine
- Importance of Liability to Pay in Certain Cases

Structure:

7. 1. Introduction

7.2. How to pay IGST fees for advance ruling application?

7.3. Confiscation and Fine

7.4. Liability to Pay in Certain Cases

7.5. Summary

7.6. Technical Terms

7.7. Self-Assessment-Questions

7.8. Suggested Readings

7.1. INTRODUCTION

Advance Ruling: An advance ruling is first sent to Authority for Advance Ruling (Authority). Any person unhappy with the advance ruling can appeal to the Appellate Authority for Advance Ruling (Appellate Authority). Application for Advance ruling has to be made in FORM GST ARA-01 along with Rs. 5,000. Section 96 of CGST Act, 2017 define The Authority for Advance Ruling as follows: “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.” The Acknowledgement can be downloaded by clicking the : An SMS and e-mail will be sent to the applicant on the successful filing of Advance Ruling Application. www.gst.gov.in URL. The GST Home page is displayed. 2. Login to the portal with valid credentials. 3. Dashboard page is displayed.

Advance Ruling under GST: Any advance tax ruling is a written interpretation of tax laws. It is issued by tax authorities to corporations and individuals who request for clarification of certain tax matters. An advance ruling is often requested when the taxpayer is confused and uncertain about certain provisions. Advance tax ruling is applied for: before starting the proposed activity. For example, under income tax, advance ruling is available in international taxation. This is to help non-residents ascertain the income-tax liability, plan their income-tax in advance and avoid long drawn and costly legal disputes. As per GST, the advance ruling is a written decision given by the tax authorities to an applicant on questions relating to the supply of goods/services.

7.2. HOW TO PAY IGST FEES FOR ADVANCE RULING APPLICATION?

In case of Online Information Database Access and Retrieval (OIDAR) taxpayer, fees have to be paid for Advance Ruling Application under IGST head. : For an OIDAR taxpayer, only IGST payment tab would be enabled by default and would be non-editable. The respective amount, to be paid, will be auto calculated based on selection of IGST head. GST Advance Ruling Jasraj Kuleriya Goods and Services Tax

7.2. A. Background: The Provision of Advance Rulings were made in 1993 in Income Tax Act vide Section 245N to 245R. An Advance Ruling is a written interpretation of tax laws. It is issued by Authority for Advance Ruling to corporations and individuals who request for clarification of certain tax matters. An advance ruling is often requested when the taxpayer does not have clarity about certain provisions. Advance tax ruling is applied for, before starting the proposed activity. Under GST, the advance ruling is a written decision given by the Authority for Advance Ruling to an applicant on questions relating to the supply of goods/services etc. An Applicant would like to be clear in his mind about various aspects of his venture and risks involved before he starts a new business. He would like to get clear verdict about his doubts in respect of taxation matters, before he decides to venture in the new or existing business. Otherwise, he may be exposed to certain unexpected risks which may have adverse consequences on his business. The Advance Ruling is binding on the Applicant and Department.

7.2. B. What is “Advance Ruling” under GST: “Advance Ruling” defined under Section 95 (a) of CGST Act, 2017 as follows “Advance Ruling” means a written decision provided by the Authority or, as the case may be, 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, as the case may be, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant. Application for advance ruling can be made in respect of supply ‘being under taken’. Thus, a person can apply even in respect of activity he is already doing. Application should be made by applicant with fees, stating the question on which advance ruling is sought.

7.2. C. Advantages of Advance Ruling under GST: The major advantages of advance ruling are as follows:

- i) Provide clarity in tax liability and classification of goods or service in advance in relation to an activity proposed to be undertaken by the applicant;
- ii) Reduce litigation at the early stage of ambiguity;
- iii) Initial disposal of application with solution for the applicant;
- iv) Opportunity of personal hearing can be granted to applicant;
- v) Pronounce ruling expeditiously in a transparent and reasonable manner;
- vi) Seeking advance ruling does not include much cost.

7.2. D. Matter or Question for which Advance Ruling under GST can be sought: As per Section 97 (2) of the Goods and Service Tax Act, 2017 Advance Ruling can be sought on following questions: ✓ Classification of any goods or services or both; ✓ Applicability of a notification issued under the provisions of this Act; ✓ Determination of time and value of supply of goods or services or both; ✓ Admissibility of input tax credit of tax paid or deemed to have been paid; ✓ Determination of the liability to pay tax on any goods or services or both; ✓ Whether applicant is required to be registered; ✓ 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. The concerned officer, the jurisdictional officer or an applicant aggrieved by any advance ruling pronounced under Section 98 (4) of CGST Act, 2017 may appeal to the Appellate Authority under Section 100 (1) of the CGST Act, 2017.

7.2. E. Authority for Advance Ruling under GST: Section 96 of CGST Act, 2017 define The Authority for Advance Ruling as follows: “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.” Authority for advance ruling will be constituted in each State/Union Territory. The Government shall appoint officers, as members of the Authority for Advance Ruling, not below the rank of the Joint Commissioner as per Rule 103 of CGST Rules, 2017. Procedure specified in Section 98 of CGST Act, 2017 to be followed by Authority for Advance Ruling.

7.2.F. Procedure for filing Application for Advance Ruling under GST: An Application for obtaining an advance ruling under Section 97 (1) of CGST Act shall be made on the common portal in Form GST ARA-01 and shall be accompanied by a fee of Rs. 10,000 /- i.e. Rs. 5,000 /- under CGST Act and Rs. 5,000 /- under SGST Act. Online Deposit of Fees on Common Portal. The application for advance ruling, the verification contained therein and all relevant documents accompanying such application shall be signed. Individual: individual himself or by some other person duly authorised by him HUF: a Karta or by any adult member of HUF or by the authorised signatory; Company: the Chief Executive Officer or the authorised signatory; Government or Gov. agency or local authority: an officer authorised; Firm: any partner, not being a minor or the authorised signatory; Any Other Association: any member of the association or the authorised signatory; Trust: any trustee or the authorised signatory thereof; Any other person: some person competent to act on his behalf. After submission of an application in form GST ARA-01, the authority may, after examining the application and 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 under Sec. 98 (2) of CGST Act. A copy of order made under Sec. 98 (2), for admit or reject of application, shall be sent to the applicant and the concerned officer. (a) Where an application is admitted: ◊ the authority shall pronounce its advance ruling on the question specified in the application. ◊ the Authority shall pronounce its advance ruling in writing within 90 days from the date of receipt of application (b) Where an application is not admitted: ◊ 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 ◊ No application shall be rejected unless an opportunity of hearing has been given to the applicant ◊ Where the application is rejected, the reasons for such rejection shall be specified in the order. Where the members of the Authority differ on any question. 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.

7.2. G. Procedure for payment of fees for application under GST: In order to make the payment of fee for filing an application for Advance Ruling on the common portal, the applicant has to fill his details using “Generate User ID for Advance Ruling” under “User Services”. After entering the email id and mobile number, a One Time Password (OTP) shall be sent to the email id. Upon submission of OTP, Systems shall generate a temporary ID and send it to the declared email and mobile number of the applicant. The applicant can make the payment of the fee of Rs. 5,000/- each i.e. CGST Act and SGST Act respectively on the basis of this ID. The applicant is then required to download Form GST ARA-01 and file the application with the Authority for Advance Ruling.

7.2. H. Appeal to Appellate Authority: The Appellate Authority for Advance Ruling constituted under the provisions of SGST or UGST shall be deemed to be the Appellate Authority in respect of that State or Union territory as per Section 99 of CGST Act, 2017. As per Section 101 of CGST Act, 2017, 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. Every appeal shall be filed within a period of 30 days from the date on which the ruling sought to be appealed against is communicated. The appellate authority may allow further period not exceeding 30 days if sufficient cause shown. An Appeal shall be made as follows: In Form GST ARA- 02 by an Applicant along with fees of Rs. 10,000/-. In Form GST ARA- 03 by the concerned officer or the jurisdictional officer without any fees. The Appellate Authority may, after giving the parties to the appeal or reference an opportunity of being heard, pass such order as it thinks fit, confirming or modifying the ruling appealed against or referred to. The order shall be passed within a period of 90 days from the date of filing of the appeal. 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. As per Section 101 (4) of CGST Act read with and Rule 107 of CGST Rules, 2017, A copy of the advance ruling pronounced by the Appellate Authority for Advance Ruling and duly signed by the Members shall be sent to- i. the applicant and the appellant; ii. the concerned officer of central tax and State or Union territory tax; iii. the jurisdictional officer of central tax and State or Union territory tax; and iv. the Authority

7.2. I. 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 6 months from the date of the order. 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.

7.2. J. Applicability of Advance Ruling: 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. The advance ruling shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.

7.2.K. Advance Ruling to be Void: Where the Authority or the Appellate Authority finds that advance ruling pronounced 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 Thereupon all the provisions of CGST Act or the rules made thereunder shall apply to the applicant or the appellant as if such advance ruling had never been made No order shall be passed unless an opportunity of being heard has been given to the applicant or the appellant. A copy of the order made shall be sent to the applicant, the concerned officer and the jurisdictional officer.

7.2. L. Power of Authority and Appellate Authority: The Authority or the Appellate Authority shall, for the purpose of exercising its powers regarding— inspection; enforcing the attendance of any person and examining him on oath; issuing commissions and compelling production of books of account and other records, and have all the powers of a civil court under the Code of Civil Procedure, 1908. The Authority shall be deemed to be civil court for the purpose of Section 195 of the Indian Penal Code. Every proceeding before the Authority or the Appellate Authority shall be deemed to be judicial proceedings within the meaning of Sec. 193 i. e. punishment for false evidence and Sec. 228 i. e. Intentional insult or interruption to public servant sitting in judicial proceeding, of the Indian Penal Code.

The Authority or the Appellate Authority shall, subject to the provisions of Advance Ruling, have power to regulate its own procedures.

7.2. M. Manual Filing and Process: All provisions as applicable to electronic filing will apply mutatis mutandis to manual filing also. Procedure for manual filing has been prescribed in CBE&C Circular No. 25/25/2017- GST dtd. 21.12.2017. Application shall be made in Quadruplicate in Form GST ARA-01. Clearly State the question on which the advance ruling is sought. The application shall be accompanied by a fee of Rs. 5,000/- each tax. (Fee is required to be deposited online). The application, the verification contained therein and all the relevant documents accompanying shall be signed by authorized signatory. Form and Manner of Appeal to the Appellate Authority by Applicant. Application shall be made in Quadruplicate in Form GST ARA-02. The application shall be accompanied by a fees of Rs. 10,000/-. (Fee is required to be deposited online). The application, the verification contained therein and all the relevant documents accompanying shall be signed by authorized signatory. Form and Manner of Appeal to the Appellate Authority by concerned officer or jurisdictional officer. Application shall be made in Quadruplicate in Form GST ARA-03. No fee shall be payable by the said office for filing the appeal. Application shall be signed by an concerned officer or jurisdictional officer or by an officer authorised in writing by such officer.

7.3. CONFISCATION AND FINE

Once confiscated, the goods will become the property of the government. 3 months will be given for payment of the confiscation fine after which the goods will be sold. Confiscation will not affect other punishments under the provisions of GST, i.e., all penalties and prosecutions will still be applicable. To know details about penalties under GST, please read our article. Before confiscating the goods, the tax officer shall give an option of paying a fine instead of confiscation. The minimum fine will be as per above i.e., 100% tax if the owner comes forward and 50% of the value of goods before tax if the owner does not come forward. Before confiscating the goods, the tax officer shall give an option of paying a fine instead of confiscation. The minimum fine will be as per above i.e., 100% tax if the owner comes forward and 50% of the value of goods before tax if the owner does not come forward. Maximum fine will be the market value of goods before tax. If the goods or conveyance are liable to be confiscated under the provisions of this Act, the proper officer shall give the owner of the goods an option to pay fine in lieu of confiscation. The amount of fine shall not exceed the market value of goods as reduced by the amount of tax payable thereon. Confiscation & Penalties | Section 129 | CGST ACT 2017 CA Mamta Chopra| Goods and Services Tax - It explains Section 130-Confiscation of goods or conveyances and levy of penalty and Section 131- Confiscation or penalty not to interfere with other punishments. Section 130-Confiscation of goods or conveyances and levy of penalty-

7.3.1. 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 there under 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 there under with intent to evade payment of tax; or (v) uses any conveyance as a means of transport for carriage of goods in contravention of the provisions of this Act or rules made there under 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. Analysis-This section provides for specific situations or causes leading to confiscation of goods/Conveyances. There are five precise causes for confiscation of goods and/ or conveyances specified in this

section and they are: Action Consequence Supply or receive goods in contravention of the provisions of this Act or rules made there under Resulting in actual evasion of tax Not accounting for goods Carrying a liability for payment of tax Supply of goods liable to tax Without applying for registration Contravention of the provisions of Act or rules made there under With intent to evade payment of tax Use of conveyance as a means of transport for carriage of goods In contravention of the Act or rules made there under In all the above cases, goods or conveyance shall be liable for confiscation. However, the conveyance shall not be confiscated where the owner of the conveyance proves that it is without the connivance of owner himself, his agent or person in charge of the conveyance. Further, the person shall be liable to pay penalty under section 122 of the Act.

7.3.2 Whenever confiscation of any goods or conveyance is authorized 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.

7.3.3. 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.

7.3.4. 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.

7.3.5. Where any goods or conveyance are confiscated under this Act, the title of such goods or conveyance shall thereupon vest in the Government.

7.3.6. 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.

7.3.7. 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 conveyances and deposit the sale proceeds thereof with the Government. Analysis- If the goods or conveyance are liable to be confiscated under the provisions of this Act, the proper officer shall give the owner of the goods an option to pay fine in lieu of confiscation. The amount of fine shall not exceed the market value of goods as reduced by the amount of tax payable thereon.

7.3.8. Amount of penalty as leviable under section 129(1): However, at the same time aggregate of fine and penalty leviable shall not be less than the amount of penalty as leviable under section 129(1). While section 129 is applicable on transporters also, section 130 primarily covers the owner. Where the conveyance is used for transportation of goods or passengers on hire, the owner of the conveyance shall be given an option to pay in lieu of confiscation of the conveyance a fine equal to amount of tax payable on the goods transported on his conveyance. It is worthwhile to note that the amount of fine payable is in addition to any tax, penalty and other charges payable on confiscated goods or conveyance. The order for confiscation cannot be issued without giving the person an opportunity of being heard. The title of the confiscated goods or conveyance shall be vested upon the Government. If the proper officer is satisfied that the confiscated goods/ conveyance are not required for

any other proceedings under the Act, then he shall after giving reasonable time not exceeding 3 months to pay fine in lieu of confiscation, dispose the goods and deposit the sale proceeds with the Government.

7.3.9. Section 131- Confiscation or penalty not to interfere with other punishments- Without prejudice to the provisions contained in the Code of Criminal Procedure, 1973 (2 of 1974), 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. Analysis– This section provides that in addition to confiscation of goods or penalty already imposed, all/ any other proceedings may also be initiated or continued under the GST law or any other law, as applicable. This could be prosecution, arrest, cancellation of registration etc., as applicable and provided for the relevant non-compliance. Therefore, for the same offence both penalty and punishment can be levied.

7.3.10. Section 130 – Confiscation of Goods or Conveyances and Levy of Penalty- CGST Act 2017: (1) 1[Where] any person- (i) supplies or receives any goods in contravention of any of the provisions of this Act or the rules made there under 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 there under 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 there under 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 2[penalty equal to hundred per cent. of the tax payable on such goods]. 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[****]

(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.

1. Substituted (w. e. f. 1st January, 2022 vide Notification No. 39/2021-C.T., dated 21st December, 2021) by s. 118(a) of The Finance Act, 2021 (No. 13 of 2021) dated 28th March, 2021 for “Notwithstanding anything contained in this Act, if”.

2. Substituted (w. e. f. 1st January, 2022 vide Notification No. 39/2021-C.T., dated 21st December, 2021) by s.118(b) of The Finance Act, 2021 (No. 13 of 2021) dated 28th March, 2021 for “amount of penalty leviable under sub-section (1) of section 129”.

3. Omitted (w. e. f. 1st January, 2022 vide Notification No. 39/2021-C.T., dated 21st December, 2021) by s. 118(c) of The Finance Act, 2021 (No. 13 of 2021) dated 28th March, 2021 for “(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.”

7.3.11. Section 131 – Confiscation or penalty not to interfere with other punishments CGST ACT 2017

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.

7.3.12. Punishment for certain offences- CGST ACT 2017 /Section 132 : (1) Whoever commits any of the following offences, namely:

1 (1) whoever commits, or causes to commit and retain the benefits arising out of, any of the following offences” 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;

(c) Avails input tax credit using such invoice or bill referred to in clause (b);

2(c) “avails input tax credit using such invoice or bill referred to in clause (b) or fraudulently avails input tax credit without any invoice or bill;”

(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, fraudulently avails input tax credit or fraudulently obtains refund

3 (e) evades tax, 3[****] 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;

(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 there under;

(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 there under;

(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 there under 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 non- 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. ← **Section 131**
Section 133
→

1. Substituted vide Notification No. 92/2020-C.T., dated 22-12-2020 for “Whoever commits any of the following offences” by s.127 of the Finance Act, 2020 (No. 12 of 2020) -Brought into force w. e. f. 01st January, 2021.

2. Substituted vide Notification No. 92/2020-C.T., dated 22-12-2020 for ” (c) avails input tax credit using such invoice or bill referred to in clause (b); ” by s.127 of The Finance Act, 2020 (No.12 of 2020) – Brought into force w. e. f. 01st January, 2021.

3. Omitted vide Notification No. 92/2020-C.T., dated 22-12-2020 “, fraudulently avails input tax credit ” by s.127 of The Finance Act, 2020 (No. 12 of 2020) – Brought into force w. e. f. 01st January, 2021.

7.4. LIABILITY TO PAY IN CERTAIN CASES

Under GST Law, liability to pay tax has been bestowed upon 2 classes of persons: (a) Forward Charge Mechanism (FCM) wherein the Supplier of Goods and Services is mandated to pay tax to the Government. (b) Reverse Charge Mechanism (RCM) wherein the Recipient of specified goods and services is mandated to pay tax to the Government. In case of continuation of business: The legal representative or any person carrying on the business of

the deceased person shall be liable to pay GST arrears. In case of discontinuation of business: The legal representative shall be liable to pay GST arrears out of the assets of the deceased or to the extent of assets inherited by him. Notwithstanding anything contained 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 firms shall, jointly and severally, be liable for such payment

7.4.1. Liability in certain cases under GST (Section 85 to 94):

Section 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 or 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 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.

Example 1: ABC Industries, a registered person under GST, has sold whole of its business to XYZ Manufactures, tax, interest or any penalty under GST Law (determined before sale but still unpaid) is due from ABC Industries upto the time of such transfer. ABC Industries & XYZ Manufacture will be, liable, jointly and severally, wholly or to extent of such transfer to pay above stated amount of tax, interest or penalty.

Example 2: ABC Pvt. Ltd. Crosses threshold of Rs. 20 Lakhs and become liable for registration (i.e., taxable person) in 2nd feb, 2018. However, it does not take registration for 7 months. Afterwards, it transfers his business to DEF Pvt. Ltd. ABC Pvt. Ltd. & DEF Pvt. Ltd. Both are, jointly and severally, liable to discharge pre transfer tax liability.

Section 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. Example 1: let say, ABC Manufactures Ltd. engages Raghav & Sons as an agent to sell goods on its behalf. Raghav & Sons sells goods to Krishna Associates on behalf of ABC manufacture Ltd. ABC Manufactures Ltd. & Raghav & Sons shall, jointly and severally, be liable to pay GST payable on such goods.

Section 87 : Liability in case of Amalgamation or Mergers of Companies (1) When two or more companies are amalgamated or merged in pursuance of an order or court or of Tribunal or otherwise and the order is to take effect from a date earlier to 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 date of the order, then such transaction 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 purpose of this act, the said two or more companies shall be treated as distinct companies for the period upto the date of the said order and, the registration certificate of said companies shall be cancelled with effect from the date of the order. Example 1: let say, A ltd. And B ltd. Merges together to form MNO Ltd. The date of the order of the NCLT is 1st Dec, 2017. However the merger has been ordered to be effected from 1st Oct, 2017. Any supplies between A ltd. And B Ltd.

Between the period from 1st Oct, 2017 to 30th Nov., 2017 will be taxable in the hands of the respective companies. Simply putting the two companies till the date of order, even though the merger was to take effect at an earlier date. It would be as if the merger has not taken place till the date of the order. Registration of A Ltd. And b Ltd. shall be cancelled with effect from 1st Dec, 2017 (and not from 1st Oct, 2017). From 1st Dec, 2017 and onwards the two companies will be considered as a single company.

Section 88: Liability in case of company in Liquidation (1) When any company is being wound up whether under the order of the court or tribunal or otherwise, every person appointed as receiver of any assets of the 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 the 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) Where the PRIVATE COMPANY is being 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 the 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 any duty on his part in relation to the affairs of the company.

Section 89: Liability of Director 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 the 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 attribute to any gross neglect, misfeasance or breach of any 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 of both for any period during which such company was a private company cannot be recovered before such conversion, then, nothing contained in the 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 to 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. Example 1: say, ABC Pvt. Ltd. Incorporated on 1st Jan, 2015 and converted into a public company on 7th Aug, 2017 then, the tax, interest or penalty in respect of any supply of goods or services or both for any period during 1st Jan, 2015 to 6th Aug, 2017 any person who was the director before such conversion, nothing contained in sub section (1) shall apply to any person who was a director of such ABC Pvt. Ltd. Co. in relation to any tax, interest or penalty in respect of such supply of goods or services or both of such private company.

Section 90: Liability of Partners of firm to pay Tax Notwithstanding anything contained 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 firms shall, jointly and severally, be liable for such payment Provided that where any partner retire 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 upto 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. Example 1: A firm having partners with the name of Mr. A, Mr. B & Mr. C where partner Mr. A, being a retired partner of such firm, then Mr. A or such firm shall intimate of such retirement to the commissioner within one month from date of retirement otherwise the liability of such Mr. A may continue until the date on which such intimation is received by the commissioner, though the liability of Mr. A will remain to the date of his retirement if he submit his retirement intimation to the commissioner within the prescribed time.

Section 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 guardians, trustee or agent in such like manner and to 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 there under shall apply accordingly.

Section 92: Liability of court of wards, etc. Where the Estate or any portion of the Estate of a taxable person owing a business in respect of which any tax, interest or penalty is payable under this act is under the control of the courts 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 or 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.

Section 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 is 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 is 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 Associates of Persons and the property of the Hindu undivided family or Artificial of Person 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 upto the time of the partition, whether such tax, interest or penalty has been determined before 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 tax, interest or penalty due from the firm under this act upto 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 a guardian of a ward on whose behalf the business is carried on by the guardian ; or (b) Is a trustee who carries on the business under a trust for a beneficiary, then, If the guardianship or trust is terminated, the ward or the beneficiary shall be, liable to pay tax, interest or penalty due from the taxable person upto the time of termination of the guardianship or trust, whether such tax, interest or penalty has been determined before the termination of guardianship or trust but has remained unpaid or is determined thereafter.

Section 94: Liability in certain cases (1) Where a taxable person is a firm or an association of person of 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 upto the date of such discontinuance may be determined as if no such discontinuance has 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 to 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 provision 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 person, the partners of the firms or members of association, as it existed before and as it exists after the reconstitution shall, without prejudice to the provisions of sec. 90, jointly and severally, be liable to pay tax, interest or penalty due from such firm or an association for any period before its reconstitution. (3) The provision of sub section (1) shall, so far as may be, apply where a taxable person, being a firm or AOP is dissolved or where the taxable person, being a HUF, has effected partition with respect to the business carried on by it and accordingly references in that sub section to discontinuance shall be construed as reference to dissolution or to partition. I hope that my member will correct me if there is any err. For further any query, you can reach me at poojagodrya@gmail.com

7.5. SUMMARY

An advance ruling is an opinion or decision under the GST law given by Authority of Advance Rulings (AAR). It is issued in response to an advance ruling application in form ARA-01, filed either by a GST registered person or any unregistered person. Such persons may need clarification on the applicability of GST provisions or classification of goods/services under GST. The applicants may also appeal against this ruling, before an Appellate Authority for Advance Rulings (AAAR). Confiscation is the taking away of the property of another, usually by the state. In relation to the acquisition of land and the like for state projects, most systems have procedures allowing for appeal and always with compensation. Customs and Excise authorities can confiscate certain goods where the proper duty has not been paid. In criminal cases, confiscation or forfeiture is now much more common than once was the case, with statutory powers being available to penalize serious criminals in a much more effective way than handing out sentences of imprisonment. So it is now possible in the UK for drug dealers to lose the houses bought with the proceeds of their trade and for the getaway car in a bank robbery to be taken and sold. There is, of course, no compensation in such cases, but there is usually a right of appeal. European HUMAN RIGHTS LAW (see EUROPEAN COURT OF HUMAN RIGHTS) means that the right to property and if appropriate the right to a fair trial or hearing are taken into account. The Judicial Committee of the Privy Council has approved confiscation legislation which sets up a reverse burden of proof in non-criminal confiscation proceedings. After studying this lesson student should be able to: Know the concept of How to pay IGST fees for advance ruling

application? -Understand the Confiscation and Fine- Importance of Liability to Pay in Certain Cases

7.6. TECHNICAL TERMS

1. **AAR:** Authority of Advance Rulings
2. **AAAR:** Appellate Authority for Advance Rulings
3. **Confiscation:** To seize (private property) for the public treasury, usually as a penalty. To confiscate is for an authority figure to take something away, often as a penalty. An example of confiscate is to take a student's cell phone after they used it during class time. To use one's authority to lay claim to and separate a possession from its holder
4. **Compensation:** Compensation noun something (such as money) given or received as payment or reparation (as for a service or loss or injury) compensation noun (psychiatry) a defense mechanism that conceals your undesirable shortcomings by exaggerating desirable behaviors recompense, compensation noun the act of compensating for service or loss or injury

7.7. SELF-ASSESSMENT-QUESTIONS

1. Discuss about How to pay IGST fees for advance ruling application?
2. Define Confiscation and Fine
3. Explain regarding Liability to Pay in Certain Cases
4. Write about AAR and AAAR?

7.8. SUGGESTED READINGS

1. Goods and Services Tax in India- Notifications on different dates
2. GST Bill 2012
3. The Central Goods and Services Tax Act, 2017, No.12 of 2017, Published by Authority, Ministry of Law and Justice, New Delhi, 12 April, 2017
4. Background Material on Model GST Law, Sahitya Bhavan Publications, Hospital Road, Agra-383 003
5. Customs Law Manual and Customs Tariff of India – R.K.JAIN.
6. The Central Goods and Services Tax Act, 2017, No.12 of 2017 published by Authority, Ministry of Law and Justice , New Delhi, 12th April, 2017.
7. Read more at: <https://taxguru.in/goods-and-service-tax/class-appointment-power-of-sgst-cgst-officers-under-revised-model-gst-law.html>- Copyright © Taxguru.in
8. Anil Kumar Agrawal : “Analysis of Delegation of Power under GST”| Goods and Services Tax - Articles| Download PDF 05 Dec 2021
9. <https://taxguru.in/goods-and-service-tax/liability-cases-gst-section-85-94.html>
10. <https://taxguru.in/goods-and-service-tax/gst-advance-ruling.html>
11. <https://taxguru.in/goods-and-service-tax/confiscation-penalties-section-129-cgst-act-2017.html>

Dr. KRISHNA BANANA

LESSON-8

CENTRAL VS STATE GST POWERS & ROLE OF GST COUNCIL

Aims and Objectives

After studying this lesson student should be able to:

- Know the concept of Centre and State level Taxes are incorporated into the GST
- Understand the Issues Arisen (or) Unresolved on GST & Timeline of GST
- Importance and role of GST Council

Structure:

8.1. Introduction

8.2. The centre and state level Taxes are incorporated into the GST

8.3. Benefits of GST

8.4. Issues Arisen (or) Unresolved on GST

8.5. Timeline of GST

8.6. Goods and Service Tax Network (or GSTN)

8.7. Power of Central (or State) Government to make rules under GST

8.8. Supreme Court Says Centre; States Have Equal Powers to Make GST-Related Laws

8.9. GST Council

8.10. GST Council Members: 33 Members Governing GST

8.11. Summary

8.12. Technical Terms

8.13. Self –Assessment Questions

8.14. Suggested Readings

8.1. INTRODUCTION

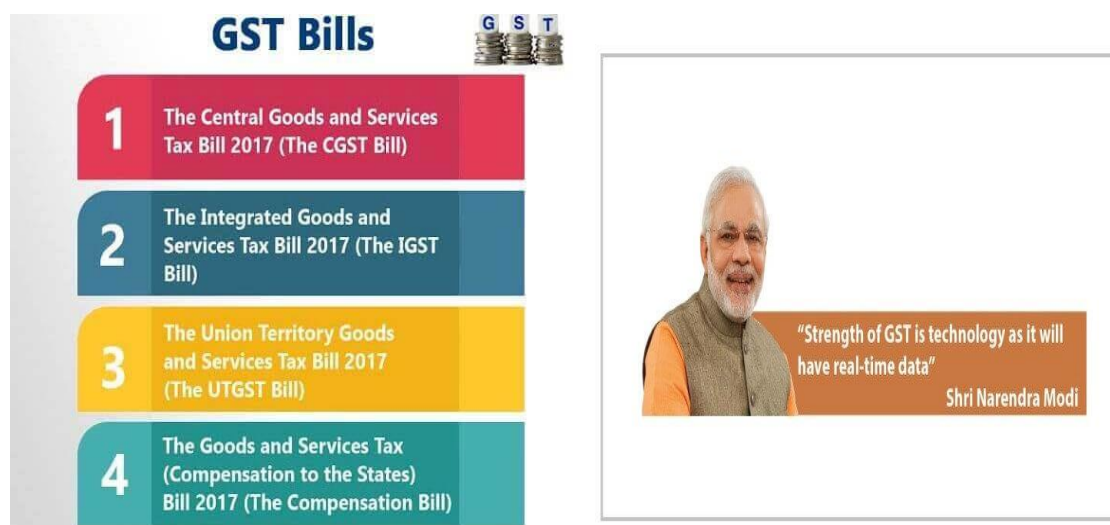
It is a destination-based taxation system. ii) It has been established by the 101st Constitutional Amendment Act. iii) It is an indirect tax for the whole country on the lines of “One Nation One Tax” to make India a unified market. iv) It is a single tax on the supply of Goods and Services in its entire product cycle or life cycle i.e. from manufacturer to the consumer. v) It is calculated only in the “Value addition” at any stage of goods or services. vi) The final consumer will pay only his part of the tax and not the entire supply chain which was the case earlier. vii) There is a provision of the GST Council to decide upon any matter related to GST whose chairman is the finance minister of India.

The Centre will levy and collect the Central GST: i. States will levy and collect the State GST on the supply of goods and services within a state. ii. The Centre will levy the Integrated GST (IGST) on the interstate supply of goods and services, and apportion the state’s share of tax to the state where the good or service is consumed. iii. The 2016 Act requires Parliament to compensate states for any revenue loss owing to the implementation of GST.

8.2. CENTRE LEVEL GST AND STATE LEVEL GST

a) At the State Level GST: i. State Value Added Tax/Sales Tax, ii) Entertainment Tax (Other than the tax levied by the local bodies), iii) Octroi and Entry Tax, iv) Purchase Tax, v) Luxury Tax, vi) Taxes on lottery, betting, and gambling

b) At the Central level GST: i) Central Excise Duty, ii) Additional Excise Duty, iii) Service Tax, iv) Additional Customs Duty (Countervailing Duty), v) Special Additional Duty of Customs.



8.2.1. Supporting Laws to implement GST: For the implementation of GST, apart from the Constitution Amendment Act, some other statutes are also necessary. Recently 5 supporting laws to the GST were recommended by the council. 4 of the bills should be passed by the parliament, while the 5th one should be passed by respective state legislatures. The details are given below.

1. The Central Goods and Services Tax Bill 2017 (The CGST Bill).
2. The Integrated Goods and Services Tax Bill 2017 (The IGST Bill).
3. The Union Territory Goods and Services Tax Bill 2017 (The UTGST Bill).
4. The Goods and Services Tax (Compensation to the States) Bill 2017 (The Compensation Bill).
5. And a state GST will be passed by the respective state legislative assemblies.

8.3. BENEFITS OF GST

1) For Central and State Governments

a) Simple and Easy to administer: Because multiple indirect taxes at the central and state levels are being replaced by a single tax "GST". Moreover, backed with a robust end-to-end IT system, it would be easier to administer.

b) Better control on leakage: Because of better tax compliance, reduction of rent-seeking, transparency in taxation due to IT use, and an inbuilt mechanism in the design of GST would incentivize tax compliance by traders.

c) Higher revenue efficiency: Since the cost of the collection will decrease along with an increase in the ease of compliance, it will lead to higher tax revenue.

2) Benefits of GST: For the Consumer

a) The single and transparent tax will provide a lowering of inflation.

b) Relief in overall tax burden.

c) Tax democracy that is luxury items will be taxed more and basic goods will be tax-free.

3) Benefits of GST: For the Business Class

a) The ease of doing business will increase due to easy tax compliance.

- b) Uniformity of tax rate and structure, therefore, better future business decision making and investments by the corporate.
- c) Removal of cascading effects of taxes.
- d) Reduction in transactional costs will lead to improved competitiveness.
- e) Gain to the manufacturers and exporters.
- f) It is expected to raise the country's GDP by 2% points.

8.4. ISSUES ARISEN (OR) UNRESOLVED on GST

a) Not all items are covered: Taxation for certain items such as Alcohol, Tobacco etc. are still not under the GST domain. States argue that including them would hamper their revenue and they would suffer a huge resource. However, some experts say that the real reason is the nexus of politicians with some business class and high-profile lobbying. Further, the Finance minister of India has said in the parliament that the consensus to include alcohol and tobacco under the GST regime is possible in foreseeable future.

b) Decision criteria for the tax bracket: There are apprehensions that how to decide about the items and the criteria that which item will fall into which tax bracket. It may lead to lobbying. To this, the Finance minister has said that the decision will be taken by the GST Council only after due diligence and most probably by consensus.

c) Multiple tax rates and brackets: The philosophical idea that GST means "One Nation one Tax" is currently diluted due to multiple tax rates and brackets. To this, the Finance minister has said that since the target consumer of goods and services have different capabilities and therefore there must be a system similar to the democratic lines where higher value consumer pays more taxes.

d) Power to impose tax taken away by Central Government from the Parliament: The Central GST Bill, 2017 allows the central government to notify CGST rates, subject to a cap. This implies that the government may change rates subject to a **cap of 20%**, without requiring the approval of Parliament. Under the Constitution, the power to levy taxes is vested in Parliament and state legislatures. Though the proposal to set the rates through delegated legislation meets this requirement, the question is whether it is appropriate to do so without prior parliamentary scrutiny and approval.

e) Confusion regarding the location of consumption: Under GST, both state and the Centre can tax the services based on their **location of consumption**. Now the confusion arises since the general rule to determine the location of the recipient is his location or address on record; there are specific rules for various services such as telecom, property, transportation, etc. This means that while a service may be consumed across multiple states, the tax revenue would be attributed to the state where the recipient is registered or his office is located. This could lead to higher taxes attributed to states that have more registered offices. **For example**, suppose a company is located in Bangalore and advertises its products in the Kolkata edition of a newspaper, which has its registered office in Delhi. In this case, one may argue that the service is being finally consumed in Kolkata. However, as the recipient of services is in Bangalore, the tax would accrue to Karnataka.

f) Anti-Profitteering Clause: The government is planning to set up an authority to see if any reduction in tax rates after GST is passed on to the consumer by companies or not. The industry and businesses are not taking this idea kindly and they see it as a backdoor entry of inspector raj. Experts say that prices should be market determined and no government authority has the business of deciding prices for goods and services.

g) Confusion regarding the control over taxation: To avoid dual control, the GST council has reached a compromised formula. 90 percent of tax assesses with an annual turnover of Rs 1.5 crore or less, will be assessed by states and the rest by the Centre. For those with a turnover of over Rs 1.5 crore, the states and the Centre will share it equally. However, this

'solution' has its own set of issues. For example, if an entity with a turnover of less than Rs 1.5 crore in one year, posts a turnover of Rs 1.5 crore in the following financial year, who would be the new authority to take over the assessment? And, how will the existing investigations, if any, against the entity be addressed, and by whom? "There are a lot of procedural issues, and if these issues are not addressed properly, they would lead to litigations.

h) The issue of casual taxable person: If a person registered in one state moves to another state for a short period for some business transaction – say to participate in a fair or exhibition, then that person would have to get himself registered in that state for that period.

8.5. TIMELINE OF GST

- i. **1986:** Vishwanath Pratap Singh, Finance Minister in Rajiv Gandhi's government, proposed in the Budget a major overhaul of the excise taxation structure. This was similar to GST in a theoretical sense.
- ii. **2000:** Initiating discussions on GST, Vajpayee government appoints an Empowered Committee headed by the then finance minister of West Bengal Asim Gupta.
- iii. **2004:** Vijay Kelkar, then advisor to the Finance Ministry, recommends GST to replace the existing tax regime.
- iv. **Feb 28, 2006: GST appears in the Budget speech for the first time.** Finance Minister Chidambaram sets an ambitious task of implementing GST by April 1, 2010.
- v. **Feb 28, 2007:** Chidambaram said in his Budget speech that the Empowered Committee of finance ministers will prepare a road map for GST.
- vi. **April 30, 2008:** The Empowered Committee submits a report titled 'A Model and Roadmap Goods and Services Tax (GST) in India' to the government.
- vii. **Nov 10, 2009:** Empowered Committee submits a discussion paper in the public domain on GST welcoming debate.
- viii. **Feb 2010:** Government launches project for computerisation of commercial taxes. Finance Minister Pranab Mukherjee defers GST to April 1, 2011.
- ix. **March 22, 2011:** Constitution Amendment Bill (115th) to GST introduced in the Lok Sabha
- x. **March 29, 2011:** Bill referred to Standing Committee on Finance.
- xi. **Nov 2012:** Finance minister and state ministers decide to resolve all issues by Dec 31, 2012.
- xii. **Feb 2013:** Declaring the government's resolve to introduce GST, the finance minister makes provisions for compensation to states in the Budget.
- xiii. **Aug 2013:** The standing committee submits a report to Parliament suggesting improvements. But the bill lapsed as the 15th Lok Sabha was dissolved.
- xiv. **Dec 18, 2014: Cabinet approval for the Constitution Amendment Bill (122nd) to GST.**
- xv. **Dec 19, 2014:** The Amendment Bill (122nd) in the Lok Sabha
- xvi. **May 6, 2015: The Amendment Bill (122nd) passed by the Lok Sabha.**
- xvii. **May 12, 2015:** The Amendment Bill presented in the Rajya Sabha
- xviii. **May 14, 2015:** The Bill forwarded to a joint committee of Rajya Sabha and Lok Sabha
- xix. **Aug 2015:** Government fails to win the support of the Opposition to pass the bill in the Rajya Sabha where it lacks sufficient numbers.
- xx. **Aug 3, 2016: Rajya Sabha passes the Constitution Amendment Bill by a two-thirds majority.** Note: GST constitutional amendment bill needs to **pass by at least**

50% of state legislatures to be implemented. Assam is 1st State to pass the GST bill.

xxi. **1 July 2017:** GST to be applicable across India.

8.6. GOODS AND SERVICE TAX NETWORK (OR GSTN)

The Goods and Service Tax Network (or GSTN) is a non-profit, non-government organization. It will manage the entire IT system of the GST portal, which is the mother database for everything GST. The government will use this portal to track every financial transaction and provide taxpayers with all services – from registration to filing taxes and maintaining all tax details.

8.6.1. Structure of GSTN: Private players own a 51% share in the GSTN, and the government owns the rest. The authorized capital of the GSTN is Rs 10 crore (US\$1.6 million), of which 49% of the shares are divided equally between the Central and State governments, and the remaining is with private banks. The GSTN has also been approved for a non-recurring grant of Rs 315 crores. The contract for developing this vast technological backend was awarded to Infosys in September 2015. The GSTN is chaired by Mr Navin Kumar, an Indian Administrative Service servant (1975 batch), who has served in many senior positions with the Govt. of Bihar and the Central Govt.

Shareholder	Shareholding
Central Government	24.5%
State Governments & EC	24.5%
HDFC	10.0%
HDFC Bank	10.0%
ICICI Bank	10.0%
NSE Strategic Investment Co	10.0%
LIC Housing Finance Ltd	11.0%
Total	100%

- GSTN is registered as a **not-for-profit company** under the Companies Act.
- It has been formed to set up and operate the information technology backbone of the GST.
- While the Central (24.5%) and the state (24.5%) governments hold a combined stake of 49%, the remaining 51% stake is divided among five financial institutions—LIC Housing Finance with 11% stake and ICICI Bank, HDFC, HDFC Bank and NSE Strategic Investment Corporation Ltd with 10% stake each.
- GSTN had awarded Infosys Ltd the contract to develop the hardware and software for GST.
- The idea behind GSTN was to set up an entity that is equidistant from both the Central government and the state governments, as it will advise both the Centre and the states on the information technology network.

8.6.2. Controversy around GSTN: It is argued by some as a private company and therefore not under government control. It may lead to a breach of tax data into private hands and manipulation of the same for the advantage of some corporate. To this allegation, the Finance minister replied in the parliament that this arrangement was decided by the empowered committee of the previous government and the present government has endorsed it by considering the fact that private professionals are required for a such a high-octane system. Further, he said that if in future there seems to be any problem with the current structure then it can be changed through the GST Council debate and discussion.

Further, the GSTN website clarifies that the strategic control over GSTN is with the government given the sensitivity of the role of GSTN and the information that would be

available to it. The strategic control of the government over GSTN is ensured through measures such as the composition of the board, mechanism of special resolution and shareholders agreement, induction of government officers on deputation and agreements between GSTN and governments.

8.6.3. Salient Features of the GSTN: The GSTN is a complex IT initiative. It will establish a uniform interface for the taxpayer and also create a common and shared IT infrastructure between the Centre and States.

a) Trusted National Information Utility: The GSTN is a trusted National Information Utility (NIU) providing a reliable, efficient and robust IT backbone for the smooth functioning of GST in India.

b) Handles complex transactions: GST is a destination-based tax. The adjustment of IGST (for inter-state trade) at the government level (Centre & various states) will be extremely complex, considering the sheer volume of transactions all over India. A rapid settlement mechanism amongst the States and the Centre will be possible only when there is a strong IT infrastructure and service backbone which captures, processes and exchanges information. Please read our article to know more about how the Centre and the States will settle IGST.

c) All information will be secure: The government will have strategic control over the GSTN, as it is necessary to keep the information of all taxpayers confidential and secure. The Central Government will have control over the composition of the Board, mechanisms of special resolution and shareholders agreement, and agreements between the GSTN and other state governments. Also, the shareholding pattern is such that the government shareholding of 49% is far more than that of any single private institution.

8.6.4. Functions of GSTN: GSTN is the backbone of the common portal, which is the interface between the taxpayers and the government. The entire process of GST is online, starting from registration to the filing of returns. It has to support about 3 billion invoices per month and the subsequent return filing for 65 to 70 lakh taxpayers. The GSTN will handle: i) Invoices; ii) Various returns; iii) Registrations; iv) Payments & Refunds

8.6.5. What is the GSTIN?: The Goods and Service Tax Identification Number (GSTIN) is the unique number each taxpayer will receive once registered on the common portal. It is based on a taxpayer's PAN. For more details, please read our article on GSTIN.

8.6.6. How can Clear Tax help you? Clear Tax GST is user-friendly, easy-to-use software. It is a cloud-based software (which eliminates the need to download) that can easily be integrated with all existing accounting software. All you need to do is upload or manually enter your invoices. The software will automatically generate your GST returns and point out any errors in your invoices. It will also auto-reconcile your returns with those of your buyers and sellers and highlight any discrepancies. Once you have verified your returns, simply click on submit, and your return will be filed on the common portal through our GSPs. If you are worried about issuing GST-compliant invoices, please use the ClearTax GST billing software, which will help you to generate GST-compliant invoices in no time.

8.7. POWER OF CENTRAL (OR STATE) GOVERNMENT TO MAKE RULES UNDER GST

The Central Government (or the State Government) may, on the recommendation of the Council, make rules, including rules conferring the power to issue notifications with retrospective effect under those rules, to carry into effect the purposes of this Act. In particular, and without prejudice to the generality of the foregoing power, such rules may —

1. Provide for the date for determination of rate of tax and the place of supply of goods or services or both;

2. Having regard to the normal practice in the supply of goods or services, define or specify the kinds of trade discount to be excluded from the value under section 15 including the circumstances in which and the conditions subject to which such discount is to be so excluded;
3. Provide for determining the value of taxable supplies in the situations mentioned under section 15;
4. Provide, subject to such conditions as may be prescribed, for the grant of input tax credit of tax paid on the input supplies of goods or services used in or in relation to the providing of the output taxable supplies of goods or services, and the manner of utilization of such credit;
5. Provide for the lapsing of input tax credit lying unutilized, in the circumstances as may be specified in the rules;
6. Provide for withdrawal of facilities or imposition of restrictions (including restrictions on utilisation of input tax credit) on taxable person or suspension or revocation of registration of taxable person, for evasion of tax or misuse of input tax credit;
7. Provide, subject to such conditions as may be prescribed, for the carrying forward of the unutilized balances of Cenvat credit of the duties of excise and the service tax, under the Cenvat Credit Rules 2004, (or of VAT credit under the state VAT credit rules) lying with the taxable persons on the date of their switching over to GST;
8. Specify the persons who shall get themselves registered under section 23 and the time, manner and form in which application for registration shall be made;
9. Provide for the manner of verification of application and issue of registration under the Act and the fees, if any, to be charged therefor;
10. Provide for the situations and manner of grant of deemed registration under the Act;
11. Provide for the manner of migration, amendment, surrender, revocation, suspension, cancellation of registration under the Act;
12. Provide for the assessment and collection of tax, the authorities by whom functions under the Act are to be discharged, the issue of notices requiring payment, the manner in which tax shall be payable, and the recovery of tax not paid;
13. Impose on taxable persons or other persons as may be specified, the duty of furnishing information, maintaining records and filing returns, and may also prescribe the nature of such information and the form of such records and returns, the particulars to be contained therein, and the manner in which they shall be verified;
14. Provide for the form, manner and frequency of the returns to be furnished and the late fee for delayed furnishing of return under relevant section;
15. Provide for charging or payment of interest under the various provisions of the Act;
16. Provide for the detention or attachment of goods, plant, machinery or material and other movable or immovable properties for the purpose of exacting the tax on taxable supplies in respect of which breaches of the Act or rules made thereunder have been committed and the disposal of things so detained or attached or confiscated;
17. Authorise and regulate the compounding of offences against, or liabilities incurred under the Act or the rules made there under;
18. Provide for the amount to be paid for compounding and the manner of compounding of offences under section 97;
19. Provide for publication, subject to such conditions as may be specified, the names and other particulars of persons found guilty of contravention of any provision of the Act or of any rule made there under;
20. Provide for the manner of recovery of any amount due to the Central Government (or state government) under section 72;
21. Authorise and regulate the inspection and audit of business premises and provide for the taking of samples, and for the making of tests, of any substance produced therein, and for the

inspection or search of any place or conveyance used for the production, storage, sale, supply or transport of goods, and so far as such inspection or search is essential for the proper levy and collection of the tax imposed by the Act, of any other taxable supply of goods or services;

22. Specify the form and manner in which application for refund shall be made under section 48;

23. Provide for the manner in which amounts shall be credited to the Consumer Welfare Fund, their utilization, and the form in which the accounts and records relating to the Fund shall be maintained;

24. Specify the forms in which appeals, applications and memoranda of cross objections shall be filed and verified under Chapter 21 of the Act;

25. Provide for the qualifications and the manner of appointment of the National President, the State President, and the Members of the Appellate Tribunal under section 100 of the Act, and other matters related or incidental thereto;

26. Regulate in such manner as the Central Government / State Government thinks fit, the movement of supplies from any part of India to any other part thereof;

27. Regulate the removal of taxable supplies of goods from the place where produced, stored or manufactured or subjected to any process of production or manufacture and their transport to or from the premises of a registered person, or a bonded warehouse, or to a market;

28. Provide for the appointment, licensing, management and supervision of bonded warehouses and the procedure to be followed for entry of goods into such warehouses and clearance of goods there from;

29. Provide for the distinguishing of supply of goods which have been manufactured after registration, of materials which have been imported, and of supply of goods on which tax has been paid, or which are exempt from tax under this Act, or any other class of goods as may be specified in such rules;

30. Require that taxable supplies of specified goods shall not be made except in prescribed containers, bearing a banderol, stamp or label of such nature and affixed in such manner as may be prescribed;

31. Provide for the grant of a rebate of the tax paid on supply of goods or services which are exported out of India or shipped for consumption on a voyage to any port outside India including interest thereon;

32. Provide for rebate of tax paid or payable on the taxable supply of services used as input services in the supply of goods or services exported out of India under section 48;

33. Provide for the charging of fees for the examination of goods intended for export out of India and for rendering any other service by a GST Officer under this Act or the rules made there under;

34. Authorize the Board (or competent authority) or officers of GST, as the case may be, appointed for the purposes of this Act to provide, by written instructions, for supplemental matters arising out of any rule made by the Central Government (or the State Government) under this section;

35. Provide for the manner of provisional attachment of property under section 77;

36. Make provisions for determining export of taxable supply of services;

37. Provide for grant of exemption to, or rebate of tax paid on, taxable supply of services which are exported out of India;

38. Provide for manner of administering of payment of taxes under the compounding of tax;

39. Provide for dealing with situations where goods are returned;

40. Provide for specifying the details to be given in the invoices, the maintenance of accounts, the furnishing of audit reports, and matters related thereto;

41. Provide for the qualifications and the manner of appointment of the Advance Ruling authority under section 114 of the Act, and other matters related to functioning of the authority;
42. Provide for the qualifications of tax return preparers, tax practitioners and authorized representatives under various provisions of the Act, the manner of their selection or appointment or nomination, their codes of conduct, and other matters related or incidental thereto;
43. Provide for matters relating to tax deducted at source and tax collected at source;
44. Provide for matters covered by Chapter 27;
45. Provide for the suspension of certain facilities admissible under this Act or the rules made there under in case of repeat violations of conditions and restrictions as may be prescribed;
46. Provide for manner of conduct of audit of registered taxable person under Chapter 16; and
47. Any other matter related to administering or enforcing the provisions of the Act. Ø The power to make rules conferred by this section shall on the first occasion of the exercise thereof 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 Chapter come into force. Ø In making rules under this section, the Central Government (or State Government) may provide that any person committing a breach of any rule shall, where no other penalty is provided by the Act, be liable to a penalty not exceeding ten thousand.

8.8. SUPREME COURT SAYS CENTRE, STATES HAVE EQUAL POWERS TO MAKE GST RELATED LAWS

i. Article 246A - Special Provision for GST: **a.** This Article gives power to the Parliament and the respective State Legislatures to make laws on GST respectively imposed by each of them. **b.** However, the Parliament of India is given the exclusive power to make laws with respect to inter-state supplies (IGST). **c.** Further, the article excludes some products (Petroleum Crude, High-Speed Diesel, Motor Spirit, Natural Gas, Aviation Turbine Fuel) from the scope of GST until recommended by the GST Council.

ii. Article 269A - Levy and Collection of GST for Inter-State Supply:

a. While Article 246A gives the Parliament the exclusive power to make laws with respect to inter-state supplies, the manner of distribution of revenue from such supplies between the Centre and the State is covered in Article 269A.

b. It allows the GST Council to frame rules in this regard.

c. Import of goods or services will also be called inter-state supplies. This gives the Central Government the power to levy IGST on import transactions.

iii. Article 279A - GST Council:

a) This Article gives power to the President of India to constitute a joint forum of the Centre and States called the GST Council, consisting of the – **b)** Union Finance Minister – Chairperson

c) The Union Minister of State, in-charge of Revenue of finance – Member ; **d)** The Minister in-charge of finance or taxation or any other Minister nominated by each State Government – Members; **e)** The GST Council is an apex committee to modify, reconcile or to make recommendations to the Union and the States on GST, like the goods and services that may be subjected or exempted from GST, model GST laws, etc.; **f)** Decisions in the GST Council are taken by a majority of not less than three-fourth of weighted votes cast.; **g)** Centre has one-third weightage of the total votes cast and all the states taken together have two-third of weightage of the total votes cast.; **h)** All decisions taken by the GST Council have been arrived at through consensus.

8.9. GST COUNCIL

The concept of GST, Goods and Services Tax, is not relatively a new one. The concept of a single tax called the Goods and Services Tax was proposed in the year 1999. GST was also accepted by the then Prime Minister of India, Mr. Atal Bihari Vajpayee and he gave it a go ahead. He constituted a committee to design a GST model. Ready to File! It has transformed

financial relations, ensuring greater coordination and efficiency in the Indian tax system. Goods and Services Tax (GST) is a comprehensive indirect tax levied on the supply of goods and services in India. Here are some of the salient features of GST: GST Council is an apex member committee to modify, reconcile or to procure any law or regulation based on the context of goods and services tax in India. The council is headed by the union finance minister Nirmala Sitharaman assisted with the finance minister of all the states of India. It is the 1st Federal Institution of India, as per the Finance minister. It will approve all decisions related to taxation in the country. It consists of the Centre, 29 states, Delhi and Puducherry. Centre has 1/3rd of voting rights and states have 2/3rd of voting rights. Decisions are taken after a majority in the council.

8.9.1. Role of GST Council: What is the GST Council? Goods and Services Tax (GST) was rolled out in the country through the 101st Act, 2016. Consequently, the President constituted the GST council under Article 279A to make recommendations on important GST-related issues. As per Article 279A, a GST Council is a joint forum of the centre and the states and is responsible for taking all major decisions related to GST. Subsequently, the union cabinet approved the first GST council on 12th September 2016, along with the setting up of the GST Council secretariat in New Delhi.

8.9.2. Structure of the GST Council: Presently, the GST council consists of 33 members. As per Article 279A, a GST Council will have the following members: a. The Union Finance Minister as the chairperson of the GST Council b. The Union Minister of State in charge of revenue (finance) from the centre c. A minister from each state who is either in charge of finance or taxation or has been nominated by the state to serve as a member of the GST Council

Accordingly, the ministers of state will elect a vice-chairperson of the GST Council from amongst the members. The Secretary (Revenue) will serve as the GST Council's ex-officio secretary. Additionally, the Central Board of Excise and Customs (CBEC)'s chairperson is a permanent invitee to all the proceedings of the GST Council.

8.9.3. Functions of GST Council Members: The primary function of the GST Council is to create a user-friendly and IT-driven GST structure based on wide consultation with the union and the states. Article 279A (4) enumerates the key functions of the GST Council members. We elaborate on them below.

8.9.4. Powers and Duties of GST Council Members: The GST Council is directed by the requirement for a harmonised national market and GST structure when carrying out the functions bestowed by the GST act.

(1) As per Article 279A (4), the GST Council should make recommendations on the following aspects:

- a. The goods and/or services that are either subject to or are exempt from GST.
- b. Any taxes, cesses, and surcharges already levied by the central government, states, or local bodies should be subsumed in the GST law.
- c. Recommendations about model GST laws and principles governing Integrated Goods and Services Tax (IGST) levy and place of supply.
- d. Applicable GST rates and floor rates, particularly for raising additional resources during a natural disaster or a calamity.

e. Special provisions for special category states and territories, including Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Tripura, Sikkim, Himachal Pradesh, Uttarakhand, and Jammu and Kashmir.

g. Threshold turnover limits below which GST is exempted on certain goods and/or services.

h. Any other GST-related issue as determined by the Council.

(2) The GST Council will propose the date from which GST on petroleum crude, motor spirit, high-speed diesel, natural gas, and aviation turbine fuel (ATF) will become applicable.

(3) The GST Council members will institute a mechanism to settle any dispute surfacing out of the council's recommendations or their implementation between-

a. The Union and one or more states

b. The Union and any state(s) on one side versus one or more states c. Any two or more states

(4) The GST Council members will determine the procedure for the performance of their functions.

(5) Half of the total GST Council members shall constitute the quorum. Finally, every decision of the GST Council will require the majority approval of not less than three-quarters of the total votes of the member's present and voting, subject to

a. The Central Government votes hold a one-third weightage in total votes cast.

b. The state governments' votes account for the remaining two-thirds weightage of the total votes cast.

However, as per the latest Supreme Court (SC) ruling in Union of India Vs Mohit Minerals Private Limited, the recommendations made by the GST Council members are no longer binding on the government. The court stated that under Article 246A, both parliament and state legislatures enjoy the 'simultaneous' power of legislating on GST and can be flexible in accepting counsel of the GST council.

8.10. GST COUNCIL MEMBERS: 33 MEMBERS GOVERNING GST

With the 47th GST Council meeting last called in June 2022, several GST Council members have been urging the centre to convene the 48th GST Council meeting in line with GST regulations of 'at least one meeting every quarter of a financial year.' The 48th GST Council meeting will likely fine-tune the details regarding the rationalisation of GST rates and the imposition of taxes on online gaming, horse racing, and casinos in this meeting.

Below, we elaborate on the GST Council and the pivotal role played by its members in implementing GST.

