



GST in India

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Compilation of **CGST Act, IGST Act, UTGST Act, Cess Act and CGST Rules** alongwith commentary on key provisions

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For feedback please write to info@lawgical.in

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1. About the book and author

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About Author



- CA Pritam Mahure works in the field of GST and VAT since more than a decade. Pritam has authored books on “GST” for Bharat Publication, CII and NBC.
- Pritam has authored more than 100 articles in Business Standard, Hindu, Business Line, Economic Times, Deccan Herald, Sakal, Taxmann, Taxindiaonline etc.
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2. How to read this book?

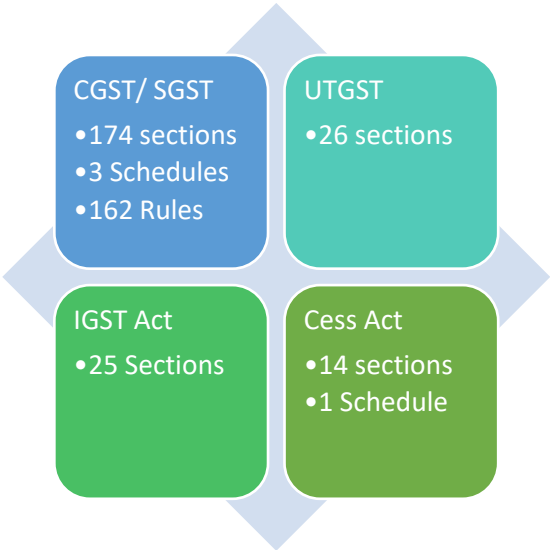
- This book contains CGST Act, IGST Act, UTGST Act and Cess Act, and CGST Rules.
- For notifications, Circulars, Press Releases, kindly refer cbic.gov.in
- '**Orange**' colour is used for authors comments and key words in respective sections are highlighted in **bold**.

3. Overview of GST

3.1 Legislative framework

What	CGST	SGST	IGST	UTGST	Cess
Tax on	Supply	Supply	Supply	Supply	Supply
Legislation	CGST Act	31 SGST Acts	IGST Act	UTGST Act	Cess Act
Extends	India	State	India	5 UTs	India
Administration	Central Authorities	State Authorities	Central Authorities	Administrator	Central Authorities

3.2 Acts and Sections therein



3.3 Overview of CGST Rules

Name and Definition (1 and 2)	Composition (3 to 7)	Registration (8 to 26)
Valuation (27 to 35)	ITC (36 to 46)	Tax invoice, Debit and credit notes (47 to 55)
Accounts and records (56 to 58)	Returns (59 to 84)	Payment of tax (85 to 88)
Refund (89 to 97)	Assessment and audit (98 to 102)	Advance Ruling (103 to 107)
Appeals and revision (108 to 116)	Transitional provisions (117 to 121)	Anti-Profiteering (122 to 137)
E-way Bills (138)	Inspection, Search and Seizure (139 to 141)	Demand and recovery (142 to 161)
	Offenses and Penalties (162)	

3.5 Notifications and Circulars issued (as on 2.09.2018):

Particulars	CGST	IGST	UTGST	Cess	Total
Notification- Rate related	69	73	69	9	220
Notification - Others	113	13	28	2	156
Circulars	75	3	0	1	79
Orders	13	13	1	-	27
Total	182	102	88	74	446

3.6 Things you must know about GST

1. GST is payable on supply

In GST regime, all 'supply' such as sale, transfer, barter, lease, import of services etc. of goods and/ or services **made or agreed to be made for a consideration** will attract CGST (to be levied by Centre) and SGST (to be levied by State).

As GST will be applicable on 'supply' the erstwhile taxable events such as 'manufacture', 'sale', 'provision of services' etc. will lose their relevance.

Further, certain supplies (specified in Schedule I), even if made **without consideration**, such as permanent transfer of business assets on which credit is availed, transaction with related or distinct entities, transactions with agent etc. will attract GST.

In Schedule I of the CGST law, it is provided that **gifts** not exceeding INR 50,000/- in value in a financial year by an **employer to an employee** shall not be treated as supply of goods or services or both. This provision could open a Pandora's Box as free canteen facilities, travel arrangements for employees, irrespective of any threshold, may attract GST as they may not qualify as gifts.

2. GST Payment in case of Unregistered Suppliers

Typically, the GST liability is to be discharged by the supplier of goods/ service or both. However, in specific cases, the liability to pay tax is cast on the recipient of the supply instead of the supplier. This is known as Reverse Charge Mechanism (RCM).