8.10.1. GST Council Members List 2023-24:

The latest GST Council has the following members:

S.NO.	Member	Post/ State
1	Smt. Nirmala Sitharaman	Union Finance Minister
2	Shri Pankaj Chaudhary	Union Minister of State (Finance)
3	Shri Buggana Rajendranath	Finance Minister, Andhra Pradesh
4	Shri Chowna Mein	Deputy Chief Minister, Arunachal Pradesh
5	Smt. Ajanta Neog	Finance Minister, Assam
6	Shree Vijay Kumar Chaudhary	Finance & Commercial Taxes Minister, Bihar
7	Shri T.S Singh Deo	Minister for Commercial Tax, Chattisgarh

8	Shri Kailash Gahlot	Deputy Chief Minister, Delhi
9	Shri Mauvin Godinho	Minister for Transport & Panchayat Raj, Housing, Protocol & Legislative Affairs, Goa
10	Shri Kanubhai Desai	Finance Minister, Gujarat
11	Shri Dushyant Chautala	Deputy Chief Minister, Haryana
12	Shri Jai Ram Thakur	Chief Minister, Himachal Pradesh
13	Shri Rajeev Rai Bhatnagar	Advisor to Lieutenant Governor, J & K
14	Dr Rameshwar Oraon	Minister for Planning and Finance, Commercial Taxes and Food, Public Distribution, and Consumer Affairs, Jharkhand
15	Shri Krishna Byre Gowda	Minister for Home Affairs, Law & Parliamentary Affairs, Karnataka
16	Shri K N Balagopal	Finance Minister, Kerala
17	Shri Jagdish Devda	Finance Minister, Madhya Pradesh
18	Shri Devendra Fadnavis	Deputy Chief Minister, Maharashtra
19	Dr. Sapam Ranjan Singh	Minister For Medical, Health, and Family Welfare Department, Manipur
20	Shri Abu Taher Mondal	Chief Minister, Meghalaya
21	Shri Lalchamliana	Minister of Home and Taxation, Mizoram
22	Shri K.G Kenye	Minister for Rural Development, Nagaland
23	Shri Bikram Keshari Arukha	Minister of Finance and Excise, Odisha
24	Shri K. Lakshminarayanan	Public Works Minister, Puducherry
25	Shri Harpal Singh Cheema	Finance Minister, Punjab
26	Shri Shanti Kumar Dhariwal	Minister for Local Self Government, Urban Development and Housing, Law, and Parliamentary Affairs, Rajasthan
27	Mr.Bedu Singh Pant	Minister for Tourism, Civil Aviation and Industries, Sikkim
28	Shri Thangam Thennarasu	Minister for Finance, Planning, Human Resource Management, Tamil Nadu

29	Shri T.Harish Rao	Finance Minister, Telangana
30	Shri Jishnu Dev Varma	Deputy Chief Minister, Tripura
31	Shri Suresh Kumar Khanna	Minister for Finance, Parliamentary Affairs, and Medical Education, Uttar Pradesh
32	Shri Premchand Aggarwal	Finance Minister, Uttarakhand
33	Chandrima Bhattacharya	Minister of State for Finance, West Bengal

You can also access this list from the official website. The GST Council is the first constitutional federal body to look into the GST law and determine its applicability after consulting with all states. The GST Council members are responsible for proposing changes to the GST law per the changing dynamics of the economy.

8.11. SUMMARY

The Goods and Services Tax (GST) is a successor to VAT used in India on the supply of goods and services. GST is a digitalized form of VAT where you can also track the goods & services. Both VAT and GST have the same taxation slabs. It is a comprehensive, multistage, destination-based tax: comprehensive because it has subsumed almost all the indirect taxes except a few state taxes. Creation of the GST Council was facilitated by the Constitution (One Hundred and Twenty Second Amendment) Bill 2016 was approved by the President of India on 8th September 2016. The objective of the Bill was to introduce GST in India. Thereafter, the notification for enforcing Article 279A was issued on 10th September 2016. After studying this lesson student should be able to: Know the concept of Centre and State level Taxes are incorporated into the GST -Understand the Issues Arisen (or) Unresolved on GST & Timeline of GST - Importance of GST Council. Further, it is extended that The centre and state level Taxes are incorporated into the GST, Benefits of GST, Issues Arisen (or) Unresolved on GST, Timeline of GST, Goods and Service Tax Network (or GSTN), Power of Central (or State) Government to make rules under GST, Supreme Court Says Centre; States Have Equal Powers To Make GST-Related Laws, GST Council, GST Council Members: 33 Members Governing GST.

8.12. TECHNICAL TERMS

1. GSTN: Goods and Service Tax Network

2. IGST: Integrated Goods and Services Tax

3. Value addition: Value added tax is a type of tax that is levied on the price of ... The Federal High Court resorted to the literal meaning of interpretation while giving the judgment. Part 1 of the 1999 constitution as amended listed the taxes that fall within exclusive.

4. Octroi: noun, plural oc-trois [ok-troiz; French awk-trwa]. (Formerly especially in France and Italy) a local tax levied on certain articles, such as foodstuffs, on their entry into a city. The place at which such a tax is collected. The officials collecting it. The act of a sovereign in granting to subjects a constitution or other charter.

5. Purchase Tax: Purchase Tax was a tax levied between 1940 and 1973 on the wholesale value of luxury goods sold in the United Kingdom. Introduced on 21 October 1940, with the stated aim of reducing the wastage of raw materials during World War II, it was initially set at a rate of 33.33%. The tax was subsequently set at differing rates dependent upon individual items' degree of "luxury" as determined by the gover... Wikipedia

6. GST Council: Creation of the GST Council was facilitated by the Constitution (One Hundred and Twenty Second Amendment) Bill 2016 was approved by the President of India on 8th September 2016. The objective of the Bill was to introduce GST in India. Thereafter, the notification for enforcing Article 279A was issued on 10th September 2016

8.13. SELF –ASSESSMENT QUESTIONS

1. What is the Centre and State level Taxes are incorporated into the GST?
2. What are the Benefits of GST?
3. What is the Issues Arisen (or) Unresolved on GST-Explain?
4. Timeline of GST
5. Discuss about Goods and Service Tax Network (or GSTN)
6. What is the Power of Central (or State) Government to make rules under GST
7. What is the importance of GST Council?

8.14. SUGGESTED READINGS

1. Goods and Services Tax in India- Notifications on different dates
2. GST Bill 2012
3. The Central Goods and Services Tax Act, 2017, No.12 of 2017, Published by Authority, Ministry of Law and Justice, New Delhi, 12 April, 2017
4. Background Material on Model GST Law, Sahitya Bhavan Publications, Hospital Road, Agra-383 003
5. Customs Law Manual and Customs Tariff of India – R.K.JAIN.
6. The Central Goods and Services Tax Act, 2017, No.12 of 2017 published by Authority, Ministry of Law and Justice , New Delhi, 12th April, 2017.
7. <https://taxguru.in/goods-and-service-tax/class-appointment-power-of-sgst-cgst-officers-under-revised-model-gst-law.html>- Copyright © Taxguru.in
8. Anil Kumar Agrawal : “Analysis of Delegation of Power under GST
9. CS charu Vinayak| Goods and Services Tax Article by: Nishant Raj. The author is an IIT Kharagpur Alumnus.

Dr. KRISHNA BANANA

LESSON – 9

ASSESSMENT METHODS UNDER GST

Learning objectives:

- To know the various methods of assessments under GST
- To understand the procedure under GST
- To know the common mistakes in the process
- To understand the self – assessment norms

Structure:

9.1 Introduction

9.2. Types of Assessment under GST

9.3. Diagram of assessment under GST

9.4. Procedure for Assessment under GST

9.5. Importance of Assessment under GST

9.6. Common Mistakes to Avoid

9.7. Self – Assessment

9.8. Self – assessment rules

9.9. Provisional Assessment

9.10. Time Limit for Final Assessments under GST

9.11. Penalties for non-compliance with Assessment under GST

9.12. Assessment of unregistered persons

9.13. Procedure of assessment of unregistered person

9.14. Summery

9.15 Keywords

9.16. Self-Assessment questions

9.17. Further readings

9.1 INTRODUCTION

Goods and Services Tax (GST) has revolutionized the way tax is collected in India. One of the key features of GST is its self-assessment system. This means that taxpayers are required to self-assess their tax liability and file their returns accordingly. However, the government has the power to verify the correctness of the returns filed by taxpayers. This is done through the process of assessment under GST. Assessment under GST is a crucial process that helps ensure that taxpayers are complying with the GST laws and regulations. In this blog, we will discuss what assessment under GST is, its types, relevant sections, and its importance. Assessment under GST is a process by which the tax authorities examine the returns filed by taxpayers to verify the correctness of their tax liability. The purpose of assessment is to ensure that taxpayers have accurately calculated and paid their taxes. Assessment is an important tool to detect any errors or discrepancies in the returns filed by taxpayers.

9.2. TYPES OF ASSESSMENT UNDER GST

There are six types of assessment under GST:

9.2.1. Self-Assessment: This is the first level of assessment, which is done by the taxpayers themselves. In self-assessment, the taxpayer calculates and pays their own tax liability, and files the returns accordingly. This is done on a monthly, quarterly or annual basis, depending

on the turnover of the taxpayer. The relevant section under GST for self-assessment is Section 59.

9.2.2. Provisional Assessment: Provision assessment can be resorted to only in two possible scenarios 1st is when the registered person is unable to determine the value of supply and 2nd is when registered person is unable to determine the rate of tax. Apart from the above two scenarios, provisional assessment cannot be applied by the taxable person for any other purpose. Within the 90 days from the receipt of such request the proper office shall pass an order, allowing payment of tax on a provisional basis at such rate or on such value as may be specified by him. The final assessment order should be passed within six months from the date of communication of provisional assessment order. The relevant section under GST for provisional assessment is Section 60.

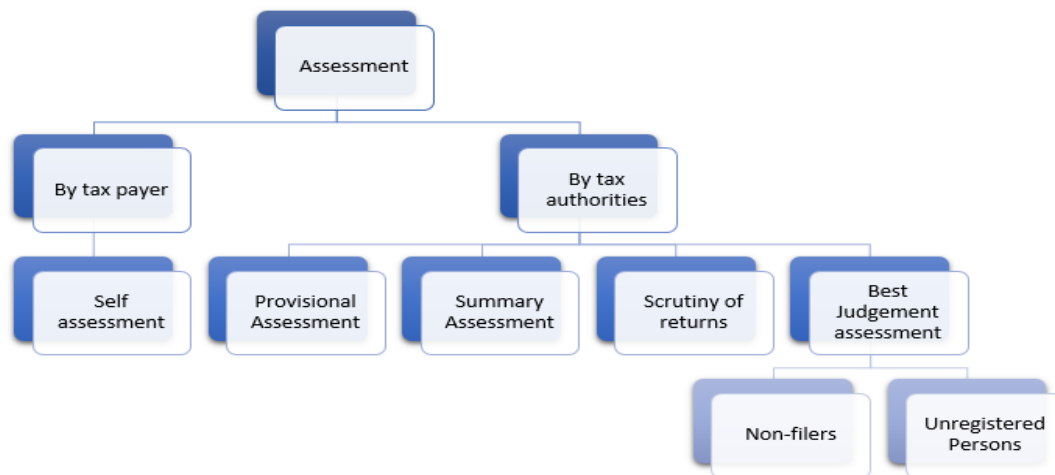
9.2.3. Scrutiny Assessment: Scrutiny assessment is done by the tax authorities to verify the correctness of the returns filed by taxpayers. This is applicable for only registered persons and not to unregistered persons. Notice under section 61 can be issued only if return has been filed by the registered persons. The tax authorities can issue a notice to the taxpayer, asking them to provide additional information or documents to support their returns. The tax authorities can also conduct an audit of the taxpayer's records. Based on the information obtained, the tax authorities can issue an assessment order, which specifies the final amount of tax to be paid by the taxpayer. The relevant section under GST for scrutiny assessment is Section 61.

9.2.4. Best Judgment Assessment: Best judgment assessment is done when the taxpayer fails to furnish the return under Section 39 or Section 45, even after the service of a notice under Section 46, the proper office may assess the tax liability of the said person to the best of his judgment taking into account all the material which is available or 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. The relevant section under GST for best judgment assessment is Section 62.

9.2.5 Assessment of Unregistered Persons: When 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 judgement for the relevant tax periods. He will 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. No such assessment order shall be passed without giving the person an opportunity of being heard. The relevant section under GST for the assessment of unregistered persons is Section 63.

9.2.6. Summary Assessment: Summary assessment is done in certain special cases, such as when the tax authorities believe that the taxpayer is trying to evade tax or when there is a threat to revenue. There should be evidence available with the proper officer that tax is payable and remains unpaid. Prior permission is required from the Additional Commissioner and Joint Commissioner. It is believed that any delay in assessment would harm the revenue's interest. If the taxpayer to whom the liability pertains is not ascertainable, then such liability is fastened to the person in charge of such goods. Generally summary assessment is resorted to in cases of absconding and defaulting taxpayers. There is no time limit prescribed for passing of order. The section does not mention that the said person should be given an opportunity of being heard. The relevant section under GST for summary assessment is Section 64.

9.3. DIAGRAM OF ASSESSMENT UNDER GST



Source: <https://cleartax.in/s/assessment-gst>

9.4. PROCEDURE FOR ASSESSMENT UNDER GST

The procedure for assessment under GST is as follows:

9.4.1. Issue of Notice: The tax authorities can issue a notice to the taxpayer, asking them to provide additional information or documents to support their returns. The notice must specify the reason for the assessment, the period under assessment, and the nature of the information or documents required.

9.4.2 Conduct of Audit: The tax authorities can conduct an audit of the taxpayer's records to verify the correctness of their returns. The audit can be done on-site or off-site, and the taxpayer must provide all necessary information and documents to the auditors.

9.4.3 Issue of Assessment Order: Based on the information obtained through the notice and audit, the tax authorities can issue an assessment order. The assessment order specifies the final amount of tax to be paid by the taxpayer. The assessment order can also include interest, penalties, and fines, if applicable.

9.4.4 Rectification of Errors: If the taxpayer disagrees with the assessment order, they can request rectification of errors. The request must be made within 30 days of the receipt of the assessment order. The tax authorities will then review the request and issue a revised assessment order if necessary.

9.4.5 Appeal: If the taxpayer is still dissatisfied with the assessment order after rectification, they can file an appeal with the appropriate appellate authority. The appeal must be filed within three months of the receipt of the assessment order. The appellate authority will then review the case and issue a final order.

9.5. IMPORTANCE OF ASSESSMENT UNDER GST

Assessment under GST is important for the following reasons:

i) **Ensures Compliance:** Assessment ensures that taxpayers are complying with the GST laws and regulations. GST Compliance is crucial for smooth business work – flow. This helps prevent tax evasion and ensures that the government collects tax revenue correctly.

ii) Detects Errors and Discrepancies: Assessment helps detect any errors or discrepancies in the returns filed by taxpayers. This helps prevent the loss of tax revenue due to mistakes or intentional evasion.

iii) Improves Taxpayer Education: Assessment helps educate taxpayers on the correct procedures for calculating and paying their taxes. This helps improve GST compliance and reduces the number of errors or discrepancies in the returns filed.

9.6 COMMON MISTAKES TO AVOID

It is crucial to understand some of the common mistakes that taxpayers make when filing their returns. These mistakes can result in incorrect assessment and ultimately lead to penalties and interest. Here are some of the common mistakes to avoid when filing GST returns:

i) **Incorrect classification of goods and services:** GST rates vary depending on the classification of goods and services. Taxpayers need to ensure that they classify their goods and services correctly to avoid incorrect assessments.

ii) **Incorrect calculation of tax liability:** Taxpayers must ensure that they accurately calculate their tax liability based on the GST rates applicable to their goods or services. Incorrect calculation can result in incorrect assessment and penalties.

iii) **Delayed filing of returns:** GST returns must be filed on time to avoid penalties and interest. Taxpayers must ensure that they file their returns by the due date to avoid any additional charges.

iv) **Failure to report input tax credit:** Taxpayers are allowed to claim the input tax credit on their purchases to reduce their tax liability. Failure to report input tax credit can result in incorrect assessment and penalties.

v) **Incorrect reporting of turnover:** Taxpayers must ensure that they report their turnover accurately to avoid incorrect assessment.

It is also important for taxpayers to keep proper records of their transactions and maintain compliance with the GST laws and regulations. This will help them to ensure that their assessments are accurate and avoid any legal or financial complications in the future. Assessment under GST is a crucial process that helps ensure that taxpayers are complying with the GST laws and regulations. It is essential for taxpayers to accurately calculate and pay their taxes to avoid penalties and interest. The different types of assessments under GST – self-assessment, provisional assessment, scrutiny assessment, best judgment assessment, assessment of unregistered persons, and summary assessment – help the tax authorities verify the correctness of the returns filed by taxpayers. The assessment also helps prevent tax evasion and ensures that the government collects tax revenue correctly. In conclusion, assessment under GST is an important process that helps maintain the integrity of the GST system.

9.7 SELF – ASSESSMENT

Self-assessment is a crucial aspect of the Goods and Services Tax (GST) system implemented in many countries, including India. It is a mechanism where taxpayers assess and determine their tax liability, report the same to the tax authorities, and pay the tax accordingly. The taxpayer is responsible for calculating the tax amount based on the information available and ensuring compliance with the GST laws and regulations. Here are some key points regarding self-assessment under the GST Act:

i) **Taxpayer Responsibility:** Taxpayers are required to assess their tax liability, including the amount of tax to be paid and the input tax credit available, on a self-assessment basis. This

involves determining the correct tax amount and adhering to the rules and regulations set forth by the GST Act.

ii) Declaration and Filing of Returns: Taxpayers are required to file periodic GST returns, providing details of their business transactions, output tax liability, and input tax credit claimed. The information provided in these returns forms the basis for self-assessment.

iii) Accuracy and Compliance: Taxpayers need to ensure the accuracy and completeness of the information provided in the returns. They must comply with the provisions of the GST Act, such as correctly classifying goods and services, calculating tax liability, and reporting the same in the returns.

iv) Payment of Tax: Taxpayers are responsible for paying the tax liability determined through self-assessment in a timely manner. Payments need to be made as per the prescribed due dates to avoid any interest or penalties.

v) Reconciliation and Amendments: Taxpayers should regularly reconcile their tax payments and input tax credits with their self-assessment. If any discrepancies or errors are identified, amendments or corrections should be made promptly to ensure accurate reporting and compliance with GST laws.

vi) Audit and Scrutiny: Tax authorities may conduct audits or scrutiny of a taxpayer's self-assessment to verify the accuracy and compliance with the GST Act. It is essential for taxpayers to maintain proper records and documentation to support their self-assessment.

vii) Penalties for Non-Compliance: Non-compliance with self-assessment provisions, including inaccurate reporting or underpayment of tax, may result in penalties or legal consequences under the GST Act. Self-assessment is a fundamental principle of the GST system, placing the responsibility on taxpayers to accurately assess and report their tax liabilities. Adhering to self-assessment procedures ensures transparency, compliance, and smooth functioning of the GST regime.

9.8. SELF – ASSESSMENT RULES

As per section 49(8), every taxable person shall discharge his tax and other dues under this Act or the rules made there under in the following order, namely:

- a) Self-assessed tax, and other dues related to returns of previous tax periods;
- b) Self-assessed tax, and other dues related to the return of the current tax period;
- c) Any other amount payable under this Act or the rules made there under including the demand determined under section 73 or section 74;

9.8.1. Whether right to be self-assessed is lost after filing of return u/s 39: Section 59 though requires to furnish return u/s 39 but does not place a bar on being self-assessed after filing of return in GSTR-3B for a relevant period. At the time of filing of return u/s 44 i.e., annual return also, a registered person can self-assess himself. Para (e) of Press Release dated 4-06-2019 provided for payment of additional outward liability at the time of filing annual return. Section 73(5) and Section 74(5) also permits voluntary payment of tax on the basis of own ascertainment. Hence self-assessment is not limited by the mere filing of return u/s 39 and is also not mandate of section 59. Mere requisition to self-assess the tax and file return u/s 39 should not treated as expression of self-assessment only through return u/s 39. Whether section 59 is complete code for self-assessment Though section 59 requires self-assessment of tax payable but section 59 in itself is not complete code for self-assessment. Like self-assessment of output tax is dealt in section 41(2), while self-assessment of input tax credit is dealt in section 49(2) read with section 41(1). Hence self-assessment of output tax, self-assessment of output tax and self-assessment of input tax are separately dealt in the GST law.

9.8.2. Interest for non-payment of self-assessed tax [S.50]: 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 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 Hence as per proviso to section 50 made effective from 01-09-2020 by NN 63/2020-Central tax dated 25-08-2020 postulates that benefit of interest on net tax liability in belated return met through cash ledger only can be availed only of following conditions are satisfied: Tax is payable in respect of supplies made during a tax period and Supplies are declared in the return for the "said" period. Hence this benefit shall be foregone if, Proceedings u/s 73, 74 in respect of impugned period of return have already commenced before filing of return for that period or Supplies made in a tax period were not declared in the same period but are carried forward from earlier period.

However, the benefit of proviso shall not be foregone in respect of tax liabilities not arising from supplies made during earlier period e.g., reversal of ITC or excess ITC claimed. Recovery of Self Assessed Tax and Interest [S. 75(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.

9.8.3. Penalty for non-payment of self-assessed tax within 30 days: Section 73(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. Hence if the self-assessed tax is not paid within a period of 30 days from the due date of payment of tax which shall coincide with due date of filing of return u/s 39 due to the operation of section 39(7), then 10% penalty has to be paid at the time of payment of tax. Here it may be pertinent to discuss the relief provided from the operation of section 73(11) by virtue of Circular 76/50/2018 as under: Whether penalty in accordance with section 73 (11) of the CGST Act should be levied in cases where the return in FORM GSTR-3B has been filed after the due date of filing such return? As per the provisions of section 73(11) of the CGST Act, penalty is payable in case 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. It may be noted that a show cause notice (SCN for short) is required to be issued to a person 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 under the provisions of section 73(1) of the CGST Act. The provisions of section 73(11) of the CGST Act can be invoked only when the provisions of section 73 are invoked. The provisions of section 73 of the CGST Act are generally not invoked in case of delayed filing of the return in FORM GSTR-3B because tax along with applicable interest has already been paid but after the due date for payment of such tax. It is accordingly clarified that penalty under the provisions of section 73(11) of the CGST Act is not payable in such cases. It is further clarified that since the tax has been paid late in contravention of the provisions of the CGST Act, a general penalty under section 125 of the CGST Act may be imposed after following the due process of law. 10% /100% penalty u/s 122(2).

9.9. PROVISIONAL ASSESSMENT

The provisions of provisional Assessment have been provided under Section 60 of the Goods and Service Tax Act, 2017. According to the aforesaid section, in case a taxpayer is unable to determine his or her rate or amount of tax liability, then he or she can request the Assessing Officer to conduct a provisional assessment. Further, it provides two conditions under which a provisional assessment can be done. The details whereof are mentioned below; i) In case, the taxpayer is not able to determine the amount of tax liability or facing difficulty while calculating the value of a transaction or has confusion regarding the addition of some receipts, etc.

ii) In case the taxpayer is not able to determine the tax rate as a result of facing difficulty in the classification of goods and/or services or being confused about if the notification is applicable or not.

9.9.1. Procedure for Provisional Assessment: The procedure to conduct a provisional assessment is provided below;

- i) The taxpayer must request for provisional assessment in writing to the GST Assessing Officer.
- ii) Upon receiving such a letter from the taxpayer, the Assessing Officer will pass an order within 90 days from the date of receiving the request letter after a successful review of the application. This order will be issued in respect of tax payment on a provisional basis or a value specified GST rate by the taxpayer.
- iii) The taxpayer who wants to make payment on a provisional basis is required to issue a bond along with security mentioning to pay the difference amount of tax between provisional assessment tax and final assessment tax.
- iv) The Assessing Officer will pass the order of final assessment within 6 months from the date of order of payment for provisional assessment.
- v) Provisional assessment will be conducted after the final assessment.

9.9.2. How Does a Provisional Assessment Work?

When you can't figure out your tax liability, you must request a provisional assessment in writing to the assistant commissioner or deputy commissioner of central tax. That request should explain why you need the provisional assessment. Additionally, you must submit an application for a provisional assessment using form GST ASMT-01, as well as any supporting documents to make your case. You can do this on your own, or you can hire a facilitation centre to help. Once the commissioner reviews your application, they may ask for additional documents using form GST ASMT-02. You can respond using form GST ASMT-03, or appear in person to explain the situation. When everything is in order, the commissioner has 90 days to provide your provisional tax liability. This order appears in form GST ASMT-04 on the GST portal. To pay this, you execute a bond in form GST ASMT-05. In addition, you need to give a bank guarantee for a security of 25% or less of your tax liability. This amount is also listed on form GST ASMT-04. The commissioner then has six months to finalize your provisional assessment. If he determines that you didn't pay enough tax, you must pay the remaining amount, with interest. If he finds that you paid too much, you get a refund, with interest. The Commissioner notifies you using Form GST ASMT-06, and you can pay or claim a refund using Form GST ASMT-07.

9.9.3. Assesses security released: Once your provisional assessment is finalized, then you can get your security released. To do so, you must apply using form GST ASMT-08. The commissioner has seven days to release the security, which will appear in your online

account using form GST ASMT-09. The provisional assessment process gives you a way to stay compliant with GST law, even when you're not sure how to calculate the amount you owe. By requesting this assessment early, you can stay on top of your taxes and maintain a high GST compliance rating.

9.9.4. Refund under Provisional Assessment under GST: In case the taxpayer is subject to pay fewer taxes after the final assessment as compared to the tax paid at the time of provisional assessment, then such taxpayer will get the refund of the same amount along with the interest on such refund under the provisions of Section 56 of the Goods and Service Tax Act, 2017. The maximum rate of interest for such a refund is 6%.

9.10. TIME LIMIT FOR FINAL ASSESSMENTS UNDER GST

The final assessment can be done within a period of 6 months after conducting the provisional assessment. However, the aforesaid time limit can be extended by the Additional Commissioner of Joint Commissioner for the next 6 months. Further, also if required the Additional Commissioner of the Joint Commissioner can extend the time limit to 4 years.

9.11. PENALTIES FOR NON-COMPLIANCE WITH ASSESSMENT UNDER GST

There may be certain penalties under GST that can be levied in case of non-compliance with Assessment under GST. The details whereof are as follows;

- i) 100 % penalty on the amount involved with a minimum penalty of Rs. 10,000 is imposed with regard to short deductions and tax evasion.
- ii) The aforesaid penalty can be extended to Rs. 25,000 which can be subject to payment in the following circumstances;
 - a) The taxpayer who receives any goods and/or services knowing that it will be a violation of the provisions under the Goods and Service Tax Act.
 - b) In case of involvement of the taxpayers in fraud in order to avoid GST
 - c) Any person is not issuing an invoice as per the provisions of the Goods and Service Tax Act.
 - d) Any person fails to maintain proper books of accounts in respect of invoices.
 - e) Any person who is absent from the tax authority in case any summons has been issued.
- iii) In case the taxable amount involved in such GST avoidance is between Rs. 1 crore to Rs. 2 Crore, then one year of imprisonment with a fine is imposed.
- iv) In case the taxable amount involved in such GST avoidance is between Rs. 1 crore to Rs. 5 Crore, then three years of imprisonment with a fine is imposed.
- v) In case the taxable amount is short paid and not paid entirely, then a 10% penalty will be charged on the due amount with a minimum penalty of Rs. 10,000.

9.12. ASSESSMENT OF UNREGISTERED PERSONS

The proper officer can assess the tax liability of an unregistered person to the best of his judgement in the following situations. Where a taxable person fails to obtain registration despite being liable to do so; Where a person's registration has been cancelled due to the following reasons: a) They have contravened the provisions of the Act or the rules; or b) In case of a composition taxpayer, they have not furnished returns for 3 consecutive tax periods; or c) In case of a regular taxpayer, they have not furnished returns for a continuous period of 6 months; or d) A person who had taken voluntary registration had not commenced business within 6 months from the date of registration; or e) The registration had been obtained through fraud, wilful misstatement or suppression of facts.

9.13. PROCEDURE OF ASSESSMENT OF UNREGISTERED PERSON

In the Goods and Services Tax (GST) system, the assessment of unregistered persons is a process conducted by tax authorities to determine tax liability for individuals or entities who are not registered under the GST Act but are liable to pay GST on certain transactions. Here are the key points regarding the assessment of unregistered persons under GST:

1. Definition of Unregistered Person: An unregistered person refers to an individual or business entity that is not registered under the GST Act but is involved in taxable supplies of goods or services.

2. Identification and Verification: The identification and verification of unregistered persons under the Goods and Services Tax (GST) system involves a systematic process carried out by tax authorities to determine whether an individual or business entity should be registered for GST and whether they have complied with the GST requirements. Here's a brief overview of this process:

a) **Data Analysis and Intelligence Gathering:** Tax authorities utilize various data sources and analytical tools to identify individuals or entities engaged in economic activities that may require GST registration. This can include analyzing financial data, transaction records, import/export data, and other relevant information.

b) **Information Sharing and Cross-Verification:** Tax authorities may collaborate with other government agencies, financial institutions, or regulatory bodies to share information and cross-verify the activities of suspected unregistered persons. This helps in building a comprehensive view of the person's business operations.

c) **Receipt of Tips and Complaints:** Authorities often receive tips or complaints from various sources, such as concerned citizens, competitors, or informants, regarding individuals or businesses potentially evading GST registration. These tips can trigger further investigations.

d) **Field Visits and Surveys:** Tax officers may conduct physical visits to the premises of suspected unregistered persons to gather additional information, inspect business operations, and verify compliance with GST provisions. This may involve interviews with business owners and employees.

e) **Mandatory Reporting by Certain Entities:** Under GST, certain entities, like e-commerce operators and government bodies, are required to report details of transactions with unregistered persons. Authorities use this information to identify potential unregistered businesses.

f) **Data Matching and Analysis:** Tax authorities utilize technology and data analytics to match the information obtained from various sources and identify discrepancies, unusual patterns, or inconsistencies that may indicate potential tax evasion or non-compliance.

g) **Communication and Notices:** If tax authorities have reasonable grounds to believe that an individual or entity is liable to register for GST, they issue a notice to the concerned party, requesting information and documentation to support their business operations.

h) **Response and Documentation Verification:** The unregistered person is required to respond to the notice and provide the requested information. Tax authorities thoroughly examine the provided documents and verify the accuracy and completeness of the information.

i) **Assessment and Decision:** Based on the information gathered and verified, tax authorities assess whether the unregistered person is indeed liable to register for GST. They determine the tax liability and initiate further action, such as issuance of an assessment order or enforcement actions if necessary.

3. Issuance of Notice: Tax authorities identify individuals or businesses that are suspected to be liable for GST registration based on various sources, data analysis, complaints, or other

means. Authorities conduct a thorough examination to verify whether the identified person is indeed liable to register under GST. This verification includes analysing the nature of their business activities, turnover, and other criteria specified in the GST law. Once the liability for GST registration is confirmed, tax authorities prepare a formal notice addressed to the unregistered person. The notice outlines the purpose, legal provisions, and requirements for the response. The notice typically includes details such as the reason for the notice, a summary of the alleged non-compliance or potential liability, and a request for the unregistered person to provide relevant information and documents to address the concerns raised. The notice is sent to the address of the unregistered person via registered post, electronically, or through any other prescribed mode of communication as per the GST laws. The notice specifies a deadline within which the unregistered person is required to respond. The response timeline is usually reasonable to allow the person to gather and provide the necessary information. The notice may include a request for specific information and supporting documentation related to the person's business activities, transactions, financial records, and any other relevant details to substantiate compliance or liability.: The unregistered person is expected to cooperate with the tax authorities, respond within the stipulated timeline, and provide accurate and complete information to address the concerns raised in the notice. Upon receiving the response, tax authorities review the provided information, assess the person's liability for GST registration, and determine further actions based on the outcome of the review.

Depending on the findings and the response received, tax authorities may proceed with registration, initiate enforcement actions, or take other appropriate measures as per the provisions of the GST law. The issuance of a notice is a crucial step to ensure compliance with GST requirements and allows tax authorities to assess and regulate unregistered persons' tax liabilities in accordance with the law.

4. Information Gathering: The unregistered person is required to provide the necessary information and documentation related to their business operations, sales, purchases, and other relevant financial details.

5. Determination of Tax Liability: Determining the tax liability for an unregistered person under the Goods and Services Tax (GST) involves calculating the amount of GST payable on the taxable supplies made by the person. Here's a step-by-step process to determine the tax liability:

6. Identify Taxable Supplies: Determine all the transactions made by the unregistered person that qualify as taxable supplies under GST. This includes sales of goods or services that attract GST.

7. Classify Supplies into Appropriate GST Rates: Classify the taxable supplies into the relevant GST rate categories as per the GST law. GST rates can vary based on the type of goods or services being supplied

8. Calculate Taxable Value: Determine the taxable value of each taxable supply. For most transactions, this is the consideration received or to be received by the person for the supply.

9. Calculate GST Amount: Multiply the taxable value of each supply by the applicable GST rate to calculate the GST amount for each transaction.

$$\text{GST Amount} = \text{Taxable Value} \times \text{Applicable GST Rate.}$$

Aggregate GST Amount: Sum up the GST amounts calculated for all taxable supplies to get the total GST liability for the specified period.

10. Determine Input Tax Credit (ITC): If the unregistered person has paid GST on purchases of goods or services (commonly known as input tax), calculate the total input tax credit available. Input tax credit can be claimed against the GST liability.

11. Calculate Net Tax Liability: Subtract the total input tax credit from the total GST liability to determine the net GST liability for the specified period. $\text{Net GST Liability} = \text{Total GST Amount} - \text{Total Input Tax Credit}$

12. Pay GST Liability: The unregistered person is required to pay the net GST liability to the government within the due date specified in the GST law.

13. Compliance and Filing: Comply with the GST compliance requirements, such as filing GST returns and providing necessary details of transactions and tax payments.

14. Record Keeping: Maintain accurate records of all transactions, calculations, and payments made to substantiate the GST liability and facilitate future audits or verifications.

15. Issuance of Assessment Order: Once the tax liability is determined, tax authorities issue an assessment order to the unregistered person specifying the amount of tax due and the applicable penalties, if any.

16. Payment of Tax and Penalties: The unregistered person is required to pay the determined tax liability along with any applicable penalties within the stipulated time mentioned in the assessment order.

17. Appeal Process: In case the unregistered person disagrees with the assessment, they have the right to file an appeal with the appropriate appellate authority as per the provisions of the GST Act.

18. Enforcement and Recovery: Tax authorities may take necessary enforcement actions to recover the tax and penalties if the unregistered person fails to comply with the assessment order and make the required payments.

Assessing unregistered persons under GST ensures that even those who are not formally registered are held accountable for their tax obligations on taxable supplies. It helps in maintaining tax compliance and promoting the integrity of the GST system.

9.14. SUMMERY

Goods and services tax in India became a large and highest tax source. In the process of implementation of the Act, the authorities are framing several norms which would be able to understand by a common man and the business holder. The procedure of the assessment, valuation of goods or services, valuations of the goods and services and implementation of the conditions and exemptions are framed very fair and simple in procedure. The authorities take necessary steps to stratify the tax payers and let them into specific category in which they are fit. Even the unregistered person also able to evolute his value of services and able to assess his tax liability as per the law.

9.15. KEY WARDS

Best Judgment: As per the Income Tax Act or in GST Act a best judgement assessment signifies the assessment performed by an assessing officer with specific knowledge of an assessee's financial circumstance.

Rectification of error: Rectification of Errors is referred to as the procedure of revising mistakes that are made during the entry of transactions. These mistakes can occur while recording transactions like - posting entries to ledger accounts, classifying accounts, carrying balance forward, etc.

Unregistered person: A person is called as an 'unregistered person' if his turnover is less than the limit of aggregate transactions is less than prescribed for registration with GST by a person. A person may not register with GST Department even he crosses the threshold limit required for registration.

Enforcement: Enforcement under GST involves an entire set of actions taken by the tax authorities to curb tax evasion. It includes calling for information, issue of notice, issue of summons, recording statements, search and seizure of goods, etc.

Assessment: Assessment is the process of gathering and discussing information from multiple and diverse sources in order to develop a deep understanding of what students know, understand, and can do with their knowledge as a result of their educational experiences; the process culminates when assessment results are used to improve subsequent learning.

9.16. SELF-ASSESSMENT QUESTIONS

1. What are the types of assessments under GST?
2. What is the procedure followed under GST?
3. What are the common mistakes happened in the process of GST?
4. What is self – assessment? How it was processed?
5. What procedure you follow for assessment of unregistered person under GST?

9.17. FURTHER READINGS

1. P. C. Joshi and P. N. Monga, "GST Ready Reckoner: Taxmann's One Solution to All GST Problems" - Taxmann Publications Pvt. Ltd.
2. V. S. Datey, "GST Ready Reckoner" - Taxmann Publications Pvt. Ltd.
3. Mahesh Gour, "GST How to Meet Your Obligations" - Lexis Nexis
4. Dr. Rakesh Garg and Sandeep Garg, "Master Guide to GST with GST Case Law Digest" - Commercial Law Publishers (India) Pvt. Ltd.
5. Bimal Jain, "GST - Law and Analysis" - Bloomsbury India
6. Girish Ahuja and Ravi Gupta, "GST Manual - Containing GST Act, Rules, Forms, Notifications, Circulars & Latest Case Laws" - Bharat Law House
7. Sachin Gupta, "GST Manual with GST Law Guide & GST Practice Reference" - Kamal Publishers
8. Sanjeev Malik, "GST Made Easy: Answer to All Your Queries on GST" - Bharat Law House
9. V. S. Datey, "GST How to Meet Your Obligations" - Taxmann Publications Pvt. Ltd.
10. Abhishek A. Rastogi, "GST in India - Law and Procedure" - Wolters Kluwer India Pvt. Ltd.

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LESSON – 10

COMPUTATION OF TAX LIABILITY

Learning objectives:

- To understand the procedure of tax computation under GST
- To Know the differences between different GSTs
- To understand the general rules to apply for GST
- To able to determine the taxable value of GST
- To understand different formulas of GST calculations
- To understand the concept of input tax credit

Structure:

10.1. Introduction

10.2. Key Laws Governing Classification

10.3. Arrangement of “Harmonized System of Nomenclature” (HSN)

10.4. General Rules of Interpretation

10.5. Determination of Taxable Value

10.6. Calculation of Tax Amount:

10.7. Input Tax Credit (ITC)

10.8. Summary

10.9. Keywords

10.10. Self Assessment Questions

10.11. Suggested Readings

10.1 INTRODUCTION

The Goods and Services Tax (GST) is a comprehensive indirect tax system introduced in India on July 1, 2017, aimed at replacing multiple indirect taxes levied by the central and state governments. GST is a destination-based tax levied at each stage of the value chain, ensuring transparency and minimizing tax cascading. Computation of tax liability under GST involves understanding the various components and their interplay in determining the tax liability for a business entity.

a) Components of GST: GST is broadly divided into three components: 1. Central GST (CGST), 2 State GST (SGST), and 3. Integrated GST (IGST). CGST is levied by the central government on intra-state transactions, SGST is levied by the respective state governments on intra-state transactions, and IGST is levied on inter-state transactions. The tax rates for each of these components are determined by the GST Council, a constitutional body comprising representatives from the central and state governments.

b) Computation of Tax Liability under GST: Computation of tax liability under Goods and Services Tax (GST) involves totaling the taxable value of goods and services supplied or imported, applying the relevant GST rates (SGST, CGST, IGST), and adjusting for input tax credit (ITC) available. It is crucial to calculate SGST and CGST for intra-state transactions and IGST for inter-state transactions. ITC is deducted from the total GST liability, balancing the tax burden. Additionally, the reverse charge mechanism may apply for specific transactions, shifting the tax liability to the recipient. Proper understanding and accurate computation ensure compliance with GST laws and help businesses manage their tax responsibilities effectively.

c) Need for Classification of Goods/Services: The following are most important points that should be consider for classification of goods and services under GST: i) Millions of goods and services; ii) Continuous advent/evolution of new goods and services; iii) Statistical tracking of goods and services for trade, policy matters, social welfare etc; iv) HSN a system of grouping/coding of goods of same kind; v) Basis for charging duties/taxes/fees; vi) Basis for trade negotiations and concessions; vii) Classification may not reflect the correct nature of goods.

d) Classification under GST Law: Explanation appended to notification 1/2017 and 2/2017 – central tax (rate) dated 28.06.2017“(iii) “Tariff item”, “sub-heading” “heading” and “Chapter” shall mean respectively a tariff item, sub-heading, heading and chapter as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).”

e) Limit for declaring HSN on invoices under GST laws: 1. Up to NR 5 Crores- Four Digit (Chapter Heading); 2. More than 5 Cr. – Six Digit Digits (Chapter sub-heading) ; 3. Notification 11/2017 – Central Tax dated 28.06.17 covers use of Service Code; 4. Classification under GST is based on UNCP (United Nations Central Product Classification)

10.2 KEY LAWS GOVERNING CLASSIFICATION

The first step in computing tax liability under GST is to classify the goods and services based on the Harmonized System of Nomenclature (HSN) or the Service Accounting Code (SAC). Proper classification is crucial as it determines the applicable tax rates and compliance requirements. Customs Tariff Act, 1962 master code for classification of goods. Schedule I of Customs Tariff Act (Import Tariff) contains list of goods with basic customs duty rates. Schedule II of Customs Tariff Act (Export Tariff) contains select list of goods with export duty rates. Under GST law, Schedule of product wise duty rates based on HSN provided (total

Schedule I-	5%
Schedule II-	12%
Schedule III-	18%
Schedule IV-	28%
Schedule V-	3%
Schedule VI-	0.25%
Schedule VII-	1.50%

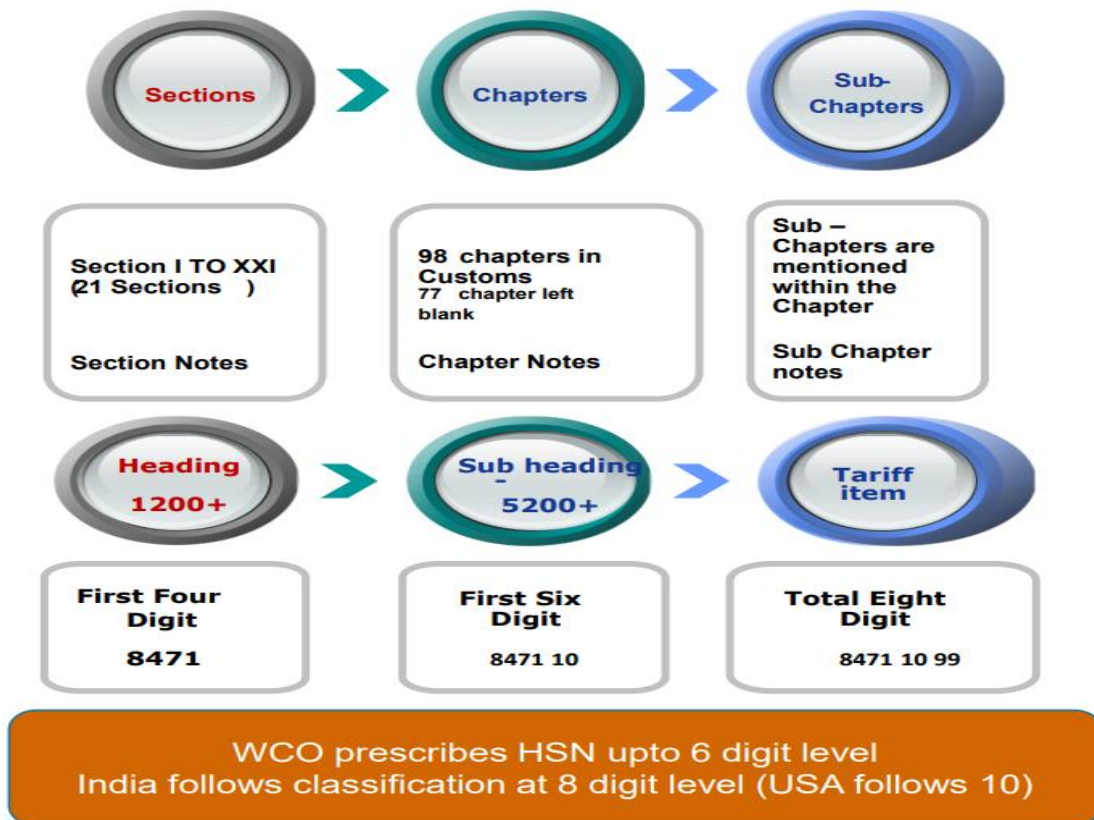
GST law refers to Customs Tariff Act for classification of goods. Central Excise Act contains rules similar to Customs Tariff Act for classification.

10.2.1. Principles of Classification: A commodity can be classified either by: i) Terms of heading; ii) Notes to sections, chapters or subheadings; iii) General interpretative rules

10.3 ARRANGEMENT OF “HARMONIZED SYSTEM OF NOMENCLATURE”(HSN)

HSN code refers to “Harmonized System of Nomenclature”. The key idea beyond the infusion of this system was to offer a systematic classification of goods around the globe. HSN code is a six-digit static code that embraces more than 5000 products. Countries across the world have accepted this harmonized system to classify numerous products. The Harmonized Commodity Description and Coding System, also known as the Harmonized System (HS) of tariff nomenclature is an internationally standardized system of names and numbers to classify traded products.

10.3.1. Arrangement of HSN: i) Raw materials/natural goods; ii) Un-worked products; iii) Semi-finished products; iv) Finished products



Source: <https://www.taxmann.com/>

- i) Dash in sub-headings and Tariff Entry
- ii) (-) A single dash denotes those goods belongs to a group covered under a heading.
- iii) (—) A double dash denotes that the article is a sub-classification of the preceding article that has a single dash.
- iv) (—) or (—) a triple dash or quadruple dash indicates the article is a sub-classification of the preceding article that has a double dash or triple dash

10.3.2. HSN Code model: Harmonized System of Nomenclature code (HSN Code) is used for classifying goods under GST. The codes have been issued by World's Customs Organization (WCO). They are used for the classification of commodities under various sections, chapters, headings, and sub-headings that belong to alike nature. The HSN system doesn't only help Customs agents – it also has important implications for GST. It helps in making GST systematic and globally accepted. By using HSN codes, there is no need to upload a detailed description for each good falling under the GST. This allows for the automation of GST returns, saving time and money for the tax authority.

10.4 GENERAL RULES OF INTERPRETATION

Rule 1: The titles of Sections, Chapters and sub-Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require. Rules 2-5 can only be used when Rule 1 has failed. The rules must be used in hierarchical order.

SOURCE INTELLIGENCE	
What Harmonized Tariff Numbers Mean <small>Source: www.datamyne.com</small>	
09 Chapter	Coffee, tea, mate, and spices
0901 Heading	Coffee, whether or not roasted or decaffeinated; coffee husks and skins; coffee substitutes containing coffee
0901.21 Sub Heading (HS Code)	Coffee, roasted, not decaffeinated
0901.21.00 Sub Heading (Duty)	No distinction
0901.21.00 10 Statistical Suffix	Coffee, roasted, not decaffeinated, certified organic

Rule 2: Prescribes how to classify both incomplete and unassembled goods, and mixtures and combinations of goods.

2(a) the incomplete/unfinished goods having essential characteristics of the finished/complete product to be classified as that of the finished product

2(b) Reference of any material in a heading will include mixture/combination of that material. Classification of goods consisting of more than one material shall be done Rule 3.

Rule 3: Prescribes how to classify products that are, prima facie, classifiable under two or more different HS headings.

3(a) Specific heading to be preferred over general headings

3(b) Mixtures/composite goods consisting of different materials/components should be classified according to the material/component that gives them their essential character.

3(c) If two headings are equally suited to the item, then the heading that appears last in numerical order to be chosen.

Rule 4: Prescribes that goods cannot be classified under above rules, to be classified under the heading appropriate to the goods to which they are most akin.

Rule 5: In respect of packing material& containers following rules shall be applicable.

5(a) specifies containers specifically designed for the article and suitable for long-term use shall be classified along with that article, if such articles are normally sold along with such cases. For example, a camera case would be classifiable as cameras. **5(b)** Packing materials and containers are to be classified with the related goods except when the packing is for repetitive use.

Rule 6: Prescribes how to classify products at subheading level, based on the wording of the subheadings and the relative HS Section and Chapter Notes. Only subheadings at the same level within the same heading are comparable.

10.5. DETERMINATION OF TAXABLE VALUE

Taxable value is the amount on which GST is charged. It includes the transaction value, any incidental expenses like packing, freight, and insurance, and any other amount charged for the supply. Discounts and incentives are deducted to arrive at the taxable value.

10.5.1. Value of Supply: VAT statues make provisions for determination of value of a transaction, as normally tax is payable on ad-valorem basis. In GST law also tax is payable on ad-valorem basis i.e., percentage of value of the supply of goods or services. Section 15 of the CGST Act and CGST Rules, 2017 (Chapter-IV Determination of Value of Supply)

contains provisions related to valuation of supply of goods or services made in different circumstances and to different persons.

10.5.2 Transaction Value: Under GST law taxable value is the transaction value i.e. price actually paid or payable, provided the supplier and the recipient are not related and price is the sole consideration. In most of the cases of regular normal trade, invoice value will be the taxable value. However, to determine value of certain specific transactions, specific provisions have been provided under Chapter-IV of the CGST Rules, 2017.

10.5.3 Compulsory Inclusions: Any taxes, fees, charges levied under any law other than GST law, expenses incurred by the recipient on behalf of the supplier, incidental expenses like commission & packing incurred by the supplier, interest or late fees or penalty for delayed payment and direct subsidies (except government subsidies) are also to be added to the price (if not already added) to arrive at the taxable value.

10.5.4 Exclusion of Discounts: Discounts like trade discount, quantity discount etc. are part of the normal trade and commerce, therefore pre-supply discounts i.e., discounts recorded in the invoice have been allowed to be excluded while determining the taxable value. Discounts provided after the supply can also be excluded while determining the taxable value provided two conditions are met namely (a) discount is established in terms of a pre-supply agreement between the supplier and the recipient and such discount is linked to relevant invoices and (b) input tax credit attributable to the discounts is reversed by the recipient. Two Circulars namely Circular No. 92/11/2019-GST dated 07.03.2019 and Circular No. 105/24/2019-GST dated 28.06.2019 have been issued to clarify various aspects of exclusions or otherwise of discount from the value to arrive at the taxable value.

10.5.5. Taxable value when consideration is not solely in money (Rule 27 of CGST Rules: In some cases, where consideration for a transaction is not solely in money, taxable value has to be determined as per prescribed Valuation Rule. In such cases following values have to be taken sequentially to determine the taxable value: i) Open Market Value of such supply. ii) Total money value of the supply i.e. monetary consideration plus money value of the non-monetary consideration. iii) Value of supply of like kind and quality. iv) Value of supply based on cost i.e. cost of supply plus 10% mark-up. v) Value of supply determined by using reasonable means consistent with principles & general provisions of GST law. (Best Judgement method)

10.5.6 Open Market Value: It means the full value of money excluding taxes under GST laws, payable by a person to obtain such supply at the time when supply being valued is made, provided such supply is between unrelated persons and price is the sole consideration for such supply.

10.5.7 Supply of like kind & quality: It means any other supply made under similar circumstances, is same or closely resembles in respect of characteristics, quality, quantity, functionality, reputation to the supply being valued.

10.5.6. Applying the GST Rate: Once the taxable value is determined, the appropriate GST rate (as per the HSN/SAC code) is applied. GST rates vary based on the nature of goods or services. The GST Council determines the GST rate slabs. The GST Council reviews the rate slabs for goods and services on a regular basis. GST rates are typically high for luxury items and low for necessities. GST rates in India for various goods and services are divided into four slabs: 5% GST, 12% GST, 18% GST, and 28% GST. Since the inception of the Goods and Services Tax. The GST council has revised the GST rates for various products several

times (GST). The most recent rate revision went into effect at the 41st GST Council Meeting on August 27, 2020. Previously, there had been numerous GST Council Meetings at which certain rate revisions were introduced.

10.5.7. Kinds of GST Rates and Structures in India

The primary GST slabs for regular taxpayers are currently 0% (nil-rated), 5%, 12%, 18%, and 28%. There are a few GST rates that are less commonly used, such as 3% and 0.25%. Furthermore, the taxable composition persons are required to pay General Service Tax at lower or nominal rates such as 1.5%, 5%, or 6% on their turnover. TDS and TCS are also concepts under GST, with rates of 2% and 1%, respectively. These are the total IGST rates for interstate supplies or the sum of CGST and SGST for intrastate supplies. To calculate the GST amounts on a tax invoice, multiply the GST rates by the assessable value of the supply. Furthermore, in addition to the above GST rates, the GST law imposes a cess on the sale of certain items such as cigarettes, tobacco, aerated water, gasoline, and motor vehicles, with rates ranging from 1% to 24%.

10.5.8. GST rate schedule for goods: Under GST, there are 7 specified rates for goods, each of which have been classified under a Schedule in the GST Rates Booklet for Goods. They are as follows: i) Schedule I: Nil Rated; ii) Schedule II: 0.25%; iii) Schedule III: 3%; iv) Schedule IV: 5%; v) Schedule V: 12%; vi) Schedule VI: 18%; vii) Schedule VII: 28%. Under each Schedule, the full list of specified Goods has been provided under two columns – "Chapter/Heading/Sub-heading/Tariff item" which provides the information of the HSN Codes & "Description of Goods" which provides the unique description of the goods for the benefit of the business.

10.5.9. GST rate schedule for services: Under GST, there 5 specified rates for services, each of which have been classified in the GST Rates Booklet for Services. They are as follows: Nil Rated; 5%; 12%; 18%; 28%

10.6. CALCULATION OF GST AMOUNT

A comprehensive tax levied on the supply of goods and services in India is called Goods and Services Tax, i.e. GST. In effect since 1st July 2017, the GST was implemented as a single tax system to replace most of the other indirect taxes at that time. The other tax systems that were abolished and replaced were the Central Excise Duty, Entry Tax, VAT, Octroi, etc. Being a comprehensive tax system, GST is levied on the production/manufacturing, sale, and consumption of the produced goods across the country. All kinds of enterprises, big or small, must have a GSTIN - GST Identification Number- to register themselves under the tax system of GST. In the case where the transaction is taking place within the states i.e. in the case of the Inter-state transactions, Integrated GST is levied; whereas, in the case of any sales taking place intra-state, Central GST and the State GST come into the picture for being levied.

The tax amount is calculated by multiplying the taxable value by the applicable GST rate. This yields the CGST and SGST amounts for intra-state transactions or the IGST amount for inter-state transactions. There are currently three types of GST Collected by Government: **CGST** – Central GST – Applies to sales within the state – goes to Central Government. **SGST** – State GST – Applies to sales within the state – goes to State Government. **IGST** – Integrated GST – Applies to sales outside the state – goes to Central Government. For example, if you sell something within the state, 50% of the GST will be CGST and 50% of the GST will be SGST. But when you sell something outside a state, 100% of it will be IGST which will go to the Central Government. While it is imperative to register and file GST on your business transactions, it is also vital to understand the process of calculation of GST. As

a registered company in India, all traders and businessmen must obtain a GSTIN (GST Identification Number) and In this article, we shall take a close look at the calculation of GST, the different tax slabs under GST, and many more related and essential aspects of GST calculation.

10.6.1. Formulae for GST calculation: GST calculation can be explained by simple illustration: If a goods or services is sold at Rs. 1,000 and the GST rate applicable is 18%, then the net price calculated will be = $1,000 + (1,000 \times (18/100)) = 1,000 + 180 = \text{Rs. } 1,180$.

10.6.2. How to calculate GST using GST Formula? Due to the simplification of the indirect taxation regime, the calculation of the applicable taxes has become much simpler. The GST rates applicable on the various goods or services can now be calculated, based on the nature of the transaction – inter-state or intra-state. To get GST part of GST inclusive amount you need divide GST inclusive amount by 115 and multiply by 15 To get GST exclusive amount while knowing GST inclusive value you need to multiply GST inclusive price by 100 and then divide result by 115. GST calculation method is simple and can be derived from the following formula. $\text{GST Tax Amount} = (\text{GST \%} \times \text{Original cost of the product or service}) / 100$ $\text{Net Price} = \text{Original cost of the product or service} + \text{GST Tax amount}$.

10.6.3. Intra-state GST tax calculator: In case of Intra-State transactions, GST can be calculated as follows: $\text{CGST} = \text{Applicable GST Rate} / 2$ (for 28%, CGST will be $28/2=14\%$) $\text{SGST} / \text{UTGST} = \text{Applicable GST Rate} / 2$ (for 28%, SGST will be $28/2=14\%$) In other words, $\text{CGST} + \text{SGST} / \text{UTGST} = \text{Applicable GST Rate}$. Thus, a simple formula arises: $\text{GST Amount} = (\text{Original Cost} \times \text{GST Rate Percentage}) / 100$; $\text{Net Price} = \text{Original Cost} + \text{GST Amount}$.

10.6.4. Examples of GST Calculations with Formula: A simple example of how GST is calculated typically by business owners:

Particulars	Rate (%)	Amount
Invoice value	12%	2,00,000
GST		12,000
Price to be charged on the Invoice		2,24,000

GST calculation by manufacturers:

Particulars	Rate(%)	Amount Pre-GST	Amount under GST
Cost of the product	–	2,00,000	2,00,000
Profit	10.00%	20,000	20,000
Excise Duty	12.50%	27,500	Nil
Total	–	2,47,500	2,20,000
VAT	12.50%	30,938	Nil
CGST	6%	Nil	13,200
SGST	6%	Nil	13,200
Final Invoice to the wholesaler	–	2,78,438	2,46,400

10.7. INPUT TAX CREDIT (ITC)

A significant aspect of GST is the concept of Input Tax Credit. Businesses can claim credit for the GST paid on purchases (input tax) against the GST collected on sales (output

tax). The net tax liability is the difference between the output tax and the eligible ITC (hereinafter referred to as, "ITC"). Uninterrupted and seamless chain of input tax credit is one of the key features of Goods and Services Tax. ITC is a mechanism to avoid cascading of taxes. Cascading of taxes, in simple language, is 'tax on tax'. Under the present system of taxation, credit of taxes being levied by Central Government is not available as set-off for payment of taxes levied by State Governments, and vice versa. One of the most important features of the GST system is that the entire supply chain would be subject to GST to be levied by Central and State Government concurrently. As the tax charged by the Central or the State Governments would be part of the same tax regime, the credit of tax paid at every stage would be available as set-off for payment of tax at every subsequent stage.

Example: A trader purchases good worth Rs. 100 and pay tax of 10% on it. And now this trader sold such goods at Rs. 150 and collect tax of Rs. 15 from customer. Now the trader has to pay Rs. 15 to government. But he had already paid Rs. 10 in the form of tax, so this Rs. 10 is ITC of the trader and will be allowed as deduction from tax payable and he has to pay only net amount of Rs. 5 as tax.

10.7.1. ITC Allowed: SGST, UTGST, CGST & IGST:

Amount of Input Tax Credit on account of IGST shall first be utilized for the payment of IGST then for payment of CGST and then for payment of SGST or UTGST. Amount of Input Tax Credit on account of CGST shall first be utilized for the payment of CGST then for payment of IGST. Such amount cannot be used for payment of SGST or UTGST. Amount of Input Tax Credit on account of SGST or UTGST shall first be utilized for the payment of SGST or UTGST then for payment of IGST. Such amount cannot be used for payment of CGST. SGST/UTGST payable or Input tax credit of SGST/UTGST will be calculated state wise i.e., ITC of SGST in one state cannot be utilized for payment of SGST of another state. Input tax credit cannot be used for payment of interest, penalty, fees or any amount payable under the act other than the GST in manner mentioned above.

Example:

PARTICULARS	IGST	CGST	SGST
Tax Payable	10,000	8,000	5,000
Input Tax Credit	12,000	7,500	1,200
Tax Payable	10,000	8,000	5,000
Less: Input Tax Credit of IGST from IGST CGST from CGST and SGST from SGST (up to maximum of tax payable)	10,000	7,500	1,200
Gross Tax Payable	NIL	500	3,800
Less: Input Tax Credit of Remaining IGST of Rs. 2,000 from CGST first and then SGST	–	500	1,500
Net Tax Payable	–	–	2,300

10.7.2. Some of the technical aspects of the scheme of ITC are as under:

- a) Any registered person can avail credit of tax paid on the inward supply of goods or services or both, which is used or intended to be used in the course or furtherance of business subject to certain conditions as under.
- b) The pre-requisites for availing credit by registered person are:
 - i) He is in possession of tax invoice or any other specified tax paying document.
 - ii) He has received the goods or services. "Bill to ship" scenarios also included.
 - iii) Tax is actually paid by the supplier.
 - iv) He has furnished the return.
 - v) If the inputs are received in lots, he will be eligible to avail the credit only when the last lot of the inputs is received.
 - vi) He should pay the supplier, the value of the goods or services along with the tax within 180 days from the date of issue of invoice, failing which the amount of credit availed by the recipient would be added to his output tax liability, with interest [rule 2(1) & (2) of ITC Rules]. However, once the amount is paid, the recipient will be entitled to avail the credit again. In case a part payment has been made, proportionate credit would be allowed.

10.7.3. Documents on the basis of which credit can be availed are: a) Invoice issued by a supplier of goods or services or both; b) Invoice issued by recipient along with proof of payment of tax; c) A debit note issued by supplier; d) Bill of entry or similar document prescribed under Customs Act; e) Revised invoice; f) Document issued by Input Service Distributor

10.7.4. Persons who are allowed to take ITC:

- a) All registered person is allowed to take input tax credit other than person who are paying tax under composition scheme.
- b) A person who has applied for registration within 30 days from the date on which he is liable for registration is allowed to take input tax credit 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.
- c) A person who has taken voluntarily registration is allowed to take input tax credit 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.
- d) A person who has ceased to pay tax under composition scheme is entitled to take credit of input tax in respect of inputs held in stock, inputs contained in semi-finished or finished goods held in stock and on capital goods on the day immediately preceding the date from which he ceases to pay tax under composition scheme.

Note: Under the points 2, 3 and 4 above, the input tax credit is allowed only for the stock which is purchased in last one year from the aforementioned date. Such person needs to file Form GST ITC-01 within 30 days of his becoming eligible for availing input tax credit. Details furnished in the form is to be certified by a practicing as chartered accountant or cost accountant if the input tax credit claimed is more than Rs. 2 lakhs.

10.7.5. Persons NOT allowed taking input tax credit: i) Persons who are not registered in GST. ii) Persons who are registered under composition scheme

10.7.6. Time Limit for Taking ITC: ITC is not allowed after any of the following happens: i) due date of return for month of September of next financial year. ii) annual return filed for relevant year (Filing date, not due date). The Input Service Distributor (ISD) may distribute the credit available for distribution in the same month in which, it is availed. The credit of

CGST, SGST and IGST shall be distributed as per the provisions of Rule 4(1) (d) of ITC Rules. ISD shall issue invoice in accordance with the provisions made under Rule 9(1) of Invoice Rules.

10.7.7. ITC not available cases: As mentioned in section 17(5) of WBGST Act, 2017 the following cases are not avail the ITC. a) Motor vehicles and other conveyances except under specified circumstances. b) Goods and/or services provided in relation to: i) Food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, except under specified circumstances; ii) Membership of a club, health and fitness centres; iii) Rent-a-cab, life insurance, health insurance except where it is obligatory for an employer under any law; iv) Travel benefits extended to employees on vacation such as leave or home travel concession; c) Works contract services when supplied for construction of immovable property, other than plant & machinery, except where it is an input service for further supply of works contract; d) Goods or services received by a taxable person for construction of immovable property on his own account, other than plant & machinery, even when used in course or furtherance of business;

Explanation 1: For the purpose of this clause, the word “construction” includes reconstruction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property.

Explanation 2: ‘Plant and Machinery’ means apparatus, equipment, machinery, pipelines, telecommunication tower fixed to earth by foundation or structural support that are used for making outward supply and includes such foundation and structural supports but excludes land, building or any other civil structures. a) Goods and/or services on which tax has been paid under composition scheme; b) Goods and/or services used for private or personal consumption, to the extent they are so consumed; c) Goods lost, stolen, destroyed, written off, gifted, or free samples; d) Any tax paid due to short payment on account of fraud, suppression, mis-declaration, seizure, detention.

10.7.8. Reversal of Input Tax Credit: If a person who is paying tax in normal scheme and wants to shift to Composition scheme or where goods or services supplied by him become wholly exempt, he has to pay 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. After payment of such amount, the balance of input tax credit, if any, lying in his electronic credit ledger shall lapse. Where a recipient fails to pay to the supplier of goods or services, the amount towards the value of supply of goods/services along with tax payable thereon within a period of 180 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. This rule doesn’t apply where the recipient is liable to pay tax on reverse charge basis. Such person has to furnish such details in From GSTR-2 for the month in which such period of 180 days lapse.

10.7.9. ITC for GST Paid on Reverse Charge: GST paid on reverse charge is also allowed as Input Tax Credit subject to the condition that it is allowed according to all other provisions. But note that reverse charge has to pay through cash only.

10.7.10. ITC on Capital Goods and Reversal on its sale: Credit of tax paid on capital goods is also permitted to be availed in one installment. Input tax credit of tax component of capital goods is not allowed if the person has claimed depreciation in income tax Act for GST component. In other words, a person can either take input tax credit of GST on capital goods

or claim depreciation on tax component. If the taxable person sells such capital goods on which ITC had been taken then such person is liable to pay GST of higher amount from the following: i) ITC taken on such capital goods less 5 percentage points per quarter of a year or part thereof from the date of invoice. ii) Sale price of capital goods multiplied by GST rate. 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.

10.7.11. ITC in respect of inputs sent for job work: Principal is allowed to take ITC of the goods or capital goods sent to a job worker for job work. Input is allowed even if the inputs are directly sent to a job worker for job-work without their being first brought to his place of business. If such goods are not received back by principal or supplied from place of job worker within one year from the date of sending goods to job worker, then 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. This limit of one year is increased to three years in case of capital goods.

Where the inputs are sent directly to a job worker, the period of one year or three year shall be counted from the date of receipt of inputs by the job worker. This rule of deemed supply shall not apply to moulds and dies, jigs and fixtures, or tools sent out to a job-worker for job-work.

10.7.12. Special circumstances under which ITC is available: a) A person who has applied for registration within 30 days of becoming liable for registration is entitled to ITC of input tax in respect of goods held in stock (inputs as such and inputs contained in semi-finished or finished goods) on the day immediately preceding the date from which he becomes liable to pay tax.

b) A person who has taken voluntary registration under section 23(3) of the WBGST Act, 2017 is entitled to ITC of input tax in respect of goods held in stock (inputs as such and inputs contained in semi-finished or finished goods) on the day, immediately preceding the date of registration.

c) A person switching over to normal scheme from composition scheme under section 10 is entitled to ITC in respect of goods held in stock (inputs as such and inputs contained in semi-finished or finished goods) and capital goods on the day immediately preceding the date from which he becomes liable to pay tax as normal taxpayer.

d) Where an exempt supply of goods or services or both become taxable, the person making such supplies shall be entitled to take ITC in respect of goods held in stock (inputs as such and inputs contained in semi-finished or finished goods) relating to exempt supplies. He shall also be entitled to take credit on capital goods used exclusively for such exempt supply, subject to reductions for the earlier usage as prescribed in the rules.

e) ITC, in all the above cases, is to be availed within 1 year from the date of issue of invoice by the supplier.

f) In case of change of constitution of a registered person on account of sale, merger, demerger etc., the unutilised ITC shall be allowed to be transferred to the transferee.

g) A person switching over from composition scheme under section 10 to normal scheme or where a taxable supply become exempt, the ITC availed in respect of goods held in stock (inputs as such and inputs contained in semi-finished or finished goods) as well as capital goods will have to be paid (ITC reversal).

h) In case of supply of capital goods or plant and machinery, on which ITC is taken, an amount equivalent to ITC availed minus the reduction as prescribed in rules (5% for every quarter or part thereof) shall have to be paid. In case the tax on transaction value of the supply is more, the same would have to be paid.

10.8. SUMMARY

In summary, the above lesson on "Computation of GST" provides a comprehensive understanding of the taxation system implemented in India. GST, a unified tax structure, amalgamates various indirect taxes, simplifying tax compliance and fostering a seamless national market. The computation involves assessing the tax liability by calculating GST on the value of goods and services, considering appropriate rates and input tax credits. This lesson highlights the significance of accurate computation to ensure compliance with GST laws, thereby enabling businesses to effectively manage their tax obligations and contribute to a more transparent and efficient taxation framework. Understanding GST computation is crucial for businesses to navigate the tax landscape efficiently and promote a conducive environment for economic growth and development. Reversal of Input Tax Credit- ITC For GST Paid on Reverse Charge- ITC On Capital Goods and Reversal on its sale- ITC in respect of inputs sent for job work.

10.9. KEY WORDS

SGST: SGST means State Goods and Services Tax. Under GST, an equivalent amount of SGST is a tax levied on intrastate supplies of both goods and services by the particular state government where the product sold is consumed.

CGST: The full form of CGST under GST law is Central Goods and Service Tax. It is called as CGST Act 2017. The CGST act has been enacted 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 the matters connected therewith or incidental thereto.

IGST: Integrated goods and services tax (IGST) would mean the tax levied under IGST Act on the supply of any goods and / or services in the course of inter-state trade or commerce. Integrated GST shall also apply to import of goods and services into India.

HSN: HSN stands for Harmonized System of Nomenclature and is used to classify goods in a systematic manner. It was developed by the World Customs Organization (WCO) and is considered the global standard when it comes to naming goods. This 6-digit uniform code can be used to classify more than 5,000 products and is also used for classification for tax purposes.

Transaction value: This is the main method of assessment at customs. This is the price actually paid or payable for the goods when they are sold for export to the customs territory of the Union, adjusted, if applicable.

10.10. SELF-ASSESSMENT QUESTIONS

1. What are the Components of GST?
2. How to Computation of Tax Liability under GST?
3. What are Classification of Goods and Services under GST Law?
4. What are the General Rules of Interpretation?
5. How to determination of Taxable Value? Explain.
6. What is the Rates Applying under GST?
7. How to Calculation of Tax Amount?
8. Reveal the GST rate schedule for goods & services.
9. Explain the Formulae for GST calculation.
10. What is Input Tax Credit (ITC)?
11. Discuss some of the technical aspects under the scheme of ITC

12. Who is the Person NOT allowed to take input tax credit?
13. What is Time Limit for Taking ITC?
14. What are the Special circumstances under which ITC is available?

10.11. FURTHER READINGS

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3. Dr. Rakesh Garg and Sandeep Garg, "Master Guide to GST with GST Case Law Digest" - Commercial Law Publishers (India) Pvt. Ltd.
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8. CA Rajesh Goyal and Adv. Ankit Gulgulia, "GST Practical Guide: Issues, Solutions & Procedures" - Bharat Law House
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LESSON – 11

FILING OF RETURNS

Learning objectives:

- To understand process of filing of returns of GST
- To know the various types of GST
- To know the different forms avail for GST submission
- To know the special cases under GST Act
- To understand the concept of penalty and recovery under GST

Structure:

11.1 Introduction

11.2. Filing of Returns under GST Act

11.3. Types of GST returns

11.4. Forms of Returns applicable under the new GST Law

11.5. GSRT 1

11.6. GSRT 2

11.7. GSRT 2A

11.8. GSTR-3B

11.9. GSTR – 4

11.10. GSTR – 5

11.11. GSTR-5A

11.12. GSTR – 6

11.13. GSTR – 7

11.14. GSTR – 8

11.15. GSTR – 9

11.16. GSTR -10

11.17. GSTR – 11

11.18. Summery

11.19. Key words

11.20. Self-Assessment questions

11.21. Further readings

11.1. INTRODUCTION

GST Return GST return means statement of information furnished by the registered taxpayer to the government. Filing of GST Return (GSTR) helps in determination of tax liability of the return filer and at the same time it also has a bearing on the determination of tax liability of the other persons with whom the former has entered into taxable activities thus timely and correct filing of GSTR is essential for the functioning of the GST system. Every registered person is required to file the return electronically.

The modes for filing return electronically are: 1) Through GSTN portal: www.gst.govt.in; 2) Offline utilities: <https://www.gst.gov.in/download/returns>; 3) Through GST Suvidha provider. 4) The information provided by a registered person regarding outward supplies are automatically populated in the recipients return i.e., in GSTR-2.

Example: Guna has supplied goods for Rs 10,000/- to Srinu and has filed GSTR1. The amount of Rs.10,000/- will be reflected as outward supply in GSTR1 of Guna and will

automatically appear as inward supply for Rs.10,000/- in the GSTR 2 of Srinu, which must be validated by Srinu. Thus, the system allows automatic match of the information and helps in calculation of ITC amount too.

11.2. FILING OF RETURNS UNDER GST ACT

The Goods and Services Tax (GST) is a unified indirect tax levied on the supply of goods and services in India. It has replaced various indirect taxes like excise duty, service tax, VAT, etc., with the aim of simplifying the tax regime and promoting a single tax structure. Filing of returns is a crucial aspect of the GST system, ensuring compliance and tax transparency.

11.2.1 Steps in Filing GST Returns

Step-1: Data Collection and Preparation: Businesses need to maintain accurate records of all their transactions, both inward and outward supplies, during the tax period.

Step-2: Validation of Invoices: Ensure that all invoices are in compliance with the GST law, containing correct details of the supplier, recipient, taxes, and other required information.

Step-3: Filing the Return Form: Use the GST portal to fill the appropriate return form based on the type of return and taxpayer category

Step-4: Verification and Submission: Review the details entered and verify the accuracy of the data. After ensuring correctness, submit the return on the GST portal.

Step-5: Late Filing and Penalties: Late filing of GST returns attracts penalties in the form of late fees and interest. The late fee is generally a specified amount for each day of delay. Interest is levied on the tax liability that remains unpaid after the due date.

11.2.2 Importance of Timely and Accurate Filing: Timely filing of returns ensures compliance with GST laws and helps avoid penalties and legal issues. Accurate filing is crucial for claiming input tax credits (ITC) and maintaining a good compliance rating, which impacts the business's credibility.

11.2.3 GST Compliance Rating: GST compliance rating is a system that evaluates a taxpayer's adherence to GST rules and regulations based on their filing and payment history. A good compliance rating is beneficial for business relationships and tenders.

11.2.4 GST Audit and Reconciliation: Regular filing of GST returns assists in the smooth conduct of GST audits and facilitates the reconciliation of input tax credits and output tax liabilities. Understanding the procedures and requirements for filing GST returns is essential for businesses to comply with the law, avoid penalties, and contribute to the efficient functioning of the GST system. It's advisable to seek professional advice to ensure accurate and timely filing of GST returns.

11.3. TYPES OF GST RETURNS

Under the GST regime, different types of returns are filed by various categories of taxpayers. Some common types of returns include GSTR-1 (for outward supplies), GSTR-3B (a summary return), GSTR-4 (for composition dealers), GSTR-9 (annual return), and more. The specific returns to be filed depend on the nature of the business and the turnover.

Frequency of Filing: The frequency of filing GST returns is based on the type of taxpayer. Regular taxpayers generally need to file monthly returns, while small taxpayers can opt for quarterly filing. Additionally, an annual return is required to be filed by all taxpayers except for composition dealers.

All licenced individuals, dealers, associations and registered firms must give information of their sales and transactions of products and services, including the tax charged and received. Such information shall be obtained by filing the GST Return. This return is the basis on which the tax authorities determine your tax liabilities. The registered GST consumer would

have to file a return, containing transactions, sales, GST production, and GST input credit. The registered customer must send 4 forms to file his or her GST return, which are: return for sales, return for sale/supplies, monthly return and annual return. For those who have opted for a composition system, quarterly returns must be submitted.

11.4. FORMS OF RETURNS APPLICABLE UNDER THE NEW GST LAW

GST Return Form is a document containing details of all purchases, sales, output GST (on sales) and input tax credit (GST paid on purchases) to calculate an assessee's GST liability for a particular tax period. Currently GST returns can be filed either on monthly, quarterly or annually depending on various applicable factors.

11.4.1 Forms of GST return:

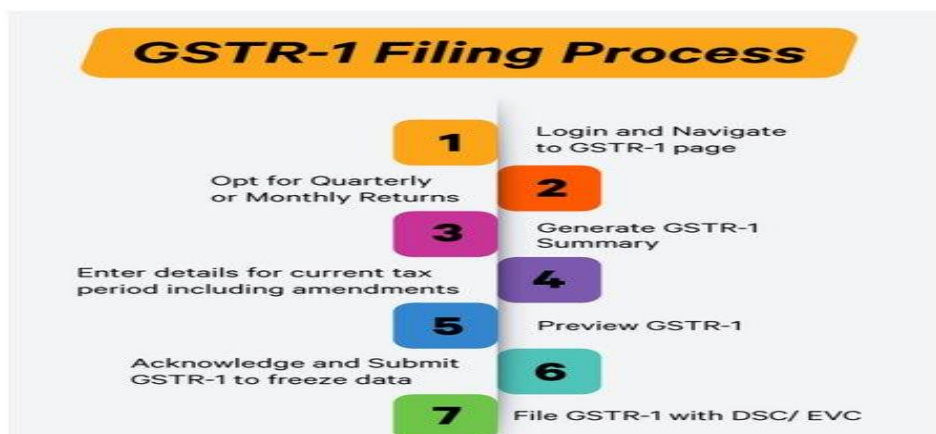
Form	Particulars	Due date
GSTR - 1	To be filed by all the normal taxpayers stating their outward supplies of goods and services during the applicable tax period.	Turnover < Rs. 1.5 crore – Quarterly , 31st of the month succeeding the quarter Turnover > Rs. 1.5 crore – Monthly , 11th of the succeeding month
GSTR - 2	Details of inward supplies of goods and services including those under reverse charge basis	Monthly , 15th of the succeeding month
GSTR - 2A	Read only documents for the recipient, to verify the details uploaded by the seller in GSTR-1	-Not Applicable-
GSTR – 3 (Suspended)	All details of the outward and inward supplies, as mentioned in Forms GSTR-1 & GSTR-2	Monthly , 20th of the succeeding month
GSTR - 3B	To be filed by all the normal taxpayers declaring their summary GST liabilities for the applicable tax period	Monthly , 20th of the succeeding month
CMP-08 (Earlier GSTR-4, for composition-scheme taxpayers only)	To declare summary of outward supplies and import of services liable to reverse charge mechanism	Quarterly , 18th of the month succeeding the quarter
GSTR - 5	To be filed by non-resident taxpayers when they do not wish to claim Input Tax Credit (ITC)	Monthly , 20th of the succeeding month
GSTR-5A	To be filed by Online Information and Database Access or Retrieval (OIDAR) service providers outside India	Monthly , 20th of the succeeding month

	for their services to unregistered persons in India	
GSTR - 6	To be filed by Input Service Distributors for distribution of ITC	Monthly , 13th of the succeeding month
GSTR - 7	Return for taxpayers which are required to deduct TDS	Monthly , 10th of the succeeding month
GSTR - 8	Return to be furnished by the E-commerce platform which is required to collect TCS	Monthly , 10th of the succeeding month
GSTR - 9	To be filed by all the normal taxpayer declaring the details of purchase, sales, input tax credit, refund claimed, demand created, etc.	Annually , 30th November'19 for FY 2017-18
GSTR - 9A	To be filed by GST composition scheme taxpayers declaring the details of outward supply, inward supply, taxes paid, refund claimed, demand created, input tax credit and reverse due to opting out or opting in to the composition scheme.	Annually , 30th November'19 for FY 2017-18
GSTR – 10 (Final return)	Annual return for the registered taxpayer whose GST registration got cancelled	Once , 3 months from the date of cancellation or order of cancellation, whichever is later
GSTR - 11	To be filed by Unique Identity Number (UIN) holders stating the supplied/received goods and services. To claim GST refund through RFD-10	Quarterly , not mandatory for UIN holders who did not receive any inward supplies during the quarter. 28th of the next month for which refund statement is filed

Note: The GST return due dates may be extended by the Government from time to time.

11.5. GSRT 1

GSTR-1 is a return document that provides specific reports about all outward goods and services carried out by the usual registered taxpayer in compliance with the GST Act. GSTR-1 provides descriptions of invoices, debit notes, credit notes and amended invoices for outgoing goods and services. The return is filed on a monthly basis by the 10th of the next month. However, it can also be extended by the Commissioner to any class of people above the 10th.



Source: PisaBazar on online.

11.6. GSRT 2

In comparison to GSTR-1, GSTR-2 is a type that provides extensive details on the inward supply of goods and services. It includes records of payments made by the taxpayer by both licenced and unregistered taxable individuals, along with statistics on debit notes and credit notes. The due date for filing GSTR-2 is the 15th of the following month. However, the procedure of making any necessary changes and filings is normally carried out from the 11th to the 15th of the next month.

11.7. GSTR-2A

It is a system generated Statement of Inward Supplies for a recipient. Form GSTR-2A will be generated in below scenarios:

- i) When the supplier uploads the B2B transaction details in their Form GSTR-1 / 5;
- ii) ISD details will be auto-populated on submission of Form GSTR-6 by their Input Service Distributor.
- iii) TDS & TCS details will be auto-populated on filing of Form GSTR-7 & 8 respectively by the counter party.
- iv) Auto-population of Import of goods from overseas, on bill of entry, as received from ICEGATE Portal of Indian Customs.

Form GSTR-2A will be generated in the following manner:

- a). After saving/filing/submission of Form GSTR-1 by suppliers or when counterparty adds invoices / Credit notes / Debit Notes etc. or make Amendments in Form GSTR-1/5.
- b). Form GSTR-6 is submitted for distribution of credit in the form of ISD credit invoice or ISD credit notes.
- c) Form GSTR-7 & 8 filed by the counterparty for TDS & TCS credit respectively.

11.7.1. An illustration of GSTR – 2A image: Source: Internet



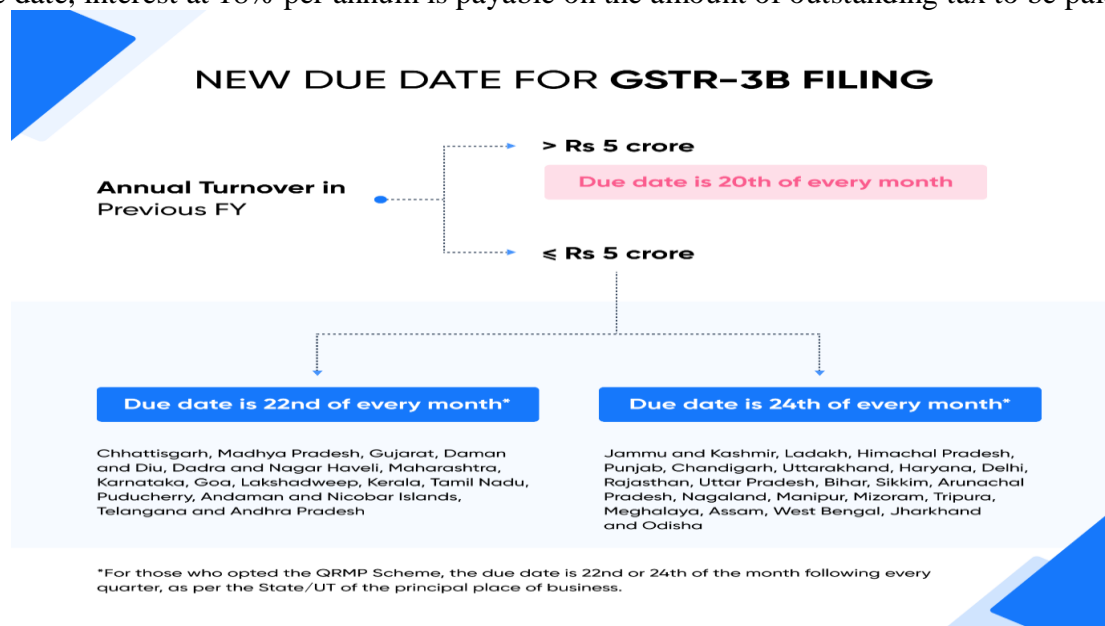
11.8. GSTR-3B

It is a self-declared summary GST return filed every month (quarterly for the QRMP scheme). Taxpayers need to report the summary figures of sales, ITC claimed, and net tax payable in GSTR-3B. i) A separate GSTR-3B must be filed for every GSTIN; ii) The GST

liability must be paid on or before the date of filing GSTR-3B, earlier of its due date; iii) The GSTR-3B once filed cannot be revised; iv) Even in case of a zero liability, GSTR-3B must be compulsorily filed

11.8.1 Who should file GSTR 3B? Every person who is registered under GST must file GSTR-3B. However, the following registrants do not have to file GSTR-3B: i) Taxpayers registered under the Composition Scheme; ii) Input service distributors; iii) Non-resident suppliers of OIDAR service, iv) Non-resident taxable persons

11.8.2. Late Fee & Penalty: A late fee is charged for filing GSTR-3B of a tax period after the due date. It is levied as follows: a) Rs. 50 per day of delay; b) Rs. 20 per day of delay for taxpayers having nil tax liability for the month. In case the GST dues are not paid within the due date, interest at 18% per annum is payable on the amount of outstanding tax to be paid.



Source: <https://cleartax.in/s/gstr-3b>

11.8.3. The following are essential points to note: a) Taxpayers must ensure to pay taxes and file GSTR-3B within the deadline. b) The late filing of GSTR-3B attracts a late fee and interest at 18% per annum. c) In case the tax was paid within the due date but the GSTR-3B was filed after the deadline, both late fees and interest will apply. d) Taxpayers (including those not opting for the QRMP Scheme filing quarterly GSTR-1 returns must still pay tax and file GSTR-3B every month.

11.9. GSTR – 4:

In April 2019, a new tax payment process was laid down for composition dealers to simplify compliance for them. Form **CMP-08** was introduced in April 2019 and was made applicable from FY 2019-2020 onwards. It replaces the erstwhile quarterly GSTR-4 filed by composition dealers. A composition dealer will use the Form CMP-08, which is a special statement-cum-challan to declare the details or summary of his/her self-assessed tax payable for a given quarter. It also acts as a challan for making payment of tax. A composition dealer is a dealer who has been registered under the composition scheme laid down for both supply of goods and services. In addition to Form CMP-08, a composition dealer will also need to file his/her annual return via the revised format of Form GSTR – 4 by 30 April following the end of a specific fiscal year.

11.9.1 Who should file CMP-08? A taxpayer who has opted for the composition scheme has to file CMP-08 in order to deposit payments every quarter. There are two kinds of taxpayers

registered using CMP-02 (opt into Composition scheme): i) The supplier of goods being manufacturers, retailers having an annual aggregate turnover of up to Rs.1.5 crore (Rs.75 lakhs for special category States except for Jammu & Kashmir and Uttarakhand) in the previous financial year, except: a) Manufacturer of ice cream and other edible ice (whether or not containing cocoa), pan masala, or tobacco and manufactured tobacco substitutes. b) A person making inter-state supplies. c) A person supplying goods which are not taxable under GST Law. d) A casual taxable person or a non-resident taxable person. e) Businesses which supply goods through an e-commerce operator. f) The supplier of services who fulfil the conditions mentioned under the Notification number 2/2019 Central Tax (Rate) having the aggregate annual turnover up to Rs.50 lakh in the previous financial year.

11.9.2. What is the due date to file the Form CMP-08? Form CMP-08 must be filed on a quarterly basis, on or before the 18th of the month succeeding the quarter of any specific fiscal year. For example, the due date to file CMP-08 for the Jan-Mar 2023 quarter was 18th April 2023.

11.9.3 Penalty for not filing CMP-08 within the due date? In case a taxpayer fails to furnish his/her statement on or before the due date, he or she will be liable to pay a late fee of Rs.200 per day for every day of delay. i.e. Rs.100 per day under CGST and Rs.100 per day under SGST. IGST Act prescribes an amount equal to the late fees for CGST and SGST Act i.e Rs.200 per day of delay. Late fee charges will be subject to a maximum of Rs.5,000 from the start of the due date to the actual filing date of the taxpayer. Moreover, if CMP-08 of two consecutive quarters are not filed, then the e-way bill generation gets blocked. For unblocking, taxpayers need to apply to the jurisdictional tax official in Form GST EWB 05. They may also be required to file all pending forms for previous quarters.

11.9.4. How does a taxpayer fill CMP-08? A taxpayer will need to fill in the following details:

Step 1- A taxpayer has to enter his/her GSTIN details. Have a look at the screenshot below to understand better: **Step 2-** Once the GSTIN number is entered, primary information such as the legal name and trade name will be auto-filled. The same statement will be updated for the ARN (Application reference number) and date of filing, once the payment is done. Take a look at the screenshot below for your reference:

Step 3- The third table of the form will have information/summary of the self-assessed tax liability. A taxpayer will need to provide details such as outward supplies on which tax is payable by him, including the inward supplies on which tax is payable on a reverse charge and cases of imports. Apart from this, the tax payable on these and the interest paid (if any) should be reported. Refer to the screenshot below for a better understanding:

Step 4- In the final step, a taxpayer has to confirm that he/she has verified all the details that have been entered by signing the form. Here is a screenshot for your reference:

11.10. GSTR – 5:

GSTR-5 is a monthly return that every registered 'non-resident' taxpayer has to file under the GST regime of India. This particular return will contain all the details of sales and purchases carried out of 'non-resident' foreign taxpayers. They are to provide all the details in this form.

11.10.1 Who is a Non-resident? A non-resident taxable person is anyone who doesn't have a business establishment in India but has come here for a short period of time to make supplies or purchases or both. Section 24 of the GST law says that the registration of a 'non-resident' taxable person is mandatory. Even if the business transactions in India are not very frequent, every non-resident individual or company has to register under the GST regime. The

information from the seller's GSTR-5 will be reflected in the relevant sections of the buyer's GSTR-2.

Under Section 27 of the GST rules, a special certificate of registration is issued to a non-resident taxable person. The registration is a temporary one and is valid for the period specified in the application, or 90 days from the effective date of registration, whichever is earlier. Thus, such a person can make taxable supplies only after the issuance of the certificate of registration. Thus, a non-resident taxable person, registered as such is required to file a GSTR-5 form:

- i) By the 20th of the succeeding month.
- ii) Within 7 days from the last day of the period of registration.
- iii) Late filing of GSTR-5 returns will lead to interest and late fees.
- iv) The interest is 18% per annum and will be calculated by the taxpayer on the amount of outstanding tax to be paid. The time period will start from the next day of filing i.e., the 21st of the month to the date of actual payment.
- v) The late fees are INR 100 per day for CGST and INR 100 per day for SGST i.e., a total of INR 200 per day – till a maximum is INR 5,000. There are no late fees however on IGST.

11.11. GSTR-5A:

Form GSTR-5A is a return to be furnished by Online Information and Database Access or Retrieval (OIDAR) services provider, of the services provided to non-taxable persons, from a place outside India to a person in India. Monthly Return(s) needs to be filed by 20th of the month succeeding the tax period to which the return pertains or by the date as may be extended by Commissioner. Non-Resident Online Information and Database Access or Retrieval (OIDAR) services provider needs to file return in Form GSTR-5A. Filing of return is mandatory. Form GSTR-5A needs to be filed even if there is no business activity (i.e. it is a Nil Return) for a tax period. Form GSTR-5A can be prepared using either of the following modes:

- a) Online entry of data on the GST Portal after log in
- b) Using third party application of Application Software Provider (ASPs) through GST Suvidha Providers (GSPs)

11.11.1. Pre-requisites for filing Form GSTR-5A are: 1. Taxpayer must be registered as an OIDAR services provider and must have a valid GSTIN. 2. Taxpayer must have valid User ID and Password.

11.12. GSTR – 6:

GSTR 6, also known as goods and service tax return, is a monthly statement that needs to be filed by firms that are also Input Service Distributors (ISD). While filing GSTR 6 returns, organisations must include information about inbound supplies received/purchases made from other registered taxpayers as well as information about input tax credits dispersed across the organisation's subsidiaries. GSTR 6 must be filed by organisations since it provides information on all the papers used to distribute Input Tax Credits (ITC), as well as data about how credits are distributed and the tax invoices used to calculate credits. As a result, even if there is a nil return, every ISD must file a GSTR 6. The organisations that are Input Service Distributors (ISD) are required to file GSTR 6. These businesses provide goods, services, or both. They collect tax invoices for input services and provide the necessary documentation to disperse the state tax (SGST), credit of central tax (CGST), union territory tax (UTGST), or integrated tax (IGST) payable on certain services to a supplier of taxable products or services having the same PAN as the ISD. Late fees have been reduced to Rs. 50 per day. However, no provision for reduction is made where NIL return is filed.

11.13. GSTR – 7:

Form GSTR-7 is a return which is required to be filed by the persons who deduct tax at the time of making/crediting payment to suppliers towards the inward supplies received. Tax deductor has a legal obligation: To declare his TDS liability for a given period (monthly) in Form GSTR-7; Furnish details of the TDS deducted under three major heads viz., Central tax, State/UT tax and Integrated tax in accordance with that return; File correct and complete return within stipulated time frame, given the fact that the TDS credit will be available to the counter party taxpayer (supplier) upon filing of TDS return in Form GSTR-7 by the Deductor (i.e., person liable to deduct TDS); and Issue TDS certificate to the deductee.

11.13.1. Who are required to deduct TDS and thus file GSTR-7? As per the GST law, the following entities need to deduct TDS, and thus will be required to carry out GSTR-7 return filing under GST: i) A department or establishment of the Central or the State government. ii) Local Authority. iii) Governmental agencies. iv) Persons or category of persons as may be notified on the recommendations of the GST Council. v) Authority or a Board or any other body which has been set up by Parliament or a State Legislature or by a government, with 51% equity, owned by Government. vi) Society established by the Central or any State government or a Local Authority, which is registered under the Societies Registration Act. vii) Public Sector undertakings. TDS at 2% is required to be deducted only if the total value of supply under a contract in respect of supply of taxable goods or services or both, exceeds Rs. 2,50,000/- (Rupees two lakh and fifty thousand) excluding taxes & cess leviable under GST.

11.13.2. How to file GSTR-7: Following are the details to be provided in the GSTR-7 form, spread across 8 tables:

a) **GSTIN:** Each taxpayer will be allotted a state-wise PAN-based 15-digit Goods and Services Tax Identification Number. The GSTIN will be auto-populated at the time of filing returns.

b) **Legal name of the Deductor:** The name of the taxpayer will be auto-populated at the time of logging into the GST Portal. Also, any trade name of the registered person, will also get auto-populated.

c) **Details of TDS:** Here one needs to mention the details in respect of TDS deducted such as GSTIN of the deductee, total amount and TDS amount (CGST / SGST / IGST).

d) **Amendments to details of TDS in respect of any earlier tax period:** Any correction to the data submitted in the return of previous months can be done here by filling the original and revised details in this section. Based on this amendment, the TDS certificate i.e., Form GSTR-7A, will get revised.

e) **TDS paid:** Here one needs to mention the details of the TDS deducted (CGST / SGST / IGST) from the deductee and the tax amount paid (CGST / SGST / IGST) to the government.

f) **Interest, Late Fees payable and paid:** If there is any interest fees or late fees applicable on TDS amount, one must mention the details of such interest and late fees payable along with the amount paid till date.

g) **Refund claimed from electronic cash ledger:** If one wants to claim the refund of TDS from the electronic cash ledger, one must mention such details here in this section. One should also provide the bank details where the refund for TDS should be credited.

h) **Debit entries in electronic cash ledger for TDS / interest payment (to be populated after payment of tax and submissions of return):** The entries in this section are auto-populated, once one finishes filing the return and the payment of TDS along with interest, if any.

11.14. GSTR – 8

E-commerce has mushroomed across the world, providing goods and services across industries on a global platform. In simple words, e-commerce operators permit vendors of different wares to sell them on their platforms. The GSTR-8 is an official statement of tax which is collected at the source (TCS). It details the various deliveries made to clients every single month by individuals who are registered taxpayers as well as non-registered. It also includes details about the total tax collected and the amount of taxes which have to be paid and have been paid. All e-commerce operators who qualify for payment of such returns have to file them at the end of every month. This statement of tax returns clearly reflects the supplies which have been made through the said online platform and the exact sum of tax collected at the source of the said supplies. It is mandatory for all e-commerce giants to be registered for tax collected at source as well as procure a GST registration. There are certain conditions which qualify e-commerce operators to file GSTR-8.

GSTR-8 is a monthly return that is binding on all e-commerce operators. They are obliged to file this return by the 10th of each month if they need to collect tax at the source, which is popularly referred to as TCS. This simple form contains information on all supplies that sellers make available on e-commerce platforms. It also includes the details of whether the sellers are unregistered or registered, brief details about the clientele, as well as the amount of tax (TCS) which is collected on the supplies provided to the operators. The mechanism of TCS is almost similar to that of tax deducted at source (TDS). When an e-commerce platform sells an item valued at ₹10,000, it is binding upon the platform to subtract and make a remittance of ₹100 to the government. This is considered as tax collected at source (TCS).

In simple words, e-commerce operators constitute digital platforms which serve as convenient channels for registered as well as unregistered sellers to sell their merchandise. These operators must register for TCS and obtain a GST registration. These are two of the key requirements for these operators.

11.14.1 GSTR-8 Due: There are many who are a little ambiguous about the correct timing of filing GSTR-8. All e-commerce operators are expected to file their GSTR-8 returns by the end of every month. However, they benefit from a grace period of 10 more days. This makes it possible for them to file the GSTR-8 return by the 10th of the forthcoming month, failing which they are penalised.

11.14.2 Penalty for Not Filing GSTR-8 Within the Due Date: E-commerce operators who default on filing their GSTR-8 returns are levied taxes as follows: As per the rules of the Central goods and service tax (CGST), these operators are levied a fine of ₹100 a day. As per the rules of the State goods and services tax (SGST), the operators are penalised ₹100 a day which makes the total penalty amount to ₹200. The maximum penalty amounts to ₹5,000. However, in addition to this, the operators have to bear the responsibility of an 18% annual interest. The taxpayers furnish details on the amount of tax that has to be paid along with the interest penalty. The time frame for the penalty comes into effect on the 11th day (the 10th day of the following month being the last date) until the date on which the amount has to be paid.

11.15. GSTR – 9:

Form GSTR-9 is an annual return to be filed by the businesses registered under GST. In Form GSTR-9, you need to declare the consolidated details of outward supplies, inward supplies, GST payable and ITC claimed for the previous financial year. For the previous financial year 2017-2018 and F.Y. 2018-2019, you need to furnish the consolidated details of supplies made or received from July 2017 to March 2018 and 2018-2019. The annual GST

Return filing consists of different returns forms. Basis of the GST registration type and annual turnover, the businesses need to file the applicable annual GST return form.

GSTR-9: should be filed by the regular taxpayers who are filing GSTR – 1 and GSTR – 3B.

GSTR-9A: should be filed by the persons registered under composition scheme under GST.

GSTR-9C: should be filed by the taxpayers whose annual turnover exceeds INR 2 crores during the financial year. All such taxpayers are also required to get their accounts audited and file a copy of audited annual accounts, reconciliation statement of tax already paid and details of tax payable as per audited accounts, along with this return.

11.15.1. Who is required to file GSTR-9: All registered taxable persons under GST must file GSTR-9. However, the following persons are not required to file GSTR-9: i) Taxpayers opting Composition Scheme. ii) Casual Taxable Person. iii) Input service distributors. iv) Non-resident taxable persons. v) Persons paying TDS.

11.15.2 Important Note: For businesses Whose aggregate turnover in a financial year does not exceed 2 crore rupees, filing of GSTR-9 is made optional. This means those who have not furnished the annual return so far and if they choose not to file, it will be deemed to be furnished on the due date.

11.15.3 Penalty: If the GSTR-9 return is not filed on time, then a penalty of INR 100 per day under CGST & INR 100 per day under SGST shall be levied i.e. a total of INR 200 per day. However, the maximum of such a penalty will be an amount calculated at a quarter percent of the total taxpayer turnover in the respective State or Union Territory.

The following are the 6 parts of GSTR 9 format as notified by the CBIC.

Part-1 of GSTR 9 Format	Basic Details of Taxpayer
Part-2 of GSTR 9 Format	Details of outward and inward supplies declared during the financial year
Part-3 of GSTR 9 Format	Details of ITC as declared in returns filed during the financial year
Part-4 of GSTR 9 Format	Details of tax paid as declared in returns filed during the financial year
Part-5 of GSTR 9 Format	Particulars of the transactions for the previous FY declared in returns of April to September of current FY or up to the date of filing of annual return of previous FY whichever is earlier
Part-6 of GSTR 9 Format	Other Information such as demands and refunds, HSN Summary, Late Fee supplies received from composition taxpayers, deemed supplies etc.

11.16. GSTR -10

In case your GST registration has been surrendered or cancelled, you must file your returns using the Form GSTR-10, otherwise known as the Final Return. This is a statement of stocks held by such a taxpayer on the day before the effective cancellation date.

11.16.1 Who Should File GSTR-10: GSTR-10 must be filed by any persons whose registration under GST has been cancelled or surrendered. The following individuals have to file the GSTR 10 document: a) Input Service Distributors; b) Non-resident taxable persons ; c) Composition taxable persons; d) Persons required to deduct TDS under Section 51 of the CGST Act; e) Persons required to collect TCS at source under Section 52 of the CGST Act

11.16.2. Prerequisites for Filing GSTR-10: The following prerequisites must be followed when filing GSTR 10: i) One must be a registered taxpayer under the GST. He/she must have a 15-digit PAN based GSTIN who now wishes to cancel his/her GST registration. ii) The business should not generate an aggregate turnover greater than ₹ 20 Lakhs (In the case of NE India, it is ₹10 Lakhs).

11.16.3 How to File GSTR 10 Return: The following is the procedure on how to file GSTR 10 on GST Portal:

Step 1: Visit the official website of GST Portal.

Step 2: Select 'Services', click on 'Returns', and then select 'Final Return'.

Step 3: Click on 'Prepare Online' and remember that you have to update the address correctly for further correspondence.

Step 4: Update the Cost Accountant or Chartered Accountant details. The following would be required to fill this section up: i) Name of the particular accountant who would issue the certificate. ii) The membership code of the firm. iii) Scanned copy. iv) Date of the issued certificate.

Step 5: Then, you need to put in details of stock goods that are being held: i) The ones with invoices are to be filled in 8A, 8B, 8C tables. ii) The ones without invoices in the 8D table.

Step 6: Preview your GSTR-10 form.

Step 7: Complete the payment for the completion of the procedure.

Step 8: Now, choose the tile that shows the tax payable amount. There are two possibilities, and here is how to deal with both: i) Available balance present in credit ledger or cash is lesser than the required amount: In such a case, part payment must be made using NEFT or RTGS or net banking. ii) Available balance present in credit ledger or cash is higher than the required amount: In such a case, the individual can directly and completely pay from within the balance.

Step 9: Finally, preview your draft and submit the GSTR-10 final return. Click on 'Declaration' and then 'File GSTR-10' to proceed.

11.17. GSTR – 11:

Form GSTR-11 is the return form to be furnished by the persons who have been issued a Unique Identity Number (UIN), in order to obtain refunds under GST, for all the goods and services purchased by them in India.

11.17.1. Who are required to file GSTR-11? All persons who are holding a Unique Identity Number (UIN) are required to carry out GSTR-11 return filing. However, before proceeding on this topic, it is important to understand UIN in more detail. The Unique Identity Number (UIN) is a special classification made for foreign diplomatic missions and embassies who are not liable to pay taxes in Indian Territory. The purpose of issuing UIN is that any amount of tax collected from the bodies/persons holding UIN is refunded back to them. However, in order to ensure that the GST is refunded and paid back to them, they need to be filing GSTR-11. The following organizations can apply for a UIN: a) A specialized agency of the United

Nations Organization; b) A multilateral financial institution and organization notified under the United Nations (Privileges and Immunities) Act, 1947; c) A consulate or embassy of foreign countries; d) Any other person or class of persons as notified by the commissioner. The above persons/organizations can apply for a UIN using Form GST REG-13.

11.17.2. GSTR-11 last date: The GSTR-11 due date is the 28th of the month following the month in which an inward supply is received by the UIN holders. Thus GSTR-11 filing is not a monthly process, but a case-to-case basis filing, depending on supplies made.

11.17.3 GSTR-11 Format: GSTR-11, compared to other GST returns is comparatively a shorter and simpler form, the main objective of which is to capture all inward supplies, such that GST refunds can be appropriately calculated and processed.

11.17.4 How to file GSTR-11: Following are the details to be provided in the GSTR-11 form, spread across 4 tables: a) **UIN** – The UIN is a special identification number assigned to notified bodies by the GST administration as explained above. This should be mentioned in this section;

a) **Name of the person having UIN** – Under this section, the name of the person having UIN, will get auto-populated at the time of filing return at the GST portal.

b) **Details of inward supplies received** – In this section, one needs to provide the GSTIN number of the suppliers, from which goods or services have been purchased in the previous month by the UIN bodies/persons. On filling the GSTIN number, the details will get auto-populated from the GSTR – 1 return form, furnished by the suppliers. It is to be noted, that UIN holders cannot add/modify details in this section.

c) **Refund amount** – The refund amount will get auto calculated here. For that to happen, one needs to provide the bank details for the credit of such refund into the specified bank account.

11.18. SUMMERY

In the new era of taxation in India it is very essential to know the various methods of application of taxation to not only the business community but also the general public. GST filling is as much as simplified by the department. Returns are filed either through the online or by offline. Different types of form are created for different persons or organizations as they deserve to submit properly. Each format has its own features and applicable to a particular section of persons. The ultimate goal of the government is to enhance the net of the tax preview as much as possible. The goal is to minimize the tax evidence.

11.19. KEY WARDS

Compliance rating: The compliance rating is calculated based on parameters such as: Punctuality in uploading invoices. Timely filing of monthly and annual returns. Timely tax payment and reconciliations. Furnishing accurate details of input credits used.

Reconciliation: Reconciliation is an accounting process in which two sets of records are compared to ensure that the results are accurate and consistent. Reconciliation also assures that the general ledger accounts are accurate, consistent, and complete. However, besides business, reconciliation can be employed for personal reasons.

ISD credit note: Credit Notes / Debit Notes to be issued by ISD: Any input tax credit required to be reduced on account of issuance of a credit note to the Input Service Distributor by the supplier shall be apportioned to each recipient in the same ratio in which the input tax credit contained in the original invoice was distributed.

Non – resident: Under GST law, “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.

11.20. SELF-ASSESSMENT QUESTIONS

1. Write a short note on filling of GST tax returns.
2. What are the types of GST returns?
3. Write a brief note on GSRT – 2A.
4. What is GSRT – 3B? Write essential points in this regard.
5. Who should file CMP – 08? Write its procedure.
6. Who in non – resident according to GST Act?

11.21. FURTHER READINGS

1. Sachin Gupta, "GST Manual with GST Law Guide & GST Practice Referencer" - Kamal Publishers
2. Sanjeev Malik, "GST Made Easy: Answer to All Your Queries on GST" - Bharat Law House
3. CA Rajesh Goyal and Adv. Ankit Gulgulia, "GST Practical Guide: Issues, Solutions & Procedures" - Bharat Law House
4. CA Yashvant Mangal, "GST - A Quick Referencer Cum Compiler" - Taxmann Publications Pvt. Ltd.
5. CA. Vishal Arora, "GST & Customs Laws - A Handbook for Professionals" - CCH - A Wolters Kluwer Business
6. P. C. Joshi and P. N. Monga, "GST Ready Reckoner: Taxmann's One Solution to All GST Problems" - Taxmann Publications Pvt. Ltd.
7. V. S. Datey, "GST Ready Reckoner" - Taxmann Publications Pvt. Ltd.
8. Mahesh Gour, "GST How to Meet Your Obligations" - Lexis Nexis
9. Dr. Rakesh Garg and Sandeep Garg, "Master Guide to GST with GST Case Law Digest" - Commercial Law Publishers (India) Pvt. Ltd.
10. Bimal Jain, "GST - Law and Analysis" - Bloomsbury India.

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LESSON – 12

OTHER CONCEPTS UNDER GST

Learning objectives:

- To get familiarity over the several related concepts on GST
- To understand the concept of TDS under GST
- To know the procedure of demand and recovery under GST
- To understand the concept of penalty under GST
- To get familiarity on refund under GST
- To know about different audits under GST

Structure:

12.1 Introduction

12.2 Penalties for Improper GST Tax Deduction at Source

12.3 TCS under GST

12.4 Demand and Recovery under GST

12.5 Details of Penalty & Interest under GST

12.6 What are the General Provisions for Determination of Tax under Section 75?

12.7 How Recovery Proceedings are initiated?

12.8 Adjudication Notice under GST

12.9 Refund under GST

12.10 Audit – Different types

12.11 Appellate authority and its powers

12.12 Restriction applicable on appeals

12.13 Summary

12.14 Key words

12.15 Self-Assessment questions

12.16 Further readings

12.1. INTRODUCTION

In addition to the fundamental aspects of GST computation, this introduction delves into crucial auxiliary concepts of GST. Audits, a pivotal mechanism, ensure compliance and accuracy in tax reporting. Tax Deducted at Source (TDS) and Tax Collected at Source (TCS) are withholding mechanisms, enforcing direct collection of tax at the point of transaction. Recovery procedures come into play to collect unpaid taxes, providing a stringent framework for revenue enforcement. Penalties and interest are imposed for non-compliance or delayed payments, reinforcing adherence to tax regulations. This introduction aims to elucidate the multifaceted nature of GST by encompassing these vital elements, shedding light on the comprehensive landscape of GST compliance and administration. Understanding these aspects is imperative for businesses and stakeholders to navigate the intricate tax structure of GST effectively.

A) Tax Deduction at Source under GST: Tax Deduction at Source (“TDS”) generally means a certain registered person making payment or crediting to the supplier’s account for supply of taxable goods or services or both is required to deduct GST at source if the contract

value without taxes exceeds the threshold limit. It is a statutory compliance which needs to be fulfilled by that person, as prescribed in the Act from time to time. It is a time bound process under which a person, called deductor, making payment or giving credit deducts GST at a fixed rate and deposits it with GST department, through filing of GST return. The deductee can take credit of deduction at source in his Electronic Cash Ledger and the same can be used for payment of tax at the time of filing GST return as per the prescribed procedure.

B) Persons involved in TDS under GST: Under the GST regime, section 51 of the WBGST Act, 2017 prescribes the authority and procedure for 'Tax Deduction at Source'. The Government may order the following persons (the deductor) to deduct tax at source: a) A department or an establishment of the Central Government or State Government; or b) Local authority; or c) Governmental agencies; or d) Such persons notified by the Government on the recommendations of the Council.

C) Conditions for Deducting Tax: The following conditions shall apply for deducting tax at source:

a) If the total value of the taxable supply records greater than Rs.2,50,000. The value shall apply only on a single contract. However, the tax value shall exclude taxes and cess under GST.

b) Provisions for deductions on contracts made for both taxable and exempted supply shall apply to the total value of goods and supplies. The deduction shall apply when the value records greater than Rs.2,50,000. This shall also exclude taxes and cess under GST.

c) When the supplier's location and the place of supply of goods occur in the same state or UT. Under these circumstances, if the trade occurs between different states (inter-state supply) and TDS is applied at 1% under the CGST Act, SGST and UTGST Act if the deductor has registered in the State or UT without legislature.

d) If the location of the Supplier belongs to State A and place of supply belongs to UT or State without legislature-B. Under these circumstances, if the trade occurs between different states (inter-state supply) and TDS is applied at 2% under the IGST Act if the deductor has registered in the State or UT without legislature-B.

e) When the location of the Supplier situated at State A and place of supply belongs to State or UT without legislature B. Under these circumstances, if the trade occurs between different states (inter-state supply) and TDS is applied at 2% under the IGST Act if the deductor has registered in State A.

f) Upon paying the advance amount on or after 1.10.2018 to the supplier for goods and services.

D) Conditions when Deducting Tax under GST shall not apply: The following mentions the conditions when deducting tax shall not apply:

i) When the total value of the taxable supply records less than Rs.2,50,000 under a single contract. ii) If the contract value shows greater than Rs.2.5 lakh for taxable and exempted supply, however, the contract states less than Rs.2.5 lakh. iii) Exemption to receipts of goods. The exemption applies to services as per notification No.2/2017, Central Tax Rate released on 28.9.2017. iv) Goods that do not fall under the taxable category. The categories include petrol, diesel, petroleum crude, natural gas. Further, it also includes aviation fuel (ATF) as well as alcohol for human consumption.

v) If the supplier issued an invoice for the sale of goods to deduct tax under VAT before 1.7.2017 but the payment occurred on or after 1.7.2017. The provision shall apply as per Section 142(13).

- vi) The distribution of products by the supplier performed at a State or UT but the deductor registered with a different state.
- vii) All transactions or activities performed through Schedule III of the CGST/SGST Act 2017. It shall apply irrespective of the value.
- vii) Tax to be paid by the deductee on reverse charge.
- viii) When the payment relates to a tax invoice dated before 1.10.2018.
- ix) If the payment was made in advance before 1.10.2018 and tax invoice dates on or after 1.10.2018.
- x) The payment for the goods and supplies made to an unregistered supplier.
- xi) The amount relates to the 'Cess' module.

12.2. PENALTIES FOR IMPROPER GST TAX DEDUCTION AT SOURCE

- a) If a deductor fails to furnish to the deductee the tax deduction certificate under GST, after deducting the tax at source, within five days of crediting the amount so deducted to the appropriate Government. Then the deductor shall pay, by way of a late fee, Rs.100 per day. It applies from the day after the expiry of the five-day period until the failure is rectified. The maximum penalty payable under this section cannot exceed Rs.5000.
- b) If a deductor fails to pay to the account of the appropriate Government the amount deducted as tax, then the deductor would be liable to pay interest in addition to the amount of tax deducted.
- c) When the deductor fails to deduct tax as per Section 51, an interest rate of 51% shall apply. The interest rate shall apply from the first date of non-compliance.
- d) Upon failure to deposit the deducted amount, the penalty shall apply as per Section 73 or 74.
- e) A penalty of Rs.10,000 shall apply if the deductor deducts less amount than the actual amount as prescribed. Further, the penalty shall also calculate the equivalent amount in the case of any changes in the tax amount.

12.2.1. Certificate of Tax Deducted at Source (TDS): A TDS certificate is required to be issued by deductor (the person who is deducting tax) in Form GSTR-7A to the deductee (the supplier from whose payment TDS is deducted), within 5 days of crediting the amount to the Government, failing which the deductor would be liable to pay a late fee of Rs. 100/- per day from the expiry of the 5th day till the certificate is issued. This late fee would not be more than Rs. 5000/-. 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.

For instance, suppose a supplier makes a supply worth Rs. 1000/- to a recipient and the GST @ rate of 18% is required to be paid. The recipient, while making the payment of Rs. 1000/- to the supplier, shall deduct 1% viz Rs. 10/- as TDS. The value for TDS purpose shall not include 18% GST. The TDS, so deducted, shall be deposited in the account of Government by 10th of the succeeding month. The TDS so deposited in the Government account shall be reflected in the electronic cash ledger of the supplier (i.e. deductee) who would be able to use the same for payment of tax or any other amount. The purpose of TDS is just to enable the Government to have a trail of transactions and to monitor and verify the compliances.

12.2.2. TDS Return: The deductor is also required to file a return in Form GSTR-7 within 10 days from the end of the month. If the supplier is unregistered, name of the supplier rather than GSTIN shall be mentioned in the return. The details of tax deducted at source furnished by the deductor in FORM GSTR-7 shall be made available to each of the suppliers in Part C of FORM GSTR-2A electronically through the Common Portal and the said supplier may include the same in FORM GSTR-2. The amounts deducted by the deductor get reflected in

the GSTR-2 of the supplier (deductee). The supplier can take this amount as credit in his electronic cash register and use the same for payment of tax or any other liability.

12.3. TAX COLLECTED AT SOURCE (TCS) UNDER GST

TCS, or Tax Collected at Source, is a tax collection mechanism under the Goods and Services Tax (GST) regime implemented in India. It is a mechanism for collecting tax at the source from the buyer of certain goods or services. Here's an overview of TCS under GST:

12.3.1 Applicability: TCS is applicable to certain specified transactions as notified by the government. As of my last knowledge update in September 2021, TCS is primarily applicable to e-commerce operators and sellers on e-commerce platforms.

12.3.2 E-commerce Operators: E-commerce operators are required to collect TCS at a specified percentage (often 1%) of the net value of taxable supplies made through their platforms. This TCS is collected from the payment made by the buyer to the seller and is deposited with the government.

12.3.3 Seller's Compliance: The sellers on e-commerce platforms are also required to provide their GSTIN (Goods and Services Tax Identification Number) to the e-commerce operator. The operator then collects TCS and remits it to the government on the seller's behalf.

12.3.4 Reporting and Payment: E-commerce operators need to file periodic statements detailing the TCS collected during a specific period. This information is submitted to the tax authorities. The TCS collected is then paid to the government within a prescribed time frame.

12.3.5 Adjustment of TCS: The TCS collected by the e-commerce operator is reflected in the electronic cash ledger of the supplier (seller) on whose behalf the TCS is collected. The supplier can then utilize this amount to discharge their GST liability.

12.3.6 Compliance and Penalties: Compliance with TCS provisions under GST is essential, and failure to comply with the TCS requirements may result in penalties and interest. It's important to note that GST laws and regulations may have been updated or changed after my last knowledge update in September 2021. Therefore, I recommend referring to the latest GST laws and official government notifications for the most current and accurate information on TCS under GST.

12.4. DEMAND AND RECOVERY UNDER GST

GST is now a term well acquainted with tax payers and people are well aware of the reasons why they are liable to pay GST under the system. GST has vast topics under it, of which few are of public's interest. Of the many topics, GST Demand & Recovery is one which could possibly have consumers' attention. Let us have a look into what GST Demand & Recovery is about and the various rules and sections coming under it.

Demand is something that is associated with consumers. More and more demand for various products or services is what propels the market and which in turn contributes to the nation's economy. People are liable to pay tax on every product or service that they consume. If a person fails to oblige to his duty of paying tax, then the Government will 'Recover' the tax from the nonpayer. Taxes are inevitable part of the Government's measure to run the economy and paying is the dutiful action of every citizen. So basically, **Demand** is the want for product/service and **Recovery** is the stringent measures taken by the government to recover tax from a defaulter who failed to pay tax.

<i>Particulars</i>	<i>When there is no fraud (Section 73)</i>	<i>When there is a fraud (Section 74)</i>	<i>Comments</i>
Show cause notice	Yes	Yes	—
Max. time limit	3 years	5 years	Time is calculated from the due date of filing the annual return for the year to which the demand relates or date of refund.
The time limit for SCN	3 months before the expiry of 3 years	6 months before the expiry of 5 years	Hence, 3 or 5 years, as the case may be, is the maximum time limit for issuing the order of GST demand payment.
Penalty	10% of tax	25% of tax	—

12.4.1. When can a Demand under GST be raised by the Tax Authorities? GST is payable on a self-assessment basis. If the assessee pays the tax on self-assessment correctly then there will not be any problem. If there is any short payment or wrong utilisation of input tax credit, then the GST authorities will initiate demand and recovery provisions against the assessee. Provisions of demand under the GST Act and the consequent recovery provisions are similar to the provisions of the erstwhile Service Tax and Central Excise laws. Further sections of the article will give you an overview of the demand and recovery provisions.