There are two types of RCM proposed in GST law:

- a. Section 9 (3) of the CGST Act - RCM is said to be applicable in respect of specified services (12 services including transportation of goods by road (GTA), advocate services, sponsorship, director etc specified by the GST Council)
- b. Section 9 (4) of the CGST Act – RCM is said to be applicable in cases of supply by an unregistered supplier to a registered person, GST shall be paid by the recipient under RCM. This provision is deferred till 30.09.2019. Further, now in CGST (Amendment) Act, 2018 it is proposed that said provision to be made applicable only for a certain notified class of registered persons

RCM will increase the compliance burden for the recipient as invoice and payment voucher is required to be issued by the recipient [as per section 31 (3) (f) and (g) of CGST Act].

3. GST payable as per time of supply

The liability to pay CGST / SGST will arise at the time of supply as determined for goods and services. In this regard, separate provisions prescribe what will time of supply for goods and services. The provisions contemplate payment of GST on supply of goods or services at the earliest of date of issuance of invoice or prescribed last day by which invoice is required to be issued or date of receipt of payment.

Given that there could be **multiple parameters** in determining 'time' of supply, maintaining reconciliation between revenue as per financials and as per GST could be a major challenge to meet for businesses.

The CGST Act provides that the 'time of supply', to the extent it relates to an addition in the value of supply, by way of interest, late fee or penalty for delayed payment, of any consideration, shall be on the date on which the supplier receives such additional value.

By way of Notification No.66/2017-CT, all supplier of goods (and not services) can pay GST on raising of invoices¹. Hence, now GST is not payable at the time of receipt of advance on supply of goods. However, in case of advance received

¹ Earlier, relief was only provided to small suppliers vide Notification No. 40/2017-CT.

for supply of services GST is still payable at the time of Supply (i.e. As per Section 13 of the CGST Act.)

4. Determining Place of Supply could be the key

An intra-State supply of goods will attract Central GST and State GST whereas an inter-State supply will attract IGST. Thus, it would be crucial to determine whether a transaction is an 'intra-State' or 'inter-State' as taxes will be applicable accordingly.

In this regard, the GST law provides separate provisions which will help an assessee determine the place of supply for goods and services. Typically for 'goods' the place of supply would be location where the good are **delivered**. Whereas for 'services' the place of supply would be **location of recipient**.

However, the IGST Act prescribes multiple scenarios (at section 10, 11, 12, 13, 14 and 16) such as supply of services in relation to immovable property, services to and by SEZ etc. wherein this generic principle will not be applicable and specific provisions will determine the place of supply. Thus, businesses will have to scroll through all the place of supply provisions before determining the place of supply.

At section 77 of CGST Act and 19 of IGST Act its specifically provides that interest will not be payable on delayed payment of say CGST and SGST if taxpayer has wrongly paid IGST. However, a specific provision, for automatic inter-Governmental adjustment, in cases of wrong payment of GST would be welcome.

5. Valuation in GST

GST would be payable on the 'transaction value'. Transaction value is the **price actually paid or payable** for the said supply of goods and/or services between un-related parties. The transaction value is also said to include all expenses in relation to sale such as packing, commission etc. Even **subsidies** linked to supply, excluding Government subsidies will be includable.

However, discounts/ incentives given **before or at the time** of supply will be permissible as deduction from transaction value. As regards discounts given after supply is made, the same will be permissible as deduction subject to fulfilment of prescribed conditions. Rule 27 to 35 of CGST Rules deal with Valuation.

6. Input tax credit in GST

Section 16 and 17 of CGST Act and Rule 36 to 45 of CGST Rules deal with Input Tax Credit.

It was expected that in GST regime, seamless credit will be allowed to business houses without any denial or any restrictions except say goods / services which are availed for personal use than official use (something similar to United Kingdom VAT law).

Further, credit is denied on goods and/or services used for **personal consumption**. Also, input tax credit shall not be available on **goods lost, stolen, destroyed, written off or** disposed of by way of **gift or free samples**. This continuation of denial will lead to substantial tax cascading (as rate of GST will be higher than the current rate of service tax!).

Further, at present, input tax credit is not available in respect of food and beverages, health services, travel benefits to employees etc. Now, in cases where it is obligatory under any law for an employer to provide these facilities to its employees, GST Act is amended (from 29th August 2018) to provide that the input tax credit in such cases shall be available. This is a welcome provision and will bring relief.

To continue to claim the input tax credit the buyer has to ensure that he pays the supplier within 180 days from date of invoice¹. If payment to vendor is not

¹ As per Proviso to Rule 2 (1) of Input Tax Credit Rules the condition of 180 days is not applicable for supplies made without consideration as specified in Schedule I.

made within 180 days, then proportionate input tax credit will have to be reversed and availed again on payment to vendor.

For a banking company or a financial institution including a NBFC, restriction of 50% on availment of credit shall not apply to tax paid on supplies made by one registered person to another registered person having the same PAN.