12.4.2. GST Demand when there is No Fraud (Section 73): This provision applies to the following cases when for any reason other than fraud, i.e., without any motive to evade tax: a) Tax is unpaid/short paid or, b) Refund is wrongly made or, c) The input tax credit has been wrongly availed/utilized. The proper officer (i.e., GST authorities) will serve a show-cause notice on the taxpayer. They will be required to pay the amount due, along with interest and penalty.

12.4.3. When there is Fraud Section 74: Section 74 applies to cases when there has been an attempt made by the taxpayer to evade tax. Following are the conditions applied under this section: a) Fraudulent; b) Purposeful misstatement; c) Hiding or suppressing facts; d) The taxpayer will get the following benefits as a result of misrepresenting facts; e) Tax is unpaid or paid short; f) Wrong refunds claimed; g) Wrongly availed ITC

The GST authority will issue a show case notice to the taxpayer and will mandate him to pay the due amount along with interest and penalty.

12.5. DETAILS OF PENALTY & INTEREST UNDER GST

	SECTION 73 OF CGST 2017	SECTION 74 OF CGST 2017
Before show cause notice is issued	Penalty Or Notice Shall Not Be Issued and The Taxpayer Haveto Pay the Tax Which Is Due Along with The Applicable Interest	No notice will be issued and the taxpayer has to pay the tax which is due together with penalty and interest at 15% of the due tax amount
After show cause notice	Taxpayer should pay the due tax within the period of 30 days	Taxpayer have to pay the due tax along with penalty at 25%, the

is issued	of issues of show cause notice along with applicable interest, with no penalty after payment of the due tax	payment of which should be made within 30 days of issue of show cause notice
After an order is issued	If a taxpayer pays the interest, tax or penalty on time, he may avoid the prosecution even after the issuance of the order.	Taxpayer have to pay tax including penalty and interest at 50% of the tax due, after which the proceeding shall be assumed to have completed
Other Cases	Taxpayer have to pay the due tax amount along with penalty and 10% interest of the due tax or RS.10000 (whichever is higher) within 30 days of communicating the decision	Taxpayer should pay due tax along with penalty and 100% interest of the due tax

12.5.1. What does Rule 142: Order & Notice of demand imply? Rule 142 of CGST Act 2017 is about issuance of order and notice of demand that must be paid by the person upon whom the payment of tax liability has been imposed. The authorized officer should issue the summary in an electronic format alongside notices under Section 73(1) or Section 74(1) or Section 76(2) in Form GST DRC-01 detailing the sum payable. The proper officer should also issue the summary in an electronic format along with statement under Section 73(3) or Section 74(3) in Form GST DRC-02 detailing the sum payable. A person who is liable to pay the tax makes the payment of interest and tax on par with Section 73(5) or tax, interest or penalty on par with Section 74(5) before the notice is issued to him, he should fill out Form GST DRC-03 and inform the clearance of dues to the proper officer. On receiving the information from the taxpayer, the proper officer should acknowledge his acceptance of the payment made by the taxpayer in Form GST DRC-04. If a person who has the liability to pay tax under Section 73(8) of interest, penalty or tax under Section 74(8) within 30 days of notice issued, the person should inform about this to the proper officer through Form GST DRC-03. The proceedings shall be settled after the officer issues order in Form GST DRC-05.

A person who is liable to pay tax representing himself under Section 73(9) or Section 74(6) or Section 76(3) that representation made by him should be filled in Form GST DRC-06. A Form GST DRC-07 needs to be filed when order issuance is done in summary under Section 73(9) or Section 74(9) or Section 76(3), stating the sum of interest, penalty or tax liable to be paid by that person. The issuance of order shall be a recovery notice. When a proper officer correct order in compliance with Section 161 of CGST 2017 done through Form GSTDRC-08.

12.6. WHAT IS THE GENERAL PROVISIONS FOR DETERMINATION OF TAX UNDER SECTION 75?

Section 75 of CGST Act 2017 depicts the general provisions about the determination of tax. When a notice issued or order released by a public officer is put on hold by the Appellate Court for calculating the limitation period under Section 73(2) and Section 73(10) or Section 74(2) and Section 74(10), the period till issuance of notice under the period it got held shall be excluded. Wilful misrepresentation or fraud or suppression of facts for evading tax under Section 74(1) fails to establish facts against the person to whom notice was issued by the officer, shall be removed by the Tribunal and considered as notice under Section 73(1). Directions passed by the tribunal require order on par with it and that order should be passed

within 2 years from the date of communication of the direction. When a taxpayer receives unfavourable decisions regarding tax or liability, he will have the opportunity to clear his part as approved by the concerned authority. If an order does not talk about any interest linked with the short paid/not paid tax, the tax payer will still have the liability of paying interest on taxes. If a court fails to pass a judicial decision in 3 years under Section 73(10) or 5 years under Section 74(10), then the proceeding shall be considered to have terminated. On imposing a penalty on a person under Section 73 or Section 74, there shall be no corresponding penalty imposed on that person under any provisions under CGST Act 2017.

12.7. HOW RECOVERY PROCEEDINGS ARE INITIATED?

Section 78 of CGST 2017 details the consequences the taxpayer will have to pay for not paying tax after court issues an order. When court issues an order to pay tax which is followed by another order demanding the taxpayer not to pay the tax, then the person will have to pay the tax within 3 months from the date when the first order was made. On failure of paying, the person will have to face the recovery proceedings. Section 78 is about a situation when the proper officer can decide that the person should pay tax before the 3 months granted to him, and then asking him to pay the tax before the prescribed time period by clearly stating the reasons while doing so.

12.7.1. What is Section 79: Tax Recovery? Section 79 of CGST Act 2017 implies the provisions pertaining to recovery of tax when a taxpayer fails to pay tax to the government.

- i) If a person fails to pay tax to the government, the following modes will be assumed to recover that tax due: ii) If an amount which is unpaid to the defaulter is held by a proper officer, he can deduct the due tax amount from that withheld money. iii) If the goods that belongs to a taxpayer is withheld by a proper officer, then that goods can be either sold or detained by the officer
- iv) Consider that a person is holding the money of another person who is liable to pay the tax under this act, and then the proper officer can demand the person holding the taxpayer's money to pay the due amount to the government.
- v) The proper officer can detain any property-movable or immovable- which belongs to the defaulter forcefully until and unless he pays the full tax amount due. If the taxpayer fails to pay the due amount, then the property can be put on sale by the authority and the amount collected through the sale can be consumed for paying the due tax. Money left after paying the tax can be returned to the defaulter.
- vi) The proper officer can issue a signed certificate and entitle the collector of the district with collecting the due tax from the defaulter, as arrears of land revenue.
- vii) If the defaulter is in a different jurisdiction than the proper officer, then then the magistrate can be approached to recover the amount due from the side of the defaulter.
- viii) The tax, penalty or interest which is required to be paid to the government under CGST 2017 remains unpaid, then then proper officer of UT or State Tax can recover the due amount from the taxpayer considering the due amount as their own asset and paying the respective government through the UT or State Tax.

12.8. ADJUDICATION NOTICE UNDER GST

An adjudication notice under GST is a formal legal notice issued by the GST department to a registered person who has violated the provisions of the GST laws. It is a serious matter that businesses must take seriously as non-compliance can lead to penalties, interest, and possible criminal proceedings.

12.8.1 The significance of understanding an adjudication notice: It is important for businesses to understand the significance of an adjudication notice as it can have severe consequences on their business operations and finances. If a registered person fails to respond to the adjudication notice within the specified time or fails to comply with the order issued by the adjudicating authority, they may face penalties, interest, and possible criminal proceedings. Therefore, it is essential for businesses to be aware of the legal provisions governing adjudication notices and how to handle them.

12.8.2. Process of Adjudication: The adjudication process under GST involves the following steps:

Step-1: Issuance of a show-cause notice: The first step in the adjudication process is the issuance of a show-cause notice to the registered person. The notice will specify the alleged non-compliance or violation and will give the registered person an opportunity to explain their position.

Step-2: Opportunity to be heard: After the show-cause notice is issued, the adjudication authority will give the registered person an opportunity to be heard. The registered person can submit their response to the notice and provide supporting documents.

Step-3: Adjudication order: Based on the response and evidence submitted by the registered person, the adjudicating authority will issue an adjudication order. The order may either confirm the allegations made in the show cause notice or may waive the allegations.

Step-4: Consequences of non-compliance: If the registered person fails to respond to the show-cause notice or fails to comply with the order issued by the adjudicating authority, they may face penalties, interest, and possible criminal proceedings.

12.8.3. Rights of the Taxpayer during Adjudication: a) **Right to be heard:** The taxpayer has the right to be heard during the adjudication process. This means that the taxpayer must be given an opportunity to explain their position and provide reasons for any discrepancies or non-compliances.

b) **Right to produce evidence:** The taxpayer can produce evidence to support their case. This may include documents, statements, or any other evidence that can support their claims.

c) **Right to a reasoned and speaking order:** The adjudicating officer must give a reasoned and speaking order. This means that the order must be well-reasoned, with clear findings and conclusions, and must explain the reasons for any decision made.

d) **Right to appeal:** The taxpayer has the right to appeal against the adjudication order if they are not satisfied with the decision. The appeal process provides a mechanism for the taxpayer to challenge the order and seek relief.

12.9. REFUND UNDER GST

Refund in Goods and Services Tax (GST) refers to the process where a taxpayer can claim a return of taxes paid when the input tax credit (ITC) exceeds the output tax liability. This mechanism ensures that taxes are not a cost to the business and promotes the free flow of goods and services. Key points regarding GST refund are as follows:

a) **Eligibility for Refund:** A taxpayer can claim a refund of GST in various scenarios, such as excess payment due to error, exports with payment of integrated tax, inverted duty structure, and accumulated ITC on account of inverted rate structure.

b) **Application for Refund:** Taxpayers need to file a refund application through the GST portal, providing necessary details and supporting documents as per the specified format for the specific type of refund.

c) **Verification and Processing:** The tax authorities verify the application and the accompanying documents to ensure accuracy and compliance. Any discrepancies or missing information may lead to a delay or rejection of the refund.

d) **Timelines for Processing:** The GST laws mandate a specific timeline for processing refund applications to ensure efficiency and reduce delays. Typically, the authorities need to process and disburse the refund within 60 days from the date of receipt of a complete refund application.

e) **Refund Payment:** Once the refund is approved, the authorities credit the refund amount to the bank account provided by the taxpayer in the GST portal.

f) **Communication and Rejection:** In case of any discrepancies or if the application does not meet the required criteria, the authorities communicate the reasons for rejection or seek clarifications from the taxpayer.

g) **Appeal Process:** If the refund claim is rejected, the taxpayer has the right to appeal the decision through appropriate channels, seeking redressal.

12.10. AUDIT – DIFFERENT TYPES

The GST laws prescribe that a registered person whose turnover during a financial year exceeds INR 2 crores is statutorily bound to get his accounts audited by a Chartered Accountant/ Cost Accountant. Irrespective of this, the tax authorities have the power to initiate the following audits: 1) Audit by tax authorities ;2) Special Audit

12.10.1 Audit by tax authorities: Section 65 of The Central Goods and Services Tax Act, 2017 (for short ‘CGST Act’) empowers the Commissioner or the proper officer to initiate and conduct audit of any registered person. A similar section is provided under the States/Union Territory Goods and Services Tax laws. Given this, Commissioner of Central Tax, Commissioner of State Tax/Union Territory and their respective proper officers have the power to conduct audits on any registered person. For the present, the provisions given in the CGST Act are being analysed; substance of which would equally apply to States/Union Territory Goods and Services Tax laws.

12.10.2 Frequency of audit: The CGST Act specifies that the Commissioner or the proper officer is entitled to undertake audit of any registered person by way of a general or a specific order for such period, at such frequency and in such manner, as may be prescribed. The Rule prescribes that the period of audit to be conducted shall be a financial year or multiples thereof [Rule 101(1) CGST Rules]. However, the said Rule does not prescribe the frequency with which an audit is to be conducted on any registered person. It would have been apt to state the frequency with which an audit is to be conducted on any registered person. There were several instances in the erstwhile Indirect tax laws where an assessee was subject to multiple audit proceedings for the same assessment years at intermittent frequency and by different Indirect tax authorities. Given that experience, the frequency of audit should have been expressly prescribed in the Rules to provide absolute certainty to any registered person.

12.10.3. Representation during audit: An audit may be conducted at the place of business of the registered person or at the office of the GST authorities. Atleast, fifteen days prior to conducting of any audit, a registered person is to be informed about the same through a notice (Form GST ADT-01-notice for conducting audit).This notice given an option to the registered person to either participate in the audit proceeding in person or through an authorized representative. In this manner, a registered person can choose to participate in audit proceedings either himself/ herself or through the regular employees or through an Advocate or any Chartered Accountant/ Cost Accountant/ Company Secretary holding a certificate of practice and not being debarred from practice. The GST laws therefore expressly permit an Advocate or any Chartered Accountant/ Cost Accountant/ Company Secretary to represent a registered person during audit proceedings. This is a welcome step as

it permits the registered person to conduct its day-to-day activities, to some extent, unhindered by audit proceedings.

12.10.4 Period of audit and conclusion of audit: An audit is normally required to be completed within a period of three months from the date of commencement of audit. However, the Commissioner has the power to extend the period by a further period not exceeding six months. During the course of audit, the proper officer and his team are entitled to verify the documents on the basis of which the books of accounts are maintained, entitled to verify the returns/ statements furnished under the GST laws, entitled to verify the correctness of the turnover, exemptions/ deductions claimed, rate of tax applied, input tax credit availed and utilized and other relevant issues, and record their observations in the audit notes.

12.10.5. Special Audit: The Assistant Commissioner (or any other officer above in rank) with the prior approval of the Commissioner having regard to the complexity of the case and in the interest of revenue can direct a registered person to get his records including books of accounts audited by a Chartered Accountant or a Cost Accountant, nominated by the Commissioner. The nominated Chartered Accountant or Cost Accountant is required to submit a report within a period of ninety days to the Assistant Commissioner. This period of ninety days to submit the report can further be extended by the Assistant Commissioner for a further period of ninety days. The expenses of the examination and audit of records and remuneration of the Chartered Accountant or a Cost Accountant is determined and paid by the Commissioner. The registered person is given an opportunity of being heard in respect of any material gathered in the Special Audit which could be used in any proceedings against the registered person. If the Special Audit is averse to any registered person, the proper officer is entitled to initiate action under sections 73 or 74 CGST Act.

12.11. APPELLATE AUTHORITY AND ITS POWERS

The GST Act provides an appeal mechanism for taxpayers who are dissatisfied with the decisions of the Adjudicating Authority. The appeal mechanism provides taxpayers with the opportunity to challenge the decisions of the Adjudicating Authority and to seek a review of the matter.

12.11.1 Appeal hierarchy under GST: The hierarchy of an appeal can be understood with the following pyramid, wherein a person can raise an application to the higher authority, based on the section given. For instance, for a legal dispute against the First Appellate Authority, the person can raise an application to the Appellate tribunal under sections 109-110.

12.11.2. The CGST & the SGST authority: Under the GST Act, the CGST officers and the SGST/UTGST officers, both have the authority to pass an order. Furthermore, as per the act, if an order has been passed for a person under CGST, it shall be deemed to apply for SGST as well. However, it should be noted that, if a CGST officer passes an order, any appeal, review, revision/rectification against the order shall lie only with the CGST officers and likewise for the SGST officer.

12.11.3. What is the appeal fee in GST? The appeals need to be made in prescribed forms along with the required fees. The fee will be – The full amount of tax, interest, fine, fee and penalty arising from the challenged order, as admitted by the appellant, AND –10% of the disputed amount. Fees won't be charged in cases where an officer or the Commissioner of GST is appealing.

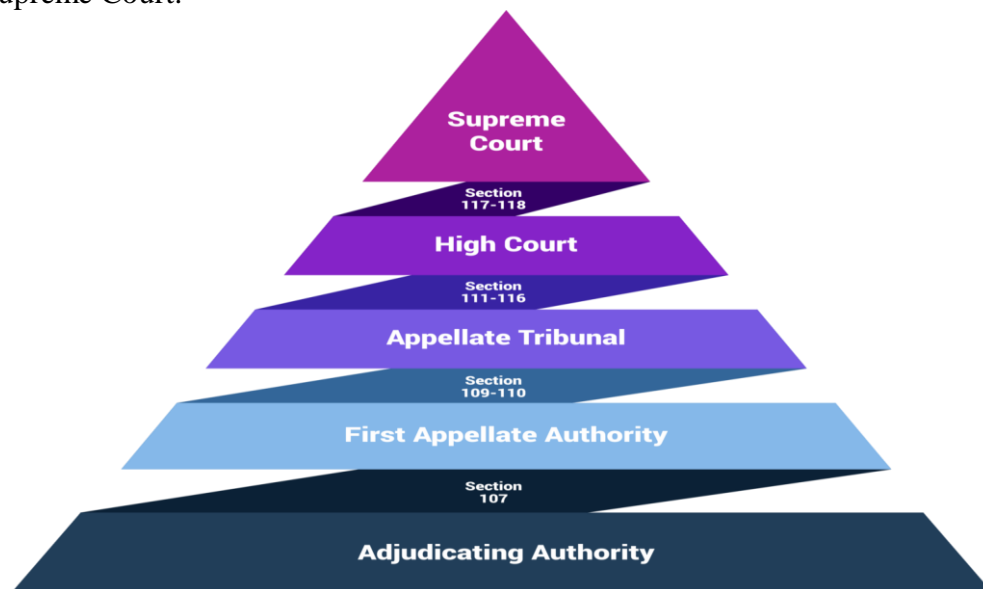
12.11.4. Procedure for Appeal under GST: The procedure for appeal under GST involves the following steps:

Step-1: Filing of Appeal: An aggrieved person can file a GST appeal for any orders received from the government. It needs to be filed in Form GST APL-01, along with relevant documents. The provisional acknowledgment will be granted as soon as the appeal is submitted. However, only after manually submitting Form GST APL-01, a copy of the challenged order, a declaration of the facts and grounds for the appeal within 7 days of the receipt of the provisional acknowledgment, will the final acknowledgment that has the appeal number, be issued. **Step-2: Notice to the Adjudicating Authority:** The Appellate Authority serves a notice on the Adjudicating Authority, informing them of the appeal filed by the taxpayer.

Step-3: Personal Hearing: The taxpayer is given an opportunity to present their case and provide evidence in support of their case in a personal hearing.

Step-4: Decision: Based on the evidence presented, the Appellate Authority takes a decision on the matter.

Step-5: Further Appeal: If the taxpayer is not satisfied with the decision of the Appellate Authority, they can file a further appeal to the next higher authority, such as the High Court or the Supreme Court.



Source: <https://irisgst.com/legal-disputes-and-appeal-under-gst/>

12.12. RESTRICTIONS APPLICABLE ON APPEALS

The person required to appear before a GST Officer, First Appellate Authority, or Appellate Tribunal can assign an authorized representative to appear on his behalf unless he is required by the Act to appear personally. An authorized representative can be- a) a relative; b) a regular employee; c) a lawyer practising in any court in India; d) any chartered accountant/cost accountant/company secretary, with a valid certificate of practice; e) a retired officer of the Tax Department of any State Government or of the Excise Dept. whose rank was minimum Group-B gazetted officer; f) any tax return preparer.

12.12.1. Time limit for filing an appeal in GST: The GST Act specifies time limits for filing appeals. a) Taxpayers are required to file an appeal within 30 days from the date of receipt of the decision of the Adjudicating Authority. In case of a further appeal to a higher authority, the time limit for filing the appeal may vary and will be specified by the relevant

authority; b) In order to make an appeal to the First Appellate Authority, a person has to file form GST APL 1 within 3 months (extendable up to 1 month) of the issuance of the order; c) However, under the rule of condonation appeal filing delays, a maximum of one further month is permitted, and that is only after providing a valid justification for the delay and supporting documentation.

12.12.2. Restriction applicable on appeals: A person cannot raise an appeal for following decisions taken by a GST officer-

- a) An order to transfer the proceedings from one officer to another officer.
- b) An order to seize or retain books of account and other documents; or
- c) An order sanctioning prosecution under the Act; or
- d) An order allowing payment of tax and other amounts in installments.

Furthermore, an appeal cannot be filed in certain cases, wherein on the recommendation of the council, the Board or the State Government may fix monetary limits for appeals by the GST officer in order to regulate the filing of appeals and avoid unnecessary litigation expenses. A person unhappy with any decision or order passed against him under GST by an adjudicating authority can appeal to the First Appellate Authority. The appeal process under GST provides taxpayers with an opportunity to challenge the decisions of the Adjudicating Authority and to seek a review of the matter. It is important to understand the provisions of the appeal process and to stay up-to-date with the latest developments under GST.

12.13. SUMMARY

GST is the one of the integrated Act which aims to replace of various complex and old Acts. Implementation of provisions under this act prepared in a simple way and try to make the participation of all parties in connection to the tax. Several rules and regulations are framed in accordance with avoiding of duplication of payment of the tax. Tax deducted at source when it was required. Compulsory auditing in necessary cases seen in the rules. Procedure of serving the notice to collecting the right amount of tax in proper way is mentioned in the procedural norms. In some cases, special auditing has also considered.

12.14. KEY WORDS

Deductor of tax: In case of certain prescribed payments (e. g. Interest, commission, brokerage, rent, etc.) the person making payment is required to deduct tax at source (TDS) at the prescribed rate. The payer is known as deductor and the payee, who receives the net payment is called the deductee.

E – commerce operator: The Authority referred to Section 2(44), 2(45) and 9(5) of the CGST Act and said that an Electronic Commerce Operator (ECO) means any person who owns, operates, or manages digital or electronic facility or platform for electronic commerce.

Adjudication: An adjudication notice under GST is a legal notice issued by the GST department to a registered person who has committed a non-compliance or a violation under GST laws. It is essential for businesses to understand the legal provisions governing adjudication notices and how to handle them.

12.15. SELF-ASSESSMENT QUESTIONS

1. What is the procedure of TDS in the GST rules?
2. What are the conditions for deducting tax at source under GST?
3. What the conditions are for not apply of GST?

4. How to rise demand U/s 73 and 74 of GST?
5. What is adjudication? Write its process under GST.
6. What are the provisions for refund under GST?
7. What is special audit? When it is happened in GST?

12.16. FURTHER READINGS

1. V. S. Datey, "GST Ready Reckoner" - Taxmann Publications Pvt. Ltd.
2. Mahesh Gour, "GST How to Meet Your Obligations" - Lexis Nexis
3. Dr. Rakesh Garg and Sandeep Garg, "Master Guide to GST with GST Case Law Digest" - Commercial Law Publishers (India) Pvt. Ltd.
4. Bimal Jain, "GST - Law and Analysis" - Bloomsbury India
5. Girish Ahuja and Ravi Gupta, "GST Manual - Containing GST Act, Rules, Forms, Notifications, Circulars & Latest Case Laws" - Bharat Law House
6. Sanjeev Malik, "GST Made Easy: Answer to All Your Queries on GST" - Bharat Law House
7. CA Rajesh Goyal and Adv. Ankit Gulgulia, "GST Practical Guide: Issues, Solutions & Procedures" - Bharat Law House
8. CA Yashvant Mangal, "GST - A Quick Referencer Cum Compiler" - Taxmann Publications Pvt. Ltd.
9. CA. Vishal Arora, "GST & Customs Laws - A Handbook for Professionals" - CCH - A Wolters Kluwer Business
10. Sanjeev Singhal and Rajendra Soni, "GST Audit and Annual Return" - Bharat Law House

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LESSON- 13

LEVY & EXEMPTION OF TAX – CHARGEABILITY

Learning Objective

- To explain the extent and commencement of GST CGST Act, IGST Act, SGST Act & UTGST Act
- To describe the provisions pertaining to levy and collection of CGST & IGST
- To describe the power of government to grant exemption from CGST/ IGST
- To provide an overview of the goods exempt from GST
- To identify and analyze various services exempt from GST

STRUCTURE

13.1. Introduction

13.2. Benefits of GST

13.3. Challenges and Problems with GST

13.4. Impact of GST Challenges on Businesses

13.5. Levy and Collection of GST under CGST Act (Section 9)

13.6. Levy and Collection of GST under IGST Act (Section 5)

13.7. GST Exemption

13.8. GST exemption from registration

13.9. Difference between Exempt, Nil Rated, Zero Rated and Non-GST supplies

13.10. Summary

13.11. Technical Terms

13.12. Self- assessment Questions

13.13. Suggested Readings

13.1. INTRODUCTION

France was the first country to implement the GST in 1954; since then, an estimated 140 countries have adopted this tax system in some form or another. Some of the countries with a GST include Canada, Vietnam, Australia, Singapore, United Kingdom, Spain, Italy, Nigeria, Brazil, and India. Goods and Services Tax (GST) is a comprehensive indirect tax system in India that replaced many indirect taxes. It is a value-added tax that is levied on all stages of production, distribution, and consumption. The GST system has two components: Central GST (CGST) and State GST (SGST).

The Central Government levies and collects CGST, while the State Government levies and collects SGST. In the case of inter-state transactions, Integrated GST (IGST) is levied and collected by the Central Government. GST is levied on the taxable value of goods and services, which includes the transaction value, any taxes, duties, and other charges. GST is collected from the customer by the registered supplier and deposited with the government. The introduction of GST has led to the digitization of the tax system and the creation of a common market in India, making it easier for businesses to operate across different states. However, GST has also faced challenges, such as complexity and impact on prices. Despite these challenges, GST has been a significant reform in India's tax system, and its efficient and

effective implementation has the potential to benefit both businesses and the economy as a whole.

13.2. BENEFITS OF GST

GST has many benefits, both for businesses and for the economy as a whole. One of the key benefits of GST is the reduction in compliance costs for businesses. The previous tax regime had multiple indirect taxes, each with their own rules and regulations, making it difficult and costly for businesses to comply. GST has replaced many of these taxes with a unified tax structure, reducing the compliance burden on businesses.

GST has also reduced the cascading effect of taxes, which was a significant issue under the previous tax regime. Under the previous regime, businesses were required to pay taxes on taxes, leading to a higher tax burden. With the introduction of GST, the tax system has become more streamlined, reducing the cascading effect of taxes.

13.3. CHALLENGES AND PROBLEMS WITH GST

While GST has many benefits, it has also faced several challenges. One of the primary challenges is the complexity of the tax system. While GST aims to create a simplified tax structure, it is still a complex system that requires businesses to comply with multiple rules and regulations. This has led to confusion and difficulties in compliance for many businesses, particularly smaller businesses. Another challenge of GST is the impact on prices. While GST aims to create a more streamlined tax system, it has also led to some increase in prices for consumers. This is particularly true for goods and services that were previously exempt from taxes or subject to lower taxes. The increase in prices has led to some concerns about the impact on inflation and the overall economy.

There are a lot of factors of challenges and problems with GST. Some of the major factors are listed below-:

13.3.1. Complex Tax Structure: One of the major challenges of GST is its complex tax structure. The GST system has four tax slabs – 5%, 12%, 18%, and 28%. Additionally, there is a special rate of 0.25% on rough precious and semi-precious stones and 3% on gold. This multi-tax system has made it difficult for businesses to understand and comply with tax laws. The complexity of the tax structure has led to confusion among taxpayers, resulting in increased compliance costs and a rise in litigation.

13.3.2. Technology Glitches: The GST system requires taxpayers to file returns online through the GST portal. However, the portal has faced several technical glitches, making it difficult for taxpayers to file returns on time. The technical issues have also resulted in the incorrect GST Return filing, leading to penalties and fines. The GST Network (GSTN), which manages the GST portal, has taken several measures to address the technical issues. However, the problem persists, and taxpayers continue to face difficulties in incorrect GST Return filing.

13.3.3. High Compliance Costs: GST compliance involves various activities such as **GST Registration**, GST return filing, maintaining records, and undergoing audits. These activities involve significant costs, which are borne by businesses. The compliance costs have increased significantly under GST, especially for small and medium-sized enterprises (SMEs). The high compliance costs have made it difficult for SMEs to operate and compete with larger businesses.

13.3.4. Input Tax Credit (ITC) Issues: ITC is a significant feature of GST, which allows businesses to claim a credit for the tax paid on the inputs used in the production of goods or services. However, several issues have arisen with the ITC mechanism under GST. The major issue is the delay in receiving the ITC refund. The delay in the refund has resulted in a shortage of working capital for businesses, leading to cash flow issues.

13.3.5. GST Rates: GST rates have been a topic of discussion since the introduction of the tax system. The high tax rates on essential goods and services have faced criticism, as they have a direct impact on the common man. The government has made several changes to the tax rates, reducing the rates on some goods and services. However, the high tax rates on certain goods and services continue to be a concern for businesses and consumers.

13.3.5. E-way Bill System: The E-way Bill is a document that is required for the transportation of goods worth more than Rs. 50,000. The E-way Bill system under GST has faced several issues, including technical glitches and delays in generating the bills. The delay in generating the E-way Bill has resulted in the detention of goods and increased compliance costs for businesses.

13.4. IMPACT OF GST CHALLENGES ON BUSINESSES

The challenges with GST have had a significant impact on businesses, especially SMEs.

13.4. a) Increased Compliance Costs: The high compliance costs under GST have made it difficult for SMEs to operate and compete with larger businesses. The compliance costs involve various activities such as GST Registration, **GST Return filing**, maintaining records, and undergoing audits. The high costs have resulted in a significant burden for SMEs, reducing their profitability and competitiveness.

13.4. b) Cash Flow Issues: The delay in receiving the ITC refund has resulted in a shortage of working capital for businesses, leading to cash flow issues. The delay in the refund has made it difficult for businesses to manage their finances, resulting in reduced investments and growth opportunities.

13.4. c) Increased Litigation: The complex tax structure and technical glitches have led to confusion among taxpayers, resulting in increased litigation. The increased litigation has resulted in higher legal costs and delayed resolution of disputes, affecting the business operations of the companies involved.

13.4. d) Difficulty in Adapting to the New System: The introduction of GST has required businesses to adapt to a new tax system, which has been challenging for many. The changes in tax rates, compliance procedures, and documentation requirements have made it difficult for businesses to understand and comply with the new system, resulting in increased compliance costs and reduced productivity.

13.5. LEVY AND COLLECTION OF GST UNDER CGST ACT (SECTION 9)

a) Levy of central goods and service tax [section 9(1)]: Under CGST Act, central tax called as the central goods and services tax (CGST) shall be levied on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption. It shall be levied on the value determined under section 15 and at such rates, not exceeding 20%, 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. [Similar rates have been prescribed under SGST/UTGST]

b) Central tax on petroleum products to be levied from the date to be notified [Section 9(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.

c) Tax payable on reverse charge basis [Section 9(3)]: The Government may, on the recommendations of the Council, 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. Further, 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.

d) Tax payable on reverse charge if the supplies are made to a registered person by unregistered person [Section 9(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. [Section 9(4) has been deferred till 30.6.2018]

e) Tax payable on intra-State supplies by the electronic commerce operator on notified services [Section 9(5)]: As per section 2(45) of the CGST Act, 2017, "electronic commerce operator" means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce. Further, "electronic commerce" means the supply of goods or services or both, including digital products over digital or electronic network. Thus, Electronic Commerce Operators (ECO), like flipkart, uber, makemy-trip, display products as well as services which are actually supplied by some other person to the consumer, on their electronic portal.

13.6. LEVY AND COLLECTION OF GST UNDER IGST ACT (SECTION 5)

The provisions under section 5 of the IGST Act are similar to section 9 of CGST Act except: The word CGST has been substituted by IGST under IGST Act: i) Under IGST Act, tax called integrated tax is to be levied on all inter State supplies and on goods imported into India; ii) Maximum rate under section 5(1) of the IGST Act is 40% (i.e. 20% CGST +20% UTGST)

13.6.1. LEVY AND COLLECTION OF GST UNDER UTGST ACT (SECTION 7)

The provisions under section 7 of the UTGST Act are similar to section 9 of CGST Act; **Except:** i) The word CGST has been substituted by the word UTGST under the UTGST Act; ii) Under UTGST Act, tax called UT tax is levied on all intra-State supplies; ii) Maximum rate 7(1) of UTGST Act is 20%. The levy and collection of GST under the GST regime have brought significant changes to India's tax system. Its effective implementation and continuous improvement are crucial for achieving the government's objectives of simplifying the tax structure, reducing the burden on taxpayers, and promoting economic growth.

13.7. GST EXEMPTION

GST exemptions are specific goods or services that are exempt from the application of GST. In other words, there are certain goods and services that are not covered under the ambit of GST Act. These exemptions change from time to time and vary from country to country. The government can grant exemptions for various reasons like alleviating the tax burden on essential goods and services or supporting specific sectors.

13.7.1. Types of GST Exemptions: There are three types of GST exemptions available in India.

i) **Absolute:** Absolute exemptions are those exemptions that are provided on the full amount and do not come with any conditions or restrictions, whatsoever. A good example is the exemption on the services of RBI.

ii) **Conditional:** Conditional exemptions are those exemptions that have a certain limit, condition, or restriction on the nature and extent of the exemption. For example, hotel services are exempt up to a certain extent and not exempt fully.

iii) **Partial:** Unregistered people who supply goods within the state to a registered person are exempt from GST under reverse charge only if the aggregate value of supply is not more than Rs.5000 per day.

13.7.2. Exempt supply under GST: Exempt supply under GST means supplies that do not attract goods and service tax. In these supplies, no GST is charged. Input tax credits paid on these supplies cannot be used. These are the following three types of supply that are considered exempt supply:-a) supplies which are chargeable to nil rate tax; b) supplies that are partially and wholly exempt from the charge of GST by the notifications which amended section 11 of CGST and section 6 of IGST; c) supplies which comes under the sec 2(78) of the Act which covers the supplies which are not taxable under the Act like alcoholic liquor for human consumption.

13.8. GST EXEMPTION FROM REGISTRATION

a) Agriculturists;

b) Person who fall in the threshold exemption limit of turnover for the supply of goods INR 40 lakhs and for supply of services INR 20 lakhs and for specified category INR 20 lakh and INR 10 lakh.(in special category states);

c) A person who is making NIL Rated and exempt supply of goods and services such as fresh milk, honey, cheese, agriculture services, etc;

d) The person indulged in activities that are not covered under the supply of goods and services such as funeral services, petroleum products, etc; e) A person making supplies of those goods that are covered under reverse charge such as tobacco leaves, cashew nuts (not shelled and peeled), etc.

13.8.1. GST exemption for businesses: Small and medium-scale businesses can enjoy GST exemptions if their aggregate turnover is up to a specified limit. These limits are as follows:

i) Businesses and individuals who are supplying goods can claim GST exemption if their aggregate turnover is less than INR 40 lakhs in a financial year.and also not fall in the category of compulsory registration.

ii) For the hilly and north-eastern States of India, the limit has been revised to INR 20 lakhs.

iii) For businesses and individuals involved in the supply of services, the limit for claiming GST exemption is INR 20 lakhs.

iv) In the case of hilly and north-eastern States, if the aggregate turnover is up to INR 10 lakhs, businesses and individuals supplying services can claim GST exemptions.

Hilly and north-eastern States would include Arunachal Pradesh, Jammu and Kashmir, Himachal Pradesh, Uttarakhand, Tripura, Nagaland, Sikkim, Meghalaya, Mizoram, Assam, and Manipur.

Aggregate turnover, as per the GST Act, would include the aggregate value of all types of taxable supplies, inter-state supplies, exempt supplies, and the goods and services which have been exported. The following, would, however, be deducted from the value of aggregate turnover –i) CGST, SGST, or IGST already paid by the investor; ii) Taxes which are payable on the basis of reverse charge mechanism; iii) Value of the inward supply of goods and services; iv) Value of non-taxable goods and services#

13.8.2. GST exemptions for goods: There is a list of goods which do not attract GST as recommended by the GST Council. The reasons for granting exemption on goods might include any of the following – i) In the interest of the public ii) The exemption is as per the GST Council's recommendation.iii) The exemption is granted by the Government through a special order. iv) The exemption is lowed on specific goods through an official notification. Moreover, there are two types of GST exemptions on goods. These are as follows – a) **Absolute exemption** - under this type of exemption, the supply of specific types of goods would be exempted from GST without considering the details of the supplier or receiver and whether the good is supplied within or outside the State.

b) **Conditional exemption** – under this type of exemption, the supply of specific types of goods would be GST exempt subject to certain terms and conditions which have been specified under the GST Act or any amendment or notification.

13.8.3. List of GST Exemption on Goods:

Types of goods	Examples
Live animals	Asses, cows, sheep, goats, poultry, etc.
Meat	Fresh and frozen meat of sheep, cows, goats, pigs, horses, etc.
Fish	Fresh or frozen fish
Natural products	Honey, fresh and pasteurized milk, cheese, eggs, etc.
Live trees and plants	Bulbs, roots, flowers, foliage, etc.
Vegetables	Tomatoes, potatoes, onions, etc.
Fruits	Bananas, grapes, apples, etc.
Dry fruits	Cashew nuts, walnuts, etc.
Tea, coffee and spices	Coffee beans, tea leaves, turmeric, ginger, etc.
Grains	Wheat, rice, oats, barley, etc.
Products of the milling industry	Flours of different types
Seeds	Flower seeds, oil seeds, cereal husks, etc.
Sugar	Sugar, jaggery, etc.
Water	Mineral water, tender coconut water, etc.
Baked goods	Bread, pizza base, puffed rice, etc.
Fossil fuels	Electrical energy
Drugs and pharmaceuticals	Human blood, contraceptives, etc.
Fertilizers	Goods and organic manure
Beauty products	Bindi, kajal, kumkum, etc.
Waste	Sewage sludge, municipal waste, etc.
Ornaments	Plastic and glass bangles, etc.
Newsprint	Judicial stamp paper, envelopes, rupee notes, etc.
Printed items	Printed books, newspapers, maps, etc.
Fabrics	Raw silk, silkworm cocoon, khadi, etc.
Hand tools	Spade, hammer, etc.
Pottery	Earthen pots, clay lamps, etc.

13.8.4. List of GST Exemption on Services: GST Exemption on services

Just like specific goods, specific services are also GST exempt. There are three types of supply of services that qualify for GST exemption. These include the following – a) Supplies that have a 0% tax rate; b) Supplies which do not attract CGST or IGST due to the

provisions stated in a notification that amends either Section 11 of CGST Act or Section 6 of IGST Act

c) Supplies which are defined under Section 2(78) of the GST Act which are not taxable. Since these types of supplies are GST exempt, any Input Tax Credit which is applicable to these supplies would not be available to utilize or set off the GST liability.

Moreover, even under the supply of services, there can be two types of GST exemptions which are as follows –

i) Absolute exemption wherein the service would be exempted from GST without any conditions.

ii) Conditional exemption or partial exemption wherein exemption is granted based on a condition. This condition states that if the service is supplied intra-State or if the service is supplied by a registered person to an unregistered one, GST would be exempted if the total value of such supplies received by a registered person is not more than INR 5000/day.

13.8.5. Reasons for exemption under GST: Under the Goods and Services Tax (GST) system in India, certain goods, services, and transactions are exempt from GST, which means they are not subject to GST taxation. There are various reasons for granting exemptions under GST, and these reasons are based on policy objectives, socio-economic considerations, and administrative simplicity. Here are some of the common reasons for granting exemptions under GST:

a) Social Welfare and Public Interest: Certain essential goods and services that are considered essential for the welfare of society may be exempted from GST. This includes items like basic food items (e.g., rice, wheat, milk), healthcare services, and education services.

b) Small Businesses: To reduce the compliance burden on small businesses and promote ease of doing business, there may be exemptions or concessional rates for businesses with lower turnover. The Composition Scheme, for example, provides for lower GST rates for small businesses with turnover limits.

c) Export of Goods and Services: Exports are typically zero-rated under GST, which means that while they are subject to GST, the tax rate is set at zero percent. This ensures that exports remain competitive in international markets and do not suffer from the burden of GST.

d) Interstate Supplies: Supplies between states (interstate supplies) of certain specified goods and services may be exempt or taxed at a concessional rate to promote the free movement of goods and services across state borders.

e) Agriculture: Many agricultural products and related services are exempt from GST. This is done to support the agriculture sector, which is a significant contributor to India's economy. **f) Government Services:** Certain services provided by the government or local authorities may be exempt from GST to avoid double taxation and simplify accounting.

g) Financial Services: Some financial services like banking, interest on loans, and insurance services may be exempt or have special provisions to determine GST liability.

h) Cultural and Religious Significance: Goods and services used for cultural, religious, or charitable purposes may be exempt to respect the cultural and social values of the society.

i) Administrative Simplicity: Exempting certain goods or services may be done to simplify the tax system, reduce compliance costs, and make it easier for businesses and taxpayers to understand and comply with GST rules.

j) Transitional Provisions: During the transition to GST, certain exemptions or concessional rates may be provided to facilitate the migration of businesses and ease the impact of the new tax regime.

13.8.6. Here is a list of some of the services which enjoy GST exemption –

Types of services	Examples
Agricultural services	Cultivation, supplying farm labor, harvesting, warehouse-related activities, renting or lending agricultural machinery, services provided by a commission agent or the Agricultural Produce Marketing Committee or Board for buying or selling agriculture produce, etc.
Government services	Postal service, transportation of people or goods, services by a foreign diplomat in India, services offered by the Reserve Bank of India, services offered to diplomats, etc.
Transportation services	Transportation of goods by road, rail, water, etc., payment of toll, transportation of passengers by air, transportation of goods where the cost of transport is less than INR 1500, etc.
Judicial services	Services offered by the arbitral tribunal, partnership firm of advocates, senior advocates to an individual or business entity whose aggregate turnover is up to INR 40 lakhs
Educational services	Transportation of faculty or students, mid-day meal scheme, examination services, services offered by IIMs, etc.
Medical services	Services offered by ambulances, charities, veterinary doctors, medical professionals, etc. does not include hair transplant or cosmetic or plastic surgery.
Organizational services	Services offered by exhibition organizers for international business exhibitions, tour operators for foreign tourists, etc.
Other services	Services offered by GSTN to the Central or State Government or Union Territories, admission fee payable to theaters, circuses, sports events, etc. which charge a fee up to INR 500

Though GST is applicable for all businesses and on the supply of goods and services, the above-mentioned exemptions are available. These exemptions reduce the GST burden and help in the socio-economic development of the country.

13.9. DIFFERENCE BETWEEN EXEMPT, NIL RATED, ZERO RATED AND NON-GST SUPPLIES

In the context of the Goods and Services Tax (GST) system in India, there are several categories that describe different tax treatments for supplies (goods and services). These categories include "Exempt," "Nil Rated," "Zero Rated," and "Non-GST Supplies." Each category has distinct implications for the applicability of GST. Here's a breakdown of the differences between these categories:

13.9.1. Exempt Supplies: GST Applicability: Exempt supplies are not subject to GST. This means that no GST is charged on the value of the supply, and the supplier cannot claim input tax credit (ITC) for the GST paid on inputs and services used to provide the exempt supply. **Examples:** Certain essential goods and services, such as fresh fruits, vegetables, milk, and healthcare services provided by a clinical establishment, are typically exempt from GST.

13.9.2. Nil Rated Supplies: GST Applicability: Nil rated supplies are also not subject to GST, but they differ from exempt supplies in that they are specifically taxed at a GST rate of

0%. Nil-rated supplies do not attract any GST liability on the part of the supplier, but the supplier can claim input tax credit on GST paid for inputs and services.

Examples: Exports of goods and services, such as pharmaceuticals and certain agricultural products, are often classified as nil-rated supplies.

13.9.3. Zero Rated Supplies: GST Applicability: Zero-rated supplies are similar to nil-rated supplies in that they are taxed at a GST rate of 0%. However, zero-rated supplies specifically refer to exports of goods and services. Suppliers of zero-rated supplies can claim input tax credit on GST paid for inputs and services.

Examples: Exports of goods and services to foreign countries are considered zero-rated supplies under GST.

13.9.4. Non-GST Supplies: GST Applicability: Non-GST supplies are not subject to GST because they fall outside the scope of GST altogether. These supplies do not involve the levy or collection of GST, and no input tax credit is available.

Examples: Items or transactions that are not covered by GST, such as petroleum products (which are subject to separate state taxes), alcohol for human consumption, and some specified goods like stamps and currency, are considered non-GST supplies.

In summary, the key distinctions between these categories lie in the tax rate and the ability to claim input tax credit: **13.9.5. Exempt supplies are not subject to GST, and ITC cannot be claimed:**

i) Nil rated supplies are taxed at a GST rate of 0%, and ITC can be claimed; ii) Zero-rated supplies refer specifically to exports and are taxed at a GST rate of 0%, with ITC claimable.; iii) Non-GST supplies are entirely outside the scope of GST, and no GST is levied or collected, nor can ITC be claimed.

13.10. SUMMARY

The student should be able to learn about the present lesson that which is the “levy and collection of CGST &IGST” with the help of some specific objectives such as: to explain the extent and commencement of GST- CGST Act, IGST Act, SGST Act & UTGST Act; to describe the provisions pertaining to levy and collection of CGST &IGST; to describe the power of government to grant exemption from CGST/ IGST; to provide an overview of the goods exempt from GST; to identify and analyze various services exempt from GST. The implementation of GST has led to the digitization of the tax system, creating a common market in India and making it easier for businesses to operate across different states. However, the GST system has faced challenges such as complexity and impact on prices. It is important to address these challenges and ensure that the GST system operates efficiently and effectively to maximize its potential benefits for businesses and the economy as a whole. the introduction of GST has been a significant reform in India's tax system, replacing many indirect taxes with a comprehensive value-added tax system. The levy and collection of GST are done through two components, Central GST and State GST, and Integrated GST in inter-state transactions. GST is levied on the taxable value of goods and services, including transaction value, taxes, duties, and other charges. The tax is collected from customers by registered suppliers and deposited with the government.

13.11. TECHNICAL TERMS

Levy: A levy is a legal seizure of your property to satisfy a tax debt. Levies are different from liens. A lien is a legal claim against property to secure payment of the tax debt, while a levy actually takes the property to satisfy the tax debt.

Collection: Collections are a great way to start finding supporting materials for your teaching. They are organized around different themes for which our editorial team selects the most appropriate content from our encyclopedia. In this collection, we consider 12 of the great composers, from Bach.

SGST Act: Furthermore, this levied tax comes under the State Goods and Services Tax (SGST) Act, 2017 and is governed by the same. This kind of tax is levied on the transaction value of the goods or services supplied as per section 15 of the SGST Act. The transaction value is actually the price that is paid or payable for the said supply of goods or services.

CGST act: The full form of CGST is Central Goods and Services Tax. Under GST, CGST is a tax levied on intrastate supplies of both goods and services by the Central Government and collected by it for its coffers. Accordingly, the levy and collection of CGST are governed by the provisions of the CGST Act, 2017 as amended from time to time. **IGST act:** The full form of IGST is Integrated Goods and Services Tax. Under GST, IGST is a tax levied on all interstate supplies of goods and/or services or across two or more states/Union Territories. Further, IGST levy and collection will be governed by the IGST Act, 2017, as amended from time to time. IGST will be applicable on any supply of goods and/or services in both cases of import into India and export from India.

UTGST act: UTGST is similar to SGST and is levied in Union Territories which do not have their own legislature. UTGST is applicable to the supplies that take place in the Union Territories of Jammu & Kashmir, Ladakh, Andaman and Nicobar Islands, Chandigarh, Dadra & Nagar Haveli and Daman & Diu, and Lakshadweep. Please note that the Union Territories of Delhi and Puducherry will fall under SGST law as they have their own legislature.

13.12. SELF ASSESSMENT QUESTIONS

1. What is inter-state & intra state supply?
2. What is GST Exemption?
3. What are reasons for exemption under GST?
4. What are the Benefits of GST?
5. What are the Challenges of GST?
6. Explain about Levy and collection of GST under CGST act (section 9)
7. Discuss about Levy and collection of GST under IGST act (section 5)
8. Briefly reveal about Levy and collection of GST under UTGST act (section 7)
9. What is GST exemption?

13.13. SUGGESTED READINGS

1. V. S. Datey, "GST Ready Reckoner" - Taxmann Publications Pvt. Ltd.
2. Mahesh Gour, "GST How to Meet Your Obligations" - Lexis Nexis
3. Dr. Rakesh Garg and Sandeep Garg, "Master Guide to GST with GST Case Law Digest" - Commercial Law Publishers (India) Pvt. Ltd.
4. Bimal Jain, "GST - Law and Analysis" - Bloomsbury India
5. Sanjeev Malik, "GST Made Easy: Answer to All Your Queries on GST" - Bharat Law House
6. CA Rajesh Goyal and Adv. Ankit Gulgulia, "GST Practical Guide: Issues, Solutions & Procedures" - Bharat Law House
7. CA Yashvant Mangal, "GST - A Quick Referencer Cum Compiler" - Taxmann Publications Pvt. Ltd.
8. Sanjeev Singhal and Rajendra Soni, "GST Audit and Annual Return" - Bharat Law House
9. <https://taxguru.in/goods-and-service-tax/charging-section-9-levy-collection-gst.html>.
10. <https://cleartax.in/s/what-is-sgst-cgst-igst>

LESSON-14

TAX COLLECTED AT SOURCE (TCS) & E-COMMERCE UNDER GST

Learning Objective:

- To know how TCS works under GST
- To examine the provisions relating to deduction of tax at source
- To know which form one can use to file TCS returns
- To understand the Impact of GST on E-Commerce Marketplace Sellers

STRUCTURE

14.1 Introduction

14.2. Guidelines for TCS Return Filing

14.3. Registration Requirements under TCS Provisions of GST

14.4. How to Compute Taxable Value of the Supplies for TCS

14.5. How to Deposit TCS

14.6. TCS Certificate

14.7. GST on E-Commerce

14.8. Impact of GST on E-Commerce Marketplace Sellers

14.9. Benefits of GST for E-Commerce Marketplace Sellers

14.10. Challenges Faced by E-Commerce Marketplace Sellers due to GST

14.11. Summary

14.12. Technical Terms

14.13. Self-Assessment Questions

14.14 Suggested Readings

14.1. INTRODUCTION

The TCS or Tax Collected at Source is the tax that is collected from the buyer by the seller while the purchase of some specific goods category by the buyer. This TCS rate depends on the category of the items and this tax collected from the buyer needs to be deposited to the government by the seller. In other words, TCS is a tax that is payable to the government by the seller who in turn collects from the buyer or lessee. The items which come under this tax are mentioned under Section 206 C Income Tax Act, 1961. To understand this tax let us explain the process with the help of an example. If a buyer is purchasing a car that costs Rs 10.01 lakhs then an amount of Rs 10,010 would be payable as TCS. This amount would need to be submitted to a particular branch of the bank which has been given permission by the government for receiving such payments. The person who is selling those cars is only responsible for collecting the cash from the buyer and paying it to the government and he doesn't pay anything herself (or) himself.

This tax needs to be collected while transactions, selling goods, issuing a receipt of cash taken from the buyer or issuing a draft or cheque whichever mode is used preferred by the buyer. So, the seller acts as a middleman between the buyer and the government. Therefore this tax is paid by the consumer rather than the businessmen. But not everything is taxed using this source rather only some of the goods are taxed. Let's take a look at those goods mentioned below.

14.1.1. Tax Collected at Source (TCS): Section 206C of the Income Tax Act says that when certain specified goods are sold, a certain amount must be added to their sale price – this is

TCS, or Tax Collected at Source. The seller imposes this amount on the buyer and then has to deposit it with the government by a certain deadline. Let's use an example to further understand. Abhinav buys a car worth Rs 20 lakhs from a popular luxury car manufacturer. The car manufacturer, according to the rates set down by the Income Tax Department, has to impose an additional 1% tax on top of the price of the car. Therefore, Mr Abhinav would be paying an additional Rs 20,000 on top of Rs 20 lakhs – making a total of Rs 20,20,000 for his luxury car. In this case, Abhinav is the buyer and the car manufacturer is the seller. TCS is applicable only to specific goods like liquor, timber wood, minerals, and luxury vehicles. But why these specific goods?



14.1.2. Classification of Sellers for TCS: There are certain organisations who have been termed as “sellers” for tax collected at source. So these sellers can only collect TCS from the buyers: i) Central Government; ii) State Government; iii) Local Authority; iv) Statutory Corporation or Authority; v) Company registered under the Companies Act; vi) Partnership firms; vii) Co-operative Society; viii) Any person or HUF who is subjected to an audit of accounts under the Income-tax Act for a particular financial year.

14.1.3. Classification of Buyers for TCS: A buyer may purchase goods directly from the seller, or through an intermediary such as a wholesaler, a retailer, or an online platform. They may also purchase goods by bidding on them at an auction or using a shopping app. Buyers typically pay for their goods using cash, bank transfer, credit or debit cards, or other forms of payment. Here is a list of buyers who are exempted from the collection of TCS: i) Public sector companies; ii) Central Government; iii) State Government; iv) Embassy of High Commission; v) Consulate and other Trade Representation of a Foreign Nation; vi) Clubs such as sports clubs and social clubs; vii) Where resident buyer utilises such purchase for the purposes of manufacturing, processing or producing articles or things or for the purposes of generation of power (not for trading) and gives this declaration in writing in duplicate.

14.1.4. When is TCS Collected? In Abhinav's situation, the car manufacturer collected TCS when it received money from Abhinav via cash/cheque/draft. Sellers can also collect TCS when they are debiting money payable by the buyer in the books of accounts if it comes earlier. In short, the seller collects TCS on whichever is earlier of the following two dates: i) While debiting money payable by a buyer in the books of accounts; ii) After receiving money from a buyer via cash/cheque/draft; iii) TCS Rate Chart: Goods Collected Under TCS Provisions and Rates Applicable To Them. When the below-mentioned goods are used for the purpose of manufacturing, processing, or production purposes, then no taxes are levied.

14.1.5 Collecting TCS: The person who is collecting the TCS needs to apply for a TAN number. The TAN number will be treated as a reference for quoting in all TCS returns and when the deposited tax collected at the source or TCS is collected. The due date for both TCS and TDS to the government is the same. The company/entity which is deducting TCS would be required to show a TCS Return form in the mentioned format and it should also have the type of goods sold by it, its value, and also its TCS Rate. Tax Collected at Source (TCS)

under GST means the tax collected by an e-commerce operator from the consideration received by it on behalf of the supplier of goods, or services who makes supplies through the operator's online platform. TCS will be charged as a percentage on the net taxable supplies. The provision of TCS under GST is dealt under Section 52 of the CGST Act.

14.1.6. TCS Rate of Different Goods

Nature of Goods	TCS Rate
Human consumption alcoholic liquor	1%
Leaves of Tendu	5%
Timber which is obtained from leased forest	2.5%
Timber which is obtained from any method apart from leased forest	2.5%
The forest produce which is not tendu leaves or forest timber	2%
Scrap	1%
Mining and Quarrying, Toll Plaza, Parking Lot	2%
Iron ore or Lignite or Minerals being Coal (which is force from July 1st, 2012)	1%
Bullion if amount is greater than Rs. 2 Lakhs and jewellery, if amount is greater than Rs. 5 Lakhs (for any receipt which is paid through cash) (which is force from July 1st, 2012)	1%
Selling of both old and new cars if the amount is greater than Rs. 10 Lakhs (which is force from June 1st, 2016)	1%
Offering any service except those payments on which the TDS is already deducted which is greater than Rs. 2 Lakhs	1%
Selling of any items for which purchase is done through cash greater than Rs. 2 Lakhs	1%

14.1.7. Other TCS Rates – Cess

Status	Payment Exceeds	Rates
Individuals/HUF Non resident	Amount lying between	Tax Rates
	1. Rs. 50 lakhs and 1 crore	1. 10%
	2. Rs. 1 crore and Rs. 2 crores	2. 15%
	3. Rs. 2 crore and Rs. 5 crore	3. 25%
Non Resident	4. More than 5 crores	4. 37%
	Amount greater than 1 crore	1. 12%
Society or Co-operative or firm or non-domestic company	1. Up to 10 crore	1. 2%
	2. Greater than 10 crore	2. 5%

14.2. GUIDELINES FOR TCS RETURN FILING

a) Here are some of the guidelines for filing TCS returns:-

- i) By the end of every month under which any TCS is generated, the seller fills up the TCS using Challan 281. It needs to be completed in a span of 7 days for the previous month's tax.
- ii) One must note that if the TCS is not paid on time to the government then the seller will be charged 1% of the total amount which is not paid on the due date as a penalty which will be paid by the seller only and the buyer cannot be charged for this at no cost.

iii) The tax collector or seller needs to submit this collected TCS return under Form 27EQ for the total tax which is collected in the particular quarter.

iv) After the TCS is paid, the certificate or Form 27D is issued

v) For TCS payment delay, the depositor will have to pay the interest prior to filing the Income-tax return to the government.

b) Form 24G for TCS deposited without Challan:

If one is submitting either TDS or TCS without Challan then they need to fill up Form 24G and submit it to the concerned agency.

This form needs to be submitted within 15 days by the end of that relevant month.

c) Provisions for TCS under GST: Some new provisions were added from Oct 1st, 2018

i) For all online transactions, the sellers working online would be given tax after deducting it at 1 % using the IGST Act.

ii) It is compulsory for the buyers to get themselves registered under GST.

iii) The amount should be credited by the 10th of every month to the government.

d) New provisions:,From Oct 1st, 2020, these new provisions are applicable:-

i) Every dealer that gets Rs 7 lakhs or greater than that in any foreign currency under LRS or Liberalized Remittance Scheme needs to collect tax at 5%.

ii) Every seller who gets a gross turnover greater than Rs 20 crores in the previous financial year can collect tax at 0.1%.

14.2.1. Tax Deducted at Source vs. Tax Collected at Source: TDS and TCS are often confused with one another. Here's a table highlighting the difference between the two.

Basis of difference	TDS	TCS
Definition	TDS is tax deducted at source by any company or individual making a payment if the payment exceeds the thresholds mentioned under respective sections.	TCS is a tax collected by the seller, at the time of sale.
Liability to deduct	It's the liability of the buyer of goods and services to deduct TDS	The seller recovers TCS
Nature	TDS is an expense	TCS is an Income
Applicability	TDS is deducted from contractors' payments, professional fees, commission, salary, rent, brokerage, interest, etc.	TCS is collected on the sale of specified goods mentioned above.