7. There would be 35 GST laws in India

In GST regime, there will be one CGST Act and 31 SGST Act for each of the States including two Union Territories, one UTGST Act (for 5 UTs) and one IGST Act governing inter-State supplies of goods and services. Also, there is a separate Compensation Act for cess. .

8. Anti-profiteering provisions

Through section 171 of CGST Act, India plans to introduce an anti-profiteering measure to ensure that the benefits arising out of the GST regime is passed on to consumers.

The CGST Act only empowers the Government to constitute the Authority but does not prescribe any method to determine the benefit which the supplier is liable to be pass on. In this regard, Rule 122 to 137 of CGST Rules deal with Anti-profiteering.

However, the neither CGST Act and nor CGST Rules do not lay down method to compute the anti-profiteering benefits. Thus, Anti-profiteering guidelines should be prescribed in the near future.

9. Key procedural provisions and Definition

Vide. Not. No. 3/2017-CT¹ (from 22nd June 2017) and 10/2017-CT (from 1st July 2017) the Government has introduced CGST Rules (162 to be precise!).

As per GST Act, a registered person engaged in taxable activity is required to issue an invoice. Additionally, returns of outward supplies are required to be filed in GSTR-1 (upto 10th of subsequent month) and consolidated return GSTR-3B (upto 20th of subsequent month).

10. Time limit for adjudication

Time limit for adjudication of generic cases (i.e. other than fraud, suppression etc.) would be **three years** and in fraud, suppression etc. cases it would be **five** years. Its pertinent to note that the time limit prescribed for generic cases is much more than the current time limit prescribe in excise law (i.e. 12 months for issuance of Show Cause Notice) and service tax legislation (i.e. 30 months).

¹ Amended vide 7/2017-CT

11. Old provisions re-introduced

Most of the current provisions such as reverse charge, tax deduction, pre-deposit, prosecution (!), arrest (!) etc. have been continued in the GST law.

The new GST law seems to be a new wine in old bottle as few of the current inefficiencies has been continued in the GST law.

3.7 Rate of GST

Rate of GST is one of the most important and contentious issues. Before we understand what could be the rate of proposed GST, let's understand the current rates of indirect taxes on goods and services. The different rates of taxes on goods and services is tabulated below:

Particulars	Goods	Services
Excise duty	12.50%/ 6% / 2%	-
VAT	12.50% / 13.50% / 14% /5%	-
CST	2% (against Form C)	-
Local Body Tax	0.10% to 8%	-
Service Tax	-	15%

Rates in GST– Broadly goods are classified as under:

Schedule	I	II	III	IV	V	VI
CGST and SGST rate	2.50% + 2.50%	6% + 6%	9% + 9%	14% + 14%	1.50% + 1.50%	0.125% + 0.125%
IGST Rate	5%	12%	18%	28%	3%	0.25%

Intra-State supply of Goods (CGST)

Vide Not. No. 1/2017-CT (Rate) the CG has notified the rate of the central tax of levied on intra-State supplies of goods:

Schedule I • Nil Rated	Schedule II • 2.50 per cent	Schedule III • 3 per cent	Schedule IV • 5 per cent
Schedule V • 12 per cent	Schedule VI • 18 per cent	Schedule VII • 0.125 per cent	

Intra-State supply of Goods (SGST)

Similarly, State Governments across India have notified that SGST rates for goods such as Maharashtra, vide Not. No.1/2017-State Tax (R):

Schedule I • Nil Rated	Schedule II • 2.50 per cent	Schedule III • 3 per cent	Schedule IV • 5 per cent
Schedule V • 12 per cent	Schedule VI • 18 per cent	Schedule VII • 0.125 per cent	

Inter-State supply of Goods (IGST)

Vide Not. No. 1/2017-IT (Rate) the CG has notified the rate of the IGST of levied on inter-State supplies of goods:

Schedule I • Nil Rated	Schedule II • 2.50 per cent	Schedule III • 3 per cent	Schedule IV • 5 per cent
Schedule V • 12 per cent	Schedule VI • 18 per cent	Schedule VII • 0.125 per cent	

Intra-State supply of services (CGST)

Vide Not. No. 11/2017-CT (Rate) the CG has notified the rate of the central tax of levied on intra-State supplies of services:

Conessional rate (GTA, cab, etc) • 2.50 per cent	Special rate (Flat with land, chit) • 6 per cent
Standard rate • 9 per cent	Luxury rate (room rent above 7,500/-, movie ticket above 100) • 14 per cent

Intra-State supply of services (SGST)

Similarly, State Governments across India have notified that SGST rates for goods such as Maharashtra, vide Not. No.11/2017-State Tax (R):

Conessional rate (GTA, cab, etc)

- 2.50 per cent

Special rate (Flat with land, chit)