14.3. REGISTRATION REQUIREMENTS UNDER TCS PROVISIONS OF GST

TCS stands for Tax Collected at source. In the GST regime, every e-commerce operator needs to collect 1% under CGST Act and 1% under SGST Act; In case of inter-state transactions, 2% (under IGST Act) on the net values of taxable supplies made through the e-commerce operator. 2. How can register as TDS or TCS? Under TCS provisions in GST, all liable e-commerce operators and all suppliers to whom TCS applies need to register for TCS. There are some mandatory requirements for their registration. These are: If you are an e-commerce vendor liable to collect TCS, you must compulsorily register. The e-commerce operators liable to collect TCS have to compulsorily register under GST and there is no

threshold limit exemption for it. Also, the sellers supplying goods through the online portal of e-commerce players are also mandatorily required to get registered under GST except for a few exceptions. If an e-commerce company collects tax on behalf of a provider of goods or services who makes supply via the operator's online platform, the tax is known as Tax Collected at Source (TCS) under GST. TCS will be levied as a percentage of net taxable supply.

14.3.1. Impact of the TCS Provisions: From the e-commerce operator's viewpoint, they must register under GST in every state in which they operate before 1st Oct 2018, which is the effective date of implementing TCS provisions. The ERP systems have to be well integrated to apply these provisions in the day to day businesses smoothly. Moreover, the working capital of the suppliers selling through an e-commerce operator will be blocked until they file their return and claim the excess taxes paid. This can prevent SMEs vendors from selling goods or supplying services on the online portal. From the government's viewpoint, tax evasion will significantly reduce since the tax will be collected at each and every transaction. But if the same goods are used for trading purposes, then taxes will be levied. The tax payable is collected by the seller at the point of sale.

14.3.2. GST Registration for TCS: GST registration is mandatory for both e-commerce operators and persons supplying goods or services through an e-commerce operator-Requirements for TCS Registration -For Registration as Tax Collector:

i) Applicant has a valid PAN; ii) Applicant must have a valid mobile number; iii) Applicant must have a valid E-mail ID; iv) Applicant must have a place of business; v) Applicant must have an authorised signatory with valid details; vi) Applicant has to file form GST REG-07 for taking registration as Tax Collector.

TCS RETURN GSTR-8 is a return to be filed by the e-commerce operators who must deduct TCS (Tax collected at source) under GST. GSTR-8 contains the details of supplies effected through the e-commerce platform and the amount of TCS collected on such supplies.

14.3.3. Registration Conditions Are As Follows: In GST regime, the registration process is online and any person/entity wishing to register will have to access the GST system for the same. Any person who wishes to get registered as the Tax Deductor/Tax Collector needs to apply in the form prescribed. Are there any preconditions I must fulfill before registering with GST as a TDS or TCS? E-commerce enterprises in India must thus adhere to the GST TCS rules.

a) Every e-commerce operator who is required to collect TCS must mandatorily register under GST; b) Every person who supplies through an e-commerce operator, except those who make supplies notified under section 9 (5) of CGST Act. Section 9 (5) mentions the following supplies – Transporting passengers by a radio-taxi and motorcycle OR providing accommodation in hotels, guest houses, for residential or lodging purposes (unregistered suppliers) OR services of house-keeping, such as plumber, carpenter etc(unregistered suppliers). In all three cases, the e-commerce operator shall pay GST, meet the compliances. Therefore, suppliers don't have to register if they provide these services listed in 9 (5), provided they do not cross the Rs.20 lakh (or Rs.40 lakh) threshold for registration.

c) Also, note that suppliers of services making a supply through an e-commerce platform are exempt from registration if their aggregate turnover is less than Rs.20 lakh or Rs.40 lakh (assuming they do not make inter-state supplies).

d) Suppliers of goods selling through an e-commerce platform are not exempt from registration.

e) An e-commerce company must register itself in GST in every state it supplies goods or services to.

14.4. HOW TO COMPUTE TAXABLE VALUE OF THE SUPPLIES FOR TCS

TCS refers to the tax which is collected by the e-commerce operator when a supplier supplies some goods or services through its portal and the payment for that supply is collected by the e-commerce operator. The e-commerce operator should collect the TCS at 1% from the suppliers.

The value for the collection of the tax will be the 'Net Value Of Taxable Supplies.' This net taxable value will be calculated as under : The total value of taxable supplies of goods and/or services (other than notified services under GST law by all registered persons) Less: Taxable supplies returned to the suppliers through the e-commerce operator =Net value of Taxable Supplies. For Example – M/s.XYZ Ltd, a registered supplier is supplying goods through an e-commerce operator. It has made supplies of Rs.55,00,000 in the month of Sep 2023. The goods returned were worth Rs.5,00,000 to XYZ Ltd. during the month of Sep 2023. Here, the net value of taxable supplies for TCS collection will be Rs.50,00,000 and TCS @ 1%, i.e Rs.50,000 will be deducted by the e-commerce operator. Hence, the final payment to be made to the supplier is Rs.49,50,000.

14.4.1. Which Form cans one use to File TCS Returns: E-Commerce operators have to file GSTR-8 by 10th of the next month in which the tax was collected. This return will only be filed once the tax collected has been deposited to the respective credit of the government. For instance, the due date for GSTR-8 for Dec 2023 is on 10th Jan 2024.

14.4.2. Using GSTR-8 Data by E-Commerce Sellers in GSTR-2A: The details submitted by the operators in GSTR 8 will be available to all the suppliers in GSTR 2A. The supplies will be available GSTR 2A after the due date of filing GSTR-8. Note that these credit details will not be available in GSTR-2B return. The tax collected will be reflected in the electronic cash ledger of the respective suppliers. The suppliers can claim the credit accordingly after matching and reconciling their supplies with the details in GSTR 2A. GSTR 8 cannot be revised once it is filed. Any discrepancy found while matching and reconciling the supply data and GSTR 2A will be communicated to the operator and the supplier. If the discrepancy is not rectified within the given time period, then the tax amount will be added to the liability of the supplier. The supplier will have to pay the difference along with the interest, if any.

14.4.3. Frequency of GSTR 8: An E-commerce operator needs to file monthly as well as annual returns, which can be attained as follows:

a) Monthly Returns: The TCS collector must file a TCS return in form GSTR-8 within 10 days after the end of the given month.

b) Annual Returns: The e-commerce operator can file his annual returns via form GSTR 9B. The Annual return needs to be filed by the 31st of December following the end of every financial year, wherein the e-commerce operator needs to provide reconciliation between financial accounting results and GST Returns. However, for the financial year 2017-2018, this provision of filing GSTR 9B is deferred.

c) Credit Claim: Upon the filing of GSTR 8 by the E-commerce Operator, the claim credit is automatically be reflected in the Supplier's Electronic Cash Ledger, which the Supplier can claim and use for payments of taxes while filing GSTR 3B. Supplier will also get the TCS details auto-populated in the GSTR 2X form.

14. 5. HOW TO DEPOSIT TCS?

The seller must deposit TCS by submitting Challan 281 within 7 days from the last day of the month in which the tax was collected, on a monthly basis. For example, if Abhinav bought his luxury car on the 15th of November, the luxury car manufacturer will have to submit Challan 281 before the 7th of December. There are two exceptions to this rule. Any taxes collected in the month of March must be submitted on the 30th of April, and any taxes

collected on the purchase of the property must be submitted on the 30th of the following month. Here is a table for easy understanding. When to Submit Challan 281: TDS collected on the purchase: Before the 7th of the following month; TDS collected on the purchase of property: Before the 30th of the following month; TDS collected in March: On 30th April. Sellers can submit Challan 281 online or offline.

14.5.1. Due Date for Depositing TCS: TCS will be deducted during the month in which the supply is made. It will be deposited within 10 days from the end of the month of supply to the credit of the government. Payment of the tax collected will be made in the following manner: a. IGST & CGST will be paid to the central government; b. SGST to respective state governments

Due Dates of TCS for the FY 2023-24

Period	Quarter	Due Date of Filing
April 1st to June 30th	First Quarter	March 31st
July 1st to September 30th	Second Quarter	March 31st
October 1st to December 31st	Third Quarter	Jan 15th of the next financial year
January 1st to March 31st	Fourth Quarter	May 15th of the next financial year

14.5.2. Online TCS Submission Process: Go to the Income Tax Department's website for tax collection. Select Challan No./ ITNS 281 for TDS/TCS; Here are the sections you will need to fill out in the selected Challan 281 form:

a) Deductee: This refers to the person from whose payment the tax has been deducted. In our example, Abhinav is the deductee, and the car manufacturer would be the deductor. There are two kinds of deductees: 0020 Company Deductee 0021 Non-Company Deductee. If the deductee is not a part of the business, select 0021 Non-Company Deductee. Otherwise, if the deductee is a part of the business, select 0200 Company Deductee. SA

b) Type of payment: There are two options in this category: 200 TDS/TCS Payable by Taxpayer

400 TDS/TCS Regular Assessment. What is the difference between 200 TDS/TCS Payable by Taxpayer and 400 TDS/TCS Regular Assessment? Select 200 TCS Payable by Taxpayer when the taxpayer is paying TCS on their own and not at the demand of the Income Tax Department.

Select 400 TCS Regular Assessment when the taxpayer is paying TCS at the demand of the Income Tax Department as part of its regular assessment.

c) Nature of payment: This is where the taxpayer declares what kind of good or service was traded. When the luxury car manufacturer is submitting its TCS, it would select:

d) Mode of Payment: Taxpayers can choose to pay TCS through a debit card or net banking.

e) Tax Deduction Account Number (TAN): The Tax Deduction Account Number (TAN) is a 10-digit alphanumeric identity number. It is issued to the deductor or the party that collects the TCS. To get the TAN number, apply on the official website separately, or visit a Facilitation Centre of the Tax Information Network (TIN)

f) Assessment Year: If the payment is made on the 15th of November 2022, the Assessment Year would be 2023-2024. This is because income earned between 1st April 2022 and 31st March 2023 will be taxable only in the following year, i.e., 2023-2024.

g) Personal Details: Finally, fill out personal details – address, PIN code, email ID and mobile number. Once you submit this form, you will be redirected to the payment page.

14.5.3. Offline TCS Submission Process: To submit TCS offline, the deductor will need to visit the bank branch and submit a challan. The bank will provide proof of submission once you've submitted the challan and made the payment.

a) Tax Collected at Source Certificate: After the successful filing of TCS returns, the IT department issues a Tax Collected at Source (TCS) certificate, also called Form 27D. The

taxpayer, or the seller, needs to submit TCS certificates to buyers while filing quarterly TCS returns. **b) Form 27D or the TCS certificate comes with the following information:** a) TAN of seller filing the quarterly returns; b) PAN of buyer and seller; c) Names of the seller and buyer; d) The total amount of Tax collected by the seller; e) Tax rate; f) Date of collection

c) When will a Higher Rate of TCS Apply?: A seller will collect TCS at a higher rate in the following situations: i) If a buyer hasn't filed Income Tax Returns for the previous two financial years before the year of TCS collection; ii) In case the total amount of Tax Collected at Source and Tax Deducted at Source exceeds Rs. 50,000 in each of the two financial years; iii) If the period for filing ITR has passed. If the process of depositing TCS and filing returns seemed long and annoying, don't worry. You're not alone. Thousands of smart merchants trust RazorpayX with their TCS payments.

14.5.4. Exemptions of the TCS or Tax Collected at Source: There are certain cases under which any buyer can claim for exemption from TCS. For this, any buyer needs Form 27C. Under this form, one should claim that they are eligible for Tax Collected at Source or TCS total exemption. The following mentioned below are the cases under which any person can claim for exemption of TCS. They are:- i) That the person is using the goods for manufacturing and processing and not for trading. For this, the buyer needs to declare that he/she is intending to use the items as raw material.; ii) They are using these goods for personal use. So the buyer needs to submit this form and he will get back a duplicate copy of this form that needs to be submitted along with the declaration form which needs to be further given to the authorities in a week.

14.5.5. e-TCS or Electronic TCS: When any buyer files TCS returns using electronic media, this process of filing TCS is called e-TCS. This is compulsory for corporate and government collectors for filing TCS returns using this electronic form, from the financial year 2004-2005. These returns should be filed along with Form 27 B which needs to be verified later.

14.5.6. e-invoicing system: The e-invoicing system is also available to e-commerce operators (ECO) to report invoices to the Invoice Registration Portal (IRP), that were raised by them on behalf of their online suppliers. The e-commerce operators shall follow a detailed procedure to integrate their ERP system with the sandbox of the IRP. To know more about the details, read our article on "e-Invoicing Impact on TCS and e-commerce operators under GST".

14.5.7. Cases of TCS Exemptions: Tax collection at the source is exempted in the following cases: a) When the goods are used for personal consumption; b) The goods are bought for manufacturing, processing or production and not for the purpose of trading those goods.

14.6. TCS CERTIFICATE

When any tax collector fills up any quarterly returns, they need to submit to the buyer of the goods a TCS certificate. Form 27D is also known as the TCS certificate which is given for filing TCS returns. **What does a TCS certificate have? It has the following details:-** i) Buyer name; ii) Collection Date; iii) PAN or Permanent Account Number of the buyer; iv) PAN or Permanent Account Number of the seller; v) Seller Name; vi) TAN or Tax Deduction and Collection Account by the seller that has filed this TCS return; vii) Tax rate; viii) The tax which was collected.

14.6.1. Tax Collected at Source Certificate: The certificate that one gets from TCS must be submitted under Form 27D in a week's time from the month's last date from which this tax has been generated by entities or people who are liable for collecting tax at source. For the period which ends on 30th September and 31st March for any financial year, one will get

more than 1 certificate which is generated for any buyer for TCS. This is a consolidated certificate that could be given in a month including the last day of that particular period. But such a certificate needs to be a buyer's request rather than the seller's. If a TCS certificate gets lost the organization which is in charge of the TCS or tax collection will issue another duplicate certificate that can be attested and printed on any plain paper that will include the necessary details which are mentioned under Form 27D. **The due date for Form 27 D**

Date	Ending of the Quarter
June 15	31st March
August 15	30th June
November 15	30th September
February 15	31st December

14.6.2. Tax Collected at Source: Lower Rate: The buyer has a right to apply to the AO or Assessing Officer for TCS collection at a quite lower rate using Form 13 if the AO or Assessing Officer is convinced the buyer's actual total income is justified for that lower tax rate. AO might issue a specific certificate that states the tax collection rate at the source specifying that the lower rate is applicable.

14.6.3. Returns and TCS Payments

The below-mentioned table states the dates for TCS Payment to the government:

Ending of Quarter	Month of Collection	I TR Due Date	Due date of Payment
June 30	April	July 15	May 7
	May		June 7
	June		July 7
September 30	July	October 15	August 7
	August		September 7
	September		October 7
December 31	October	January 15	November 7
	November		December 7
	December		January 7
March 31	January	March 15	February 7
	February		March 7
	March		April 7

14.7. GST ON E-COMMERCE

The Goods and Services Tax (GST) is a comprehensive indirect tax reform that was implemented in India on July 1, 2017. The GST replaced indirect taxes, including the Value Added Tax (VAT), Central Sales Tax (CST), and service tax, and it has been hailed as a major step forward in simplifying the country's tax system. However, the GST has also had a significant impact on e-commerce marketplace sellers in India. In this article, we will explore the key ways in which the GST has affected e-commerce marketplace sellers in India, including the compliance requirements, the tax rate changes, and the overall impact on their businesses.

14.7.1. Who is Liable to Collect TCS under GST: Certain operators who own, operate and manage e-commerce platforms are liable to collect TCS. TCS applies only if the operators

collect the consideration from the customers on behalf of vendors or suppliers. In other words, when the e-commerce operators pay the consideration collected to the vendors they have to deduct an amount as TCS and pay the net amount. Here are few exceptions to the TCS provisions for the services provided by an e-commerce platform: a) Hotel accommodation/clubs (unregistered suppliers); b) Transportation of passengers – radio taxi, motor cab or motorcycle; c) Housekeeping services like plumbing, carpentry etc. (unregistered suppliers). For example – M/s.XYZ stores (a proprietorship) is selling garments through Flipkart. Flipkart, being an e-commerce operator, before it makes the payment of consideration collected on behalf of XYZ, will be liable to deduct TCS.

14.7.2. When Will the Liability of Collecting TCS Arise: TCS will be collected by e-commerce operators while making a payment to the vendor. This payment will be the consideration collected on the vendor's behalf for the supplies made by him via the online portal. This tax will be collected on the net value of taxable supplies.

14.7.3. What is the Rate Applicable under TCS: The dealers or traders supplying goods and/or services through e-commerce operators will receive payment after deduction of TCS @ 1%. The rate is notified by the CBIC in Notification no. 52/2018 under CGST Act and 02/2018 under IGST Act. This means for an intra-state supply TCS at 1% will be collected, i.e 0.5 % under CGST and 0.5% under SGST. Similarly, for a transaction between the states, the TCS rate will be 1%, i.e under the IGST Act.

14.8. IMPACT OF GST ON E-COMMERCE MARKETPLACE SELLERS

14.8.1. Compliance Requirements: One of the most significant impacts of the GST on marketplace sellers in India has been the increased compliance requirements. Under the GST, e-commerce marketplace sellers are required to register for GST, file GST returns, and maintain detailed records of their transactions. This has created a significant administrative burden for many e-commerce marketplace sellers, particularly small and medium-sized businesses that may not have the resources to comply with these requirements. Additionally, e-commerce marketplace sellers are also required to obtain a unique GST identification number (GSTIN) and display it on their websites. Failure to comply with these requirements can result in significant penalties and fines.

14.8.2. Tax Rate Changes: Another major impact on e-commerce marketplace sellers in India has been the changes to the tax rates. Under the GST, e-commerce marketplace sellers are required to pay a tax of 1% on their gross turnover in addition to the GST on the products they sell. This has increased the tax burden on e-commerce marketplace sellers, particularly those who sell low-priced items, as they may not be able to pass on the increased tax burden to their customers. Additionally, e-commerce marketplace sellers are also required to pay GST on all their expenses, including advertising, logistics, and other operational costs. This has further increased their tax burden and reduced their margins.

14.8.3. Impact on Business: The GST has had a significant impact on the e-commerce marketplace sellers in India. The increased compliance requirements and tax rate changes have increased the administrative and financial burden on e-commerce marketplace sellers, particularly small and medium-sized businesses. This has resulted in increased operating costs and reduced profitability for many e-commerce marketplace sellers, making it harder for them to compete with larger businesses. Furthermore, e-commerce marketplace sellers are also facing challenges in terms of GST refunds, as the process of claiming GST refunds can be complex and time-consuming. This has made it difficult for e-commerce marketplace sellers to claim the refunds they are entitled to, which has further reduced their profitability.

14.9. BENEFITS OF GST FOR E-COMMERCE MARKETPLACE SELLERS

- a) **Simplification of taxes:** GST replaces multiple taxes with a single tax, making it easier for e-commerce marketplace sellers to comply with tax laws.
- b) **Increased transparency:** GST uses a digital system for invoicing and filing returns, which increases transparency and reduces the possibility of tax evasion.
- c) **Improved competitiveness:** GST eliminates the cascading effect of taxes, where tax is levied on tax. This improves the competitiveness of e-commerce marketplace sellers and allows them to offer goods and services at a lower price.
- d) **Input tax credit:** GST allows e-commerce marketplace sellers to claim the input tax credit, which means they can offset the GST paid on inputs against the GST collected on sales.
- e) **Increased compliance:** GST increases compliance as e-commerce marketplace sellers are required to register, file returns, and pay taxes regularly, which makes it difficult for them to evade taxes.
- f) **Wider market:** GST allows e-commerce marketplace sellers to sell their products and services to customers in other states without having to pay additional taxes, which can help them expand their market.

14.10. CHALLENGES FACED BY E-COMMERCE MARKETPLACE SELLERS DUE TO GST

- i) **The complexity of GST rules:** E-commerce marketplace sellers may find it difficult to understand and comply with the complex rules and regulations of GST, which can lead to errors and penalties.
- ii) **High compliance costs:** GST requires e-commerce marketplace sellers to register, file returns, and pay taxes regularly, which can increase their compliance costs.
- iii) **Lack of IT (Information Technology) infrastructure:** E-commerce marketplace sellers may not have the necessary IT infrastructure to comply with the digital system for invoicing and filing returns as required under GST.
- iv) **Difficulty in claiming input tax credit:** E-commerce marketplace sellers may face challenges in claiming an input tax credit, as they may not have the necessary documents or invoices to support their claim.
- v) **Difficulty in understanding the GST rates:** E-commerce marketplace sellers may have difficulty understanding the different GST rates for different goods and services, which can lead to errors in invoicing and tax payments.
- vi) **Difficulty in dealing with multiple tax authorities:** GST requires e-commerce marketplace sellers to deal with multiple tax authorities, which can be time-consuming and confusing.

14.11. SUMMARY

In conclusion, the implementation of GST in India has had a significant impact on e-commerce marketplace sellers. While it has simplified the tax system and provided a level playing field for small businesses, it has also increased compliance costs and created operational challenges for sellers. However, with the proper guidance and support, e-commerce marketplace sellers can navigate these challenges and take advantage of the opportunities provided by GST. To claim your TCS (Tax Collected at Source) refund, follow these steps: Understand TCS: TCS is a tax collected at source under income tax and GST regulations. It's levied when you make certain transactions. Maintain Documentation: Keep all relevant documents and receipts of TCS payments made. File an Income Tax Return: Include TCS details while filing your income tax return. Claim Refund: If you've paid excess

TCS, you can claim a refund by filing your return accurately. Seek Professional Help: If needed, consult a tax expert for assistance with TCS refund claims.

TCS (Tax Collected at Source) and TDS (Tax Deducted at Source) are both mechanisms for collecting income tax in India. While TDS involves deducting tax from payments made to individuals or entities, TCS is the tax collected by the seller when selling certain goods or services. TCS primarily applies to specific transactions under GST, whereas TDS covers a wider range of income sources, including salaries and interest. TCS, or Tax Collected at Source, is a tax collection mechanism in India. Under this system, individuals or entities collecting specified payments, like the sale of goods, services, or certain transactions, must collect a percentage of the amount as tax from the buyer. This collected tax is then deposited with the government. TCS is governed by various rules and regulations, primarily under the Income Tax Act and the GST Act. It is important to comply with these rules to avoid penalties and ensure proper tax collection. If TCS (Tax Collected at Source) is collected but not deposited, it can result in penalties and legal consequences. TCS is a tax collection mechanism where the seller collects tax from the buyer on certain transactions. Failing to deposit TCS to the government can lead to interest charges, fines, and even prosecution under income tax laws or GST (Goods and Services Tax) regulations. It's crucial to comply with TCS obligations to avoid such issues.

14.12. TECHNICAL TERMS

TCS: Section 206C of the Income Tax Act says that when certain specified goods are sold, a certain amount must be added to their sale price – this is TCS, or Tax Collected at Source. The seller imposes this amount on the buyer and then has to deposit it with the government by a certain deadline.

TCS refund: To claim a refund of TCS, the buyer needs to file their income tax return and submit Form 27D, which is a certificate issued by the seller of the car. The Income Tax Department will refund the TCS amount to the buyer within 12 months of filing the income tax return.

TDS: Tax Deduction at Source or TDS is mandatory by the Income-tax Act with an aim to collect tax from the source of income. The TDS is deducted from the taxpayer at the time of making payment (if the price value is above the predefined limit) by the deductor. The deducted amount will be forwarded to the Government on behalf of the taxpayer.

PAN: PAN primarily acts as a database for all individual transactions, such as the tax collected at source (TCS)/tax deducted at source (TDS) credits, income tax payments, return on gift/investments/wealth, etc. Simply put, the PAN enables the tax department to identify an individual's tax-related transaction.

LRS: Any person who is an Indian citizen may send money under the LRS scheme. It includes minors, although they must submit the guardian's countersignature in the LRS declaration form. Family members have the option of consolidating remittances under the LRS.

14.13. SELF ASSESSMENT QUESTIONS

1. How do I claim my TCS refund?
2. What is the difference between TDS and TCS?
3. What are the rules for tax collected at source?
4. For the provisions for TCS which were introduced in 2020, does it also cover overseas tour package programs?
5. What is the full form of PAN?

6. Under the provision for TCS, what should the tax collector or seller do if the person does not have PAN or Aadhaar under LRS?
7. State the break-up of GST of TCS
8. Under which sections of the Income Tax Act do the provisions of LRS cover up?
9. Is TAN mandatory for TCS?
11. Is TCS mandatory?
13. Can someone claim for TCS under GST?
14. What happens if TCS is collected but not deposited?
15. What is the purpose behind introducing TCS in GST?
16. Who is liable to collect tax at source in GST?
17. When does the tax need to be collected on a transaction?
18. Is it mandatory for E-Commerce operators to get registered in GST?

14.14. SUGGESTED READINGS

1. Goods and Services Tax in India- Notifications on different dates
2. GST Bill 2012
3. Background Material on Model GST Law, SB Publications, Hospital Road, Agra-383 003
4. Customs Law Manual and Customs Tariff of India – R.K.JAIN.
5. The Central Goods and Services Tax Act, 2017, No.12 of 2017 published by Authority, Ministry of Law and Justice , New Delhi, 12th April, 2017.
6. GST on Services by (S.S. Gupta) Professional Books.
7. GST Avam Custom Kanoon by (Shripal Saklecha, Anit Saklecha)Academic Book
8. Students' guide to GST & Customs law- Dr. Vinod K.Singhania
9. <https://taxguru.in/goods-and-service-tax/tcs-tax-collected-source-gst-applicability.html>
10. <https://cleartax.in/s/tcs-under-goods-and-services-tax>

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LESSON-15

GST COMPOSITION LEVY

Learning Objectives

- To know about Composition Levy
- To understand the concept of Composition Levy Scheme
- To learn about Tax under Central GST and State GST

STRUCTURE

15.1 Introduction

15.2. Conditions for Composition Levy

15.3. Persons not entitled to avail Composition Scheme

15.4. Composition Rate of Tax

15.5. Benefits under GST Composition Levy Scheme

15.6. Limitations of GST Composition Levy Scheme

15.7. Registration and intimation under the scheme

15.8. Tax under Central GST and State GST

15.9. Summary

15.10. Technical Terms

15.11. Self Assessment Questions

15.12. Suggested Books

15.1. INTRODUCTION

The Composition Levy is an alternative method of levy of tax designed for small taxpayers whose turnover is up to prescribed limit. The objective of Composition Levy scheme is to bring simplicity, ease the compliance burden and reduce cost of compliance for the small taxpayers. The scheme is optional. It essentially provides for a turnover tax regime for such taxpayers, with facility for filing of return on annual basis along with quarterly payment of tax. Under this scheme, a registered taxable person, whose Aggregate Annual Turnover has not exceeded R 1.50 Cr in case of goods (R 75 Lakh in case of Uttarakhand and 7 North Eastern States) in the previous financial year, may opt for this scheme. Composition Levy scheme has been made available for suppliers of services (to those who are otherwise not eligible under Section 10(1) of the CGST Act) with a tax rate of 6% (3% CGST + 3% SGST) having an Aggregate Annual Turnover in the preceding FY up to R 50 Lakh

15.1.1. Tax Implications: The person registered under composition levy has to follow these Should not issue a tax invoice and in lieu of tax invoice a bill of supply for the outward supplies ; i) Is not eligible to take input tax credit on all inward supplies, i.e., supply of goods or services or inputs or capital goods; ii) Should not levy or collect taxes from the customers on his /her outward supplies; iii) On inward supplies should be paying on reverse charge for supplies from unregistered taxpayers and not eligible to take input tax credit.

15.1.2. Eligibility under Composition Levy: Every supplier of goods or services is not eligible to register under the composition scheme of GST. There are certain conditions laid down in the CGST Act, and they are: i) The taxpayer should not be a supplier of services other than services mentioned in clause (b) of paragraph 6 of Schedule II; ii) The taxpayer is not manufacturing any goods listed in Notification No 8 /2017 Central Tax; iii) The taxpayer should not make any interstate supplies ; iv) The taxpayer is not engaged in making any supply of goods which are not leviable to tax under this Act; v) The taxable person is neither

a casual taxable person or non-resident taxable person. The taxpayers how are not falling in any of the above-mentioned points are eligible to take opt for composition levy under GST.

15.1.3. Limit under GST Composition Scheme As per Section 10(1) of CGST Act, 2017 A registered person whose aggregate turnover in the previous financial year did not exceed 1.5 crore (As amended by the Notification No. 14/2019 – Central Tax New Delhi, the 7th March, 2019.) The limits for special category states [(i) Arunachal Pradesh (ii) Uttarakhand (iii) Manipur (iv) Meghalaya (v) Mizoram (vi) Nagaland (vii) Sikkim (viii) Tripura] remains 75 lakhs.

15.1.4 Advantages of Composition Scheme: The following are the advantages of registering under composition scheme: i) Lesser compliance (returns, maintaining books of record, issuance of invoices); ii) Limited tax liability; iii) High liquidity as taxes are at a lower rate

15.1.5. Disadvantages of Composition Scheme: The following are the disadvantages of registering under GST composition scheme: i) A limited territory of business. The dealer is barred from carrying out inter-state transactions; ii) No Input Tax Credit available to composition dealers; iii) The taxpayer will not be eligible to supply non-taxable goods under GST such as alcohol and goods through an e-commerce portal.

15.1.6. Supply of services under Composition Scheme: The composition scheme is not available to supplier of services, except supply of food for human consumption. A trader under composition scheme was not allowed to provide any service till 01.02.2019. Second proviso to section 10(1) of CGST Act has been inserted vide CGST (Amendment) Act, 2018 w.e.f. 1-2-2019. This simplified scheme is introduced w.e.f. 1-4-2019 for small service providers (and those who are supplier of goods as well as services exceeding 10% of turnover within State/UT) whose aggregate turnover during previous financial year did not exceed Rs. 50 lakhs.

15.1.7. Bill of Supply :As per section 31 (3) of the CGST Act, 2017, a registered taxable person supplying exempted goods or services under GST or paying tax under Composition Scheme as per section 10 of the Act must issue Bill of Supply in place of a tax invoice. This is because they are either supplying goods or services exempt under GST or cannot collect GST from the customers as per section 10 of the CGST Act, 2017. Hence, such businesses are required to issue Bill of Supply in place of a Tax Invoice under GST.

15.2. CONDITIONS FOR COMPOSITION LEVY

The following are the conditions are to be met by a taxpayer registering under composition levy as per Rule 5 of the CGST Rules:

i) The person registering under GST for composition levy should not be a casual taxable person or non-resident taxable person; ii) Taxpayer registered under the erstwhile tax regime will be eligible under GST for composition levy only if the goods held as on the appointed day does not contain purchases from the following sources: a) Goods imported from outside the country ; b) Goods purchased from outside the state from where he is taking registration; c) Goods received from a branch outside the state; d) Goods received from an agent or principal outside the state .

iii) Goods in stock are not purchased from unregistered taxpayers as per provisions of sub-section (4) of section 9 of CGST Act 2017.

iv) The person registering under composition levy is required to pay reverse charge on inward supplies from unregistered taxpayer's or based on a list of goods or services notified by the government on the recommendations of the GST Council and will not take input tax credit on the same.

v) The person registering under composition levy should not have manufactured goods during the previous financial year

vi) The person registering under composition levy shall mention the words “composition taxable person, not eligible to collect tax on supplies” at the top of the bill of supply issued by him.

vii) The person registering under composition levy shall mention the words “composition taxable person” on every notice or signboard displayed at a prominent place at his principal place of business registered and at every additional place or places of business registered under GST.

15.2.1. Conditions & Restrictions under the scheme:

A person opting for the scheme has to adhere to the following conditions:

- (a) Issue bill of supply in the prescribed manner;
- (b) Pay all taxes on purchases including taxes to be paid on reverse charge basis, if any;
- (c) Don't claim Input Tax Credit of purchases;
- (d) Mention the words “Composition Taxable Person” on every notice board or signboard displayed at the prominent place at his every place of business;
- (e) Withdraw from the scheme if not eligible.

15.2.2. Conditions & Restrictions for GST Composition Levy (As per Rule 5 of Chapter II of the CGST The person exercising the option to pay tax under section 10 shall comply with the following conditions, namely:-

- (a) he is neither a casual taxable person nor a non-resident taxable person;
- (b) the goods held in stock by him on the appointed day have not been purchased in the course of inter-State trade or commerce or imported from a place outside India or received from his branch situated outside the State or from his agent or principal outside the State, where the option is exercised by a dealer migrating to GST scheme starting from appointed day;
- (c) the goods held in stock by him have not been purchased from an unregistered supplier.
- (d) he shall pay tax under sub-section (3) or sub-section (4) of section 9 on inward supply of goods or services or both;
- (e) he was not engaged in the manufacture of goods as notified under clause (e) of sub-section (1) of section 10, during the preceding financial year;
- (f) he shall mention the words “composition taxable person, not eligible to collect tax on supplies” at the top of the bill of supply issued by him; and
- (g) he shall mention the words “composition taxable person” on every notice or signboard displayed at a prominent place at his principal place of business and at every additional place or places of ” A casual taxable person, or a non-resident taxable person is not eligible for composition scheme. Composition scheme can be opted on the condition that goods held in stock by the person opting for the scheme on the appointed day has not been purchased in course of inter-state trade, or imported from outside India. Further goods held in stock has not been purchased from unregistered dealer.

15.3. PERSONS NOT ENTITLED TO AVAIL COMPOSITION SCHEME

- (a) A taxable person is engaged in making any supply of goods which are not leviable to tax under this act. This condition means that if a registered person is engaged in supply of something not leviable to tax under CGST Act, he shall not be eligible for this scheme. “Not leviable to tax” under this Act does not mean exempted goods. It refers to goods which cannot be taxed under this Act. Thus, a person who is engaged in supply of alcoholic liquor for human consumption or a restaurant serving alcoholic liquor cannot opt for this scheme.
- (b) A taxable person is engaged in making any interstate outward supplies of goods (one state to another state)

(c) A taxable person is not engaged in making any supply of goods through an electronic commerce operator who is required to collect tax at source under Section 52 of the Act.

(d) A taxable person is not a manufacturer of such goods as may be notified by the Government on the recommendation of the GST.

Following manufacturers of goods will not be eligible for Composition Levy [Notification No. 8/2017-CT dated 27-6-2017]. [see also FAQ on GST Chapter 2 Q No. 20 issued by CBI&C on 15-12-2018.

(a) Ice cream and other edible ice, whether or not containing cocoa.

(b) Pan masala

(c) Tobacco and manufactured tobacco substitutes

(e) Where more than one registered person is having the same Permanent Account Number issued under the Income-tax Act, 1961, the registered person shall not be eligible to opt for the composition scheme unless all such registered persons are eligible under composition scheme and opt to pay tax under the scheme.

15.3.1. Who can opt for Composition Scheme?

A taxpayer whose turnover is below Rs 1.5 crore* can opt for Composition Scheme. In case of North-Eastern states and Himachal Pradesh, the limit is now Rs 75* lakh. As per the CGST (Amendment) Act, 2018, a composition dealer can also supply services to an extent of ten percent of turnover, or Rs.5 lakhs, whichever is higher. This amendment will be applicable from the 1st of Feb, 2019. Further, GST Council in its 32nd meeting proposed an increase to this limit for service providers on 10th Jan 2019*. Turnover of all businesses registered with the same PAN should be taken into consideration to calculate turnover.

*CBIC has notified the increase to the threshold limit from Rs 1.0 Crore to Rs. 1.5 Crores.

15.3.2. Who cannot opt for Composition Scheme:

The following people cannot opt for the scheme- i) Manufacturer of ice cream, pan masala, or tobacco; ii) A person making inter-state supplies; iii) A casual taxable person or a non-resident taxable person.

15.3.3. Validity of the Composition Levy scheme:

A person opting for the Composition Levy scheme can continue to pay tax under the said scheme as long as he/she satisfies the eligibility criteria and conditions related to the scheme. Conditions which may render a person ineligible for the scheme: A person is ineligible for the scheme, if

(a) he wrongly opts for the scheme;

(b) his turnover exceeds the eligible limit for the scheme (as detailed above);

(c) he contravenes eligibility criteria or any of the conditions of the scheme.

15.3.4. How can a taxpayer opt for composition scheme?

To opt for composition scheme a taxpayer has to file GST CMP-02 with the government. This can be done online by logging into the GST Portal. This intimation should be given at the beginning of every Financial Year by a dealer wanting to opt for Composition Scheme. Here is a step by step Guide to File CMP-02 on GST Portal.

15.4. COMPOSITION RATE OF TAX

Sr. No. Category of Registered Person Rate of CGST Rate of SGST Total

(a) Manufacturers other than manufacturers of such goods as may be notified by the Government. 0.5% 0.5% 1.0%

(b) Restaurant services and Outdoor catering services (not serving alcohol) 2.5% 2.5% 5.0%

(c) Any other supplier eligible for composition levy (section 10) 0.5% 0.5% 1.0%

Rate of tax has been prescribed under Rule 7 of the CGST Rules [Notification No. 05/2019 – Central Tax New Delhi, the 29th January, 2019], which is 0.5% on goods and 2.5% for restaurants.

If services are supplied within the limits allowed in Section 10, such services shall attract a tax rate of 0.5%. Tax of 1% (in case of manufacturer) and 5% (in case of restaurant) is payable even on exempted goods also – The tax is payable on ‘turnover in a State or Union Territory’. Thus, tax is payable even on goods which are otherwise exempt from GST. In case of traders, tax @ 0.5% is payable on ‘turnover of taxable supplies’ w.e.f. 1-1-2018.

15.4.1. GST rates for a composition dealer: Following chart explains the rate of tax on turnover applicable for composition dealers :

Composition Scheme - Applicable GST Rates			
Type of Business	CGST	SGST	Total
Manufacturer and Traders (Goods)	0.5%	0.5%	1.0%
Restaurants not serving alcohol	2.5%	2.5%	5.0%
Other service Providers*	3.0%	3.0%	6.0%

*The 32nd GST Council meeting proposed for the inclusion of Service Providers under the Composition Scheme, with the above-mentioned rates of tax. However, a notification is yet to be issued in this regard.

As per notification dated 01.01.2018, turnover in case of traders has been defined as ‘ Turnover of taxable supplies of goods’.

15.4.2. How GST payment should be made by a composition dealer: GST Payment has to be made out of pocket for the supplies made. The GST payment to be made by a composition dealer comprises of the following: i) GST on supplies made; ii) Tax on reverse charge; iii) Tax on purchase from an unregistered dealer* Only on the specified categories of goods and services and well as the notified class of registered persons with effect from 1st Feb 2019 but is yet to be notified. Hence, not applicable until then

15.4.3. Important Notes for Composition Dealers: No Input Tax Credit (ITC) will be made available to composition levy of tax. Composition dealers cannot make interstate sales. Composition dealers are not required to maintain detailed records. Composition dealers cannot issue Tax Invoice. Composition dealers cannot charge tax from their customers. It should be pay tax out of their own pocket. Composition dealers must issue Bill of Supply instead of Tax Invoice and should mention “composition taxable person” not eligible to collect tax on supplies on their top of Bill of supply.

15.4.4. Returns to be filed by a composition dealer: A dealer is required to pay tax in a quarterly statement CMP-08 by 18th of the month after the end of the quarter. Also, a return in form GSTR-4 has to be filed annually by 30th April of next financial year from FY 2019-20 onwards. GSTR-9A is an annual return to be filed by 31st December of the next financial year. It was waived off for FY 2017-18 and FY 2019-20. Also, note that a dealer registered under composition scheme is not required to maintain detailed records.

15.4.5. Penalty for delay filing of GSTR 4: GSTR 04 filed in Quarterly basis within the given time frame but if it's not file than penalty levied on it. Rs. 100 for CGST and Rs. 100 for SGST per day or Rs. 5000 each CGST & SGST whichever is lower.

15.4.6. Returns under Composition Levy: Sr No. Returns to be filed Due Date for filing of Return (a) CMP 08 (Quarterly return) 18th of the month after the end of the quarter (b) GSTR – 4 (Annual return) within 30th April of the succeeding year Due to COVID -19 outbreak, the taxpayer can file Form GST CMP-08 till 7th July, 2020 and Form GSTR-4 within 15th July,

2020. Return filing for the taxpayers under GST is different from the regular taxpayers. The number of returns to be filed will be lesser, and it will be only one return per quarter as they will be paying very lesser tax rate and also not availing input tax credit. They have file on return for each and every quarter known as GSTR - 4. Filing of returns on a quarterly basis is based on the provisions of Sub-section 2 of section 39 of the CGST Act 2017.

15.4.7. The GSTR – 4 contains the following information: a) Inward supply of goods or services or both including the supplies which attract reverse charge or tax is to be paid on reverse charge; b) Any changes or debit/credit notes issued for the above supplies; c) Taxes payable on outward supplies by rate wise for central and state taxes ; d) Advance received during the month and also supplies made against advances received in the previous months; e) TDS credit received; f) The amount of total tax payable along with the amount of tax paid; g) Any late fee or interest payable or paid; h) If any refund received; The registration of the composition taxpayer is liable to be canceled by the concerned office if the taxpayer under composition levy does not file returns continuously for three quarters. This based on the provisions given in clause (b) of subsection 2 of section 29 of the CGST Act 2017.

15.5. BENEFITS UNDER GST COMPOSITION LEVY SCHEME

(a) Less Compliance: Under the normal scenario, a taxpayer under GST has to file monthly / quarterly returns and yearly returns. Further, he has to upload details of invoices issued by him during the period. For small suppliers and business, it may be difficult. Whereas under Composition Levy scheme, quarterly payment of tax and yearly filing of return have been prescribed. This will ease the compliance burden for SMEs, and they can focus more on their business rather than getting occupied in compliance procedures.

(b) Reduce tax liability: Another advantage of being registered with Composition Levy scheme is the rate structure. While most of the services fall under either 12% or 18% GST bracket, Composition service providers need to pay only 6% of supplies made by them.

(c) High Liquidity: For normal taxpayers, most of the working capital is blocked as Input Tax Credit because the taxpayer can avail ITC only if his supplier has filed the return. The supplier has to pay tax at standard rate and the Credit of Input Tax will be availed only when his supplier files the return. In Composition Levy scheme, the taxpayer need not worry about his supplier filing return as he cannot take the credit and will pay tax at nominal rate.

15.6. LIMITATIONS OF GST COMPOSITION LEVY SCHEME

There are some limitations under GST Composition Levy scheme, which a taxpayer must be aware of before opting for the scheme. These are:

(a) No credit of Input Tax: Any taxpayer registered under Composition Levy scheme will not be eligible to take Credit of Input Tax paid on purchases. Also, the buyer of taxpayer's supplies will not get the credit of taxes paid by taxpayer.

(b) No Inter-State business: The major drawback of the scheme is that the taxpayer cannot deal in inter-state supplies or affect exports of goods and services. He is barred from performing such actions which limit his territory for expansion and can only conduct local or intra-State transactions.

(c) Pay tax form own pocket: Since the taxpayer is not allowed to charge tax from his buyer, he has to pay tax out of his own pocket, despite the rate being low. He is not even allowed to issue a tax invoice, resulting in the burden on the taxpayer to pay tax.

d) Method to calculate Aggregate Turnover: Aggregate turnover is computed on all India basis for a person having same Permanent Account Number (PAN).It is sum of value of all outward supplies falling in the following four categories:

a) **Taxable supplies;** b) **Exempt supplies;** c) **Exports of goods or services or both;** d) **Inter-state supplies.**

But excludes: i) the value of inward supplies on which tax is payable by a person on reverse charge basis & taxes including cess paid under GST law. ii) CBEC vide Order No. 01/2017-Central Tax dated 13th October, 2017 has clarified that a person supplying any exempt services including services 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 ineligible for the composition scheme. In computing his aggregate turnover in order to determine his eligibility for composition scheme, value of supply of the exempt services including services by way of extending deposits, loans or advances shall not be taken into account.

15.7. REGISTRATION AND INTIMATION UNDER THE SCHEME

Registration under GST law is compulsory for opting for the Composition scheme. A person who is registered under existing laws and has obtained a provisional registration under GST has to file an electronic intimation in the **FORM GST CMP-01** on the common portal www.gstn.gov.org. He can file this intimation either before the appointed day (i.e. day on which GST came into force 01/07/2017) or within 30 days (or as extended by the commissioner) of the appointed day (01/07/2017), (which was later extended up to 16/08/2017). If he intimates after the appointed day, he shall not collect GST and issue bill of supply from the appointed day.

Further such person has to furnish a statement containing details of stock including the inward supply of goods received from unregistered persons, held by him on the day preceding the date from which he opts for the scheme, in FORM GST CMP-03, within 60 days (or as extended by the commissioner) of the date from which the option for composition levy is exercised. As per Order No. 11/2017-GST dated 21.12.2017, the period for intimation of details of stock in FORM GST CMP-03 is extended till 31st January, 2018. A person who is not registered under existing law but applies for fresh registration under Rule 8 of the CGST Rules, 2017 may opt for the scheme by providing necessary information under part B of FORM GST REG-01. Any registered person who wants to opt for composition levy has to file an electronic intimation in the FORM GST CMP-02 prior to the commencement of financial year for which the option to pay tax under composition levy is exercised and also has to furnish a statement in **FORM GST ITC-03** in accordance with the sub rule (4) of Rule 44 of CGST Rules, 2017, within 90 days from the commencement of the relevant financial year.

A person having a single PAN and registered in more than one State under GST can opt for the scheme, provided he meets all the conditions of the scheme, only if all such registered persons opt for the Composition scheme. A registered person cannot choose to opt for the Composition scheme in one state and not in other states. Further, an intimation for withdrawal from the scheme; or denial of the scheme with respect to any one registered person under the same PAN will be applicable for all such registered persons.

15.7.1. What is Aggregate Turnover As per section 2(6) of CGST Act 2017, “Aggregate Turnover” means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable on reverse charge basis), exempt supplies, export of goods or services or both and interstate supplies of persons having the same PAN to be computed on all India basis but excludes (CGST, SGST, UTT, IGST, CESS). Activities or transactions specified in Schedule III of CGST Act are to be treated as neither good nor services and turnover of these will not be includible in ‘aggregate turnover’. It has been clarified vide order No. 01/2017 date 13 October 2017 that for computing the aggregate turnover for eligibility for the scheme, the turnover of exempted services, including services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount, supplied by a taxpayer will not be included. (explanation 1 to section 10

of CGST Act, inserted vide Finance (No. 2) Act, 2019). For the purposes of computing aggregate turnover of a person for determining the eligibility to pay tax under section 10 of CGST Act 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 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. For Example, aggregate turnover in a state of Mr. Y for the financial year 2019-20 was Rs 38 Lakhs. His aggregate turnover as on 8th May 2020 has become Rs 42 Lakhs .He becomes liable for registration under GST on 8th May 2020. He is also engaged in extending loan, deposits, advances etc and interest received from such loan as on 8th May 2020 is Rs 110 lakhs. He is eligible for composition scheme as interest on loans, deposits etc. will not be considered for in computing aggregate turnover in order to determine eligibility for composition scheme. (Removal of Difficulties Order No. 1/2019-CT dated 1-2-2019) . The supply of goods by job worker after completion of job work treated as a supply of goods by the principal as per section 143 of CGST Act 2017 and value of such goods shall not be included in the calculation of Aggregate Turnover of job worker but it will be included Aggregate Turnover of principal.

15.7.2. Form to be submitted: (a) For persons already registered under Pre – GST regime Sr. No. FORM Purpose for which form to be filed online Due date of filing (i) GST-CMP-01 Intimation to pay tax under section 10 (composition levy) (Only for persons registered under the existing law migrating on the appointed day) Prior to appointed date or within 30 days of said date beginning of financial year (ii) GST-CMP-03 Intimation of details of stock on date of opting for composition levy (Only for persons registered & unregistered under the existing law migrating on the appointed day Within 90 days of exercise option (b) Person registered under GST and person switches to composition Scheme (iii) GST- CMP- 02 Intimation to pay tax under section 10 (composition levy) (for person registered under the Act) Intimation of availed opt for scheme middle of the financial year Prior to commencement of Financial year* *In the view of COVID-19 pandemic, Last date to opt for Composition Scheme has been extended till the last week of June, 2020 for Financial Year 2020-21. Last date for making payments for the quarter ending on 31st march, 2020 and that for filing returns for the FY 2019-20 for Composition dealers have been extended till the last week of June, 2020. (iv) GST- CMP- 04 Intimation/Application for withdrawal from Composition levy Within 7 days of occurrence of event (v) GST- CMP- 05 Show Cause Notice issued by Proper officer in contravention of rules or Act (Notice for denial of option to pay tax under section 10) In contravention of rules or Act (vi) GST- CMP- 06 Reply of show cause notice given by the taxable person Within 15 days of received of Show Cause Notice (vii) GST- CMP- 07 Issue of Order for acceptance / rejection of reply to show cause notice Within 30 days of received of SCN (viii) GST REG- 01 Registration Certificate under Composition Scheme (for person who applied for fresh register under GST to opt scheme) Prior to appointed date (ix) GST ITC-01 Details of input in stocks, semi-finished and finished goods 30 days of composition scheme option withdrawn (x) GST ITC-03 Intimation of ITC (Input Tax Credit) available Within 60 days of commencement of the financial year.* Due to COVID-19 outbreak, the taxpayer shall furnish the statement in Form GST ITC-03 within 31st July, 2020.

15.7.3. Effective Date for composition levy: Effective date for the taxpayers who are already registered under the existing laws and obtained provisional registration under GST law and intimates about opting for the scheme either before the appointed day (01/07/2017) or within 30 days (or as extended) of the appointed day, shall be the appointed date. Effective date for registered taxpayer who intimates about opting for the scheme under **FORM GST CMP-02**, shall be the beginning of the financial year. Effective date for a person who applies for fresh registration under Rule 8 of the CGST Rules, 2017 by providing necessary

information under part B of FORM GST REG-01, shall be the effective date of registration as per sub rule 2 or 3 of Rule 10 of CGST Rules, 2017.

15.7.4. Persons who are not eligible for the scheme: Barring few exceptions, all registered taxable persons whose aggregate turnover has not exceeded Rs. One crore (Rs. 75 lakhs for special category states except J & K and Uttrakhand) in the financial year 2016-17 are eligible to opt for this scheme. List of taxable persons who are not eligible for the scheme is as below:

- i) A casual taxable person i.e. a person who occasionally undertakes supplies in a State or Union Territory where he has no fixed place of business.
- ii) A non-resident Taxable person i.e. a person who occasionally undertakes supplies but has no fixed place of business or residence in India.
- iii) A supplier of services except a person engaged in supply of restaurant service.
- iv) A person engaged in providing inter-state supply of goods.
- v) A person engaged in supply of non-taxable goods i.e. goods which are not taxable under GST law
- vi) A person engaged in supply of goods through an Electronic Commerce Operator (ECO) who is required to collect Tax at source under section 52 of the CGST Act.
- vii) The goods held in stock by him on the appointed day have not been purchased in the course of inter-State trade or commerce or imported from a place outside India or received from his branch situated outside the State or from his agent or principal outside the State where registration under the Composition Scheme has been taken.
- viii) The goods held in stock by him have not been purchased from an unregistered supplier and where purchased, he pays the tax under the reverse charge mechanism.

A person engaged in manufacturing of goods notified under sec 10 (2) (e) of the CGST Act either in the year 2016-17 or later. Following goods have been notified for which composition scheme is not available.

15.7.5. Renewal: The person registering under composition levy may not file fresh application/intimation for every financial year and continue to be under composition levy till he follows/satisfies all the conditions for a composition levy in place from time to time.

15.8. TAX UNDER CENTRAL GST AND STATE GST

Under the GST law, the central government will collect the CGST, SGST, or the IGST depending on the transaction. When the supply of the goods or services is happening within the state it is called the intrastate transaction then both CGST and SGST will be collected. If the supply of the goods or services has happened between the states it is called inter-state transactions then it is called the inter-state transactions then only IGST will be collected. There were multiple taxes such as the Central excise, service tax, and the State VAT but under GST there is just one tax with three components- CGST, SGST, and IGST.

15.8.1. Central Goods and Service Tax: The Government of India levies the Central Goods and Service tax on any transaction of goods and services within the state. It is one of the taxes that is charged on every intrastate transaction. CGST has replaced all the existing central taxes like the service tax, central excise duty, customs duty. The rate of the CGST is equal to the SGST rate and both the taxes are charged based on the products. So in case, If Ayaan is wanting to sell a product to Joseph who lives in the same state then he has to pay two taxes. The rate of CGST is 9% and SGST will also be 9%. GST is levied on the consumption of the product in which the state is manufactured is not entitled to tax collection. For manufacturing the state levies the tax then the same will be transferred to the consuming state through the central government. Central Goods and Services Tax (CGST) subsumed all the taxes levied

by the central government. For example, central excise duty, central surcharges and cess and other such central indirect taxes that were earlier applicable.

15.8.2. Objectives of the CGST Act, 2017: The primary objective of the CGST Act is to curb multiple problems associated with the taxation system. To overcome issues like double taxation, heavy tax duties (such as octroi, entry tax, and check posts) and introduce a simplified compliance system, the act was introduced in India.

15.8.3. Features of the CGST Act, 2017: The primary features of CGST are-

- a) Central Goods and Services Tax is levied on the supply of all intra-state goods and services.
- b) It enables self-assessment by taxpayers on taxes that are liable to be paid by them.
- c) CGST assists to reduce the tax burden on multiple goods and services.
- d) Penalties and fines can be levied under CGST provisions on violation of taxation regulations.
- e) To restrict tax defaulters from selling goods or services, tax recoveries can be made through tax arrears via provisions under the CGST Act.

15.8.4. CGST Rules:

- a) A supply bill must be issued if registration falls under the GST composition scheme.
- b) An invoice of tax must be issued to each of the taxable goods and services (in case you are already registered for GST).
- c) All the invoices should carry a unique serial no. and be noted in sequential order.
- d) CGST and SGST are filed in equal amounts. For example, if the GST rate is 18%, the CGST will be 9%, and SGST will also be 9%.

15.8.5. Documents Required for CGST Registration

- a) Applications form;
- b) PAN Card;
- c) Aadhaar Card;
- d) Cancelled Cheque Leaf;
- e) Address Proof.

In almost all cases, the total tax liability is divided into two equal halves and distributed equally between the state and central government.

These rates are decided by the GST Council. The GST Council meets for a couple of items in a year as and when required however, there is no regular fashion. The last time the GST Council met was in September 2019. These rates are as of October 1, 2019.

15.8.6. There are around six slabs of rates

Slab Rates	Details
5%	The most commonly used products that are subjected to a 5% GST rate are cream and yoghurt, paneer, cashew nut, raisins, fruit and nuts and a few others. Now for these products, 2.5% goes to the state government and the rest 2.5% goes to the CGST. Many household items are covered in this section.
12%	6% GST rate is the second slab of rates under GST. Citrus fruits, jams, sausages, 20l drinking water, statues, pots and jars, geometry box, cutlery, railway coaches, printer ink, wooden toys and more. Here for every product, 6% goes towards CGST and 6% goes towards SGST. This section covers processed food to a great extent.

18%	Examples of products being taxed at 18% are bindis, chocolates, fountain pens, tripods, soap, toothpaste, and industrial intermediate products are therein this slab. Here 9% goes towards SGST, and 9% goes towards CGST. The central goods and services tax act 2017 has a full list of items.
28%	Examples of products being taxed at a GST rate of 28% are cigarettes, caffeinated beverages, pan masala, motor cars and motorcycles, air conditioners, refrigerators etc. Mainly luxury items are covered in this sector. In this, 14% goes towards SGST, and 14% goes towards CGST.
3%	Coins, gold, silver, platinum, imitation jewellery, etc, are taxed at 3%. Here 1.5% goes towards SGST and 1.5% towards CGST.
0.25%	Precious stones are taxed at 0.25%, where 0.125% goes towards CGST and 0.125% goes towards SGST.
0%	There are also some products that are taxed at 0%. Basically, they are tax-free. Mammals, live swine, live bovine mammals, birds, insects, fish, curd, lassi, buttermilk, bananas, apples, grapes, human hair, and sanitary napkins, among others.

The central GST Act 2017 has a fully updated list of all items under all GST tax slabs. For example, if Ankit from Uttar Pradesh is wanting to sell some goods to Lalit in Uttar Pradesh then the product will attract the GST at 18% comprising of 9% of CGST and 9% SGST.

15.8.7. State Goods and the Service tax: SGST means the state Goods and Service tax, which is one of two taxes that is levied on the intrastate transactions of the goods and the services. GST is levied on the state where the goods are being purchased and sold. It will replace the existing state's taxes that includes the VAT, entertainment tax, sales tax, luxury tax, entry tax, state cess, and the surcharge on any kind of transaction that involves the goods and services. The state government is the sole devising of the revenue earned under the SGST. State Goods and Services Tax (SGST) subsumes all taxes levied by the state government, that's, state indirect taxes. For example, VAT, sales tax, state cesses and surcharges, etc.

15.8.8. Features of SGST:

- a) SGST is levied and collected by the states on all goods and services supplied for consideration.
- b) The tax collected is deposited to the accounts of the respective state
- c) Each state has its separate SGST act under its State Goods and Service Tax Department. However, the basic features of the GST law for all the states like the charges, valuation, taxable event, measure, classification, etc would remain the same across the respective act of each state
- d) SGST is not applicable to the exempted goods and services as they do not come under the influence of GST. Furthermore, SGST is also not applicable where the aggregate annual turnover is less than the prescribed limit.

15.8.9. Difference between CGST and SGST

Difference	CGST	SGST
Meaning	The Central Goods and Service tax under GST has replaced the existing tax services tax, excise tax, etc.	SGST means the state goods and service tax that has replaces the existing tax like the sales tax, luxury tax, etc. This tax is levied by the state government.
Collected by	Central Government	State Government
Benefiting authorities	Central Government	State Government
Applicable on transaction	Intrastate (Within the state)	Intrastate (Within the state)
Registration	No registration, until the turnover, is exceeding Rs.20 lakh (For northeastern states it is Rs.10 lakh)	No registration, until the turnover, is exceeding Rs.20 lakh (For northeastern states it is Rs.10 lakh)
Composition scheme	The dealer can use the benefits up to Rs.75 lakh under the composition scheme	The dealer can use the benefits up to Rs.75 lakh under the composition scheme

To get GST registration you can get in touch with our advisors who will help you in getting the GST registration within 6-7 days.