- 6 per cent

Standard rate

- 9 per cent

Luxury rate (room rent above 7,500/-, movie ticket above 100)

- 14 per cent

Inter-State supply of services (IGST)

Vide Not. No. 8/2017-IT (Rate) the CG has notified the rate of IGST levied on inter-State supplies of services:

Conessional rate (GTA, cab, etc)

- 5 per cent

Special rate (Flat with land, chit)

- 12 per cent

Standard rate

- 18 per cent

Luxury rate (room rent above 7,500/-, movie ticket above 100)

- 28 per cent

4. CGST Act, 2018

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

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

Author comments: The CGST Act is amended by **CGST Amendment Act, 2018** and as per section 1 (2) of CGST Amendment Act, 2018, the amendments shall come into force on such date as the Central Government may, **by notification** in the Official Gazette, **appoint**. However, certain provisions are made applicable retrospectively from 1st July 2018:

- Scope of supply [Section 7]
- Transitional arrangements for input tax credit [Section 140]

Chapter-I

1. Short title, extent and commencement

- (1) This Act may be called the Central Goods and Services Tax Act, 2017.
- (2) It extends to the whole of India.

Author comments: This Act is extended to J & K from 8th July 2017

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

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

Author comments: Applicability of TDS (Section 51) and TCS (Section 52) of has been postponed (refer press note and Not. No. 9/2017-CT).

2. Definitions

In this Act, unless the context otherwise requires,--

- (1) **“actionable claim”** shall have the same meaning as assigned to it in section 3 of the Transfer of Property Act, 1882;
- (2) **“address of delivery”** means the address of the recipient of goods or services or both indicated on the tax invoice issued by a registered person for delivery of such goods or services or both;
- (3) **“address on record”** means the address of the recipient as available in the records of the supplier;

Author comments: Address on record is relevant for determining Place of Supply as per section 9 of IGST Act.

- (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, Central Board of Indirect Taxes and Customs the Revisional Authority, the Authority for Advance Ruling, the Appellate Authority for Advance Ruling, ~~the Appellate Authority and the Appellate Tribunal~~; the Appellate Authority, the Appellate Tribunal and the Authority;
- (5) **“agent”** means a person, including a factor, broker, commission agent, arhatia, del credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services or both on behalf of another;;

Author comments: *As per section 86 '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.'*

Further, Schedule I deems following as supply (even if without consideration)

'3. Supply of goods—

(a) by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal, or

(b) by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.'

Circular 57/31/2018-GST dated 4th September 2018 has clarified that:

'7. It may be noted that the crucial factor is how to determine whether the agent is wearing the representative hat and is supplying or receiving goods on behalf of the principal. Since in the commercial world, there are various factors that might influence this relationship, it would be more prudent that an objective criteria is used to determine whether a particular principal-agent relationship falls within the ambit of the said entry or not. Thus, the key ingredient for determining relationship under GST would be whether the invoice for the further supply of goods on behalf of the principal is being issued by the agent or not. Where the invoice for further supply is being issued by the agent in his name then, any provision of goods from the principal to the agent would fall within the fold of the said entry. However, it may be noted that in cases where the invoice is issued by the agent to the customer in the name of the principal, such agent shall not fall within the ambit of Schedule I of the CGST Act. Similarly, where the goods being procured by the agent on behalf of the principal are invoiced in the name of the agent then further provision of the said goods by the agent to the principal would be covered by the said entry. In other words, the crucial point is

whether or not the agent has the authority to pass or receive the title of the goods on behalf of the principal.'

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

Author comments: The aggregate turnover shall be computed on PAN basis (i.e. all India basis). Further, surprisingly, the term aggregate turnover includes turnover of exempt supplies as well!

Section 23 grants relief from obtaining registration to:

- a. Any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly exempt from tax under this Act or under the Integrated Goods and Services Tax Act or
- b. An agriculturist, to the extent of supply of produce out of cultivation of land

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

Author comments: The term agriculture is relevant for section 23 wherein its specified that an agriculturist shall not be liable for registration. Further, vide Not. No. 4/2017-CT (R) in case of Cashew nuts, not shelled or peeled, Bidi wrapper leaves (tendu) and tobacco leaves the liability to pay GST on supply is cast on the recipient registered person.

- (8) **“Appellate Authority”** means an authority appointed or authorised to hear appeals as referred to in section 107;
- (9) **“Appellate Tribunal”** means the Goods and Services Tax Appellate Tribunal constituted under section 109;
- (10) **“appointed day”** means the date on which the provisions of this Act shall come into force;

- (11) **“assessment”** means determination of tax liability under this Act and includes self-assessment, re-assessment, provisional assessment, summary assessment and best judgment assessment;
- (12) **“associated enterprises”** shall have the same meaning as assigned to it in section 92A of the Income-tax Act, 1961;

Author comments: As per section 13 the time of supply in case of supply by associated enterprises, where the supplier of service is located outside India, is the date of entry in the books of account of the recipient of supply or the date of payment, whichever is earlier.