15.9. SUMMARY

Accordingly, a person who opts for composition scheme may supply services of value not exceeding ten per cent, of turnover in a State in the preceding financial year or five lakh rupees, whichever is higher . As per the CGST (Amendment) Act, 2018, a composition dealer can also supply services to an extent of 10% of turnover, or `5 Lakhs, whichever is higher. This amendment is applicable from the 1st of Feb, 2019. A new sub-section (2A) has been inserted in section 10 of the CGST Act vide Notification No. 2/2019-CT(Rate) dated 7-3-2019. to bring in an alternative composition scheme for supplier of services or mixed suppliers (not eligible for the earlier composition scheme) having an annual turnover in preceding financial year up to ₹ 50 lakhs. . Person not entitled to avail Composition scheme under GST, Condition & restriction for levy of composition scheme (under Rule 5 of chapter II of CGST Act 2017), Form to be submitted, Composition Rate of Tax, Penalty for delay in filing GSTR -4, Important Notes and Content of Bill of supply. Section 10 of the CGST Act, 2017 provides for composition levy to such person. The composition scheme under GST is currently applicable to businesses with aggregate turnover of Rs. 1.5 crores or less (lower limit is applicable in case of special category states). Composition Scheme is a simple and easy scheme. A taxable person who opt composition scheme is not required to maintain detailed records and fling of detailed returns.

15.10. TECHNICAL TERMS

Composition levy: Composition levy is kind of GST for small taxpayers who are not able to do complicated compliances of GST laws as applicable to regular taxpayers. The compliance level for those small taxpayers is very minimal and applicable tax rate for composition levy is uniform across all type of goods or services.

Composition Scheme: Composition Scheme is uncomplicated and simple scheme under GST for small taxpayer. They can get relaxation from monotonous GST formalities and can also pay tax at a fixed rate of Turnover. This scheme is only applicable to those whose turnover is not exceeding Rs. 1.5 Crores.

Aggregate Turnover: Meaning of Aggregate Turnover:- As per section 2 (6) of CGST Act, 2017 '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.

Composition Rate of Tax: Composition Scheme is uncomplicated and simple scheme under GST for small taxpayer. They can get relaxation from monotonous GST formalities and can also pay tax at a fixed rate of Turnover. This scheme is only applicable to those whose turnover is not exceeding Rs. 1.5 Crores.

Bill of Supply: Much like the Tax Invoice, a Bill of Supply acts as a proof of sale undertaken by the registered taxpayer containing details such as description of goods or services, value of supply, etc.

15.11. SELF ASSESSMENT QUESTIONS

1. What is composition levy under GST?
2. What is the specified rate of composition levy?
3. Who are the persons not eligible for composition scheme?
4. What is the validity of composition levy?
5. Define CGST and SGST?
6. What is the difference between CGST and SGST?
7. What is the Limit under GST Composition Scheme?
8. What is Aggregate Turnover?
9. What is the Supply of services under Composition Scheme?
10. Explain the Conditions & Restrictions for GST Composition Levy.

15.12. SUGGESTED BOOKS

1. Good and Services Tax in India-Notification on different dates
2. The Central Goods and Services Tax Act,2017,No.12 of 2017 published by Authority Ministry of Law and Justice, New Delhi,12th April,2017.
3. Background Material on Model GST Law, Sahitya Bhawan Publications, Hospital Road,Agra.
4. Dharmesh Babubhai Mistry Composition Levy under GST- Detailed Analysis | Goods and Services Tax
5. Goods and Services Tax in India- Notifications on different dates
6. Background Material on Model GST Law, Sahitya Bhavan Publications, Hospital Road, Agra-383 003
7. Customs Law Manual and Customs Tariff of India – R.K.JAIN.
8. The Central Goods and Services Tax Act, 2017, No.12 of 2017 published by Authority, Ministry of Law and Justice , New Delhi, 12th April, 2017.
9. Read more at: <https://taxguru.in/goods-and-service-tax/class-appointment-power-of-sgst-cgst-officers-under-revised-model-gst-law.html>- Copyright © Taxguru.in
10. Anil Kumar Agrawal : “Analysis of Delegation of Power under GST”| Goods and Services Tax - Articles| Download PDF 05 Dec 2021
11. CS charu Vinayak| Goods and Services Tax Article by: Nishant Raj. The author is an IIT Kharagpur Alumnus.

LESSON-16

GST ON EXPORTS AND IMPORTS

Learning Objectives

- To know about the concept of GST on Exports and Imports
- To understand the procedures for Imports and Exports
- To learn about the place of supply of Imports and Exports
- To know the benefits of GST on Imports and Exports.

STRUCTURE

16.1. Introduction

16.2. Import of Goods and Services

16.3. Export of goods and Services

16.4. Develop Export Strategy

16.5. Refunds on Exports

16.6. Recent amendments in refund

16.7 Place of supply for import/export of goods

16.8. Summary

16.9. Technical Terms

16.10. Self Assessment Questions

16.11. Suggested Readings

16.1. INTRODUCTION

Goods are items that are usually (but not always) tangible, such as pens, salt, apples, and hats. Services are activities provided by other people, who include doctors, lawn care workers, dentists, barbers, waiters, or online servers, a book, a digital videogame or a digital movie. Taken together, it is the production, distribution, and etc. Goods are material things wanted by human beings. They can be seen or touched. Services are non-material things. These cannot be seen or touched only their effects are felt. When we are hungry, we take food. When we fall sick, we take medicines. When we study, we use book, notebook, pen, paper etc. All these are examples of goods which satisfy. 'Goods' are the physical objects while 'Services' is an activity of performing work for others. Goods imply the tangible commodity or product, which can be delivered to the customer. It involves the transfer of ownership and possession from seller to the buyer.

a) Goods and Services: Economic activity depends on the production and consumption of goods and services, which are the two key types of economic output. While some organizations provide goods and services, others focus on one type of output to meet consumer demand. Learning about these two types of economic output can help you develop a deeper understanding of how economies work.

b) What are goods? Goods are items, articles, products or commodities that customers purchase from companies. They are tangible items with physical attributes you can touch, feel and see, like color, size, shape and weight. Consumers might use a good a single time or multiple times. They might also share the good or give it to someone else without changing its essential nature. When a consumer purchases goods and pays the assigned price, they secure ownership of the product; and then possession of the good moves from the seller to the buyer. Delivering goods from the seller to the buyer may involve manufacturing, warehouse storage, marketing and logistics. Because of this process, there is general uniformity between

goods, except in businesses that produce small-batch or custom products. **Some examples of goods include:** i) Computers; ii) Books; iii) Notepads; iv) Laptop bags; v) Water bottles; vi) Cars; vii) Jackets; viii) Cell phones; ix) Desks; x) Lamps.

c) What are services? Services are intangible activities, amenities, benefits or assistance that one person or business performs or provides to another. The receiver of the service or their representative pays for the service. In some industries, service output can come from an individual, like someone who cuts your hair. In others, a group performs a service, such as a team of doctors working together to perform surgery on a patient. While the consumer of the service can utilize it, they don't own the service they receive. Instead, the service provider owns the service. In some instances, a consumer purchases an item to receive a service. For example, an individual who purchases a movie ticket can enter the theater and enjoy the selected movie. In this case, the movie is a service and the ticket purchase is how the consumer can take advantage of the movie viewing. Purchasing a movie ticket allows you to see the movie, but you don't own part of the movie theater because the theater provides a service. **Some examples of services include:** i) Computer repairs; ii) Meal deliveries; iii) Air conditioning installations; iv) Tutoring; v) Waste collection; vi) Transportation; vii) Events management; viii) Internet access; ix) Massages; x) Dry cleaning; xi) See how your salary compares; xii) Get personalized salary insights with the Indeed Salary Calculator

16.1.1. Differences between services and goods: Here are some differences between services and goods:

a) Tangibility: Goods are tangible objects you can touch and then take home after purchase, whereas the time and effort that goes into providing services are not. While a service may result in a tangible object, like a meal, it isn't tangible. Consider the work of a meal delivery service. The meals you receive are tangible goods, but you paid for the meal delivery service. The service is intangible, and the goods you get as part of the service are the company's products.

b) Transferability: When you buy a good, you can usually give it to someone else within certain legal and financial limitations. For example, if you purchase a shirt and no longer want to wear it, you can give it to a friend or family member who owns the good. Goods have a higher transferability than services, and some companies specialize in reselling goods. While you can sometimes give a friend a certificate to receive a certain service, the service provider still owns the service since they have the skills and knowledge to perform the task.

c) Presence of inventory: Companies that provide goods to consumers usually have an inventory of products available to fulfill consumer orders, unless the company creates custom goods with every order. These companies usually have an inventory of supplies and materials to make the goods. Service-based businesses do not use an inventory, since the service provider completes certain tasks for every customer. Some companies have an inventory of goods that support the primary service model. For example, an auto repair shop might offer repairs and other services and also have a small inventory of car appliances for purchase, like air fresheners and cleaners.

d) Ownership: When you buy a good, you take ownership of the item from the seller. For example, if you buy a computer from a retail store, you now own the computer outright. When you purchase a service, you don't retain ownership of the service. Instead, the service provider continues to own that service after they've completed the work. For example, if you pay for a haircut, you receive a service from the hairstylist. Your purchase doesn't allow you to take the stylist's scissors or combs with you, and you don't own part of the hair studio.

e) Return ability: Because goods are tangible items, you can often return or exchange them, depending on the purchase agreement. While you can sometimes get a refund after buying a service but before receiving it, you can't return a service you've already received. If you're

unhappy with the service you've received, you can sometimes get a partial or full refund, but the service still occurs. For example, a parent might enroll their student in music lessons. Before the first session, they might decide to cancel and receive a full refund. Once the student begins their sessions, the parents might not get a rebate for ending the lessons unless they can prove an issue with the instruction.

f) Time management: Typically, services have stricter time requirements than goods because when you buy a good, the company might ship it to you or requisition it from somewhere else. Often, when you buy a service, the service person provides the service at a specified time. This structure allows both the service provider and recipient to be present when the service happens. For example, if you order a custom part for your car, it might take several weeks to arrive. Once it arrives, you might schedule a specific time to have the piece installed by an auto technician.

g) Quality measurement: Measuring the quality of a good is usually easier and less complicated than doing the same with a service you've purchased or signed up for. Consider the case of electronics stores that sell a specific flash drive that businesses may need to maximize their storage capacity. Except for faulty devices, you can usually assume that all the goods in the flash drive's production line work the same way. Service-based businesses can be more challenging to evaluate because it's often subjective. For instance, a barber's work may differ from one client to the next, each haircut may be different, and the client's expectations can also vary from one person to the other. While businesses may use surveys and other methods to measure customer satisfaction, an objective measurement for the quality of a service isn't as easy to determine as the physical quality or appearance of a product purchased by a consumer.

h) Customer interaction: In many cases, vendors who sell services interact with their customers more than vendors who sell goods because a service administration often requires a service provider who speaks with the customer before providing the service. For example, a tutor interacts closely with their students and parents. Companies that sell goods might have low-contact or automated sales processes that increase efficiency and reduce the number of necessary sales employees. For example, a grocery store might staff a few check-out lines with employees and rely on self-service kiosks for most transactions.

i) Variability: Often, services include more variability from customer to customer than goods do. In many cases, except for smaller businesses and small batch operations, a company's goods are identical. Consider a business that mass produces notepads. This business likely has a certain operation in place, including quality control, to ensure that it manufactures the same product line of notepads every time to meet customer expectations and the specifications they have for their products. This leads to a product's uniformity. While a service provider may aim for and train employees to provide the same service each time, many variables are involved in carrying out a service. For example, a restaurant that employs 10 people as part of its waitstaff can expect that each person differs from the other in how they cater to guests, take orders, deliver food and answer menu questions. This variability can also be strength. For example, a hair salon might employ eight stylists, each with their own area of specialty, who might attract customers of different ages and hair types.

16.2. IMPORT OF GOODS AND SERVICES

“Import of goods” with its grammatical variations and cognate expressions, means bringing goods into India from a place outside India; “Import of Services” means the supply of any service.

16.2.1. Basic principle of GST on Imports: As a basic principle, GST law says that all supplies of goods & services made as imports into India will be treated as an inter-state supply. All inter-state supplies attract IGST. So import of goods and services into

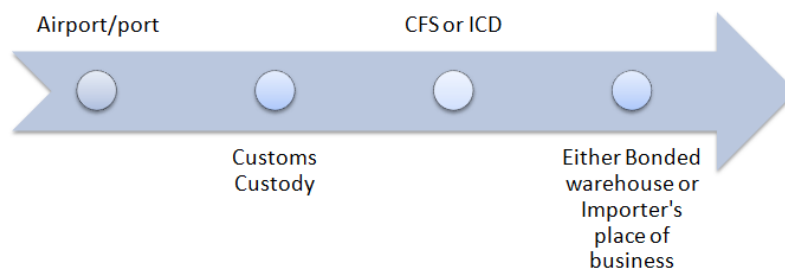
India will attract IGST. Basic custom duty and all applicable customs levy will continue to be charged. i) IGST on import of goods will be levied and collected under the Customs Act, 1962. ii) IGST on import of services will be covered under the IGST Act.

Here the importer has to deposit IGST on reverse charge basis. Except in case of OIDAR (Online Information Data Access and Retrieval) services, the supplier has to seek registration and pay taxes. The IGST paid on imports will be available as input tax credit to the importer. This can be set off against the GST outgo on supplies made by the importer.

16.2.2. Understanding Place of Supply of Imports: Place of supply of any goods imported into India is the location of the importer. Therefore, if an importer is located in the state of Karnataka, the state's share of IGST will go to Karnataka.



16.2.3. Import Procedures: There is a typical import procedure in GST that is involved in the imports. These procedures include different stages.



Stage 1: When the goods have arrived at port or airport then the goods are said to be imported.

Stage 2: After the arrival of goods at the port, they remain under the custody of the customs.

Stage 3: From the custody of the customs, the goods are further transferred for clearance to either CFS (Container Freight Station) or ICD (Inland Courier Depot). Under rule 138, these kinds of transactions are exempted which means they do not have to generate an e-way bill for this transaction.

Stage 4: Then these goods are further transacted from CFS or ICD, either to i) The bonded warehouse or ii) The factories or businesses' consumptions. In the first case, if there is a transaction between the ICD or CFS to bonded warehouses, that transaction will be exempted from the provisions of generating the e-way bill. Once the goods are out from the warehouse for the supply the recipient of the good has to generate an e-way bill. In the second case, when the goods are transported to the factories or business for consumption then it is mandatory for the recipient factory or business to generate an e-way bill.

16.2.4. Duties Levied on Imports under GST: From 1st July 2017, the duties and tax levied on imports into India would change significantly. Before implementation of GST, the following types of duties and taxes are levied on imports into India based on the HSN code of the item.

- a) Basic Customs Duty; b) Countervailing Duty (CVD); c) Special Additional Duty of Customs (SAD); d) Education Cess; f) Anti-dumping duty; g) Safeguard duty
- b) Once GST is implemented, the following duties and taxes would be applicable for a majority of the products : i) Basic Customs Duty; ii) Integrated Goods and Services Tax (IGST) – Know more about IGST, CGST and SGST; iii) GST Compensation Cess; iv) Education Cess; v) Anti-dumping duty; vi) Safeguard duty.

Supply is	Place of supply	GST
Goods imported into India	Location of the importer	IGST
Services imported to India	Location of the receiver of services (if not available, location of supplier of services)	IGST

16.2.5. Calculating GST on Imports: GST is applicable on all imports into India in the form of levy of IGST. It is levied on the value of imported goods + any customs duty chargeable on the goods. Hence, IGST must be calculated after adding the applicable customs duty to the value of imported goods. **Find the GST rate along with GST Compensation Cess.**

16.2.6. IGST Calculation On Imports: If for any imported articles, in addition to basic customs duty, other duty of customs is chargeable, then it must be included along with the basic customs duty to arrive at the value on which GST cess or IGST is calculated. To arrive at the rate for levying IGST or GST Compensation Cess, the methodology shall include education cess, higher education cess, as well as anti-dumping and safeguard duties. Further, it shall also include, anti-dumping and safeguard duties must be added along with basic customs duty.

16.2.7. Input Tax Credit for Imports under GST: Under GST, the **input tax credit** would be provided for IGST paid, and GST Compensation Cess paid. However, the input tax credit is not applicable for basics customs duty paid during imports. To avail input tax credit, the importer would have to obtain **GST registration** and quote the GSTIN on Bill of Entry. During the transitional period, provisional GSTIN can also be quoted instead of GSTIN.

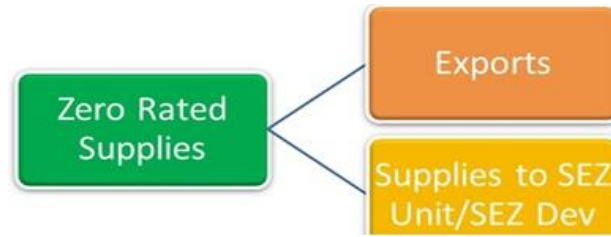
16.3. EXPORT OF GOODS AND SERVICES

a) **Export of goods means-i)** Section 2 (5) “export of goods’ with its grammatical variations and cognate expression, means taking goods out of India to a place outside India; ii) Export of goods will be treated as ‘zero-rated supplies.

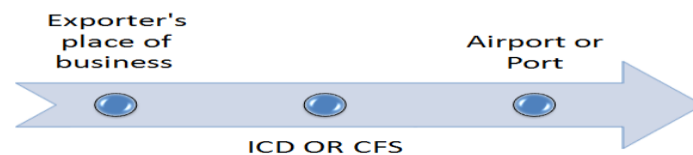
b) **Export of services means:** Section 2 (6) “export of services” means the supply of any service when – (i) the supplier of service is located in India; (ii) the recipient of service is located outside India; (iii) the place of supply of service is outside India:

c) **Zero rated suply :** By zero rating, it is meant that- i) the entire value chain of the supply is exempt from tax; ii) not only output is exempt from payment of tax, but there is also no bar on taking/availing credit of taxes paid on the input for making/providing the output supply. Such an approach would in the true sense make the goods or services zero-rated.

All supplies need not be zero-rated. As per the GST Law exports are meant to be zero-rated, the zero rating principle is applied in letter and spirit for exports and supplies to SEZ



d) Export: An export is any movement of items outside the country. That includes items sent by regular mail or hand carried on an airplane; documents transmitted by fax; software or specifications downloaded from the internet; and technology transmitted by email or shared in a phone conversation. An item is also considered an export if it is leaving the U.S. temporarily, or if it is being returned to a foreign country. Finally, releasing technology or data to a foreign national located in the U.S. is also “deemed” to be an export. As you can see, you can be an exporter of a wide variety of items—physical, electronic or even just information. Regardless of what you are exporting, your success depends on creating export procedures tailored to your company that ensure you follow the rules and best practices that will help you maximize your profits and keep you out of trouble.



e) Export Procedures

There are two stages that are involved in the export procedure. Let us see what are they:

Stage 1: In this stage, the goods are transported from the exporter's warehouses or the location of business to the CFS or ICD. For the transportation purpose, the exporter has to generate an e-way bill

Stage 2: The goods so transported from the exporter to CFS or ICD is transferred to the port or airport. This transfer of goods is exempted from the provision of the generation of an e-way bill.

Moreover, there are some goods that are exempted from carrying an e-way bill even for export and import under GST. Some of them are: a) Diesel, petrol, kerosene, lubricant oil for any Indian aircraft etc; b) Paper money; c) Wool, woollen cloth received as a gift from the red cross society; d) Goods imported by the diplomats or their families for consumption; e) Goods imported in India for a fair or exhibition shall be re-exported within six months from the date of receiving that good; f) Goods transported to or from Nepal or Bhutan.

16.4. DEVELOP EXPORT STRATEGY

a) Identify products to sell: If you have a product that is selling well in the United States, it's not unusual to attempt to sell that same product or products in other markets as well. After all, 95% of the world's consumers are located outside the U.S. And many areas of the world, like Asia, have a rapidly growing middle class. But limiting your exporting to only your fastest selling products in the U.S. may be limiting your export potential. Products that may face growing competition in the U.S. or products that are becoming outdated in this country could find new life in other markets that don't have similar competition or need the

very latest technology. Identifying which products you end up exporting depends a great deal on the markets you choose to sell to.

b) Identify markets to sell to: Before you can sell and export your products, you need to find people to buy them. Maybe you are already receiving inquiries from certain potential customers in certain countries. Maybe you've self-identified logical new markets for your goods. In either case, you need to spend time learning about these potential new markets. This includes identifying the market potential, learning how to properly (and legally) export your products or services to that market, identifying sales channels, and more. Do your research to determine what kind of modifications you may need to make to your product for this market, what the import duty rates are, and whether or not there are any U.S. export restrictions.

c) Identify your strategy for selling: You can sell directly to end users. If you choose to sell directly to end users, your company is responsible for all aspects of the transaction—shipping, payment, product servicing, etc.—unless you make other arrangements. If you don't anticipate and include these costs upfront, you may end up with less profit than you were hoping for. A Basic Guide to Exporting has helpful information about planning for direct sales, as well as government agencies that can assist you. You can sell to distributors who purchase goods from you (often at a discount) and resell them for a profit. When working with a foreign distributor, expect to have fewer responsibilities for support and service; the distributor will take care of these aspects, which can be challenging for new exporters. As mentioned above, the U.S. Commercial Service can help you find and select distributors who are reputable and advise you in beginning steps. You can establish partnerships with local companies. Partners represent a step up from a distributor relationship. In this case, you may find an existing company in your intended foreign market that has a distribution and support system already in place. Partnering with such a company can make entering a new market easier and lessen the cost and pain of setting up infrastructure in another country.

d) Identify how you will support your products: In addition to figuring out what you're selling, where you're selling it, and how you plan to sell, you're responsible for planning and implementing the care you provide after the sale. That includes determining how you will support your products—a critical factor if you want to be a successful exporter with a good reputation. Things to consider include: Service-Technical support-Warranties>Returns.

International trade makes it more difficult and costly to service, repair or replace damaged goods or items. There are two primary options for providing this support: Require the buyer to return the product. This is an expensive option. It is also inconvenient for the foreign buyer, who is then saddled with high shipping costs and doesn't get to use your product for an extended amount of time. For more information about facilitating this process, read Repaired Goods: Import and Re-Export. Figure out a way to service your product locally. This is a cost-effective, time-saving option for most exporters. You can hire existing local service facilities or create an office to provide service in-country. How you handle your service and support could make or break your reputation. Take the time to plan for this in advance, so you don't waste customers' time and try their patience once your export transactions are underway.

e) Identify any intellectual property concerns: Many exporters don't realize the importance of protecting and enforcing their intellectual property (IP). When you export, you don't get the benefit of rights granted in the U.S. by patents, trademarks, registrations, copyrights, et al. In a foreign country, these protections may mean little, if anything. (If you don't know much about intellectual property protection, you may want to start by reading: 10 Terms Exporters Should Know about Intellectual Property. That may mean you need to protect your inventions by filing a patent application in countries in which you plan to do

business. Most countries have a first to file system, so you want to file early, perhaps by using a provisional patent application.

Using your trademarks is an important factor in protecting it. By using them, you not only increase the marketing value of the marks, it makes ownership of the marks clear. In most countries, if you don't use a trademark, it can be canceled for non-use. You also need to be willing to take action against those who infringe on your marks. This is typically done through the courts. For more information about international trademark protection, read *5 Strategies for Exporters to Protect their Trademarks Globally*. The United States Patent and Trademark Office (USPTO) has a number of resources available for domestic and international IP protection on their website.

e) Decide how to price your products: Pricing is one of the most difficult challenges for exporters, even experienced ones. According to *A Basic Guide to Exporting*, these 10 questions will help ensure you're setting the best price for your product.

At what price should your company sell its product in the foreign market?

What type of marketing positioning—also known as customer perception—does your company want to convey through its pricing structure?

Does the price reflect your product's quality?

Is the price competitive?

What type of discounts and allowances should your company offer foreign customers?

Should your prices differ by market segment?

What should your firm do about product-line pricing?

What options are available if your firm's costs increase or decrease? Is the demand in the foreign market elastic or inelastic?

Is the foreign government going to view your prices as reasonable or exploitative?

Do the foreign country's anti-dumping laws pose a problem?

Traditionally, determining proper pricing depends on costs, market demand, and competition. You'll also want to consider additional costs the importer will incur, including tariffs, customs fees, currency fluctuation, transaction costs, and value-added taxes, because they can add to the final price substantially and may even double the U.S. domestic price of your good. Pricing is a complicated, important aspect of exporting, so make sure you do thorough research to understand how and what to charge. You may also want to consider pricing your exports in the local currency. It can make your goods more competitive, particularly with companies located in other countries.

16.5. REFUNDS ON EXPORTS

Section 54 of the CGST Act read with Rule 96 of the CGST Rules provides the mechanism for claiming refund on account of export of goods. As discussed earlier, exporter has an option for export goods under LUT or he may export goods on payment of IGST. Accordingly, the refund provision for each scenario is as under:

16.5.A. Export of goods under LUT: Section 54(3)(i) of the CGST Act provides that a registered person may claim refund of unutilized input tax credit ('ITC') for zero-rated supply made without payment of tax. The refund application may be made for each tax period. The said section comes with some of the restriction which are enumerated below: I. 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

II. 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.

Accordingly, if the goods which are exported as subject to export duty or any drawback is to be claimed on such exports, refund of utilized ITC may not be available. Further, it is pertinent to note that, refund of utilized ITC has to be computed as per the method prescribed under Rules 89(4) of the CGST Rules. The same is reproduced below: $\text{Refund Amount} = (\text{Turnover of zero-rated supply of goods} + \text{Turnover of zero-rated supply of services}) \times \text{Net ITC} \div \text{Adjusted Total Turnover}$: Where, - a) "Refund amount" means the maximum refund that is admissible; b) "Net ITC" means input tax credit availed on inputs and input services during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both;

16.5. B. Export of goods on payment of IGST: Any person availing option to export goods on payment of IGST is not required to file separate application for refund. Following procedure is to be complied with for export of goods on payment of IGST: i) A registered person is required to file shipping bill showing prescribed details. ii) Details of goods exported as to be reported in Table 6A of Form GSTR-1. iii) Summary details of goods exported are to be reported in Table 3.1(b) of Form GSTR-3B. iv) The amount disclosed in GSTR-3B should not be less than the same shown in GSTR-1. Upon matching the above details on the GSTIN and ICEGATE portal, the refund of IGST paid would automatically be get credited to the bank account of the exporter. Accordingly, a registered person is required to take utmost care at the time of uploading exports details at the time of filing GST returns.

16.5.1. Restriction on making exports on payment of IGST: Rule 96(10) of the CGST Rules, 2017 provides that a register person shall not be allowed to export goods on payment of IGST in following circumstances: i) A register person should not have received supplies mentioned in Notification No 48/2017-Central Tax dated October 18, 2017; ii) A register person should not have received supplies mentioned in Notification No 40/2017-Central Tax dated October 23, 2017; iii) A registered person should not have availed benefit of Notification No 78/2017-Customs dated October 13, 2017 or 79/2017 dated October 13, 2017. In other words, the said sub rule states that register person should not have received any supplies which are regarded as deemed exports under GST (except EPCG), merchant export supplies, and should not be an advance authorisation holder. The Government has provided relaxation to EPCG holder, wherein if they are importing goods under EPCG scheme without payment of duty, they can continue to export goods on payment of IGST.

16.5.2. Issues faced at the time of realising refund of IGST paid on export of goods: Certain registered person have erred at the time of filing Form GSTR-3B by reporting export of goods in Table 3.1(a) (outward taxable supplies) of GSTR3B instead of Table 3.1(b) (zero-rated supplies) of Form GSTR-3B, though correctly reported in GSTR-1. As a result, the details of export invoices reported in Form GSTR-1 and GSTR-3B could not get match at GSTIN portal. Accordingly, the export invoices could not be transmitted from GSTIN to ICEGATE. Hence, the genuine refund claims of many exporters got stuck due to wrong reporting of export details in Form GSTR-3B. In order to overcome the problem of refund blockage, CBIC have issued Circular No. 12/2018- Customs dated May 25, 2018 and Circular No 25/2019-Customs dated August 27, 2019 wherein the relief was granted to the exporters who have committed an error at the time of filing Form GSTR-3B.

16.5.3. Whether to export goods under LUT or on payment of IGST? Every registered person is required to analyse looking at their nature and quantum of procurements as to whether to export goods on payment of IGST or under LUT. If a register person is having majority export supplies compare to domestic supplies, ideally ITC would be get accumulated in such case. Accordingly, in such cases, it would be prudent to make an export on payment of IGST and claim the refund of accumulated ITC in cash. Similarly, if a registered person is required to discharge his tax liability in cash i.e. after utilizing his full

ITC at the end of the tax period, it is advisable for him to export goods under LUT. It is pertinent to note that the IGST payment is made at the time of filing GSTR-3B and the same may be made by utilizing ITC. Accordingly, unlike the restriction of claiming the refund of capital goods for unutilized ITC, no such restriction is applicable for refund of IGST paid on export of goods. Hence, ITC of capital goods also gets liquidated if the exporter chooses an option to make export of goods on payment of IGST.

16.6. RECENT AMENDMENTS IN REFUND

Certain issues in amendments in the refund formula: i) It is pertinent to note that the restriction placed in Rule 89(4)(c) of the CGST Rules on the value of export of goods maximum to 1.5 times the value of like goods sold domestically is inserted vide Notification No 16/2020-Central Tax dated March 23, 2020. There were no such restriction placed earlier. To expect that export price greater than 50 per cent over domestic price is unwarranted restraint on export benefits that is deserved and earned by exporters.

ii) The calculation of 1.5 times the value of export of goods is applicable in the numerator only. In numerator the actual export value of goods is required to be added to the total adjusted turnover. Hence, this would further reduce the net refund amount to the exporter and is clearly a retrograde step.

iii) It is worthwhile to highlight that the said sub rule has been 'substituted' vide Notification No 16/2020-Central Tax dated March 23, 2020. In other words, the old rule has been replaced with new rule. Accordingly, one needs to interpret whether the said substitution can extend this restriction to rebates yet to be filed for past exports and thereby be retrospective.

iv) It is deeply concerning if the said restriction applies to refund claim filed after March 2020 which pertains to past period i.e. before March 2020. v) Also, prices being dynamic, especially in present market conditions, to expect exporters to comply with this restriction when domestic supplies are nil or negligible or even sporadic

16.6.1. Circular No 135/05/2020-GST dated March 31, 2020: Earlier, Circular No 125/44/2019 dated November 18, 2019 had restricted filing refund applications where tax period was across financial years. Meaning thereby, refund claim for multiple tax period falling in different financial year was not allowed. However, there is no such restriction placed in Section 54 of the CGST Act and hence the circular was going beyond what was prescribed under the Act. Accordingly, the said restriction has been removed vide 135/05/2020-GST dated March 31, 2020.

16.6.2. Insertion of sub rule 96B in the CGST Rules, 2017

CBIC vide Notification No 16/2020-Central Tax dated March 23, 2020 has inserted Rule 96B in the CGST Rules which provides the sale proceeds in respect of export of goods have to be realized within the time period allowed under Foreign Exchange Management Act, 1999 ('FEMA'). In case the sale proceeds is not realised within the prescribed time limit, the refund amount sanctioned to the extent of non-realisation of export proceeds shall have to be refunded along with applicable interest. It is pertinent to note that, the time limit for realisation of export proceeds is 9 months from the date of exports. With this recent amendment, exporter claiming refund of IGST paid on export of goods or claiming refund of unutilized ITC, in both the cases, are now required to submit proof that the sale proceeds are realised within the prescribed time limit. In case if the exporter does not realise the export proceeds within the prescribed time limit, the amount of refund to the extent of non-realisation of sale proceeds has to be deposited along with the applicable interest within thirty days of the expiry of the said period. If the refund amount is not deposited within thirty days, the amount of refund shall be recovered in accordance with Section 73 or 74 of the CGST Act.

16.6.3. Following points needs to be carefully analysed for complying the new sub rule 96B: It is pertinent to note that the said rule is inserted vide Notification No 16/2020-Central Tax dated March 23, 2020. Accordingly, the same would be applicable prospectively and not retrospectively. Hence, it would be prudent if the tax officers do not insist on proof of realisation of export proceeds for the past period, even if the refund application for the period before March-20 is filed on or after March-20. In case of non-compliance of Rule 96B, the exporter is required to pay back the refund amount at 18 per cent interest. The period for which interest is to be paid shall be from the date of granting of refund till the date of payment of refund to the government. The refund amount to be paid back may be paid through Form DRC-03 in accordance with Section 73(5) of the CGST Act. It would be prudent to make such payment in cash and not through utilization of electronic credit ledger. Considering the unprecedented challenges due COVID-19 pandemic, Reserve Bank of India has released press release on April 01, 2020 wherein the time limit for realisation of export proceeds for the exports made on or up to July 31, 2020 has been extended to 15 months from the date of exports.

16.7. PLACE OF SUPPLY FOR IMPORT/EXPORT OF GOODS

Generally, Supply is	Place of supply	GST
Goods Imported into India	Location of the importer	Always IGST on imports
Exported from India	Location outside India	Exports are exempted

16.7.1. E-Way Bill for Imports and Exports: The GST on imports and exports, the portal, and the procedure remain similar for the generation of an e-way bill. But there are some points that shall be kept in mind while furnishing the details in an e-way bill in case of import and export under GST PPT.

E-Way Bill for Imports and Exports

Particulars in the e-way bill	In case of Import	In case of Export
Sub-types of transaction	The taxpayer shall enter Import.	The taxpayer shall enter Export.
Type of document	Bill of entry shall be used to furnish this detail.	Invoice of tax generated for export of goods shall be used to furnish the details.
Bill From	If the bill is from the unregistered Person.	Exporter's details including the name, GSTIN
Dispatch From	In state line 'other countries' shall be selected and Pin code 999999 shall be entered.	Exporter's location of business or warehouse address as the case may be.
Bill to	Importer's details including the name, GSTIN and other details.	If a person outside India is unregistered.
Ship to	Importer's location of business or warehouse	In state line 'other countries' to shall be selected and Pin code

	address as the case may be.	999999 shall be entered.
Details of Transportation	Details of transporter which includes vehicle details and transporter's details.	Details of transporter which includes vehicle details and transporter's details.

16.7.2. Importance of the E-Way Bill in Exports and Imports: The export meaning in GST depicts that the area of concentration while generating an e-way in the case of imports and exports is to validate the distance so as to avoid the consequences that can be imposed on the concerned parties.

Import: The distance and validity of an e-way bill shall be calculated when the goods are transported to the location of the business or factory from either CFS/ICD or warehouses.

Export: The distance and validity of an e-way bill shall be calculated before the transportation of the goods from the location of the business to ICD/CFS or warehouses as the case may be.

16.8. SUMMARY

Exports and Imports play a vital role in the growth of the economy by pooling foreign exchange through international borders. Under the GST act export definition under GST is to supply goods outside the border of India whereas import means the supply of goods inside India through international borders. Moreover, IGST will be applicable to the goods which are imported to India according to the IGST Act.

Furthermore, if the goods are exported from India then that supply will be deemed as zero-rated. Hence no tax rate shall be applied on it. Under GST law, supply of goods in the course of import into India shall be deemed to be a supply of goods in the course of inter-State trade or commerce. An export of goods shall be deemed to be a supply of goods in the course of inter-State trade or commerce.

16.9. TECHNICAL TERMS

Goods: In economics, goods are items that satisfy human wants and provide utility, for example, to a consumer making a purchase of a satisfying product. A common distinction is made between goods which are transferable, and services, which are not transferable. A good is an "economic good" if it is useful to people but scarce in relation to its demand so that human effort is required to obtain it.

Services: A service application conforms to the interface rules of the Service Control Manager (SCM). It can be started automatically at system boot, by a user through the Services control panel applet, or by an application that uses the service functions. Services can execute even when no user is logged on to the system. A driver service conforms to the device driver protocols. It is similar to a service application, but it does not interact with the SCM. For simplicity, the term service refers to a service application in this overview.

Exports: To export is defined as to send something from one place to another. An example of export is to send a computer file from one software program to another software program, or for exporting or exports. To save a copy of the current open document, database, image or video into a file format required by a different application.

Imports: Imports are the goods and services that are purchased from the rest of the world by a country's residents, rather than buying domestically produced items. Imports lead to an outflow of funds from the country since import transactions involve payments to sellers residing in another country.

16.10. SELF ASSESSMENT QUESTIONS

1. What is the impact of GST on exports and imports?
2. How will import and export be treated under GST?
3. Is GST mandatory for import and export?
4. How much GST applicable on exports and imports?
5. What are the benefits of GST on imports and exports?

16.11. SUGGESTED READINGS

1. Goods and Services Tax in India-Notification on different dates
2. The Central Goods and Services Tax Act, 2017, No. 12 of 2017, published by Authority, Ministry of Law and Justice, New Delhi 12 April, 2017
3. The Central Goods and Services Tax Act, 2017, No. 12 of 2017, Published by Authority, Ministry of Law and Justice, New Delhi, 12 April, 2017
4. Background Material on Model GST Law, Sahitya Bhavan Publications, Hospital Road, Agra-383 003
5. Customs Law Manual and Customs Tariff of India – R.K.JAIN.
6. The Central Goods and Services Tax Act, 2017, No. 12 of 2017 published by Authority, Ministry of Law and Justice, New Delhi, 12th April, 2017.
7. Read more at: <https://taxguru.in/goods-and-service-tax/class-appointment-power-of-sgst-cgst-officers-under-revised-model-gst-law.html>- Copyright © Taxguru.in
8. Anil Kumar Agrawal : “Analysis of Delegation of Power under GST”| Goods and Services Tax - Articles| Download PDF 05 Dec 2021

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LESSON- 17

APPORTIONMENT OF GST

Aims and Objectives

After studying this lesson students should be able:

- To know the concept of Apportionment of GST.
- To understand Input Tax Credit.
- To acquired knowledge on financial Institution.
- To learn Legal Framework of ITC.
- To obtain knowledge on Reversal of ITC in case of Non-Payment of Consideration.
- To know the concepts of ITC Rules for Common Credit under GST.

Structure

17.1. Introduction

17.2 Apportionment of credit and blocked credits

17.3 Apportionment of Input Tax Credit

17.4 Items included in exempted supplies [Section 17(3)]

17.5 Banking Company or Financial Institution [Section 17(4)]

17.6 Blocked Credits i.e. Ineligible Inputs/Capital Goods/Services for ITC [Section17(5)]

17.7 Meaning of Input Tax Credit (ITC)

17.8 Input Tax Credit (ITC) Under GST

17.9 Legal Framework of ITC

17.10 Eligibility for Availing ITC [Section 16(1)]

17.11 Manner of Utilisation

17.12 When goods/Services are deemed to have been received

17.13 Reversal of ITC in case of Non-Payment of Consideration

17.14 ITC Rules for Common Credit under GST

17.15 Latest updates

17.16 Summary

17.17. Technical Terms

17.18 Self -Assessment Questions

17.19 Suggested Readings

17.1. INTRODUCTION

The word “apportionment” generally refers to the division of net income between jurisdiction by the use of a formula containing apportionment factors, and the word “allocation” generally refers to the assignment of net income to a particular jurisdiction. The 16th Amendment, an individual's income was NOT taxable, either with apportionment or without. Eliminating apportionment, among the states, would still require the tax to be imposed on the states, not on the people. To better understand this concept, let's look. Apportionment is deciding how to divide things up and distribute them. While the apportionment of the candy from a piñata can be chaotic, milk apportionment in a school cafeteria is much more orderly. The apportionment of tax dollars may be contentious in your town if some people object to the amount of spending that goes to the yearly fireworks display. This controversy may result in the apportionment of blame on a few specific city council members. Apportionment is also used for the number of congressional representatives

each state gets, based on population: "Maine might lose a seat in the House of Representatives during the next apportionment."

a) Definitions of apportionment: Noun the act of distributing by allotting or apportioning; distribution according to a plan "The apportionment of seats in the House of Representatives is based on the relative population of each state". Synonyms: allocation, allotment, apportioning, assignation, parcelling. State income tax is a direct tax on business income you've earned in a state. It sounds straightforward, but this is a complex topic: States have various ways of calculating how much of your corporation's business income is attributable to its presence and activity there. Each state gets to decide what matters most — your payroll, property, or sales — and in what ratio to account for them. This can make calculating state income tax complex, particularly if you do business in multiple states. Tax teams that are equipped with knowledge of state requirements, and that have the technology to help track their many facets and frequent changes, are best positioned to stay in compliance.

b) What is apportionment in taxes? Apportionment is the assignment of a portion of a corporation's income to a particular state for the purposes of determining the corporation's income tax in that state. The state determines how much of your earnings are a result of business done in that state so it can charge you the right amount of income tax. Allocation and apportionment in U.S. tax differ in that allocation covers non-business income, while apportionment covers business income.

c) Which types of businesses are subject to apportionment? The only type of business that must pay state income tax the way an individual does is a traditional corporation, otherwise known as a **C corporation or C corp**. This is because C corps is considered taxable entities; they are required to file state tax returns separate from the personal returns filed by their owners and employees. Other types of companies, such as **S (Subchapter) corporations, limited liability companies (LLCs)**, and partnerships usually do not need to pay corporate income tax. Instead, they are subject to "pass-through taxation"; the individuals involved in the business pay state tax on their income from the business, while the business doesn't pay separately.

d) What are the types of state apportionment formula? There is no single rule defining the process of state apportionment. The formula differs from state to state. Most states use one of three apportionment formulas: i) An equally weighted **three-factor formula** that takes payroll, property, and sales into account in equal measure, also known as the; ii) A **single sales factor formula**, which bases taxes solely on a company's sales within the state; iii) A **three-factor formula** in which the sales factor is given different weight from the other elements, such as a double-weighted sales factor. States have differed on how to incorporate the sales factor in apportionment. In the early days of state tax apportionment laws, states did not include sales in the calculations, relying only on payroll and property. Over time, sales have become a more important factor in states' apportionment calculations. For instance, **California recently implemented a revised apportionment formula** that places a greater emphasis on sales, shifting away from the traditional three-factor formula. This move has resulted in businesses recalibrating their tax strategies to align with the new requirements. Similarly, **Texas has introduced a blended formula** that considers both sales and payroll as significant factors in determining state tax apportionment, thereby influencing tax planning for companies operating within the state.

This shift has presented some difficulties: For example, one element of that decision is figuring out whether sales should be counted based on the customer's location, the seller's location, the location to which goods are delivered, or some other metric.

If a state can't accurately capture a business's activity by using any of the standard formulas, it can opt to use alternative methods of calculation for apportionment. A business may

petition for the use of such an alternative, which might include separate accounting or customization of factors.

e) How do you calculate state tax apportionment? States calculate apportionment in various ways depending on the formula being used. Using the Uniform Division of Income for Tax Purposes (UDITPA), or three-factor formula, a state accounts for the percentage of a company's payroll, property, and sales that were based in the state and then divides that number by 3 to come up with the percentage of income the state can tax. For example, if 50% of a company's payroll, 50% of its property, and 20% of its sales are in **New Mexico**, the state would be able to tax 40% of the firm's net earnings. A single sales factor method makes for an easy calculation: The state can take the percentage of the company's sales that took place in the state based on whatever standards the state maintains. If a company is in **New York** or Connecticut, for example, the state can tax 20% of the company's profits if 20% of its sales are made in the state. To calculate the apportionment for a three-factor formula with a variable sales factor, the formula still considers payroll, property, and sales, but it gives extra weight to sales. A common way of doing this is to give sales double the weight. In **Massachusetts**, for example, a company that has 20% of its profits in the state would add 40% into the formula for sales. After adding up the amounts — say 50% of property and 50% of payroll, plus the 40% of sales — you divide this number by 4. In this case, Massachusetts could tax 35% of the firm's net earnings.

f) What challenges might tax teams face when calculating apportionment? Multi-state apportionment can be a concern. Companies that **do business in multiple states** face the challenge of tracking corporate income tax laws in multiple — perhaps many — places. On top of that, **sales tax laws** are complex and frequently change. Staying in compliance across the board is extremely difficult, if not impossible, especially for small teams without a lot of bandwidth to track every detail of state tax law. With the surge in e-commerce activities, states have been actively reevaluating their approach to sales apportionment, particularly concerning digital transactions. States like New York and Illinois have implemented guidelines to include digital sales in their apportionment calculations, recognizing the growing significance of online commerce. This shift has compelled businesses to adapt their accounting practices to accurately capture and report digital sales for tax purposes, further emphasizing the need for advanced technological solutions to manage these complexities. These teams need **compliance solutions** to stay on top of their company's state income tax obligations. To help in navigating the complexity of tax rules and changes for each state, consider an industry-trusted tax and accounting research tool. It uses artificial intelligence and machine learning to deliver fast, accurate answers, updated forms, and state-specific IRS insights to your thorniest tax questions. To streamline your entire state tax apportionment process, consider a comprehensive tool such as the **Thomson Reuters ONESOURCE State Apportionment** module. This web-based software solution can help you manage your data, consistently apply the right calculation methods, and provide a tractable solution for audits. With tools such as these, even the smallest tax team can stay on top of everything it needs to know to manage state income tax.

17.2. APPORTIONMENT OF CREDIT AND BLOCKED CREDITS

- i. Where the goods and/or services are used by the registered taxable 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.
- ii. Where the goods and / or services are used by the registered taxable person partly for effecting taxable supplies including zero-rated supplies under this Act or under the IGST Act, 2016 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.

Explanation: For the purposes of this sub-section, exempt supplies shall include supplies on which recipient is liable to pay tax on reverse charge basis under subsection (3) of section 8.

iii. 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 sub-section (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.

Explanation: The option once exercised shall not be withdrawn during the remaining part of the financial year. iv. Notwithstanding anything contained in sub-section (1) of section 16 and subsection (1), (2), (3) and (4) of section 18, input tax credit shall not be available in respect of the following: a) Motor vehicles and other conveyances except when they are used for making the following taxable supplies, namely: i) Further supply of such vehicles or conveyances; or ii) Transportation of passengers; or iii) Imparting training on driving, flying, navigating such vehicles or conveyances; iv) For transportation of goods

b) Supply of goods and services, namely: i. food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery except where such inward supply of goods or services of a particular category is used by a registered taxable person for making an outward taxable supply of the same category of goods or services; ii. Membership of a club, health and fitness centre; iii. rent-a-cab, life insurance, health insurance except where 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; and iv. Travel benefits extended to employees on vacation such as leave or home travel concession. c) Works contract services when supplied for construction of immovable property, other than plant and machinery, except where it is an input service for further supply of works contract construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property. service; goods or services received by a taxable person for construction of an immovable property on his own account, other than plant and machinery, even when used in course or furtherance of business;

Explanation 1: For the purpose of this clause, the word “construction” includes re-

Explanation2: ‘Plant and Machinery’ means apparatus, equipment, machinery, pipelines, telecommunication tower fixed to earth by foundation or structural support that are used for making outward supply and includes such foundation and structural supports but excludes land, building or any other civil structures. The Central or a State Government may, by notification issued in this behalf, prescribe the manner in which the credit referred to in sub-sections (1) and (2) above may be attributed.

17.3. APPORTIONMENT OF INPUT TAX CREDIT

As regards the apportionment of ITC, the provisions are contained in section 17 of **CGST Act, 2017**, which are as follows: i) Where goods or services are used partly for business purposes and partly for other purposes [Section 17(1)]; ii) Where goods or services are used partly for effecting taxable supply including zero rated supply and partly for exempted supply [Section 17(2)]; iii) Items included in exempted supplies [Section 17(3); iv) Optional method for Banks for taking ITC [Section 17(4)]; v) Blocked Credits [Section 17(5)].

The following rules under **CGST Rules, 2017** prescribe the procedure for claiming ITC: i) ITC by a banking company or a financial institution [Rule 38]; ii) Manner of determination of

ITC in respect of Inputs or input services and reversal [Rule 42]; ii) Manner of determination of ITC in respect of Capital Goods and Reversal [Rule 43]

17.3.1 Where goods or services are used partly for business purposes and partly for other purposes [Section 17(1)]: The registered person may use the input supplies either for business or non-business purposes. As per Section 17(1), “Where the goods and/or services are used by the registered person partly for the purposes 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.” This means that no ITC will be available in respect of those inputs which are used for non-business purposes. **For Example:** Suman owns a Business entity and deals in textiles. She has purchased goods for the business, in respect of which ITC admissible is ₹ 42,500. If 15% of such goods have been used by her for personal purposes, then ITC will not be available in relation to such goods which are used for non-business purposes. Therefore, as per section 17(1), Suman shall be entitled to take credit of ₹ 36,125 (calculated as 85% of ₹ 42,500).

17.3.2 Where goods or services are used partly for effecting taxable supply including zero rated supply and partly for exempted supply [Section 17(2)]: When the goods are used for business purposes, they may either be used in effecting the following supplies: (1) Taxable supplies, which includes zero-rated supplies or (2) Exempted supplies (either under this Act or under IGST Act) or (3) Partly taxable and partly exempted supplies. As per Section 17(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.” In other words, the ITC shall be available only for that portion of Input tax which is attributable to the purposes of business of providing taxable supplies including zero-rated supplies.

17.4. ITEMS INCLUDED IN EXEMPTED SUPPLIES [SECTION 17(3)]

The value of exempt supply under section 17(2) shall be such as may be prescribed, and shall include: i) Supplies on which the recipient is liable to pay tax on reverse charge basis, ii) Transactions in securities, iii) Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building *i.e.* sale of land and sale of building when entire consideration is received after completion certificate issued by the competent authority.

17.4.1. Taxable supplies have been defined under section 2(108) to mean the supply of goods or services or both which is levied to tax under this Act.

17.4.2 Exempted supplies: – The exempted supplies shall include the following supplies:— Supplies on which recipient is liable to pay tax on reverse charge basis: i) Transactions in securities, ii) Sale of land; iii) Sale of building subject to certain conditions; iv) Supplies which are charged to nil- rate of duties; v) non-taxable supplies

17.4.3 The Central GST (Amendment) Act, 2018 has inserted an explanation to section 17(3) As per this explanation, “For the purposes of section 17(3), 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.” It may be recalled that paragraph 5 of Schedule III includes, “Sale of Land and subject to paragraph 5(b) of Schedule II, sale of Building.” Therefore, while in all other items of Schedule III, ITC will not be required to be reversed, in case of sale of Land and sale of building, ITC will need to be reversed.

17.5 BANKING COMPANY OR FINANCIAL INSTITUTION [SECTION 17(4)]

The special provisions for ITC in case of banking company and financial institution includes NBFC are given in section 17(4) to be read with Rule 38 of the CGST Rules, 2017. The following are the relevant provisions:

17.5.1 Availability of 50% of total ITC: 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 i) either Comply with the provisions of Section 17(2) or ii) Avail of, every month, an amount equal to 50% of the eligible input tax credit on inputs, capital goods and input services in that month and the rest shall lapse.

17.5.2 Availability of 100% of total credit: The restriction of 50% shall not apply to the tax paid on supplies made by one registered person to another registered person having the same Permanent Account Number. In such cases, 100% tax credit shall be availed.

17.5.3 Non-Availability of ITC for Non-Business use and of Blocked Credits: The credit of tax paid on inputs and input services that are used for non-business purposes and items mentioned under section 17(5) i.e. blocked credits, cannot be availed.

17.5.4 Option applicable for Financial Year: The option available under section 17(4), once exercised, shall not be withdrawn during the remaining part of the financial year.

17.6. BLOCKED CREDITS INELIGIBLE INPUTS/CAPITAL GOODS/SERVICES FOR ITC [SECTION 17(5)]

The input goods, input services and the capital goods may be used by the business for the following purposes: i) For business purposes; ii) For non-business purposes (*i.e.* personal purposes); iii) For taxable supplies; iv) For zero rated supplies (These are the taxable supplies but no GST is payable); v) For exempted supplies

ITC is available: i) For business purposes; iii) For taxable supplies; ; iv) For zero rated supplies (These are the taxable supplies but no GST is payable)

ITC is not available: ii) For non-business purposes (*i.e.* personal purposes); v) For exempted supplies.

In nutshell, ITC is available on taxable supplies, including zero rated supplies, when affected for business purposes. Although ITC is not available on (2) and (5) but these are not the examples of Blocked Credits. **The section 17(5) of CGST Act, 2017 has listed down specific goods and services, in respect of which ITC is not available, irrespective of their use in business. These are termed as Blocked Credits.**

17.7. MEANING OF INPUT TAX CREDIT (ITC)

As per Section 2 (63) of the CGST Act, 2017 “input tax credit” means the credit of input tax. Input-tax is defined under section 2(62) of the CGST Act as follows: It means the Central tax, State tax, integrated tax or Union territory tax charged on any supply of goods or services or both made to a registered person but does not include the tax paid under the composition levy. It shall also include:—a) The integrated goods and services tax which is charged on import of goods; b) The tax payable as per section 9(3) and (4) of the CGST Act; c) The tax payable as per section 5(3) and (4) of the IGST Act, d) The tax payable as per section 9(3) and (4) of the respective SGST Act; e) The tax payable as per section 7(3) and (4) of the UTGST Act.

17.8. INPUT TAX CREDIT (ITC) UNDER GST

The credit mechanism under the indirect tax aims to mitigate the cascading effect of duty on duties. It provides for credit of duties paid on goods or services which are used as inputs in production of output goods or provision of output services. This aim was not

achieved to the fullest as various duties, taxes and cess were levied at the central and state levels and all were not adjusted against each other. With the introduction of GST, credit on goods and services is available across the entire supply chain barring a few exceptions. It may be noted that it is an auto populated feature.

17.9. LEGAL FRAMEWORK OF ITC

The various provisions related to INPUT TAX CREDIT (ITC) are given under Chapter V (Section 16-21) of the CGST Act, and CGST Rules. These provisions of ITC under CGST are also applicable to the IGST Act. Section 20 of the IGST Act has made the provisions applicable. The aspects covered under various sections are:—

Section 16:	Eligibility and Conditions for taking Input tax credit
Section 17:	Apportionment of credit and blocked credits
Section 18:	Availability of Credits in Special Circumstances
Section 19:	Taking input tax credit in respect of inputs and capital goods sent for job work.
Section 41:	Utilization of ITC
Section 42:	Matching, Reversal and Reclaim of ITC.

17.9.1 CGST Rules, 2017 Relating To ITC: The Chapter V of CGST Rules, 2017 contains the following rules in relation to ITC:

Rule 36:	Documentary requirements & conditions for claiming ITC
Rule 37:	Reversal of ITC in the case of Non-Payment of consideration
Rule 38:	Claim of credit by a Banking Company or a Financial Institution
Rule 39:	Procedure for distribution of ITC by Input Service Distributer (ISD)
Rule 40:	Manner of claiming credit in special circumstances
Rule 41:	Transfer of credit on sale, merger, etc.
Rule 42:	Manner of determination of ITC in respect of inputs or input services & reversal
Rule 43:	Manner of determination of ITC in respect of Capital goods & reversal thereof
Rule 44:	Manner of reversal of credit under special circumstances
Rule 44A:	Manner of reversal of credit of Additional Duties of Customs
Rule 45:	Conditions and restrictions in respect of inputs and Capital Goods to the job worker

17.10. ELIGIBILITY FOR AVAILING ITC [SECTION 16(1)]

As per section 16(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 business and the said amount shall be credited to the electronic credit ledger of such person.”

The analysis of above statutory provision reveals the following:

17.10.1. Registered Person: As per Section 16(1), Input tax credit is available only to a registered person. When a registered person is supplied with goods or services or both, on which tax has been charged, he is allowed to take credit of the input tax paid. This is subject to the provisions relating to use of ITC under section 49 and the conditions & restrictions in the rules. This means, if a person is unregistered he will not be eligible to claim Input tax credit.

17.10.2. Exception: There is one exception wherein ITC is not available although the person is registered. This exception applies to a person who pays tax under section 10 of the CGST Act, under the compounded levy scheme. Such person cannot claim ITC in respect of inward supplies made by him. In-fact, the tax paid under Composition levy does not fall within the definition of Input tax. In the course of or in furtherance of business: The goods/services must be used or intended to be used in the course of or in furtherance of his business. However, no such credit is available in respect of inputs used for outward supply of exempted goods or services.

17.10.3. Explanation: The relation of inputs and input services with business can be direct or indirect. 'Intention to use' implies that ITC can be availed as soon as inputs or input services are received, though the same may be utilised later. However, if finally, the input goods or services are not utilised for intended purpose, ITC is disallowed, as provided in section 17(5) of CGST Act. [Provisions of section 17(5) are discussed in the ensuing pages of this Chapter in Para 10.10.] In fact, the tax paid on goods and/or services which are used or intended to be used for non-business purposes cannot be availed as credit.

17.11. MANNER OF UTILISATION

The ITC shall be utilised in the manner specified in section 49. Rules under CGST Rules, 2017: The conditions and restrictions have been specified in Chapter V of CGST Rules, 2017 (Rule 36 to Rule 45). These rules have been mentioned under the appropriate heading throughout this chapter.

17.11.1 Conditions to be satisfied for Availing ITC [Section 16(2)]: The registered person is entitled to the credit of any input tax credit on a supply only if all the following conditions are fulfilled: a) Possession of a Tax Invoice or Debit Note; b) Furnishing and communication of details; c) The ITC is not restricted; d) Receipt of goods and/or services; e) Payment of tax to the Government; f) Furnishing the valid return under section 39. The above conditions are given in section 16(2), which starts with "Notwithstanding anything contained in this section"

17.11.2. Receipt of Goods or Services or both: As per section 16(2)(b), the registered person should have received the goods or services or both. This means the ITC will not be available unless the goods are received by the registered person.

17.12. WHEN GOODS/SERVICES ARE DEEMED TO HAVE BEEN RECEIVED

Statutory Provisions: As amended by the **Central GST (Amendment) Act, 2018**, the Explanation to section 16(2)(b) *clarifies*, for the purpose 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.

17.12.1. Analysis of the Provisions: The above provision is related with "Bill to ship to" model. **Bill to Ship to Model:** Under this model, the goods are delivered to a third party on the direction of the customer (registered person) who purchases the goods from the supplier. The 'Bill to Ship to' Model supplies include two supplies: (a) From Supplier to Customer (i.e. from Mr A to Mr B); (b) From Customer to third party (i.e. From Mr B to Mr C). It is clear that goods/services may be provided to a third party by the supplier on the direction of the registered person. In this case, though the registered person does not receive the goods or services, but by virtue of Explanation to section 16(2)(b) it is deemed that the registered

person has received the goods/services. Accordingly, ITC will be available to the registered person, on whose direction the goods/services are provided to a third party. (e) Payment of Tax to the Government. As per section 16(2)(c), the third essential condition is that the tax should have actually been paid to the government on the goods or services for which ITC is being taken. This payment can be done by the supplier either by:— (a) Making the payment through cash or (b) through utilization of ITC. However, when the recipient claims ITC, it is provisionally allowed to be utilized for making the payment of self-assessed tax on outward supply, before matching in the common portal. It is later on verified after filing of GSTR 3.

(f) Filing of valid Return: As per Section 16(2)(d), the fourth essential condition is that the registered person should have furnished the return under section 39. The return has to be filed before 20th of the month succeeding the month in which the supplies were received. This return must be furnished in Form GSTR-3 and must contain all the details of inward supplies.

17.13. REVERSAL OF ITC IN CASE OF NON-PAYMENT OF CONSIDERATION

The following are the relevant provisions given under CGST Act, 2017 and CGST Rules, 2017:

(1) ITC availed to be paid along with Interest [Second Proviso to Section 16(2)]: Where a recipient fails to pay to the supplier of goods or services or both, the amount towards the value of supply along with tax payable thereon, **within 180 days** from the date of issue of invoice by the supplier, an amount equal to ITC availed by the recipient shall be added to his output tax liability, along with interest thereon, in the manner as may be prescribed. Related provisions as prescribed under Rule 37 of CGST Rules, 2017. As per Rule 37(1), A registered person, who has availed of input tax credit on any inward supply of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, but fails to pay to the supplier thereof, the amount towards the value of such supply, whether wholly or partly, along with the tax payable thereon, within the time limit specified in the second proviso to section 16(2), shall pay or reverse an amount equal to the input tax credit availed in respect of such supply, proportionate to the amount not paid to the supplier, along with interest payable thereon under section 50, while furnishing the return in FORM GSTR-3B for the tax period immediately following the period of 180 days from the date of the issue of the invoice. When supply is made without consideration: The value of supplies made without consideration as specified in Schedule I of the said Act shall be deemed to have been paid for the purposes of the second proviso to section 16(2). As per Rule 37(2), Where the said registered person subsequently makes the payment of the amount towards the value of such supply along with tax payable thereon to the supplier thereof, he shall be entitled to re-avail the input tax credit referred to in rule 37(1).

(2) Re-Entitlement when payment is made subsequently: 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. In case part payment has been made, proportionate credit would be allowed. Related provisions as prescribed under Rule 37(4) of CGST Rules, 2017. The time limit of availing credit as specified in section 16(4) shall not apply to a claim for re-availing of any credit, in accordance with the provisions of the Act or the provisions of this Chapter that had been reversed earlier.

(3) Exceptions to the Limitation Period of 180 days: The condition of payment of value of supply plus tax within 180 days does not apply in the following cases: (a) the supplies on which tax is payable under Reverse Charge. (b) Deemed supplies without consideration. (c) Additions made to the value of supplies on account of supplier's liability, in relation to such supplies, being incurred by the recipient of the supply. The value of supply is deemed to have been paid, in situations given in (b) and (c) above.

17.14. ITC RULES FOR COMMON CREDIT UNDER GST

Businesses often use the same assets and inputs for both business & personal use. For example, Ms. Anita owns a grocery shop. She rents a 2-storey building and uses the ground floor for her shop and 1st floor of the same building as residence. The input credit of GST paid on rent will be allowed only to the extent it pertains to her business. Ms. Anita also has an attached land where she grows vegetables and sells them in her shop. The same property or common property is used for 3 separate reasons- taxable sales, exempted sales (vegetable) and personal expenses (residence). While Ms Anita is eligible to claim input credit for GST paid by her on her business expenses, some of the expenses are used for both business and non-business purposes. The GST in rent (GST is applicable since it is let out for commercial purposes) is the common credit.

17.14.1. Importance of common credit: ITC is only available for business purposes. Many traders use the same inputs for both business & personal. A taxpayer is not allowed to claim any input credit for GST paid on personal expenses. Again, goods exempted under GST already enjoy 0% GST. ITC cannot be claimed for inputs used in such exempted goods as it will lead to negative taxation. So, ITC on inputs for exempted goods will also have to be removed. The following will help you to calculate the common credit that belongs to personal supplies & exempted supplies leaving only the portion that pertains to taxable supplies. You will have an amount you are eligible to claim as ITC while filing your GST Returns. The credit that is attributable to personal supplies & exempted supplies must be reversed in GSTR-2. Click here to find out the reversal process in GSTR-2.

17.4.2 Calculating Common Credit: Let us understand the calculations through an example. Details for the month of May 2018 are as follows: Total Input Tax available in the tax period – 1,00,000 (T); Value of taxable items sold in her shop – 5,00,000; Value of vegetables sold (Agricultural activity) – 2,00,000; Input Tax for inputs (transporting charges) for taxable items – 10,000 (T4); Input Tax for inputs exclusively for agricultural activity (purchasing seeds, soil, labour charges) – 20,000 (T2); Input Tax for inputs exclusively for personal purpose (eating out) – 5,000 (T1); Input Tax for inputs and services on which availing credit is not eligible (travelling by Ola to wholesalers)- 10,000 (T3); So, Ms. Anita's total input tax will have 4 parts:

Step 1: Finding out total eligible ITC: Available credit $C1 = \text{Total ITC} - [\text{ITC for personal supplies} + \text{ITC for exempted supplies} + \text{Non-eligible ITC}] = T - (T1 + T2 + T3) = 1,00,000 - (5000 + 20,000 + 10,000) = 65,000$; This step calculates the available credit, i.e., the total eligible credit. This is derived by removing ITC on all personal inputs, all exempted inputs, non-eligible ITC. This amount will be credited to the electronic ledger. You have to reverse the common ITC for personal supplies, exempt supplies & non-eligible supplies in your GSTR-2.

Step 2: Finding out ITC pertaining to personal supplies & exempt supplies: Common Credit $C2 = \text{Input Tax credited to Electronic Credit Ledger (C1)} - \text{Input Tax for taxable supplies (T4)} = 65,000 - 10,000 = 55,000$; This shows the common credit which has to be shared between taxable supplies, personal supplies and exempt supplies. In our example, it could be the rent paid for the building. The GST component of the residence portion will be reversed. This Common credit will be divided into 3 parts:

Step 2.1: Partly Exempted -The portion of ITC pertaining to exempted supplies is calculated by the following formula: So by our example,

The formula calculates the amount by the proportionate method. The amount of Rs. 22,000 is deemed to be the amount of ITC pertaining to exempted supplies (vegetables) and must be reversed in GSTR-2.;

Step 2.2: Partly Personal- There are many common expenses such as rent, electricity, water bill which are used for both business & personal purposes. This formula will help to segregate the amount of credit that pertains to personal purposes. $D2 = 5\%$ of Common Credit So by our example, $D2 = 5\%$ of 55,000 = 2,750 The formula calculates the amount by assuming 5% of inputs are used for personal purposes. The amount of Rs. 2,750 is deemed to be the amount of ITC pertaining to personal supplies and must be reversed in GSTR-2.

Step 2.3: Normal portion: Finally, we calculate the portion of common credit that pertains to the taxable supplies (such as rent portion for the shop). $C3 = \text{Common Credit} - [\text{ITC portion for exempted supplies (D1)} + \text{ITC portion for personal supplies (D2)}] = 55,000 - (22,000 + 2,750) = 30,250$; This is the common credit attributable to normal supplies.

Step 3: Finally, calculating the total ITC you can claim: Total eligible ITC for the month = ITC for normal supplies + Common credit for normal supplies = $10,000 + 30,250 = 40,250$

17.14.3 Order of utilisation of Input Tax credit under GST: The government changed the procedure for the order of set-off of the same with effect from 29th March 2019. The new rules were laid down to reduce the balance lying under IGST credits to optimise the distribution between the Centre and the state. However, if the mechanism is not understood and off-set is not optimised, then the businesses might end up with higher working capital requirements. Hence, it is important to understand the order of utilization of input tax credit, how to optimize input tax credit, and the impact on business.

17.15. LATEST UPDATES

a) Section 16 is amended to state that buyers who fail to pay their supplier the invoice value, including the GST amount within 180 days from the date of issue of the invoice, must pay an amount equal to the ITC claimed along with interest under section 50. b) Sections 37, 39, 44 and 52 are amended to restrict taxpayers from filing their GSTR-1, GSTR-3B, GSTR-9 and GSTR-8 for a tax the expiry of three years from the due date. c) Section 17(5) is revised to include another item under ineligible ITC being expenditure on CSR initiatives for corporates. d) High sea sales and similar transactions that are neither supply of goods or services are considered exempt and hence ITC proportional to such sales cannot be claimed as per revised section 17(3). e) Schedule III has been amended to provide for paras (7) and (8) and explanations (2) to take retrospective effect from 1st July 2017. f) Section 10 of the CGST act has been amended to allow business that supply goods through an e-commerce operator to opt into the composition scheme.

17.15.1 The amended law on order of ITC Set Off: CGST circular no.98/17/2019 was issued on 23 April 2019 has clarified the order of ITC utilisation for each tax head. It further stated that until the rule 88A of the CGST rules was implemented on GST portal, taxpayers had to follow the facility available on the GST portal up to July 2019. The facility was made available from July 2019 returns onwards. Firstly, let's take a look at the two sections inserted in the CGST Act.

Section 49A: 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 has been utilised fully towards such payment.

Section 49B: Notwithstanding anything contained in this chapter and subject to the provisions of clause (e) and clause (f) of sub-section(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. Subsequently, the rule 88A has been inserted to notify the above new provision via CT notification no.16/2019 dated 29th March 2019.

Rule 88A: Order of utilisation of input tax credit: Input tax credit on account of 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 union territory tax as the case may be in any order. Provided that the input tax credit on account of 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.

17.15.2 What is the Maximum ITC that can be utilised to pay GST LIABILITY? From 1st January 2021, certain taxpayers cannot utilise the ITC balance available in the electronic credit ledger to discharge more than 99% of the tax liability for a tax period. It means at least 1% of tax liability must be paid by cash. It applies to such taxpayers who have monthly value of taxable supplies more than Rs.50 lakh (not being exempt or zero-rated supplies). The following taxpayers are exempted from this restriction: i) A registered taxpayer where more than Rs.1 lakh is paid as income tax in the last two FY in belated IT returns of himself or his proprietor or any two partners or managing director, trustee or board, etc; ii) A registered taxpayer who has received more than Rs.1 lakh as refund of unutilised input tax credit under GST, on account of zero-rated supplies without payment of tax or inverted tax structure; iii) A registered taxpayer paid more than 1% of his GST liability using only his electronic cash ledger, for all the tax periods in the current FY so far; Government departments, PSU, local authorities, statutory bodies, etc.

17.16. SUMMARY

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 sub-section (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. The registered person may use the input supplies either for business or non-business purposes. As per Section 17(1). Taxable supplies, which includes zero-rated supplies. Taxable supplies have been defined under section 2(108) to mean the supply of goods or services or both which is levied to tax under this Act. As per Section 2 (63) of the CGST Act, 2017 “input tax credit” means the credit of input tax. Input-tax is defined under section 2(62) of the CGST Act. Where a recipient fails to pay to the supplier of goods or services or both, the amount towards the value of supply along with tax payable thereon, within 180 days from the date of issue of invoice by the supplier, an amount equal to ITC availed by the recipient shall be added to his output tax liability, along with interest thereon, in the manner as may be prescribed. The government changed the procedure for the order of set-off of the same with effect from 29th March 2019. The new rules were laid down to reduce the balance lying under IGST credits to optimise the distribution between the Centre and the state. However, if the mechanism is not understood and off-set is not optimised, then the businesses might end up with higher working capital requirements. Hence, it is important to understand the order of utilisation of input tax credit, how to optimise input tax credit, and the impact on business.

17.17. TECHNICAL TERMS

Capital Goods: Items which are purchased and used for doing/developing a business (for sale/to generate income). It also includes those items for which a taxpayer has claimed input tax credit.

Cash Ledger: It is one of the subsidiary ledgers that are maintained by a company alongside the general ledger. As the name says ‘cash’, this ledger is a record of all transactions associated to cash accounts that are operated by an organization and its branches.

Casual Taxable Person: is a person occasionally undertaking transactions involving the supply of goods and/or services during business, whether as principal, agent or in any other capacity, in a taxable territory where he has no fixed place of business.

CGST: levied by the Centre on the intrastate (within one state/UT) transactions of taxable goods and services.

Common Portal: Common Portal refers to the online GST portal approved by the Central and State Governments, on the recommendation of the council.

E-Way Bill: E-way Bill is an electronic (digital) bill required to be produced to facilitate the movements of goods with the value above Rs. 50,000.

GST Council: is the council designated by the Indian government with the task to govern the GST, decide GST rules and ensure proper implementation of GST in the country.

Input Tax Credit: Input tax credit is the credit against the tax already paid on inputs (purchases) can be claimed back to pay the liability of output taxes (on sales). It is called input tax credit or ITC.

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.

Refund Voucher: is a GST compliant voucher to be issued by the manufacturer/supplier upon cancellation of an order on which an advance has been paid by the recipient. It is the proof that the advance payment has been refunded back to the recipient.

17.18 SELF -ASSESSMENT QUESTIONS

1. What is Apportionment and explain apportionment of credit and blocked credits?
2. Define ITC and discuss input tax credit under GST?
3. Elaborate legal framework of ITC?
4. Classify ITC Rules for common credit under GST?
5. Describe eligibility for availing ITC?
6. Discuss items which are included in exempted supplies?

17.19. SUGGESTED READINGS

1. The Central Goods and Services Tax Act, 2017, No.12 of 2017 published by Authority, Ministry of Law and Justice , New Delhi, 12th April, 2017.
2. The Central Goods and Services Tax Act, 2017, No.12 of 2017, Published by Authority, Ministry of Law and Justice, New Delhi, 12 April, 2017.
3. Goods and Services Tax in India- Notifications on different dates
4. GST Bill 2012
5. Background Material on Model GST Law, Sahitya Bhavan Publications, Hospital Road, Agra-383 003
6. Customs Law Manual and Customs Tariff of India – R.K.JAIN.

Dr. MEERAVALI SHAIK

LESSON-18

RETURNS UNDER GST & REMISSION OF TAX

Aims and Objectives

After studying this lesson students should be able to

- To understand GST return.
- To know types of returns.
- To acquired knowledge on Remission of Tax.
- To obtain knowledge on RDTEP.

Structure

18.1. Introduction

18.2 Who should file GST Returns?

18.3 Types of returns under GST

18.4 Different types of GST returns and the due dates

18.5. Types of GST Returns and Due dates

18.6 Late filling of GST returns

18.7. Remission of Tax

18.8. Related to Remission of Taxes

18.9. Remission of Duties and Taxes on Exported Products (RDTEP) Scheme

18.10. Summary

18.11. Technical Terms

18.12. Self – Assessment Questions

18.13. Suggested Readings

18.1. INTRODUCTION

A GST return is a document containing details of all income/sales and/or expenses/purchases that a GST-registered taxpayer (every GSTIN) is required to file with the tax administrative authorities. This is used by tax authorities to calculate net tax liability. Under GST, a registered dealer has to file GST returns that broadly include: Purchases-Sales-Output GST (On sales)- Input tax credit (GST paid on purchases). Remission of tax will apply only when tax is payable as per law i.e taxable event should have happened and tax is required to be paid as per law. Under GST law, levy is applicable upon supply of goods. Where goods are lost or destroyed before supply, taxable even does not occur in order to pay tax. Accordingly remission of tax does not arise. To file GST returns or for GST filings, check out the Clear GST software that allows the import of data from various ERP systems such as Tally, Busy, custom Excel, to name a few. There is also the option to use the desktop app for Tally users to directly upload data and file. In general, all taxable terminations are subject to the GST tax. A taxable termination is the conclusion of an interest in property held in trust unless: At no time after the termination may a distribution be made from the trust to a skip person. Irrevocable trusts. Under the GST regime, regular businesses having more than Rs.5 crore as annual aggregate turnover (and taxpayers who have not opted for the QRMP scheme) have to file two monthly returns and one annual return. This amounts to 25 returns each year. Taxpayers with a turnover of up to Rs.5 crore have the option to file returns under the QRMP scheme. A regular taxpayer under GST is required to file two monthly returns and one annual return. However, there are special category taxpayers registered under GST who need to furnish separate returns. These taxpayers include: What is Return Under GST? Every

registered person paying GST is required to furnish an electronic return every calendar month. Under GST, a registered dealer has to file GST returns that broadly include: To file GST returns or for GST filings, check out the Clear GST software that allows the import of data from various ERP systems such as Tally, Busy, custom Excel, to name a few.

18.1.1. Reverse Charge under GST law:

The reverse charge applies to supplies of both goods and services also in the GST regime. “Reverse charge” means the liability to pay tax by the person receiving goods and/or services instead of the person supplying the goods and/or services in respect of such categories of supplies as the Central or a State Government may, on the recommendation of the Council, by notification, specify – clause 2(85) of Model GST Law, 2016. Image courtesy of Stuart Miles at FreeDigitalPhotos.net Clause 7(3) of Model GST Law, 2016 deals with Services and persons Covered under reverse charge which reads as follows: Notwithstanding anything contained in sub-section (2), the Central or a State Government may, on the recommendation of the Council, by notification, specify categories of supply of goods and/or services the tax on which is payable on reverse charge basis and the tax thereon shall be paid by the person receiving such goods and/or services and all the provisions of this Act shall apply to such person as if he is the person liable for paying the tax in relation to such goods and/or services. Central or State Government on the recommendation of the Council would notify the categories of supplies of goods / services on which tax would be payable on reverse charge basis. Therefore, only such goods and/or services would be covered under reverse charge mechanism as may be notified. The Liability to pay Tax on the goods and/or services notified under the reverse charge mechanism would be on the recipient of the goods and/or services and he would be treated as the only person liable to pay tax on such good and/or services and not the service provider or supplier of the goods.

18.1.2. Reverse Charge provisions: Those who are covered under Reverse Charge provisions; they have to see the following three aspects. Exemption limit of Rs.20 Lakh is not available. Registration is must from zero point and they have to file all the connected returns. Pay the required taxes on time and comply with all the rules and regulations of GST law. Section 12(3) deals with Time of supply of Goods, wherein for Reverse Charge cases, the time of supply would be the earliest of the following dates, (a) The date of the receipt of goods, or (b) The date on which the payment is made, or (c) The date immediately following thirty days from the date of issue of invoice by the supplier:

18.2. WHO SHOULD FILE GST RETURNS?

Under the GST regime, regular businesses having more than Rs.5 crore as annual aggregate turnover (and taxpayers who have not opted for the QRMP scheme) have to file two monthly returns and one annual return. This amounts to 25 returns each year. Taxpayers with a turnover of up to Rs.5 crore have the option to file returns under the QRMP scheme. The number of GSTR filings for QRMP filers is 9 each year, which include 4 GSTR-1 and GSTR-3B returns each and an annual return. Note that QRMP filers have to pay tax on a monthly basis even though they are filing returns quarterly. There are also separate statements/returns required to be filed in special cases such as composition dealers where the number of GSTR filings is 5 each year (4 statement-cum-challans in CMP-08 and 1 annual return GSTR-4)

18.3. TYPES OF RETURNS UNDER GST

What is Return under GST? Every registered person paying GST is required to furnish an electronic return every calendar month. A “Tax Return” is a document that showcases the income of a registered taxpayer. Such a document needs to be filed with the tax authorities in

order to pay tax to the government. The tax to be paid by a registered dealer depends upon the income declared by such a person in the tax return filed with the tax authorities. Under the initial GST Return filing procedure, the different types of GST returns demanded the taxpayer to disclose the following details: Outward Supplies (Sales); Inward Supplies (Purchases); GST On Output; GST on Input (Input Tax Credit); Other Particulars (As May be Prescribed in the Document); ***Note: However, the current system of GST Return filing requires a taxpayer to update outward supplies information in GSTR 1. And then file a summary return in GSTR 3B. All the other forms like GSTR 2 and GSTR 3 have been suspended for the time being. As mentioned above, from April 1, 2019, the incumbent government is planning to implement the new GST Return design. This simplified version of return would require the taxpayers having an annual turnover of over Rs 5 Crores to file one monthly return only. Thus, small business owners, having an annual turnover of upto Rs 5 Crores would have the option to file quarterly return. There are 15 returns under GST. They are the GSTR-1, GSTR-3B, GSTR-4, GSTR-5, GSTR-5A, GSTR-6, GSTR-7, GSTR-8, GSTR-9, GSTR-10, GSTR-11, CMP-08, and ITC-04. However, all returns do not apply to all taxpayers. Taxpayers file returns based on the type of taxpayer/type of registration obtained. There is also an Invoice Furnishing Facility (IFF) available to small taxpayers who are registered under the QRMP scheme to furnish their Business to Business (B2B) sales for the first two months of the quarter. These small taxpayers will still need to pay taxes on a monthly basis using Form PMT-06.

18.3.1. Below Table Shows Types of GST Returns

1	GSTR – 1: Return for Outward Supplies
2	GSTR – 2: Return for Inward Supplies
3	GSTR – 2A: Read Only Document
4	GSTR – 3B: Summary of Inward and Outward Supplies
5	GSTR – 4: Return For Composition Dealers
6	GSTR – 5: Return For Non-Resident Taxable Persons
7	GSTR – 6: Return For Input Service Distributors
8	GSTR – 7: Return For Taxpayers Deducting TDS
9	GSTR – 8: Return For E-Commerce Operators Collecting TCS
10	GSTR – 9: Annual Return For Normal Registered Taxpayer Under GST
11	GSTR – 9A: Annual Return For Composition Dealers
12	GSTR – 9B: Annual Return For E-Commerce Operators Collecting TCS
13	GSTR – 9C: Return For Registered Persons Getting Accounts Audited From CA
14	GSTR – 10: Return For Registered Person Whose GST Registration Gets Cancelled
15	GSTR – 11: Return For UIN (Unique Identification Number) Holders

18.3.2. Who Can Apply For UIN? GSTR-11 is a return to be furnished by a person who has been allotted a Unique Identification Number (UIN). UIN is issued so that the registered person obtaining the same can claim refunds for GST paid on goods and services purchased by them in India. UIN is allotted to foreign embassies and diplomatic missions who are not required to pay taxes in India. This number is issued so that these organizations can claim a refund for the amount of tax paid to the Indian Tax Authorities. In order to claim the refund on GST paid, these organizations need to file GSTR-11. The organizations that can apply for UIN include: i) Specialized agency of the United Nations Organization; ii) A consulate or embassy of foreign countries; iii) Multilateral financial institution and organization notified

under the United Nations (Privileges and Immunities) Act, 1947; iv) Any other person or class of persons as may be specified by the Commissioner.

Due Date for Filing GSTR-11: The due date for filing GSTR-11 is 28th of the month succeeding the month in which inward supplies are received by the UIN holders. This means, GSTR-11 is not filed on a monthly basis. Rather, this form is filed on case-to-case basis as and when the supplies are made.

18.4. TYPES OF GST RETURNS AND DUE DATES

18.4.1. GSTR-1: GSTR-1 is the return to be furnished for reporting details of all outward supplies of goods and services made. In other words, it contains the invoices and debit-credit notes raised on the sales transactions for a tax period. GSTR-1 is to be filed by all normal taxpayers who are registered under GST, including casual taxable persons. Any amendments to sales invoices made, even pertaining to previous tax periods, must be reported in the GSTR-1 return by all the suppliers or sellers registered under GST.

The filing frequency of GSTR-1 is currently as follows: (a) Monthly, by 11th* of every month- If the business either has an annual aggregate turnover of more than Rs.5 crore or has not opted into the QRMP scheme. (b) Quarterly, by 13th** of the month following every quarter- If the business has opted into the QRMP scheme. *Till September 2018, the due date was the 10th of every month. **Till December 2020, was the end of the month succeeding the quarter.

18.4.2. GSTR-2A: GSTR-2A is a view-only dynamic GST return relevant for the recipient or buyer of goods and services. It contains the details of all inward supplies of goods and services i.e., purchases made from GST registered suppliers during a tax period. The data is auto-populated based on data filed by the corresponding suppliers in their GSTR-1 returns. Further, data filed in the Invoice Furnishing Facility (IFF) by the QRMP taxpayer, also get auto-filled. Since GSTR-2A is a read-only return, no action can be taken in it. However, it is referred by the buyers to claim an accurate Input Tax Credit (ITC) for every financial year, across multiple tax periods. In case any invoice is missing, the buyer can communicate with the seller to upload it in their GSTR-1 on a timely basis. It was used frequently for claiming ITC for every tax period until August 2020. Thereafter, the buyers are required to refer to the GSTR-2B, a static return, to claim the input tax credit for every tax period. However, some taxpayers still find referring to the GSTR-2A beneficial at the time of filing the annual GST return.

18.4.3. GSTR-2B: The GSTR-2B is again a view-only static GST return important for the recipient or buyer of goods and services. It is available every month, starting in August 2020 and contains constant ITC data for a period whenever checked back. ITC details will be covered from the date of filing GSTR-1 for the preceding month (M-1) up to the date of filing GSTR-1 for the current month (M). The return is made available on the 12th of every month, giving sufficient time before filing GSTR-3B, where the ITC is declared. The GSTR-2B provides the action to be taken against every invoice reported, such as to be reversed, ineligible, subject to reverse charge, references to the table numbers in GSTR-3B.

18.4.4. GSTR-2: GSTR-2 is currently a suspended GST return, that applied to registered buyers to report the inward supplies of goods and services, i.e. the purchases made during a tax period. The details in the GSTR-2 return had to be auto-populated from the GSTR-2A. Unlike GSTR-2A, the GSTR-2 return can be edited. GSTR-2 is to be filed by all normal taxpayers registered under GST. However, the filing of the same has been suspended ever since September 2017.

18.4.5. GSTR-3: GSTR-3 is again currently a suspended GST return. It was a monthly summary return for furnishing summarized details of all outward supplies made, inward

supplies received and input tax credit claimed, along with details of the tax liability and taxes paid. This return would have got auto-generated on the basis of the GSTR-1 and GSTR-2 returns filed. GSTR-3 is to be filed by all normal taxpayers registered under GST, however, the filing of the same has been suspended since September 2017.

18.4.6. GSTR-3B: GSTR-3B is a monthly self-declaration to be filed, for furnishing summarised details of all outward supplies made, input tax credit claimed, tax liability ascertained and taxes paid. GSTR-3B is to be filed by all normal taxpayers registered under GST. The sales and input tax credit details must be reconciled with GSTR-1 and GSTR-2B every tax period before filing GSTR-3B. GST reconciliation is crucial to identify mismatches in data that may lead to GST notices in future or suspension of GST registration as well. The filing frequency of GSTR-3B is currently as follows: (a) Monthly, 20th* of the succeeding month- For taxpayers with an aggregate turnover in the previous financial year of more than Rs.5 crore or have been otherwise eligible but still opted out of the QRMP scheme.

(b) Quarterly, 22nd of the month following the quarter for 'X'** category of States and 24th of the month following the quarter for 'Y'** category of States- For the taxpayers with aggregate turnover equal to or below Rs.5 crore, eligible and remain opted into the QRMP scheme. * Effective from January 2021 tax period onwards. ** 'X' category States/UT – Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana or Andhra Pradesh or the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands and Lakshadweep. 'Y' category States/UT- Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha or the Union Territories of Jammu and Kashmir, Ladakh, Chandigarh and New Delhi.

18.4.7. GSTR-4: GSTR-4 is the annual return that was to be filed by the composition taxable persons under GST, by 30th April of the year following the relevant financial year. It has replaced the erstwhile GSTR-9A (annual return) from FY 2019-20 onwards. Prior to FY 2019-20, this return had to be filed on a quarterly basis. Thereafter, a simple challan in form CMP-08 filed by 18th of the month succeeding every quarter replaced it. The composition scheme is a system in which taxpayers dealing with goods and having a turnover up to Rs.1.5 crores can opt into and pay taxes at a fixed rate on the turnover declared. Further, the service providers can avail a similar scheme as per CGST (Rate) Notification 2/2019 dated 7th March 2019 if their turnover is up to Rs.50 lakh.

18.4.8. GSTR-5: GSTR-5 is the return to be filed by non-resident foreign taxpayers, who are registered under GST and carry out business transactions in India. The return contains details of all outward supplies made, inward supplies received, credit/debit notes, tax liability and taxes paid. The GSTR-5 return is to be filed monthly by the 20th of each month under GSTIN that the taxpayer is registered in India.

18.4.9. GSTR-5A: GSTR-5A refers to a summary return for reporting the outward taxable supplies and tax payable by Online Information and Database Access or Retrieval Services (OIDAR) provider under GST. The due date to file GSTR-5A is the 20th of every month.

18.4.10. GSTR-6: GSTR-6 is a monthly return to be filed by an Input Service Distributor (ISD). It contains details of input tax credit received and distributed by the ISD. It will further contain details of all documents issued for the distribution of input credit and the manner of distribution. The due date to file GSTR-6 is the 13th of every month.

18.4.11. GSTR-7: GSTR-7 is a monthly return to be filed by persons required to deduct TDS (Tax deducted at source) under GST. This return will contain details of TDS deducted, the

TDS liability payable and paid and TDS refund claimed if any. The due date to file GSTR-7 is the 10th of every month.

18.4.12. GSTR-8: GSTR-8 is a monthly return to be filed by e-commerce operators registered under the GST who are required to collect tax at source (TCS). It contains details of all supplies made through the e-commerce platform, and the TCS collected on the same. The GSTR-8 return is to be filed on a monthly basis by the 10th of every month.

18.4.13. GSTR-9: GSTR-9 is the annual return to be filed by taxpayers registered under GST. It is due by 31st December of the year following the relevant financial year, as per the GST law. It contains the details of all outward supplies made, inward supplies received during the relevant financial year under different tax heads i.e. CGST, SGST & IGST and a summary value of supplies reported under every HSN code, along with details of taxes payable and paid. It is a consolidation of all the monthly or quarterly returns (GSTR-1, GSTR-2A, GSTR-3B) filed during that financial year. GSTR-9 is required to be filed by all taxpayers registered under GST. However, there are few exceptions such as taxpayers who have opted for the composition scheme, casual taxable persons, input service distributors, non-resident taxable persons and persons paying TDS under section 51 of the CGST Act.

18.4.14. GSTR-9A: GSTR-9A is currently a suspended annual return earlier required to be filed by composition taxpayers. It had a consolidation of all the quarterly returns filed during that financial year. Ever since GSTR-4 (annual return) was introduced from FY 2019-20, this return stands scrapped. Prior to that, GSTR-9A filing for composition taxpayers had been waived off for FY 2017-18 and FY 2018-19.

18.4.15. GSTR-9C: GSTR-9C is a self-certified reconciliation statement between the books of accounts and the GSTR-9 that is to be filed by every registered person under GST whose turnover during a financial year exceeds the prescribed limit of Rs.5 crore. The deadline to file this statement is the same as the due date prescribed for GSTR-9, i.e., 31st December of the year following the relevant financial year. GSTR-9C is to be filed for every GSTIN, hence, one PAN can have multiple GSTR-9C forms being filed.

18.4.16. GSTR-10: GSTR-10 is to be filed by a taxable person whose registration has been cancelled or surrendered. This return is also called a final return and has to be filed within three months from the date of cancellation or cancellation order, whichever is earlier.

18.4.17. GSTR-11: GSTR-11 is the return to be filed by persons who have been issued a Unique Identity Number (UIN) in order to get a refund under GST for the goods and services purchased by them in India. UIN is a classification made for foreign diplomatic missions and embassies not liable to tax in India, for the purpose of getting a refund of taxes. GSTR-11 will contain details of inward supplies received and refund claimed.

18.5. LATE FILING OF GST RETURNS

Return filing is mandatory under GST. Even if there is no transaction, you must file a nil return. There are few points to note: i) You cannot file a return if you do not file the previous month/quarter's return. ii) Hence, late filing of GST return will have a cascading effect leading to heavy fines and penalty. iii) The late filing fee of the GSTR-1 is populated in the liability ledger of GSTR-3B filed immediately after such delay.

18.5.1 Interest and late filing to be paid: Interest is 18% per annum. It has to be calculated by the taxpayer on the amount of outstanding tax to be paid. It shall be calculated on the net tax liability identified in the ledger at the time of payment. The time period will be from the next day of filing due date till the actual date of payment.

18.6. REMISSION OF TAX

Tax Remission: It means relieving the tax payer from the obligation to pay tax on goods when they are lost or destroyed due to any natural causes. Remission is subject to conditions stipulated under the law and rules made there under. It means relieving the tax payer from the obligation to pay tax on goods when they are lost or destroyed due to any natural causes. Under section 23 of the Financial Administration Act, the Governor in Council may grant a tax remission of penalties and/or interest with respect to assessed amounts of tax, even if there is no remission of tax. In particular, a remission of penalties and/or interest may be granted in cases where taxpayer relief provisions do not apply. A tax remission request can be initiated by the experienced Canadian tax lawyer for a taxpayer who is impacted or by federal or provincial members of Parliament. The CRA can also initiate a tax remission request in certain circumstances where there is concrete evidence confirming that granting such a relief is warranted.

The Central or a State Government may, by rules made under this sub-section, provide for remission of tax on such supplies which are found to be deficient in quantity due to any natural causes. Any rules made under sub-section (1) may, having regard to the nature of the supply fix the limit or limits of percentage beyond which no such remission shall be allowed. The State Government may, by notification in the Official Gazette, remit or exempt the whole or any part of the tax paid or payable by any factory or unit for such period or periods, either prospectively or retrospectively, as specified in the notification,-

(a) For the purpose of encouraging the establishment of new factories or for the purpose of overcoming any difficulties faced by any factory or unit in the initial period of manufacturing; or

(b) For the purpose of overcoming problems caused by the oversupply of sugar in so far as it relates to the crushing of sugarcane, or (c) For the purpose of promoting export of sugar, on the purchase of sugarcane which is used in the production of the sugar which is exported outside India.

(d) For the purpose of establishing a co-generation unit for generation of electricity from the products or by-products of the said factory.

Explanation.- for the purpose of this section, “export” shall have the same meaning as assigned to it in section 5 of the Central Sales Tax Act, 1956.] (e) For the purpose of assisting the sugar factories in the State, to give the fair and remunerative price to the farmers for the 6years 2013-14 and 2014-15.

18.7. RELATED TO REMISSION OF TAXES

18.7.1. Occasion of Tax Non-Compliance: Occasion of Tax Non-Compliance means any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of: a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation in any jurisdiction that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle; the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under DOTAS or any equivalent or similar regime in any jurisdiction; and/or any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Call Off Commencement Date or to a civil penalty for fraud or evasion; Seller’s Taxes shall have the meaning set forth in Section 5.4(a) hereof.

18.7.2. Payment in lieu of taxes: Payment in lieu of taxes means those estimated tax revenues from real property in a redevelopment project area derived from real property that has been acquired by a municipality which according to the redevelopment project or plan is to be used for a private use which taxing districts would have received had a municipality not acquired the real property and adopted tax increment allocation financing and which would result from levies made after the time of the adoption of tax increment allocation financing to the time the current equalized value of real property in the redevelopment project area exceeds the total initial equalized value of real property in said area. New Taxes Any taxes enacted by any Governmental Authority after the Effective Date or by any Governmental Rule effective after the Effective Date resulting in the application, for the first time, of any tax to Participating Consumers with respect to All-Requirements Power Supply. Tax Covenant means the deed of tax covenant relating to the Separation Transaction, entered into or to be entered into between GSK, Haleon, GSKCHHL, Pfizer and JVCo on or around the date of the SCIA; Determination of Taxability means and shall be deemed to have occurred on the first to occur of the following: Tax and Insurance Escrow Fund shall have the meaning set forth in Section 7.2 hereof. Payee Tax Representations each representation specified in the Schedule as being made by it for the purpose of this Section 3(f) is accurate and true. Responsible charge means that degree of control an engineer is required to maintain over engineering decisions made personally or by others over which the engineer exercises supervisory direction and control authority. The engineer in responsible charge is the Engineer of Record as defined in subsections 61G15-30.002(1), F.A.C.

18.7.3. Tenant's Taxes: Tenant's Taxes means (a) all taxes, assessments, license fees and other governmental charges or impositions levied or assessed against or with respect to Tenant's personal property or Trade Fixtures in the Premises, whether any such imposition is levied directly against Tenant or levied against Landlord or the Property, (b) all rental, excise, sales or transaction privilege taxes arising out of this Lease (excluding, however, state and federal personal or corporate income taxes measured by the income of Landlord from all sources) imposed by any taxing authority upon Landlord or upon Landlord's receipt of any rent payable by Tenant pursuant to the terms of this Lease ("Rental Tax"), and (c) any increase in Taxes attributable to inclusion of a value placed on Tenant's personal property, Trade Fixtures or Alterations. Tenant shall pay any Rental Tax to Landlord in addition to and at the same time as Base Rent is payable under this Lease, and shall pay all other Tenant's Taxes before delinquency (and, at Landlord's request, shall furnish Landlord satisfactory evidence thereof). If Landlord pays Tenant's Taxes or any portion thereof, Tenant shall reimburse Landlord upon demand for the amount of such payment, together with interest at the Interest Rate from the date of Landlord's payment to the date of Tenant's reimbursement.

18.7.4. Value Added Taxes: Value Added Taxes means such sum as shall be levied upon amounts payable to the Consultant under this Contract by any Governmental Authority that is computed as a percentage of the amounts payable to the Consultant (including all other Taxes but excluding Value Added Taxes), and includes the HST, and any similar tax, the payment or collection of which, by the legislation imposing such tax, is an obligation of the Consultant. U.S. Taxes means any present or future tax, assessment or other charge or levy imposed by or on behalf of the United States of America or any taxing authority thereof or therein. Tax Claims means any Claim against the Participating CCAA Parties (or any one of them) for any Taxes in respect of any taxation year or period ending on or prior to the applicable Filing Date, and in any case where a taxation year or period commences on or prior to the applicable Filing Date, for any Taxes in respect of or attributable to the portion of the taxation period commencing prior to the applicable Filing Date and up to and including the applicable Filing Date. For greater certainty, a Tax Claim shall include, without limitation, (a) any and all Claims of any Taxing Authority in respect of transfer pricing

adjustments and any Canadian or non- resident Tax related thereto, and (b) any Claims against any BL/Wabush Released Party in respect of such Taxes;

18.7.5. Tax Losses has the meaning assigned to such term in Section 7.1(a): Tax-Related Losses means (i) all U.S. federal, state and local Taxes payable pursuant to any Final Determination or otherwise; (ii) all professional fees, and court costs incurred in connection with such Taxes; and (iii) all costs, expenses and damages associated with stockholder litigation or controversies, including but not limited to, any amount paid by EWS, any EWS Affiliate, SNI, or any SNI Affiliate, as the case may be, in respect of the liability of shareholders, whether paid to shareholders, the IRS, any other Taxing authority, or any other person or entity, in each case, arising from the Distribution and related transactions failing to have Tax-Free Status in any manner. Payroll Taxes means State Unemployment Insurance (“SUI”), Federal Unemployment Insurance (“FUI”) and payments pursuant to the Federal Insurance Contributions Act (“FICA”). Governmental Charges has the meaning set forth in Section 9.2. Cash Taxes in respect of any fiscal period means amounts actually paid by the Companies in such fiscal period in respect of income and capital Taxes (whether relating to such fiscal period or any other fiscal period). Applicable Taxes means the Goods and Services Tax (GST), the Harmonized Sales Tax (HST), and any provincial tax, by law, payable by Canada such as, the Quebec Sales Tax (QST) as of April 1, 2013. Disallowed costs means those charges determined to be unallowable, in accordance with the applicable Federal statutes, regulations, or the terms and conditions of the Federal award. (2 CFR 200.31 and 45 CFR 75.2) . Connection Income Taxes means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

18.7.6. Real Property Taxes: Real Property Taxes shall each mean Tenant's Expense Share of (i) all taxes, assessments, levies and other charges of any kind or nature whatsoever, general and special, foreseen and unforeseen (including all instruments of principal and interest required to pay any general or special assessments for public improvements and any increases resulting from reassessments caused by any change in ownership or new construction), now or hereafter imposed by any governmental or quasi-governmental authority or special district having the direct or indirect power to tax or levy assessments, which are levied or assessed for whatever reason against the Property or any portion thereof, or Landlord's interest herein, or the fixtures, equipment and other property of Landlord that is an integral part of the Property and located thereon, or Landlord's business of owning, leasing or managing the Property or the gross receipts, income or rentals from the Property, (ii) all charges, levies or fees imposed by any governmental authority against Landlord by reason of or based upon the use of or number of parking spaces within the Property, the amount of public services or public utilities used or consumed (e.g. water, gas, electricity, sewage or waste water disposal) at the Property, the number of person employed by tenants of the Property, the size (whether measured in area, volume, number of tenants or whatever) or the value of the Property, or the type of use or uses conducted within the Property, and all costs and fees (including attorneys' fees) reasonably incurred by Landlord in contesting any Real Property Tax and in negotiating with public authorities as to any Real Property Tax.

If, at any time during the Lease Term, the taxation or assessment of the Property prevailing as of the Effective Date of this Lease shall be altered so that in lieu of or in addition to any the Real Property Tax described above there shall be levied, awarded or imposed (whether by reason of a change in the method of taxation or assessment, creation of a new tax or charge, or any other cause) an alternate, substitute, or additional use or charge: i) on the value, size, use or occupancy of the Property or Landlord's interest therein or ii) on or measured by the gross receipts, income or rentals from the Property, or on Landlord's business of owning,

leasing or managing the Property or iii) computed in any manner with respect to the operation of the Property, then any such tax or charge, however designated, shall be included within the meaning of the terms "Real Property Tax" or "Real Property Taxes" for purposes of this Lease. If any Real Property Tax is partly based upon property or rents unrelated to the Property, then only that part of such Real Property Tax that is fairly allocable to the Property shall be included within the meaning of the terms "Real Property Tax" or "Real Property Taxes." Notwithstanding the foregoing, the terms "Real Property Tax" or "Real Property Taxes" shall not include estate, inheritance, transfer, gift or franchise taxes of Landlord or the federal or state income tax imposed on Landlord's income from all sources.

18.7.7. Income Taxes: Income Taxes means any Taxes based upon, measured by, or calculated with respect to: (a) net income or profits or net receipts (including, but not limited to, any capital gains, minimum Tax or any Tax on items of Tax preference, but not including sales, use, real or personal property, or transfer or similar Taxes) or (b) multiple bases (including corporate franchise, doing business and occupation Taxes) if one or more bases upon which such Tax may be based, measured by, or calculated with respect to, is described in clause (a). Local taxes means all taxes levied other than taxes levied for school operating purposes.

18.7.8. Miscellaneous Charges: Miscellaneous Charges mean charges that apply for miscellaneous services provided at CLEC's request or based on CLEC's actions that result in miscellaneous services being provided by CenturyLink, as described in this Agreement. Transaction Payroll Taxes means the employer portion of any payroll or employment Taxes incurred or accrued with respect to any bonuses, option exercises and cashouts, change of control or other compensatory payments made in connection with the transactions contemplated by this Agreement.

18.8. REMISSION OF DUTIES AND TAXES ON EXPORTED PRODUCTS (RDTEP) SCHEME: RDTEP Scheme Issues:

The Remission of Duties and Taxes on Exported Products (RDTEP) Scheme was announced in 2019 by the Government of India and it became effective on 1 January 2021. In this article, you can learn all about the RDTEP Scheme, its provisions, need and benefits, from an IAS exam perspective. In cases where the benefit of other schemes like EOU, Advance Authorization, Jobbing, etc has been availed, the benefit of RDTEP has been prohibited. In schemes such as EOU, Advance Authorization, Jobbing, etc. only those indirect taxes that are levied on inputs that are necessary for the manufacturing of exported products (the immediate ones) are refunded but not all the taxes or duties/levies that are incurred in the entire value chain.

18.8.1. What is RDTEP Scheme? The RDTEP Scheme allows exporters to receive refunds on taxes and duties that are not exempted or refunded under any other scheme. Under the scheme, exporters receive refunds on the embedded taxes and duties previously non-recoverable. The chief aim of the scheme is to boost the export of goods that were poor in volume. The scheme basically replaces the Merchandise Export from India Scheme (MEIS). The scheme provides for rebates of Central, State and Local duties/taxes/ levies which are not refunded under any other duty remission schemes. The RDTEP scheme can be said to be a combination of the MEIS and the Rebate of State and Central Taxes and Levies (RSCTL). Under this scheme, refund would be claimed as a percentage of the Freight On Board (FOB) value of exports.

18.8.2. Need for RDTEP Scheme: In 2018, the United States challenged five Indian export subsidy schemes in the World Trade Organisation (WTO). The five schemes were: i) Merchandise Export from India Scheme (MEIS); ii) Export Oriented Units (EOU); iii)

Electronics Hardware Technology Parks (EHTP); iv) Special Economic Zone (SEZ); v) Export Promotion Capital Goods (EPCG). In October 2019, WTO ruled that these schemes are inconsistent with the WTO agreements for providing prohibited export subsidies. The WTO panel recommended to the Indian government that these schemes should be withdrawn. In response, the Indian government came up with the RDTEP scheme which is WTO-compliant.

18.8.3. Features of RDTEP Scheme: The following are the salient features of the RDTEP Scheme. **i) Remission of taxes/duties/levies:** It covers duties and taxes levied at the central, state and local levels that are not reimbursed under any other mechanism. Items that were under the MEIS and the RSCTL are shifted to the RDTEP.

ii) Automated refund system: Refunds will be issued to exporters as transferable duty credit/electronic scrip's and maintained in an electronic ledger. This is keeping in line with the Digital India mission.

iii) Pay basic customs duty: This can be used to pay basic customs duty on imported goods. The credits can also be transferred to other importers.

iv) Speedy clearance through digitalisation: Faster clearance through a digital platform will be facilitated through a monitoring & audit mechanism, with an IT-based risk management system that would physically verify the exporters' records.

v) Scheme for all sectors; vi) The scheme is applicable across all sectors.

18.8.4. RDTEP Benefits: Being WTO-compliant, the RDTEP scheme can make available from the government benefits to the exporters seamlessly: i) The scheme is more exhaustive in that certain taxes that were not covered under the previous scheme are also included in the list, for example, education cess, state taxes on oil, power and water; ii) It will add more competitiveness in the foreign markets, with assured duty benefits by the Indian Government; iii) It will also help exporters meet international standards and promote business growth; iv) Taxes to be reimbursed under RDTEP:

18.9. SUMMARY

The goods and services tax (GST) is a value-added tax (VAT) levied on most goods and services sold for domestic consumption. The GST is paid by consumers, but it is remitted to the government by the businesses selling the goods and services. A GST return is a document containing details of all income/sales and/or expenses/purchases that a GST-registered taxpayer (every GSTIN) is required to file with the tax administrative authorities. This is used by tax authorities to calculate net tax liability. Under GST, a registered dealer has to file GST returns that broadly include: The number and types of GST return that a business/professional must file is based on the type of taxpayer registered. These types include regular taxpayer, composition taxable persons, e-commerce operators, TDS deductor, non-resident taxpayer, Input Service Distributor (ISD), casual taxable persons, etc. A regular taxpayer under GST is required to file two monthly returns and one annual return. However, there are special category taxpayers registered under GST who need to furnish separate returns.

These taxpayers include: What is Return Under GST? Every registered person paying GST is required to furnish an electronic return every calendar month. Tax remission means relieving the tax payer from the obligation to pay tax on goods when they are lost or destroyed due to any natural causes. Remission is subject to conditions stipulated under the law and rules made there under. It means relieving the tax payer from the obligation to pay tax on goods when they are lost or destroyed due to any natural causes. After studying this lesson students should be able to : Meaning of GST Return- Who should file GST RETURNS?-Types of returns are there under GST- Different types of GST returns and the due dates to file them-Types of GST Returns and Due dates- Late filing of GST returns- Remission of Tax- Related

to Remission of Taxes-Remission of Duties and Taxes on Exported Products (RDTEP) Scheme

18.10. TECHNICAL TERMS

Returns under GST: The details in GST Returns includes purchases, Sales , Output GST & Input Tax Credit (GST paid on purchases. GST compliant sales and purchase invoices are required in order to file GST returns . GSTR-1 – GSTR-1 contains details of outward supplies (sales) of taxable goods and/or services. GSTR-1 can either be filed quarterly or monthly.

Remission of Tax: It means relieving the tax payer from the obligation to pay tax on goods when they are lost or destroyed due to any natural causes. Remission is subject to conditions stipulated under the law and rules made there under.

Tax liability: Tax liability is the payment owed by an individual, business, or other entity to a federal, state, or local tax authority. Generally, you have a tax liability when you earn income or generate profits by selling an investment or other asset. It is possible to have no income tax liability if you don't meet the income requirements to file taxes.

Input Service Distributor: As per Section 2 (61) of CGST Act,2017, Input Service Distributor means : (b) The said office receives tax invoices towards receipt of input services (c) The said office distributes credit of CGST/SGST/IGST/UTGST to a supplier of goods/services having same PAN.

Value-added tax: Value-added tax (VAT) is a type of indirect tax levied on goods and services for value added at every point of production or distribution cycle, starting from raw materials and going all the way to the final retail purchase. VAT was introduced on April 1, 2005.

E-commerce operators: e-commerce operator means a non - resident who owns, operates or manages digital or electronic facility or platform for online sale of goods or online provision of services or both, and is required to pay equalisation levy under section 166A of the Chapter VIII of the Finance Act, 2016.

Non-resident taxpayer: For tax purposes, a nonresident is someone who is neither a U.S. national nor a U.S. citizen. The Internal Revenue Code (IRC) contains myriad rules that these individuals must follow, and some of them can be complicated. There are a few gray areas and several qualifiers.

18.11. SELF – ASSESSMENT QUESTIONS

- 1) What is the Meaning of GST Return?
- 2) Who should file GST RETURNS?
- 3) What are the Types of returns under GST?
- 4) What are the due dates to file Different types of GST returns?
- 5) Explain about Late filling of GST returns.
- 6) What is the meaning of Remission of Tax?
- 7) What are aspects related to Remission of Taxes-Explain.
- 8) Discuss about Remission of Duties and Taxes on Exported Products (RDTEP) Scheme.

18.12. SUGGESTED READINGS

1. The Central Goods and Services Tax Act, 2017, No.12 of 2017 published by Authority, Ministry of Law and Justice , New Delhi, 12th April, 2017.
2. The Central Goods and Services Tax Act, 2017, No.12 of 2017, Published by Authority, Ministry of Law and Justice, New Delhi, 12 April, 2017.
3. Goods and Services Tax in India- Notifications on different dates
4. GST Bill 2012
5. Background Material on Model GST Law, Sahitya Bhavan Publications, Hospital Road, Agra-383 003
6. Customs Law Manual and Customs Tariff of India – R.K.JAIN.

DR. MEERAVALI SHAIK

LESSON-19

GST PAYMENT, ADJUSTMENT AND REFUND

Aims and Objectives

After studying this lesson students should be able to

- To understand GST Payments & GST payment process
- To know Adjustment and Refund of GST
- Adjustment of GST for the Financial Year 2021-2022
- To acquired knowledge on Refund process of IGST
- To obtain knowledge on What happens after the GST refund is applied

Structure

19.1. Introduction

19.2. GST payments and its process

19.3. Adjustment of GST

19.4. Differences between the Debit Note and Credit Note in GST

19.5. Adjustment of GST for the Financial Year 2021-2022

19.6. Refund of GST

19.7. Refund process of IGST paid on export of goods (with tax payment)

19.8. What happens after the GST refund is applied

19.9. Summary

19.10. Technical Terms

19.11. Self – Assessment Questions

19.12. Suggested Readings

19.1. INTRODUCTION

A Goods and Services (GST) tax is a "value-added tax" that is exacted upon certain domestically sold goods and services and is typically set by the highest levels of government. Customers paying a Goods and Services Tax will do so at the point of sale and will find it included within the total cost of the item itself. Sort of like an alternative form of a sales tax. Once collected, the tax is then forwarded onward by the seller to the governing body. There are two types of a Goods and Services Tax Systems, unified and dual. Under a unified system, which is the more common form, federal and state/province taxes are combined into a single payment which means everything is taxed at the same rate. Dual structures, on the other hand, are a bit more complicated because the rate can change between different sectors of the country. In countries that use dual structures, both federal and state/provinces may exact goods and services taxes. Meaning, that under this system a domestically sold item can be taxed twice by two separate levels of government before the item can be purchased. To mark the first anniversary of GST, we look at what's been achieved, the successes, failures, what the experts think and what lies ahead. GST has received positive as well as negative responses as befits its characterization as a toddler, thinks expert. The success or failure of the Goods and Services Tax (GST) can be subjective and depends on various perspectives. Introduced in India in 2017, GST aimed to streamline the complex tax system, promote transparency, and boost economic growth. It has simplified tax compliance for businesses, reduced tax evasion, and created a unified national market. However, challenges like frequent changes in tax rates, technical glitches in the online portal, and initial disruptions in small

businesses have been criticized. Overall, GST has had a positive impact on India's tax landscape, but its success is marred by implementation challenges and ongoing reforms to address them, making it a mixed bag.

19.1.1. Is GST a Success (or) a Failure? 75% Failure: a) Like Demonetization GST is Failing in Implementation; b) Failed on Petrol; c) Failed on ITC Maintenance; d) Failed to Give Taxes to States; e) Failed in Way Bills; f) Failed in Site Maintenance; g) Failed in Composition GST; h) Failed in Below 20lakh Business; i) Failed to Lower the Prizes; j) Failed to Clarify Doubts

19.2. GST PAYMENTS AND ITS PROCESS

In the GST regime, for any intra-state supply, taxes to be paid are the Central GST (CGST), going into the account of the Central Government) and the State/UT GST (SGST, going into the account of the concerned State Government). For any inter-state supply, tax to be paid is Integrated GST (IGST) which will have components of both CGST and SGST. In addition, certain categories of registered persons will be required to pay to the government account Tax Deducted at Source (TDS) and Tax Collected at Source (TCS). In addition, wherever applicable, Interest, Penalty, Fees and any other payment will also be required to be made. Payment of taxes by the normal tax payer is to be done on monthly basis by the 20th of the succeeding month. Cash payments will be first deposited in the Cash Ledger and the tax payer shall debit the ledger while making payment in the monthly returns and shall reflect the relevant debit entry number in his return. These dealers are required to make GST payment – a) A Registered dealer is required to make GST payment if GST liability exists; b) Registered dealer required to pay tax under Reverse Charge Mechanism (RCM); c) E-commerce operator is required to collect and pay TCS; d) Dealers required deducting TDS

19.2.1. GST Payment Process: Indian businesses are in for a learning curve, the payment process under Goods and Services Tax (GST) differs drastically from current procedures. Namely, each step of the process like all other aspects of GST now occur online within the GST portal. Section 49 of the Central Goods and Services Tax Act, along with rules published by the Central Board of Excise and Customs (CBEC), govern the new payment procedures. This whitepaper provides an overview of what they entail and looks at the following:

a) **Electronic ledgers:** Manner of utilization and cross-utilisation of input tax credit (ITC). Interest on delayed payments- Electronic payment forms- Unique identification number for each transaction- In the GST portal, a taxable person can track his tax liabilities across three ledgers, each maintained in real-time: b) **Electronic liability ledger:** This ledger records all liabilities of a taxable person including: The tax, interest, late fees, or any other amount payable per the return furnished by the taxpayer or per any proceedings

c) **Electronic credit ledger:** Every claim of ITC self-assessed by the taxpayer shall be credited to this ledger. The amount available in this ledger may be used for payment towards output tax only. Under no circumstance can an entry be made directly in the electronic credit ledger. This ledger may include the following: i) ITC on inward supplies from registered taxpayers; ii) ITC available based on distribution from input services distributor (ISD); iii) ITC on input of stock held/semi-finished goods or finished goods held in stock on the day immediately preceding the date on which the taxpayer became liable to pay tax, provided he applies for registration within 30 days of becoming liable

d) **Electronic cash ledger:** Any amount paid by the taxpayer will be reflected in the electronic cash ledger. The amount available in this ledger may be used for making any payment towards tax, interest, penalty, fees, or any other amount due under the act/rules in the time and manner prescribed. (It is reiterated that any credit in the electronic credit ledger can be utilized only for payment of output tax.). To initiate a payment, taxpayers generate a

challan online using form GST PMT-06, which will be valid for a period of 15 days. Payment can then be remitted through any of the following modes: a) Internet banking (authorized banks only); b) Credit or debit card (authorized banks only); c) National Electronic Fund Transfer (NEFT) or real-time gross settlement (RTGS) (any bank, authorized or unauthorized); d) Over-the-counter (OTC) payment (authorized banks only) for deposits up to ten thousand rupees per challan and per tax period; f)

e) **Interest on delayed payments:** Per Section 50 of the CGST Act, interest will start accruing on a delayed payment the day after the payment was due. This applies to both missed payments and payments not made in full. The payment of interest is automatic and should be made voluntarily, even without a demand. The interest rate, not to exceed 18 percent, will be determined by the Government on the recommendation of the GST Council. In the case of undue or excess claim of ITC, or undue or excess reduction in output tax liability, interest shall be paid at a higher rate, not to exceed 24 percent, to be notified by the Government.

19.3. ADJUSTMENT OF GST

i) Input tax credit utilization of GST: This is input tax credit utilization of GST which enables to overcome challenges such as cascading tax prevalent under previous tax regime. Section 49 of the CGST Act, 2017 lays down the provisions in respect of the utilization of input tax credit under GST. Input Tax Credit (ITC) is the tax credit businesses earn for the tax paid on inputs and services used in production or service provision. Let's consider an example: you purchase a set of software licenses for your company at Rs.10,000 and pay a GST of 18%, which amounts to Rs.1,800. That Rs.1,800 becomes your input tax credit, which you can use to offset future tax liabilities. To calculate ITC, multiply the GST rate by the total taxable value of your business purchases. The formula is simple.

Input Tax Credit = Total Taxable Value of Inputs (×) GST Rate. So if you bought raw materials for Rs.100, 000 at a GST rate of 18%, your input tax credit would be Rs.18, 000 (100,000 x 0.18).

ii) Re-Calculation of reversal: Rules 42 and Rule 43 of The Central Goods and Services Tax Rules, 2017 prescribes the manner of reversal of Input Tax Credit as called for in Section 17(1) and Section 17(2) of The Central Goods and Services Tax Act, 2017. The manner set down in the rules demands for reversal of Input Tax Credit in accordance with the formulae specified, for every tax period. In addition to the reversal made for every tax period, the reversal amount has to be finally recomputed on completion of the financial year but before the due date for furnishing of the return for the month of September following the end of the financial year to which such credit relates. If the re-calculated amount exceeds the amount so reversed in the financial year, such excess amount along with the applicable interest rate as specified in Section 50(1) of The Central Goods and Services Tax Act, 2017 shall be reversed in FORM GSTR- 3B or in DRC- 03 and in case, the amount so reversed in the financial year exceeds the amount so determined on re-calculation, the excess Input Tax Credit shall be claimed by the registered person. Such reversal or claim of the Input Tax Credit which is determined on re-computation is required to be done by the registered person up till the due date of return for the month not later than September following the end of the financial year to which such Input Tax Credit relates. Delaying this activity would entail interest obligation on the taxpayer. It is worthwhile to note that there has been no change in timelines for this compliance and as such the same needs to be done in the return to be filed for the period of September itself.

iii) Output tax under CGST & IGST Act: The definition of output tax given under section 2 (82) and 2 (18) of the CGST & IGST Act respectively, makes it clear that output tax will not include the amount of tax payable by person on reverse charge basis. Thus, whenever the

recipient is liable to pay tax, tax paid by him cannot be considered as output tax. When it comes to computing output tax liability under GST, the operation is surprisingly straightforward. You take the taxable value of the goods or services sold and perform a simple multiplication with the GST rate.