- (13) **“audit”** means the examination of records, returns and other documents maintained or furnished by the registered person under this Act or the rules made thereunder or under any other law for the time being in force to verify the correctness of turnover declared, taxes paid, refund claimed and input tax credit availed, and to assess his compliance with the provisions of this Act or the rules made thereunder;

Author comments: As per section 35 (5) of 'Every registered person whose turnover during a financial year **exceeds the**

prescribed limit shall get his accounts audited by a chartered accountant or a cost accountant and shall submit a copy of the audited annual accounts, the reconciliation statement under sub-section (2) of section 44 and such other documents in such form and manner as may be prescribed.'

- (14) **“authorised bank”** shall mean a bank or a branch of a bank authorised by the Government to collect the tax or any other amount payable under this Act;
- (15) **“authorised representative”** means the representative as referred to in section 116;
- (16) **“Board”** means the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963;
- (17) **“business”** includes--
- (a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;
 - (b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);

- (c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;
- (d) supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;
- (e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;
- (f) admission, for a consideration, of persons to any premises;
- (g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;
- (h) ~~services provided by a race club by way of totalisator or a licence to book maker in such club; and activities of a race club including by way of totalisator or a license to book maker or activities of a licensed book maker in such club; and~~”;
- (i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities;

Author comments: The term 'business' could be of relevance for section 7 which states that supply should be in the course or furtherance

of 'business'. The definition of the term 'business' is very wide as even a single transaction may get covered under its ambit.

Further, it is specifically provided that any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities shall also qualify as business.

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

~~Explanation. For the purposes of this clause, factors that should be considered in determining whether goods or services are related include the nature of the goods or services; the nature of the production processes; the type or class of customers for the goods or services; the methods used to distribute the goods or supply of services; and the nature of regulatory environment (wherever applicable), including banking, insurance, or public utilities;~~

Author comments: The clause defining 'business verticle' is omitted.

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

Author comments: The term capital goods is now defined in a simple manner (as compared to erstwhile CENVAT Credit Rules) to state that capital goods mean goods, the value of which is capitalised in the books of accounts.

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

Author comments: As per section 25 even a casual taxable person or a non-resident taxable person shall apply for registration **at least five days prior** to the commencement of business. As per Section 24 casual taxable person has to obtain registration, irrespective of the threshold.

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

- (22) **“cess”** shall have the same meaning as assigned to it in the Goods and Services Tax (Compensation to States) Act;

- (23) **“chartered accountant”** means a chartered accountant as defined in clause (b) of subsection (1) of section 2 of the Chartered Accountants Act, 1949;
- (24) **“Commissioner”** means the Commissioner of central tax and includes the Principal Commissioner of central tax appointed under section 3 and the Commissioner of integrated tax appointed under the Integrated Goods and Services Tax Act;
- (25) **“Commissioner in the Board”** means the Commissioner referred to in section 168;
- (26) **“common portal”** means the common goods and services tax electronic portal referred to in section 146;

Author comments: Vide Not. No. 4/2017-CT gst.gov.in is notified as the Common Goods and Services Tax Electronic Portal for:

- a. Facilitating registration
- b. Payment of tax
- c. Furnishing of returns
- d. Computation and settlement of integrated tax and
- e. Electronic way bill

(27) **“common working days”** in respect of a State or Union territory shall mean such days in succession which are not declared as gazetted holidays by the Central Government or the concerned State or Union territory Government;

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

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

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

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

Author comments: The term composite supply is used at section 8. In this regard, the tax liability on a **composite or a mixed supply** shall be determined in the following manner:

(a) a **composite supply** comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply;

(b) a **mixed supply** comprising two or more supplies shall be treated as supply of that particular supply which attracts the highest rate of tax.

As per section 2 (90) "principal supply" means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary

(31) "**consideration**" in relation to the supply of goods or services or both includes--

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

(b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both,

whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government:

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

Author comments: The term 'consideration' is defined in an inclusive manner. Even payment by any other person than a recipient can qualify as consideration. Any subsidy given by the Central Government or a State Government shall not form part of consideration.

As regards, deposits (whether refundable or not) given in respect of the supply of goods and/or services it is stated that the same shall not be considered as payment made for the supply unless the supplier applies the deposit as consideration for the supply¹.