Output Tax Liability = Total Taxable Value of Supply (×) GST Rate

So, if you sold 10 laptops at Rs.50,000 each, the total taxable value would be Rs.500,000. With an 18% GST rate and total sales of Rs. 500,000, your output tax liability would be Rs.90,000, calculated as $500,000 \times 0.18$

In spite of complete digitization, the possibility of human errors cannot be completely wiped off. However, interestingly, there are no provisions relating to the filing of revised returns under Goods and Services Tax (GST) law. In the present article, we will look into the manner in which the adjustments of GST omission/ incorrect particulars can be done under GST; the time limit prescribed thereof along with recent amendments in the time limit; trade confusion prevalent and clarification thereof.

iv) Non-issuance of Credit notes post September: In case where the tax amount charged or the taxable value reflecting in tax invoice issued by a registered person for a supply is detected to exceed the value of such supply made or where the supply made is to be returned, the registered person in such cases is required to issue a Credit Note in accordance with Section 34 of The Central Goods and Services Act, 2017. Section 34(2) of The Central Goods and Services Tax Act, 2017 specifies that such credit note shall be furnished in the return not later than the thirtieth day of November following the end of financial year or furnishing of the relevant annual return, whichever is earlier, to which such supply relates. To rephrase it, it can be said that where the registered person desires to adjust the output tax liability owing to the reasons mentioned above, such credit note should be issued within the stipulated time period. The registered person should review the supplies made in the financial year and all the returns accepted as well to ensure that

19.4. DIFFERENCES BETWEEN THE DEBIT NOTE AND CREDIT NOTE IN GST

A Credit Note and Debit Note for the purpose of GST Law, can be Issued by the Registered Person who has issued the tax Invoice i.e. The Supplier. Any Such Document, by whatever name called (Debit Note or credit Note) when issued by the recipient to the registered supplier, will not be considered any document under GST Law.

19.4.1. Credit Note: Sec 2 (37) Credit note is issued when issuer owes money to someone (means issuer has to give money to someone) Someone here means the person to whom the Tax Invoice has been issued. Example: When a cash discount is allowed at the time of collecting payment from a customer in terms of an agreement entered in to prior to the supply, then supplier will issue a credit note to the customer to the extent of such cash discount. Now, (Original Amount Due – Credit Note) is the revised value of supply that the customer pays to the supplier. Note: To this extent the GST would also stands reduced. Note: In case of sales return also Credit Note can be issued by the supplier.

19.4.2. Time Limit for Issuing Credit Note: 1. the supplier can issue the credit note in respect of a tax invoice which has been issued by him earlier. Credit Note should be issued by earlier of the following dates: 1. Date of filing of Annual return in which the Original Tax Invoice was issued; OR 2. 30th September of the FY immediately succeeding the FY in which the original Tax Invoice was issued. Note: The Credit Note so issued must be declared in the returns for the month in which they are issued, by the supplier and by the recipient both (Means by Buyer and Seller Both) as per the above mentioned date. Note: The recipient must claim a reduction in ITC if he has claimed the same against the Original Tax Invoice. (In 3B)

Note: If goods or services supplied are founded deficient in that case also credit note can be issued. Note: Credit Note can also be issued if Tax charged in the Original Tax Invoice is higher than that tax Applicable on the Actual Value Supply.

19.4.3. Debit Note: Sec 2(38) Debit Note is issued when any money is OWED to the Issuer. (Means Issuer will receive some money from the Buyer/service Receiver). Example: If the supplier charges a penalty for the delayed payment of consideration , the supplier would issue a debit note for the amount of Penalty . Note: Now the original amount due PLUS the debit note amount is the revised Value of Supply that the customer pays the Supplier. Note: To this Extent the GST thereon would also stand Increased. Note: Debit Note will be issued when tax charged in the original tax Invoice is lower than that tax applicable on the Actual supply (Value of Original tax invoice + value of Debit Note). Note: Actual Value of supply is higher than that value stated in the original tax Invoice in case of Debit Note.

19.4.4. Time Limit for Issuing Debit Note : **No time limit has been prescribed for issuing a Debit Note.** The reason behind that is if a debit note is issued it will increase the value of supply and If value of supply will increase it will also increase the value of tax (GST) So, it will be beneficial for the Government due to which there is no time limit for Issuing the Debit Note. NOTE: 1. If goods are returned after the due date for credit note, a credit note can be issued by the supplier for reduction in the amount payable by the recipient. 2. However he cannot claim a reduction in tax liability. 3. On the other hand recipient of tax may be imposed to reverse the input tax credit that had been availed thereon (valeur of Credit Note). CONCLUSION: Debit Note will benefit the government in terms of Tax Collection but Credit Note will cause to reduce the tax liability So, Government has specified the time limit for issuing a Credit Note but has not specified the time limit for issuing a debit note.

19.4.5. Debit Note VS Credit Note in GST

Provisions	Earlier time limit	Amended time limit
Section 16(4) of the Central Goods and Services Tax Act, 2017	Earlier of the following –i) Due date of furnishing return under section 39 (i.e. Form GSTR-3B) for the month of September following the end of the Financial Year for which the invoice/ debit note pertains; or ii) Furnishing of relevant annual return.	Earlier of the following – i) 30th November following the end of the Financial Year for which the invoice/ debit note pertains; or ii) Furnishing of relevant annual return.
First proviso to section 37(3) of the Central Goods and Services Tax Act, 2017	Earlier of the following –i) Due date of furnishing return under section 39 for the month of September following the end of the Financial Year for which the details pertains; ii) Furnishing of relevant annual return.	Earlier of the following –i) 30th November following the end of the Financial Year for which details pertains; or ii) Furnishing of relevant annual return.
First proviso to section 39(9) of the Central Goods and Services Tax Act, 2017	Earlier of the following – i) Due date of furnishing return under section 39 (i.e. Form GSTR-3B) for the month or second quarter following the end of the Financial Year; or ii) The actual date of furnishing of the relevant annual return.	Earlier of the following –i) 30th November following the end of the Financial Year; or ii) The actual date of furnishing of the relevant annual return.
First proviso to	Earlier of the following – i) Due	Earlier of the following – i) 30th

section 52(6) of the Central Goods and Services Tax Act, 2017	date of furnishing of the statement (Form GSTR-8) for the month of September following the end of the Financial Year; or ii) The actual date of furnishing of the relevant annual statement.	November following the end of the Financial Year; or ii) The actual date of furnishing of the relevant <u>GST annual return</u> .
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It is important to note that all the above amendments were introduced vide the Finance Act, 2022. However, the said amendments are made effective only from 1st October 2022 vide notification no. 18/2022- Central Tax dated 28th September 2022.

19.5. ADJUSTMENT OF GST FOR THE FINANCIAL YEAR 2021-2022

(Last Chance for GST adjustments for year 2021-22 – September, October or November?)

GSTR1 & GSTR 3B return to be filed for the month of September is very significant as the taxpayers can rectify the errors, to the extent permissible, made / undisclosed in the returns filed during the previous financial year. The statutory timeline for the above irregularities to be rectified is the return to be filed for the month of September following the end of the financial year to which such error pertains. For instance, errors, if any, made in the returns filed for the FY 2021-2022 can be rectified up till the due date of filing of the return for the month of September '22. Taxpayers often confuse the time limit given in the law as till they file return for the month of September, when on the contrary the time limit so prescribed in the act is the due date of filing of return and not when the return is actually filed. So, the first key takeaway in this case would be to note that in order to avail / pass on the benefit of adjustment / rectification of previous year, the same should be filed within the due date.

However, it is pertinent to note that vide Notification No. 18/2022-Central Tax dated 28.09.2022, the Central Government has appointed 01.10.2022 as the date on which the provisions of sections 100 to 114, except clause (c) of section 110 and section 111, of the Finance Act, 2022 shall come into force, wherein the discussion is being limited to the extension of time limit for compliances in respect of a particular financial year has been extended and fixed as 30th November of the next financial year, or furnishing of the relevant annual return, whichever is earlier. Uncertainties arose as to whether the changes so brought in effect would be applicable for FY 2022-23 onwards or whether the same are also applicable to the compliances for FY 2021-22.

Further the provisions have been revised by substituting the words “due date of furnishing of the return under section 39 for the month of September”, by the words “thirtieth day of November”, which also added on to the uncertainty whether the timelines for the said compliances stand extended to the date of filing/ furnishing of the return/ statement for the month of November 2022 or the said compliances can be carried out in a return or the statement filed/furnished upto 30th November 2022.

The above has been clarified vide press release dated 4th October, 2022 wherein it is explained that the extended timelines are applicable to the compliances from FY 2021-22 onwards. It is also clarified that such compliances need to be carried out in the returns furnished upto 30th November and not for the return to be filed for November, i.e. in December. Although it is relevant to note that corresponding changes in the rules have not been made and as such the extension does not apply for all changes / adjustments to be done pertaining to the previous year. There would be a number of changes and adjustments which are to be/can be shown in the return, however the focus in this article is on those changes only which are brought forward from the previous financial year. Such various implications that need the attention of the stakeholders on which necessary action is required is being discussed herewith:

19.5. 1. Adjustment of GST: Omission/ Incorrect Particulars: Rectification of error or omission in furnishing details of outward supply: First proviso to Section 37(3) of The Central Goods and Services Tax Act, 2017 lays down the time limit within which error or omission in relation to outward supply, if any, may be rectified upon discovery of the same. As set out in the proviso, all such rectifications may be made up till the thirtieth day of November following the end of financial year or furnishing of the relevant annual return, whichever is earlier, to which such error or omission pertains. The error or omission may be in respect of invoices, debit notes, credit notes and revised invoices issued in relation to outward supplies made during any tax period. Therefore, taxpayers may suo-moto rectify any error or omission in the returns filed during a tax period along with payment of interest, in case where there is short payment of taxes, which has been discovered well within the established time limit. To ensure that all such errors or omissions have been identified, the taxpayers should perform yearly reconciliation of the outward supply recorded in the books of accounts with the outward supply disclosed and reported in the returns filed during the relevant tax period. Such reconciliation process when performed within the stipulated time-limit will safeguard the taxpayer from the hassle cause by unwarranted notices from the department on account of short disclosure of outward supply. A bonus in this case would be that the said purchaser/receiver of the goods/services would be eligible to claim such ITC being reported in the return now.

As the facility to rectify the GST returns is not available, the manner to carry out the adjustments of any omission/ incorrect particulars is provided under section 39(9)/ section 37(3)/ section 52(6) of the Central Goods and Services Tax Act, 2017. The said provisions are summarized in the table below

Particulars	Details
Manner to carry out the adjustments of any omission/ incorrect particulars	As and when the registered person discovers any omission/ incorrect particulars after furnishing respective GST returns. Then, such omission/ incorrect particulars can be adjusted while filing subsequent GST returns.
Circumstances when such adjustments cannot be undertaken	As and when the registered person discovers any omission/ incorrect particulars as a result of any <u>GST audit</u> or scrutiny or enforcement activity by the tax authorities or inspection.

It is important to note that the registered person cannot carry out such omission/ incorrect particulars after the prescribed time limit. The said prescribed time limit is explained hereunder.

19.5.2. . Adjustment of GST: Time Limit to Carry Out the Adjustments: Availing the benefit of Input Tax Credit within the set time-limit: Section 16(4) of The Central Goods and Services Tax Act, 2017 provides that the thirtieth day of November following the end of financial year or furnishing of the relevant annual return, whichever is earlier, shall be the time limit within which Input Tax Credit in respect of any invoice or debit note relating to the financial year should be claimed. As GSTR- 2B was implemented to bring the proposed matching concept of Input Tax Credit, the registered persons were restricted to avail credit every month to the extent, the said invoices were reflecting in these forms. Due to the concerned restriction existing owing to the implementation of matching concept, there may be instances where the registered person has not availed Input Tax Credit against certain invoices as they are not reflecting in form GSTR- 2B. Therefore, all registered person should perform yearly review of the Input Tax Credit recorded in their books of accounts along with data reflecting in GSTR- 2B to assess the Input Tax Credit to be availed by the thirtieth day

of November following the end of financial year for the previous financial year which they have not claimed in the relevant tax period. Performing such exercise will ensure that the taxpayers do not incur any loss on account of non-availment of eligible Input Tax Credit which otherwise will not be available to the registered person post the availment due date. The provisions covering the time limit for carrying out the adjustments of omission/ incorrect particulars along with the type of adjustment are tabulated hereunder:

19.5.3. The Type of Adjustment are Tabulated hereunder:

Provisions	Type of adjustment
Section 16(4) of the Central Goods and Services Tax Act, 2017	Adjustments relating to availment of input tax credit in respect of any invoice/ debit note.
First proviso to section 37(3) of the Central Goods and Services Tax Act, 2017	Adjustments relating to details of outward supplies furnished via return in Form GSTR-1 .
First proviso to section 39(9) of the Central Goods and Services Tax Act, 2017	Adjustments relating to details furnished via return in Form GSTR-3B .
First proviso to section 52(6) of the Central Goods and Services Tax Act, 2017	Adjustments relating to details furnished via statement furnished by a TCS in GST .

Recently, vide Finance Act, 2022, the time limit prescribed under all the above provisions are amended. Accordingly, the earlier time limit and the amended time limit of all the provisions are summarized hereunder

19.6. REFUND OF GST

In some cases, the taxpayer may have outstanding demand under GST Act. The GST Law may provide for adjusting the refund claim against any amount of un-stayed confirmed demand lying beyond the appeal period. The refund order may clearly state the amount so adjusted and particulars of the adjusted demand may also be stated in the annexure to be attached with the order. Format of Application for refund and Refund order can be designed accordingly. Suggested format is enclosed as Annexure-IV to VI to this document. **19.6.1. Step-by-Step Guide to GST Refund Claims:** The GST refund process requires the taxpayer to follow laborate steps, submit documents and declaration if required, to the GST authorities for claiming a GST refund. The refunds under GST can be the cash balance in the electronic cash ledger deposited in excess or tax paid by mistake or the accumulated Input Tax Credit (ITC) unable to be utilised for tax payments due to zero-rated sales or inverted tax structure. The forms in which a GST refund is claimed varies according to the type of GST refund being claimed. For instance, the refund of IGST in exports (with tax payment) can be claimed by only reporting details in the GSTR-1 and GSTR-3B. Whereas the refund of cash paid in excess of the electronic cash ledger can be claimed by applying in form RFD-01. Therefore, the steps or the process differs with the type of GST refund.

19.6.2. Steps to submit a refund pre-application form: Refund pre-application is a form that taxpayers must fill out to offer information about their business, Aadhaar number, income tax details, export data, expenditure and investment, and so on. Taxpayers must file this pre-application form for all types of GST refund. This form need not be signed and

cannot be edited once submitted. Hence, the user must be careful while entering the details. The two steps involved in filing the GST refund pre-application form are as follows:

Step 1: Log in to the GST portal, go to the 'Services' tab, click on 'Refunds' and select the 'Refund pre-application form' option.

Step 2: On the page displayed called 'Refund pre-application form', fill in the details asked, and click on 'Submit'. A confirmation of submission will be displayed on the screen. The following details must be reported: **Nature of business:** Manufacturer, merchant exporter, trader, and service provider; **Date of issue of IEC (only for exporters):** Those applying for a refund on account of exports (without payment of tax) must furnish the date of issue of the Import Export Certificate; Aadhaar number of the primary authorised signatory is mandatory.

19.7. REFUND PROCESS OF IGST PAID ON EXPORT OF GOODS (WITH TAX PAYMENT):

Exports are considered as 'Zero-rated supplies' under GST. Hence, the tax paid (IGST and cess, if any) is eligible for a refund by the exporter. Since the quantum of transactions can be huge in exporters, the GST portal facilitates a simpler process of GST refund. No separate application in form RFD-01 is required in this case. Certain conditions must be satisfied by the exporter for a GST refund. GSTR-1 must be filled up with shipping bill details related to export transactions (with payment of tax) and filed by the due date. Secondly, the summary details must be reported in item 3.1 (b) of Table 3.1 of GSTR-3B, the corresponding tax must be paid, and the return should be filed by the due date prescribed by GST law. In the export invoice data provided under Form GSTR-1, the correct and complete shipping bill number, shipping bill date, and port code details must be provided. It should be noted that export transactions carried out in a tax period must be filed in the GSTR-1 and GSTR-3B of the same relevant tax period. The GST authority considers the shipping bill as a refund application. The GST portal sends export details to the ICEGATE as disclosed on GSTR-1. Also, a confirmation that GSTR-3B was filed for the relevant tax period is sent. The Customs system compares the information on GSTR-1 to the information on their shipping bill and Export General Manifest (EGM) and then processes the refund. The ICEGATE system will share payment information with the GST portal once the refund payment has been credited to the taxpayers' accounts. The GST portal will share the information with the taxpayers by SMS and e-mail.

19.7.1. Steps to apply in form RFD-01 for most types of GST refund: RFD-01 must be filed for the following types of GST refund claims: a) Excess cash balance from the electronic cash ledger or excess tax payment; b) IGST paid on export of services (with payment of tax); c) Accumulated ITC due to exports of goods and services without payment of tax; d) Accumulated ITC due to supplies made to SEZ unit/SEZ developer (without payment of tax); e) ITC accumulated due to inverted tax structure (tax on inputs higher than a tax on outputs); f) If a recipient of deemed exports has paid the tax on inward supplies that qualify as deemed exports and has claimed ITC for the tax paid in their electronic credit ledger, the recipient of these deemed exports is eligible for a refund of the tax amount paid (on a condition that the supplier of such deemed exports does not claim a refund); g) Tax paid on supplies made to SEZ units/SEZ developers (with payment of tax); h) Tax paid on an intrastate supply later held as interstate supply and vice versa; i) If a supplier of deemed exports paid tax on deemed supplies without charging and collecting tax from the buyer of deemed exports, then he would be eligible to claim it as a refund (on a declaration that the recipient or buyer of such deemed exports does not claim a refund); j) On account of Assessment or Provisional Assessment or Appeal or any other order; k) There is also a

provision for claiming a refund on 'Any other ground' in RFD-01. Care must be taken to declare consistent information of the invoices in both GSTR-1, where it applies, and RFD-01. A certificate by a chartered accountant/cost accountant needs to be submitted along in certain cases. Follow the below steps to file a refund application in RFD-01:

Step 1: Log in to the GST portal and go to the 'Services' tab, click on 'Refunds' and select the 'Application of refund' option.

Step 2: In the page that appears, select the reason for refund or the type of refund and click on 'Create refund application'.

Step 3: Select the period for which a refund is to be applied and select 'Yes' or 'No' on the dialogue box- 'If you want to file a nil refund'.

Step 4: Enter the details on the relevant page that gets displayed, based on the type of refund selected in the previous step.

19.7.2. GST refund process for embassies and international organizations: There are two ways in which refunds can be claimed: a) Use GSTR-11 to generate a refund application in form RFD-10; b) Obtain the RFD-10 form on the dashboard after logging into the GST portal. In the first case, go to GSTR-11 already filed by selecting the tax period/quarter. Click on the 'Generate RFD-10' button. Select the embassy or organisation radio button and click on the 'Create' button. Table 'Details of the tax paid on purchases as reported under GSTR-11' will have amounts as auto-populated from the return of the respective period, editable as well.

19.8. WHAT HAPPENS AFTER THE GST REFUND IS APPLIED

The application filed by a refund applicant or taxpayer will appear on the dashboard of the tax officer or refund processing officer as a pending work item. He or she will verify and scrutinise the application along with the documents. Filed applications can be tracked using the "Track Application Status" under Refunds. After inspection by a GST authorities refund amount will be credited to the applicant bank account. Following will be the officer's actions:

i) Provisional refund can be granted in form RFD-04 for certain types of refunds. It is to be issued within seven days from the acknowledgement date with at least 90% of the amount of the refund claimed granted.

ii) Acknowledgement in form RFD-02 is issued within 15 days from filing the refund of the application if it is complete in all aspects.

iii) There is an option introduced to withdraw the application of refund by the applicant in form RFD-01W. Once the withdrawal application is submitted, the refund, which was debited to the taxpayer's electronic credit or cash ledger upon the filing of the refund application, will be credited to the respective ledger.

iv) Otherwise, a deficiency memo in form RFD-03 can be issued by the officer within the same time limit to rectify any deficiencies by the applicant. At this point, an auto re-credit of the amount of refund claimed in the electronic cash/ credit ledger will happen if the ledger had been debited at the time of filing the refund. A fresh application must be submitted in such cases.

v) Notice to seek clarification in form RFD-08 can be issued by the officer for rejecting the application or recovery of refund granted by mistake. In such cases, the applicant must reply to it within 15 days in form RFD-09.

vi) A sanction or rejection order shall be passed by the officer in form RFD-06. Following this, in cases of sanction, a payment order in form RFD-05 is passed. Alternatively, RFD-05 is sometimes issued after RFD-04. vii) In certain cases, the officer may pass an order for withholding refund sanctioned in form RFD-07 (part-B). Here, RFD-05 is never issued. viii)

Order to re-credit the refund from the taxpayer's electronic cash or credit ledger in cases of rejection or when the provisional refund was granted in form PMT-03.

19.9. SUMMARY

A GST return is a document containing details of all income/sales and/or expenses/purchases that a GST-registered taxpayer (every GSTIN) is required to file with the tax administrative authorities. This is used by tax authorities to calculate net tax liability. Under the GST regime, regular businesses having more than Rs.5 crore as annual aggregate turnover (and taxpayers who have not opted for the QRMP scheme) have to file two monthly returns and one annual return. This amounts to 25 returns each year. There are 13 returns under GST. They are the GSTR-1, GSTR-3B, GSTR-4, GSTR-5, GSTR-5A, GSTR-6, GSTR-7, GSTR-8, GSTR-9, GSTR-10, GSTR-11, CMP-08, and ITC-04. However, all returns do not apply to all taxpayers. Taxpayers file returns based on the type of taxpayer/type of registration obtained. Return filing is mandatory under GST. Even if there is no transaction, you must file a nil return. Interest is 18% per annum. It has to be calculated by the taxpayer on the amount of outstanding tax to be paid. Indian businesses are in for a learning curve, the payment process under Goods and Services Tax (GST) differs drastically from current procedures.

19.10. TECHNICAL TERMS

- 1. CGST:** Central GST [CGST] is the GST, to be levied by the Centre, on intra-state businesses.
- 2. SGST:** State GST [SGST] is the GST, to be levied by the State, on intra-state businesses.
- 3. IGST:** Integrated GST [IGST] is the GST, to be levied by the Centre, on inter-state businesses and imports.
- 4. GST Tax Invoice:** GST Tax Invoice is the GST compliant tax document to be issued by the registered supplier to the recipient of taxable goods and services on which GST has been charged.
- 5. GSTIN:** GSTIN is a unique PAN-based 15-digit number given to a taxpayer registered under the GST law.
- 6. GSTR 1:** GSTR 1 (GST return form) used for furnishing the details of outward supplies (sales) on the common portal.
- 7. GSTR 2:** GSTR 2 (GST return form) for providing the details on inward supplies (purchases) on the GST portal.
- 8. GSTR 3:** GST return form used by a normal taxpayer for entering the details of tax liability and making payment of tax on the GST Portal.
- 9. GSTR 3B:** GSTR 3B (GST return form) specially issued for filing of GST returns for the months of July and August 2017.
- 10. GSTR 4:** GSTR 4 (GST return form) to be used by composition registered dealers for filing their quarterly GST returns on the portal.
- 11. GSTR 5:** GSTR 5 (GST return form) to be used by registered non-resident taxpayers to file monthly GST returns.

19.11. SELF -ASSESSMENT QUESTIONS

1. Define GST and explain types of GST Returns?
2. Classify different types of GST returns?
3. What is GST payment and Describe GST payment process?
4. Describe GST adjustment and refund of GST?
5. Explain refund process of IGST paid on export of goods?

19.12. SUGGESTED READINGS

1. Goods and Services Tax in India- Notifications on different dates
2. GST Bill 2012
3. The Central Goods and Services Tax Act, 2017, No.12 of 2017, Published by Authority, Ministry of Law and Justice, New Delhi, 12 April, 2017
4. Background Material on Model GST Law, SahityaBhavan Publications, Hospital Road, Agra-383 003
5. The Central Goods and Services Tax Act, 2017, No.12 of 2017 published by Authority, Ministry of Law and Justice , New Delhi, 12th April, 2017.
6. CA Poonam Gandhi, December 5, 2022- Updated on December 15th, 2022
7. Aditya Dhanuka| Goods and Services Tax - Articles- Featured| Download PDF 06 Oct 2022 28,770 Views 3 comments
8. Read more at: <https://taxguru.in/goods-and-service-tax/chance-gst-adjustments-year-2021-22-september-october-november.html>
9. Read more at: <https://taxguru.in/goods-and-service-tax/credit-note-debit-note-gst-regime.html>
10. Credit Note and Debit Note under GST Regime CA Vijay Mittal| Goods and Services Tax - Articles| Download PDF 23 May 2020 94,206 Views 6 comments

DR. MEERAVALI SHAIK

LESSON -20

GST ACT, 2017 -COMPENSATION TO STATES

Aims and Objectives

After studying this lesson students should be able:

- To know about Calculation and release of compensation under GST Act,2017
- To understand regarding Levy and collection of cess under GST Act,2017
- To reveal about Returns, payments and refunds & Crediting proceeds of cess to Fund under GST Act,2017

Structure

20.1. Introduction

20.2. Definitions: The Gazette of India Extraordinary [Part II]

20.3. Projected growth rate

20.4. Base year

20.5. Base year revenue

20.6. Projected revenue for any year

20.7. Calculation and release of compensation

20. 8. Levy and collection of cess

20.9. Returns, payments and refunds

20.10. Crediting proceeds of cess to Fund

20.11. Other provisions relating to Cess

20.12. Power to make rules

20. 13. Laying of rules before Parliament

20.14. Summary

20.15. Technical Terms

20.16. Self – Assessment Questions

20.17. Suggested Readings

20.1. INTRODUCTION

GST is known as the Goods and Services Tax. It is an indirect tax which has replaced many indirect taxes in India such as the excise duty, VAT, services tax, etc. The Goods and Service Tax Act was passed in the Parliament on 29th March 2017 and came into effect on 1st July 2017. In other words, Goods and Service Tax (GST) is levied on the supply of goods and services. Goods and Services Tax Law in India is a comprehensive, multi-stage, destination-based tax that is levied on every value addition. GST is a single domestic indirect tax law for the entire country. Compensation noun something (such as money) given or received as payment or reparation (as for a service or loss or injury) compensation noun (psychiatry) a defense mechanism that conceals your undesirable shortcomings by exaggerating desirable behaviors recompense, compensation noun the act of compensating for service or loss or injury.

What is GST Act 2017? [12th April, 2017.] An Act to provide for compensation to the States for the loss of revenue arising on account of implementation of the goods and services tax in

pursuance of the provisions of the Constitution (One Hundred and First Amendment) Act, 2016. Act, 2017. (2) It extends to the whole of India. GST Compensation Cess (under Section 8 of the Act) will be levied on all intra-State and inter-State supplies of goods or services or both, including import of goods. The Cess would not be leviable on supplies made by a person who has opted for composition levy. In accordance with the GST (Compensation to States) Act of 2017, a compensation cess is imposed on five goods that are deemed to be “sin” or “luxury,” such as Pan Masala, Tobacco, and Automobiles. To compensate states for any revenue loss, the compensation cess fund was established.

The Goods and Service Tax (Compensation to States) Act, 2017 provides for a mechanism to compensate the States on account of loss of revenue which may arise due to implementation of the Goods and Services Tax read together with the Constitutional (one Hundred and First Amendment) Act, 2016, for a period of 5 years. Ministry of Law and Justice (Legislative Department) New Delhi, the 12th April, 2017 The following Act of Parliament received the assent of the President on the 12th April, 2017, and is hereby published for general information:

THE GOODS AND SERVICES TAX (COMPENSATION TO STATES) ACT, 2017 No. 15 OF 2017 [12th April, 2017.] An Act to provide for compensation to the States for the loss of revenue arising on account of implementation of the goods and services tax in pursuance of the provisions of the Constitution (One Hundred and First Amendment) Act, 2016. BE it enacted by Parliament in the Sixty-eighth Year of the Republic of India as follows:

20.1.1. Short title, extent and commencement

- (1) This Act may be called the Goods and Services Tax (Compensation to States) Act, 2017.
- (2) It extends to the whole of India.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

20.2. DEFINITIONS: THE GAZETTE OF INDIA EXTRAORDINARY [PART II]

In this Act, unless the context otherwise requires,

- (a) “Central tax” means the central goods and services tax levied and collected under the Central Goods and Services Tax Act;
- (b) “Central Goods and Services Tax Act” means the Central Goods and Services Tax Act, 2017;
- (c) “cess” means the goods and services tax compensation cess levied under section 8;
- (d) “Compensation” means an amount, in the form of goods and services tax compensation, as determined under section 7;
- (e) “Council” means the Goods and Services Tax Council constituted under the provisions of article 279A of the Constitution; (f) “Fund” means the Goods and Services Tax Compensation Fund referred to in section 10; (g) “input tax” in relation to a taxable person, means, (i) cess charged on any supply of goods or services or both made to him; (ii) cess charged on import of goods and includes the cess payable on reverse charge basis;
- (h) “Integrated Goods and Services Tax Act” means the Integrated Goods and Services Tax Act, 2017;
- (i) “Integrated tax” means the integrated goods and services tax levied and collected under the Integrated Goods and Services Tax Act;
- (j) “Prescribed” means prescribed by rules made, on the recommendations of the Council, under this Act;
- (k) “Projected growth rate” means the rate of growth projected for the transition period as per section 3;

- (l) “Schedule” means the Schedule appended to this Act;
- (m) “State” means,- (i) for the purposes of sections 3, 4, 5, 6 and 7 the States as defined under the Central Goods and Services Tax Act; and (ii) for the purposes of sections 8, 9, 10, 11, 12, 13 and 14 the States as defined under the Central Goods and Services Tax Act and the Union territories as defined under the Union Territories Goods and Services Tax Act;
- n) “State tax” means the State goods and services tax levied and collected under the respective State Goods and Services Tax Act;
- (o) “State Goods and Services Tax Act” means the law to be made by the State Legislature for levy and collection of tax by the concerned State on supply of goods or services or both;
- (p) “Taxable supply” means a supply of goods or services or both which is chargeable to the cess under this Act;
- (q) “Transition date” shall mean, in respect of any State, the date on which the State Goods and Services Tax Act of the concerned State comes into force;
- (r) “Transition period” means a period of five years from the transition date; and
- (s) “Union Territories Goods and Services Tax Act” means the Union Territories Goods and Services Tax Act, 2017.

The words and expressions used and not defined in this Act but defined in the Central Goods and Services Tax Act and the Integrated Goods and Services Tax Act shall have the meanings respectively assigned to them in those Acts. www.taxguru.in SEC. 1]

The Goods and Service Tax (Compensation to States) Act, 2017 provides for a mechanism to compensate the States on account of loss of revenue which may arise due to implementation of the Goods and Services Tax read together with the Constitutional (one Hundred and First Amendment) Act, 2016, for a period of 5 years.

This Act, inter-alia provides:

- (a) That the base year during the transition period shall be reckoned as the financial year 2015-16 for the purpose of calculating compensation amount payable to the States;
- (b) That the revenue proposed to be compensated would consist of revenues from all taxes that stands subsumed into the GST law, as audited by the CAG;
- (c) For reckoning the growth rate of revenue subsumed for a State at 14% per annum; (d) That the compensation will be released bi-monthly based on the provisional numbers furnished by the Central Accounting Authorities and the final adjustment to be done after the accounts are subjected to audit by CAG;
- (e) That the revenue foregone on account of grant of exemption in the 11 special categories State (Article 279A), be counted for the purpose of determining revenue for the base year 2015-16;
- (f) That the revenue of States directly devolved to Mandi / Municipalities would be considered as revenue subsumed;
- (g) Levy of a cess over and above the GST on certain notified goods to compensate States for 5 years on account of revenue loss suffered by them;
- (h) That the proceeds of the cess will be utilised to compensate States that warrant payment of compensation;
- (i) That 50% of the amount remaining unutilised in the fund at the end of the fifth year will be transferred to the Centre and the balance 50% would be distributed amongst the State and Union Territories in the ratio of total revenues from SGST / UTGST of the fifth year; Relevant Sections of the GST Compensation Act warranting attention are reproduced below:

20.3. PROJECTED GROWTH RATE

The projected nominal growth rate of revenue subsumed for a State during the transition period shall be fourteen per cent. Per annum.

20.4. BASE YEAR

For the purpose of calculating the compensation amount payable in any financial year during the transition period, the financial year ending 31st March, 2016, shall be taken as the base year.

20.5. BASE YEAR REVENUE

(1) Subject to the provision of sub-sections (2), (3), (4), (5) and (6), the base year revenue for a State shall be the sum of the revenue collected by the State and the local bodies during the base year, on account of the taxes levied by the respective State or Union and net of refunds, with respect to the following taxes, imposed by the respective State or Union, which are subsumed into goods and services tax, namely:— (a) the value added tax, sales tax, purchase tax, tax collected on works contract, or any other tax levied by the concerned State under the erstwhile entry 54 of List-II (State List) of the Seventh Schedule to the Constitution;

(b) The central sales tax levied under the Central Sales Tax Act, 1956;

(c) the entry tax, octroi, local body tax or any other tax levied by the concerned State under the erstwhile entry 52 of List-II (State List) of the Seventh Schedule to the Constitution;

(d) the taxes on luxuries, including taxes on entertainments, amusements, betting and gambling or any other tax levied by the concerned State under the erstwhile entry 62 of List-II (State List) of the Seventh Schedule to the institution; (e) the taxes on advertisement or any other tax levied by the concerned State under the erstwhile entry 55 of List-II (State List) of the Seventh Schedule to the Constitution;

(f) the duties of excise on medicinal and toilet preparations levied by the Union but collected and retained by the concerned State Government under the erstwhile article 268 of the Constitution;

(g) any cess or surcharge or fee leviable under entry 66 read with entries 52, 54, 55 and 62 of List-II of the Seventh Schedule to the Constitution by the State Government under any Act notified under sub-section (4), prior to the commencement of the provisions of the Constitution (One Hundred and First Amendment) Act, 2016:

Provided that the revenue collected during the base year in a State, net of refunds, under the following taxes shall not be included in the calculation of the base year revenue for that State, namely:—

(a) any taxes levied under any Act enacted under the erstwhile entry 54 of List-II (State List) of the Seventh Schedule to the Constitution, prior to the coming into force of the provisions of the Constitution (One Hundred and First Amendment) Act, 2016, on the sale or purchase of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption;

(b) tax levied under the Central Sales Tax Act, 1956, on the sale or purchase of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption;

(c) any cess imposed by the State Government on the sale or purchase of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption; and

(d) The entertainment tax levied by the State but collected by local bodies, under any Act enacted under the erstwhile entry 62 of List-II (State List) of the Seventh Schedule to the

Constitution, prior to coming into force of the provisions of the Constitution (One Hundred and First Amendment) Act, 2016.

(2) In respect of the State of Jammu and Kashmir, the base year revenue shall include the amount of tax collected on sale of services by the said State Government during the base

(3) In respect of the States mentioned in sub-clause (g) of clause (4) of article 279A of the Constitution, the amount of revenue foregone on account of exemptions or remission given by the said State Governments to promote industrial investment in the State, with respect to such specific taxes referred to in sub-section (1), shall be included in the total base year revenue of the State, subject to such conditions as may be prescribed.

(4) The Acts of the Central Government and State Governments under which the specific taxes are being subsumed into the goods and services tax shall be such as may be

(5) The base year revenue shall be calculated as per sub-sections (1), (2), (3) and (4) on the basis of the figures of revenue collected and net of refunds given in that year, as audited by the Comptroller and Auditor-General of India.

(6) In respect of any State, if any part of revenues mentioned in sub-sections (1), (2), (3) and (4) are not credited in the Consolidated Fund of the respective State, the same shall be included in the total base year revenue of the State, subject to such conditions as may be prescribed.

20.6. PROJECTED REVENUE FOR ANY YEAR

The projected revenue for any year in a State shall be calculated by applying the projected growth rate over the base year revenue of that State. Illustration.—If the base year revenue for 2015-16 for a concerned State, calculated as per section 5 is one hundred rupees, then the projected revenue for financial year 2018-19 shall be as follows— Projected Revenue for 2018-19=100 (1+14/100)³

20.7. CALCULATION AND RELEASE OF COMPENSATION

(1) The compensation under this Act shall be payable to any State during the transition period.

(2) The compensation payable to a State shall be provisionally calculated and released at the end of every two months period, and shall be finally calculated for every financial year after the receipt of final revenue figures, as audited by the Comptroller and Auditor-General of India: Provided that in case any excess amount has been released as compensation to a State in any financial year during the transition period, as per the audited figures of revenue collected, the excess amount so released shall be adjusted against the compensation amount payable to such State in the subsequent financial year.

(3) The total compensation payable for any financial year during the transition period to any State shall be calculated in the following manner, namely:— (a) the projected revenue for any financial year during the transition period, which could have accrued to a State in the absence of the goods and services tax, shall be calculated as per section 6; (b) the actual revenue collected by a State in any financial year during the transition period shall be— (i) the actual revenue from State tax collected by the State, net of refunds given by the said State under Chapters XI and XX of the State Goods and Services Tax Act; (ii) the integrated goods and services tax apportioned to that State; and (iii) any collection of taxes on account of the taxes levied by the respective State under the Acts specified in sub-section (4) of section 5, net of refund of such taxes, as certified by the Comptroller and Auditor-General of India; (c) the total compensation payable in any financial year shall be the difference between the projected revenue for any financial year and the actual revenue collected by a State referred to in clause (b).

(4) The loss of revenue at the end of every two months period in any year for a State during the transition period shall be calculated, at the end of the said period, in the following manner, namely:— (a) the projected revenue that could have been earned by the State in absence of the goods and services tax till the end of the relevant two months period of the respective financial year shall be calculated on a pro-rata basis as a percentage of the total projected revenue for any financial year during the transition period, calculated in accordance with section 6. Illustration.— If the projected revenue for any year calculated in accordance with section 6 is one hundred rupees, for calculating the projected revenue that could be earned till the end of the period of ten months for the purpose of this sub-section shall be $100 \times (5/6) = \text{Rs.}83.33$; (b) the actual revenue collected by a State till the end of relevant two months period in any financial year during the transition period shall be— (i) the actual revenue from State tax collected by the State, net of refunds given by the State under Chapters XI and XX of the State Goods and Services Tax Act; (ii) the integrated goods and services tax apportioned to that State, as certified by the Principal Chief Controller of Accounts of the Central Board of Excise and Customs; and (iii) any collection of taxes levied by the said State, under the Acts specified in sub-section (4) of section 5, net of refund of such taxes; (c) the provisional compensation payable to any State at the end of the relevant two months period in any financial year shall be the difference between the projected revenue till the end of the relevant period in accordance with clause (a) and the actual revenue collected by a State in the said period as referred to in clause (b), reduced by the provisional compensation paid to a State till the end of the previous two months period in the said financial year during the transition period.

(5) In case of any difference between the final compensation amount payable to a State calculated in accordance with the provisions of sub-section (3) upon receipt of the audited revenue figures from the Comptroller and Auditor-General of India, and the total provisional compensation amount released to a State in the said financial year in accordance with the provisions of sub-section (4), the same shall be adjusted against release of compensation to the State in the subsequent financial year.

(6) Where no compensation is due to be released in any financial year, and in case any excess amount has been released to a State in the previous year, this amount shall be refunded by the State to the Central Government and such amount shall be credited to the Fund in such manner as may be prescribed.

20. 8. LEVY AND COLLECTION OF CESS

(1) There shall be levied a cess on such intra-State supplies of goods or services or both, as provided for in section 9 of the Central Goods and Services Tax Act, and such inter-State supplies of goods or services or both as provided for in section 5 of the Integrated Goods and Services Tax Act, and collected in such manner as may be prescribed, on the recommendations of the Council, for the purposes of providing compensation to the States for loss of revenue arising on account of implementation of the goods and services tax with effect from the date from which the provisions of the Central Goods and Services Tax Act is brought into force, for a period of five years or for such period as may be prescribed on the recommendations of the Council: Provided that no such cess shall be leviable on supplies made by a taxable person who has decided to opt for composition levy under section 10 of the Central Goods and Services Tax Act.

(2) The cess shall be levied on such supplies of goods and services as are specified in column (2) of the Schedule, on the basis of value, quantity or on such basis at such rate not exceeding the rate set forth in the corresponding entry in column (4) of the Schedule, as the Central

Government may, on the recommendations of the Council, by notification in the Official Gazette, specify: Provided that where the cess is chargeable on any supply of goods or services or both with reference to their value, for each such supply the value shall be determined under section 15 of the Central Goods and Services Tax Act for all intra-State and inter-State supplies of goods or services or both: Provided further that the cess on goods imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975, at the point 51 of 1975. When duties of customs are levied on the said goods under section 12 of the Customs Act, 1962, on a value determined under the Customs Tariff Act, 1975. 52 of 1962.

20.9. RETURNS, PAYMENTS AND REFUNDS

(1) Every taxable person, making a taxable supply of goods or services or both, payments and shall— (a) pay the amount of cess as payable under this Act in such manner; (b) furnish such returns in such forms, along with the returns to be filed under the Central Goods and Services Tax Act; and (c) apply for refunds of such cess paid in such form, as may be prescribed.

(2) For all purposes of furnishing of returns and claiming refunds, except for the form to be filed, the provisions of the Central Goods and Services Tax Act and the rules made thereunder, shall, as far as may be, apply in relation to the levy and collection of the cess leviable under section 8 on all taxable supplies of goods or services or both, as they apply in relation to the levy and collection of central tax on such supplies under the said Act or the rules made there under.

20.10. CREDITING PROCEEDS OF CESS TO FUND

(1) The proceeds of the cess leviable under section 8 and such other amounts as may be recommended by the Council, shall be credited to a non-lapsable Fund known as the Goods and Services Tax Compensation Fund, which shall form part of the public account of India and shall be utilised for purposes specified in the said section.

(2) All amounts payable to the States under section 7 shall be paid out of the Fund.

(3) Fifty per cent. of the amount remaining unutilised in the Fund at the end of the transition period shall be transferred to the Consolidated Fund of India as the share of Centre, and the balance fifty per cent. shall be distributed amongst the States in the ratio of their total revenues from the State tax or the Union territory goods and services tax, as the case may be, in the last year of the transition period.

(4) The accounts relating to Fund shall be audited by the Comptroller and Auditor-General of India or any person appointed by him at such intervals as may be specified by him and any expenditure in connection with such audit shall be payable by the Central Government to the Comptroller and Auditor-General of India.

(5) The accounts of the Fund, as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be laid before each House of Parliament.

20.11. OTHER PROVISIONS RELATING TO CESS.

(1) The provisions of the Central Goods and Services Tax Act, and the rules made there under, including those relating to assessment, input tax credit, non-levy, short-levy, interest, appeals, offences and penalties, shall, as far as may be, mutatis mutandis, apply, in relation to the levy and collection of the cess leviable under section 8 on the intra-State supply of goods and services, as they apply in relation to the levy and collection of central tax on such intra-State

supplies under the said Act or the rules made there under. (2) The provisions of the Integrated Goods and Services Tax Act, and the rules made there under, including those relating to assessment, input tax credit, non-levy, short-levy, interest, appeals, offences and penalties, shall, mutatis mutandis, apply in relation to the levy and collection of the cess leviable under section 8 on the inter-State supply of goods and services, as they apply in relation to the levy and collection of integrated tax on such inter-State supplies under the said Act or the rules made there under: Provided that the input tax credit in respect of cess on supply of goods and services leviable under section 8, shall be utilised only towards payment of said cess on supply of goods and services leviable under the said section.

20.12. POWER TO MAKE RULES

(1) The Central Government shall, on the recommendations of the Council, by notification in the Official Gazette, make rules for carrying out the provisions of this Act. (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:— (a) the conditions which were included in the total base year revenue of the States, referred to in sub-clause (g) of clause (4) of article 279A of the Constitution, under sub-section (3) of section 5; (b) the conditions subject to which any part of revenues not credited in the Consolidated Fund of the respective State shall be included in the total base year revenue of the State, under sub-section (6) of section 5; (c) the manner of refund of compensation by the States to the Central Government under sub-section (6) of section 7; (d) the manner of levy and collection of cess and the period of its imposition under sub-section (1) of section 8; (e) the manner and forms for payment of cess, furnishing of returns and refund of cess under sub-section (1) of section 9; and (f) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, by rules.

20.13. LAYING OF RULES BEFORE PARLIAMENT

Every rule made under this Act by the Central Government shall be laid, as soon as may be after it is made, 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 both Houses agree that the rule should not be made, the rule 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.

20.13.1. Glossary of Standard Terms of Parliamentary Procedure: Agenda (or Order of Business) - The regular program of procedure of an organization.

Amend - To alter a motion by addition, deletion, or in any other way.

Chair - The Chairman or presiding officer. "Addressing the Chair" means speaking to the presiding officer. Being "Recognized by the Chair" means being given permission to speak further.

20.13.2. Power of Chair - The Chairman has the following authority:

- a. to decide in what order speakers shall be recognized
- b. to refuse to recognize members offering dilatory, absurd, or frivolous motions
- c. to restrain speakers within the limits of the rules
- d. to enforce good decorum

- e. to appoint committees
- f. to decide points of order
- g. to vote in cases where the vote would make or break a tie
- h. The chair should avoid influencing a vote by his own comment on a motion.

20.13.3. Actions of the chair are subject to appeal.

- i) Commit - To refer to a committee
- ii) Committee of the Whole - The meeting, on a motion duly made, may "resolve itself into a committee of the whole."
- iii) Division - When all those voting stand in separate "for" and "against" groups.
- iv) Division of Question - To separate a motion into different parts that are considered individually.
- v) Floor - The privilege of speaking before the assembly.
- vi) Indefinite Postponement - The object is not merely to "postpone" but in effect to reject the motion.
- vii) Informal Consideration - When a member moves for "informal consideration," and the motion is adopted, the meeting lays aside formal rules, and allows each committee member to speak on the subject under consideration.
- viii) Motion - A formal proposal to a meeting that it take certain action.
- ix) Order - An expression of the will of the assembly, in the form of a command.
- x) Order of the Day - A motion to drop the present discussion, and that the chairman announce the next matter to be taken up in accordance with the organization's customary business routine.
- Parliamentary Inquiry - An investigation to determine the proper course of procedure.
- xi) Privilege - The privileges and rights of the meeting in connection with matters of physical comfort or ineligibility or misconduct of a member in the meeting.
- xii) Question - The question is a proposition or motion that has been placed before the meeting for action by the chairman. To "move the question" is to demand that the chairman take a vote on the current motion.
- xiii) Resolution - An act of the assembly that declares facts, expresses opinion, but does not command.
- xiv) Suspension of Rules - To allow something to be done that would otherwise violate the meeting rules, but is not in conflict with the constitution or by-laws, or with the fundamental principles of parliamentary law.
- xv) Table - To delay action on a motion

20.13.4. GST Compensation Act:

I. Levy of cess: GST Compensation Cess (under Section 8 of the Act) will be levied on all intra-State and inter-State supplies of goods or services or both, including import of goods. The following supplies will be liable at the rate specified below:

Pan Masala (60% ad valorem) Tobacco and Tobacco products (Rs. 4,170 per 1,000 sticks or 290% ad valorem or a combination thereof) Coal, briquettes and similar solid fuels (Rs. 400 per tonne) Aerated Water (12% ad valorem) Used and old Motor vehicles, Ambulance, Cars for physically handicapped persons, Electrically operated vehicles, Three wheeled vehicles, Motor vehicles of engine capacity not exceeding 1500cc and of length not exceeding 4000 mm (NIL) Motor cars and passenger motor vehicles (15% ad valorem), SUVs (22% ad valorem)

2. The Cess would not be leviable on supplies: The Cess would not be leviable on supplies made by a person who has opted for composition levy. Those supplies that are liable to tax with

reference to their value (i.e. all supplies except coal, briquettes and similar solid fuels), are to be determined based on the Valuation provisions under Section 15 of the CGST Act. The cess levied under this Act would be payable over and above the CGST, SGST/UTGST and IGST tax leviable on. Cess would be levied on whole value exclusive of GST i.e. for Transaction value as per Section 15 is Rs. 100 and GST Rate is 18% then Cess would be levied on Rs. 100 Calculation would be Rs. 100+18% GST+ % Compensation Cess (as specified).

3. Dealer of second hand goods: The levy of Cess has been exempted on intra-State procurement of second hand goods from an un-registered supplier when purchased by a registered person dealing in buying and selling of second hand goods and who pays the Cess on the margin basis of computation envisaged under rule 32(5) of the CGST Rules, 2017. The Central Government reduced the rate of Cess at 65% of the Cess which is otherwise payable on supply of motor vehicles which are purchased or leased before Goods and Services Tax (Compensation to States) Act, 2017 GST Compensation Act 699 July 1, 2017 subject to the condition that such supplier has not availed input tax credit of Central Excise Duty or VAT or any other taxes paid thereon w.e.f. 13.10.2017. As a further relief measure, the Central Government has prescribed 'NIL' rate of Cess on supply of all old and used motor vehicles on which supplier has not availed CENVAT or VAT credit under the earlier regime or input tax credit in GST regime w.e.f. 25.01.2018.

4. The scope and applicability of the notifications: The scope and applicability of the notifications issued in respect of old and used motor vehicles (MV), can be better understood by a comparative analysis as summarised below: Particulars Notification No. 7/2017– Compensation Cess (Rate) dated 13th October, 2017 Notification No. 1/2018 Compensation Cess (Rate) dated 25th January, 2018 Scope a. MV purchased and leased prior to July 1, 2017 which are continued to be leased in GST regime b. MV purchased prior to July 1, 2017 and supplied in GST regime All old and used MVs Note: 1. Not applicable on lease transactions. 2. Can be purchased either before or after July 1, 2017 Rate of Cess 65% of Cess payable NIL Condition Input tax credit (ITC) of Central Excise duty, VAT or any other taxes paid is not taken ITC not taken in GST regime or CENVAT credit or VAT credit not availed in earlier regime Refund of Cess upon Export: Exporter will be eligible to claim refund of Cess paid under the Act on export of goods on the similar lines as refund of IGST paid on exports. Further, Cess will not be charged on goods exported by an exporter under bond / LUT and refund of input tax credit of Cess relating to goods exported will be available on similar lines as refund of input taxes in relation to zero-rated supplies. II. Determination of Base Year Revenue: The Compensation amount to be paid in any year during the transition period is to be computed taking the base year as 2015-16 only.

5. Taxes imposed by State / Union: The provisions of Section 5(1) of the said Act lists the taxes imposed by State / Union that stand subsumed into the GST while the proviso to Section 5(1) lists out the taxes that shall not be included for calculation of base year revenue. The revenue collected by the States on account of the said taxed detailed in Section 5(1) of the Act alone would be considered for the determination of Base Year Revenue; Goods and Services Tax (Compensation to States) Act, 2017 700 BGM on GST Acts & Rules The revenue collected would always be reckoned as 'net of refunds'; The transition period will be the period of 5 years from the date when the respective SGST Acts commence. III. Input Tax Credit and returns: Input Tax Credit on inward supplies liable to cess can be utilized only for payment of cess on outward supplies liable to cess under the Act. A taxable person effecting supplies chargeable to

cess is required to file returns along with the returns prescribed under the CGST Act. IV. General All provisions of CGST Act and IGST Act including input tax credit, assessment, offences, penalties, interest, non-levy and short-levy will apply in relation to the levy and collection of cess on intra-State and inter-State supply, respectively. Note: The relevant notifications on Compensation Cess have been provided in forthcoming pages of this publication

20.14. SUMMARY

This updated version of the Rules as amended up to 30th December, 2017 has been prepared for convenience and easy reference of the trade and industry and has no legal binding or force. Notifications as published in the official Gazette of the Government of India only have the force of law. These rules may be called the Central Goods and Services Tax Rules, 2017. (2) They shall come into force with effect from 22nd June, 2017. In these rules, unless the context otherwise requires,- (a) “Act” means the Central Goods and Services Tax Act, 2017 (12 of 2017); (b) “FORM” means a Form appended to these rules; (c) “section” means a section of the Act; (d) “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 (28 of 2005); (e) words and expressions used herein but not defined and defined in the Act shall have the meanings respectively assigned to them in the Act. After studying this lesson students should be able: To know about Calculation and release of compensation- To understand regarding Levy and collection of cess- To reveal about Returns, payments and refunds & Crediting proceeds of cess to Fund. In addition to that the present lesson is revealed those Definitions: The Gazette of India Extraordinary [Part II], Projected growth rate, Base year, Base year revenue, Projected revenue for any year, Calculation and release of compensation, Other provisions relating to Cess, Power to make rules, Laying of rules before Parliament, Power to remove difficulties.

20.15. TECHNICAL TERMS

Compensation: 1. the act of compensating or the state of being compensated. 2. Something, such as money, given or received as payment or reparation, as for a service or loss. 3. Biology The increase in size or activity of one part of an organism or organ that makes up for the loss or dysfunction of another.

Projected revenue: Projected revenue can mean different things to different people, especially at small companies with only one revenue stream. To project your revenue accurately, you'll need to know the difference between sales, income and revenue. Projecting your revenue correctly will help you avoid poor cash flow, which is a key reason small businesses fail. Whether you have an informal bookkeeping system or a full-blown accounting department, make sure everyone is on the same page when discussing projected revenue.

Levy: A levy is a legal seizure of your property to satisfy a tax debt. Levies are different from liens. A lien is a legal claim against property to secure payment of the tax debt, while a levy actually takes the property to satisfy the tax debt.

Cess: CESS is an Irish slang word for luck, also known as bad cess to you. It is a short form of assessment, a tax, or a military exaction. It can also be used as a verb to mean to tax or assess.

Proceeds: Proceeds refer to the cash received from the sale of goods or assets during a particular period. The total is obtained by multiplying the quantities sold by the selling price per unit. The proceeds received before any deductions are made are known as gross proceeds, and they

comprise all the expenses incurred in the transaction such as legal fees, shipping costs, and broker commissions.

Schedule: A list of planned activities or things to be done showing the times or dates when they are intended to happen or be done. A list of the times when events are planned to happen, for example the times when classes happen or when buses, etc. leave and arrive

Customs Tariff Act, 1975: An act to consolidate and amend the law relating to customs duties. (1) This Act may be called the Customs Tariff Act, 1975. (2) It extends to the whole of India. 2. The rates at which duties of customs shall be levied under the Customs Act, 1962, are specified in the First and Second Schedules, 4 53.

Special Economic Zone: A special economic zone (SEZ) is an area in a country that is designed to generate positive economic growth. An SEZ is normally subject to different and more favorable economic regulations compared to other regions in the same country, including tax incentives and the opportunity to pay lower tariffs. SEZ economic regulations tend to be conducive to—and attract—foreign direct investment (FDI). FDI refers to any investment made by a firm or individual in one country into business interests located in another country.

Comptroller and Auditor-General of India: The Constitution of India (Article 148) provides for an independent office of the Comptroller and Auditor General of India (CAG). He is the head of the Indian Audit and Accounts Department and is one of the bulwarks of the democratic system of government in India.

Central Board of Excise and Customs: The Central Board of Excise and Customs (CBEC) is a part of the Department of Revenue under the Ministry of Finance. It deals with the tasks of formulation of policy concerning levy and collection of customs and central excise duties and prevention of smuggling.

20.16. SELF – ASSESSMENT QUESTIONS

1. What is the projected growth rate?
2. What is the Base Year?
3. How can you determine the Base year revenue?
4. How can you estimate the projected revenue for any year?
5. Explain about Calculation and release of compensation.
6. Discuss about Levy and collection of cess.
7. How do you measure the Returns, payments and refunds?
8. Explain about crediting proceeds of cess to Fund.
9. What are the other provisions relating to Cess?
10. What are the Power to make rules under GST Act, 2017?
11. Explain about Laying of rules before Parliament.
12. Discuss about Power to remove difficulties.

20.17. SUGGESTED READINGS

1. Goods and Services Tax in India- Notifications on different dates
2. GST Bill 2012
3. The Central Goods and Services Tax Act, 2017, No.12 of 2017, Published by Authority, Ministry of Law and Justice, New Delhi, 12 April, 2017
4. Background Material on Model GST Law, SahityaBhavan Publications, Hospital Road, Agra-383 003
5. The Central Goods and Services Tax Act, 2017, No.12 of 2017 published by Authority, Ministry of Law and Justice , New Delhi, 12th April, 2017.
6. [CA Poonam Gandhi, December 5, 2022- Updated on December 15th, 2022](#)
7. [Aditya Dhanuka| Goods and Services Tax - Articles- Featured| Download PDF 06 Oct 2022 28,770 Views 3 comments](#)
8. Read more at: <https://taxguru.in/goods-and-service-tax/chance-gst-adjustments-year-2021-22-september-october-november.html>
9. Read more at: <https://taxguru.in/goods-and-service-tax/credit-note-debit-note-gst-regime.html>
10. [Credit Note and Debit Note under GST Regime CA Vijay Mittal| Goods and Services Tax - Articles| Download PDF 23 May 2020 94,206 Views 6 comments](#)
11. 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:—
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DR. MEERAVALI SHAIK

MODEL QUESTION PAPER

M.Com. Accountancy
Semester: IV, Paper: III

GOODS & SERVICES TAX – II**Max. Marks: 70****Time: 3 hrs.****SECTION A (Total: 5x3=15 Marks)**

(Answer the following questions. Each answer carries 3 marks)

1. a) Assesses (OR) b) Deemed registration
2. a) Delegation of Powers (OR) b) Role of GST Council
3. a) Filing of Returns (OR) b) Computation of Tax liability
4. a) GST on Exports (OR) b) Tax under State GST
5. a) Returns under GST (OR) b) Payment of Tax

SECTION B (Total: 5x8 = 40 Marks)

(Answer the following questions. Each answer carries 8 marks)

1. a) Explain about Registration of Assesses under GST Act.
(or)
b) Discuss briefly about Procedure for Registration and Cancellation.
2. a) What is appointment? Explain the appointment of Officers under GST Act.
(or)
b) Distinguish between Central powers and State powers on GST.
3. a) What is Assessment? How to assessment of Non-filers of returns?
(or)
b) Discuss about the assessment of Unregistered Persons.
4. a) What is Chargeability? Explain about Chargeability under GST Act 2017
(or)
b) Briefly explain about GST on E- Commerce transactions.
5. a) What is return? Explain about apportionment of returns under GST.
(or)
b) Briefly discussed about Compensation to states under the GST Act 2017.

SECTION C (Total: 1x15 =15 Marks)

6. a) Explain about Search and Seizure, Inspection, Arrest and Prosecution.
(or)
b) What is TDS, TCS, Demand, Recovery and Adjudication?