(32) **“continuous supply of goods”** means a supply of goods which is provided, or agreed to be provided, continuously or on recurrent basis, under a contract, whether or not by means of a wire, cable, pipeline or other

¹ In a pre-deposit judgment of Phoenix International Ltd [2015-TIOL-1708-CESTAT-DEL] it was held that security deposit of Rs. 20 crores received by the appellant was not in the nature intended for the purpose of securing default in rent, or utility charge or damages but something more.

conduit, and for which the supplier invoices the recipient on a regular or periodic basis and includes supply of such goods as the Government may, subject to such conditions, as it may, by notification, specify;

Author comments: The term continuous supply of goods is used in the section 31 (4) which prescribes time limit for issuance of invoice as '*In case of continuous supply of goods, where successive statements of accounts or successive payments are involved, the invoice shall be issued before or at the time each such statement is issued or, as the case may be, each such payment is received*'

(33) **“continuous supply of services”** means a supply of services which is provided, or agreed to be provided, continuously or on recurrent basis, under a contract, for a period exceeding three months with periodic payment obligations and includes supply of such services as the Government may, subject to such conditions, as it may, by notification, specify;

Author comments: The term continuous supply of services is used in the section 31 (5) which prescribes time limit for issuance of invoice as under:

(a) where the due date of payment is ascertainable from the contract, the invoice shall be issued on or before the due date of payment;

(b) where the due date of payment is not ascertainable from the contract, the invoice shall be issued before or at the time when the supplier of service receives the payment;

(c) where the payment is linked to the completion of an event, the invoice shall be issued on or before the date of completion of that event.

(34) **“conveyance”** includes a vessel, an aircraft and a vehicle;

Author comments: Section 17 (5) denies credit *inter-alia* on conveyance.

(35) **“cost accountant”** means a cost accountant as defined in clause ~~(e)~~ (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959;

(36) **“Council”** means the Goods and Services Tax Council established under article 279A of the Constitution;

(37) **“credit note”** means a document issued by a registered person under sub-section (1) of section 34;

(38) **“debit note”** means a document issued by a registered person under sub-section (3) of section 34;

(39) **“deemed exports”** means such supplies of goods as may be notified under section 147;

Author comments: In days to come, GST Act may notify the transaction which can be treated as deemed export.

- (40) **“designated authority”** means such authority as may be notified by the Board;
- (41) **“document”** includes written or printed record of any sort and electronic record as defined in clause (t) of section 2 of the Information Technology Act, 2000;
- (42) **“drawback”** in relation to any goods manufactured in India and exported, means the rebate of duty, tax or cess chargeable on any imported inputs or on any domestic inputs or input services used in the manufacture of such goods;
- (43) **“electronic cash ledger”** means the electronic cash ledger referred to in sub-section (1) of section 49;
- (44) **“electronic commerce”** means the supply of goods or services or both, including digital products over digital or electronic network;
- (45) **“electronic commerce operator”** means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce;
- (46) **“electronic credit ledger”** means the electronic credit ledger referred to in sub-section (2) of section 49;

Author comments: In GST regime, the amount of credit to be available will be auto-populated (GSTR-2A) by the GST system based on the Outward supply returns (GSTR-1) filed by the vendors. Thus effectively, availment and utilisation of credit will be through electronic ledger.

(47) **“exempt supply”** means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11, or under section 6 of the Integrated Goods and Services Tax Act, and includes non-taxable supply;

Author comments: Exempt supply includes supplies which attract:

- a. Nil rate
- b. Wholly exempt
- c. Non-taxable (petrol, diesel, alcohol, electricity etc)

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

(49) **“family”** means,--

- (i) the spouse and children of the person, and
- (ii) the parents, grand-parents, brothers and sisters of the person if they are wholly or mainly dependent on the said person;

Author comments: The members of the same family are deemed as 'related persons' (section 15)

- (50) **"fixed establishment"** means a place (other than the registered place of business) which is characterised by a sufficient degree of permanence and suitable structure in terms of human and technical resources to supply services, or to receive and use services for its own needs;

Author comments: The term fixed establishment is used in section 2 (70) and (71) in the context of 'location of supplier of service' and 'location of recipient of service'

- (51) **"Fund"** means the Consumer Welfare Fund established under section 57;
- (52) **"goods"** means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply;

Author comments: GST is applicable on supply of goods. Goods are defined to include movable property, actionable claims¹ etc. In the earlier version of Model GST Law the term 'goods' included securities. Now, securities is specifically excludes from ambit of 'goods' as well as 'services' exclude '**securities**'.

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

¹ Schedule III (i.e. Activities or transactions which shall be treated neither as a supply of goods nor a supply of services) includes under its ambit 'Actionable claims, other than lottery, betting and gambling'.

(58) **“integrated tax”** means the integrated goods and services tax levied under the Integrated Goods and Services Tax Act;

(59) **“input”** means any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business;

Author comments: Inputs is defined to mean:

- a. Any goods
- b. Other than capital goods
- c. Used or intended to be used
- d. By a supplier
- e. In the course or furtherance of business

This is a wider definition as any goods, except capital goods, will qualify as inputs, provided that they are used or intended to be used in the course or furtherance of business.

(60) **“input service”** means any service used or intended to be used by a supplier in the course or furtherance of business;

Author comments: Input service is defined to mean:

- a. Any service
- b. Used or intended to be used
- c. By a supplier

d. In the course or furtherance of business

This is a wider definition as any service, will qualify as input service, provided that they are used or intended to be used in the course or furtherance of business.

(61) **“Input Service Distributor”** means an office of the supplier of goods or services or both which receives tax invoices issued under section 31 towards the receipt of input services and issues a prescribed document for the purposes of distributing the credit of central tax, State tax, integrated tax or Union territory tax paid on the said services to a supplier of taxable goods or services or both having the same Permanent Account Number as that of the said office;

Author comments: Section 21 and 22 of the GST Act provides for special provisions for Input Service Distributor.

(62) **“input tax”** in relation to a registered person, means the central tax, State tax, integrated tax or Union territory tax charged on any supply of goods or services or both made to him and includes—

- (a) the integrated goods and services tax charged on import of goods;
- (b) the tax payable under the provisions of sub-sections (3) and (4) of section 9;

- (c) the tax payable under the provisions of *sub-sections (3) and (4)* of section 5 of the Integrated Goods and Services Tax Act;
 - (d) the tax payable under the provisions of *sub-sections (3) and (4)* of section 9 of the respective State Goods and Services Tax Act; or
 - (e) the tax payable under the provisions of *sub-sections (3) and (4)* of section 7 of the Union Territory Goods and Services Tax Act, but does not include the tax paid under the composition levy;
- (63) **“input tax credit”** means the credit of input tax;
- (64) **“intra-State supply of goods”** shall have the same meaning as assigned to it in section 8 of the Integrated Goods and Services Tax Act;
- (65) **“intra-State supply of services”** shall have the same meaning as assigned to it in section 8 of the Integrated Goods and Services Tax Act;
- (66) **“invoice”** or **“tax invoice”** means the tax invoice referred to in section 31;
- (67) **“inward supply”** in relation to a person, shall mean receipt of goods or services or both whether by purchase, acquisition or any other means with or without consideration;
- (68) **“job work”** means any treatment or process undertaken by a person on goods belonging to another registered person and the expression “job worker” shall be construed accordingly;

Author comments: Section 19 and 143 of the GST Act provides for special provisions for job work.

Further, Schedule II deems '*Any treatment or process which is applied to another person's goods is a supply of services.*'

(69) **“local authority”** means--

- (a) a “Panchayat” as defined in clause (d) of article 243 of the Constitution;
- (b) a “Municipality” as defined in clause (e) of article 243P of the Constitution;
- (c) a Municipal Committee, a Zilla Parishad, a District Board, and any other authority legally entitled to, or entrusted by the Central Government or any State Government with the control or management of a municipal or local fund;
- (d) a Cantonment Board as defined in section 3 of the Cantonments Act 2006;
- (e) a Regional Council or a District Council constituted under the Sixth Schedule to the Constitution;
- (f) a Development Board constituted under article 371 and article 371J of the Constitution; or
- (g) a Regional Council constituted under article 371A of the Constitution;

(70) **“location of the recipient of services”** means,—

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

(71) **“location of the supplier of services”** means,—

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

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

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

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

Author comments: The term market value is used at Rule 27, 28 and 29 of CGST Rules.

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

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

Author comments: In this regard, the tax liability on a **composite or a mixed supply** shall be determined in the following manner:

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

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

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

(77) **“non-resident taxable person”** means any person who occasionally undertakes transactions involving supply of goods or services or both,

whether as principal or agent or in any other capacity, but who has no fixed place of business or residence in India;

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

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

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

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

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

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

(84) **“person”** includes—

- (a) an individual;
- (b) a Hindu Undivided Family;
- (c) a company;

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

(85) **“place of business”** includes--

- (a) a place from where the business is ordinarily carried on, and includes a warehouse, a godown or any other place where a taxable person stores his goods, supplies or receives goods or services or both; or
- (b) a place where a taxable person maintains his books of account; or

(c) a place where a taxable person is engaged in business through an agent, by whatever name called;

(86) **“place of supply”** means the place of supply as referred to in Chapter V of the Integrated Goods and Services Tax Act;

(87) **“prescribed”** means prescribed by rules made under this Act on the recommendations of the Council;

(88) **“principal”** means a person on whose behalf an agent carries on the business of supply or receipt of goods or services or both;

(89) **“principal place of business”** means the place of business specified as the principal place of business in the certificate of registration;

(90) **“principal supply”** means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary; persons.

Author comments: The term principal supply is relevant for composite supply.

(91) **“proper officer”** in relation to any function to be performed under this Act, means the Commissioner or the officer of the central tax who is assigned that function by the Commissioner in the Board;

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

- (93) **“recipient”** of supply of goods or services or both, means—
- (a) where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration;
 - (b) where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available; and
 - (c) where no consideration is payable for the supply of a service, the person to whom the service is rendered, and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied;
- (94) **“registered person”** means a person who is registered under section 25 but does not include a person having a Unique Identity Number;
- (95) **“regulations”** means the regulations made by the Board under this Act on the recommendations of the Council;
- (96) **“removal”** in relation to goods, means—
- (a) despatch of the goods for delivery by the supplier thereof or by any other person acting on behalf of such supplier; or
 - (b) collection of the goods by the recipient thereof or by any other person acting on behalf of such recipient;
- (97) **“return”** means any return prescribed or otherwise required to be furnished by or under this Act or the rules made thereunder;

(98) **“reverse charge”** means the liability to pay tax by the recipient of supply of goods or services or both instead of the supplier of such goods or services or both under subsection (3) or sub-section (4) of section 9, or under subsection (3) or sub-section (4) of section 5 of the Integrated Goods and Services Tax Act;

Author comments:

In GST regime reverse charge may be applicable for both services as well as **goods**. Further, apart from specified services, RCM is also applicable in case of procurement of goods or services by registered person from un-registered person.

(99) **“Revisional Authority”** means an authority appointed or authorised for revision of decision or orders as referred to in section 108;

(100) **“Schedule”** means a Schedule appended to this Act;

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

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

Explanation.--For the removal of doubts, it is hereby clarified that the expression "services" includes facilitating or arranging transactions in securities;'

Author comments: The definition of service is very wide as it means anything other than goods.

(103) "State" includes a Union territory with Legislature;

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

(105) "supplier" in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied;

(106) "tax period" means the period for which the return is required to be furnished;

(107) "taxable person" means a person who is registered or liable to be registered under section 22 or section 24;

Author comments: Section 9 of GST Act states that GST 'shall be paid by the taxable person'.

- (108) **“taxable supply”** means a supply of goods or services or both which is leviable to tax under this Act;
- (109) **“taxable territory”** means the territory to which the provisions of this Act apply;
- (110) **“telecommunication service”** means service of any description (including electronic mail, voice mail, data services, audio text services, video text services, radio paging and cellular mobile telephone services) which is made available to users by means of any transmission or reception of signs, signals, writing, images and sounds or intelligence of any nature, by wire, radio, visual or other electromagnetic means;
- (111) **“the State Goods and Services Tax Act”** means the respective State Goods and Services Tax Act, 2017;
- (112) **“turnover in State”** or **“turnover in Union territory”** means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis) and exempt supplies made within a State or Union territory by a taxable person, exports of goods or services or both and inter-State supplies of goods or services or both made from the State or Union territory by the said taxable person but excludes central tax, State tax, Union territory tax, integrated tax and cess;
- (113) **“usual place of residence”** means--
- a. in case of an individual, the place where he ordinarily resides;

- b. in other cases, the place where the person is incorporated or otherwise legally constituted;

(114) **“Union territory”** means the territory of—

- a. the Andaman and Nicobar Islands;
- b. Lakshadweep;
- c. Dadra and Nagar Haveli;
- d. Daman and Diu
- e. Chandigarh; and
- f. other territory.

Explanation –For the purposes of this Act, each of the territories specified in sub-clauses (a) to (f) shall be considered to be a separate Union territory;

(115) **“Union territory tax”** means the Union territory goods and services tax levied under the Union Territory Goods and Services Tax Act;

(116) **“Union Territory Goods and Services Tax Act”** means the Union Territory Goods and Services Tax Act, 2017;

(117) **“valid return”** means a return furnished under sub-section (1) of section 39 on which self-assessed tax has been paid in full;

(118) **“voucher”** means an instrument where there is an obligation to accept it as consideration or part consideration for a supply of goods or services or both and where the goods or services or both to be supplied or the identities of their potential suppliers are either indicated on the instrument

itself or in related documentation, including the terms and conditions of use of such instrument;

- (119) **“works contract”** means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of **any immovable property** wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract;

Author comments: Works contract definition is only for immovable property (and not movable property).

- (120) words and expressions used and not defined in this Act but defined in the Integrated Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act shall have the same meaning as assigned to them in those Acts;

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

Chapter-II

Administration

3. Officers under this Act¹

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

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

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

¹ In exercise of the powers under section 3 read with section 5 of the Central Goods and Services Tax Act, 2017, Not. No. 2/2017-CT has been issued for jurisdiction

4. Appointment of officers

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

5. Powers of officers

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

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

- (1) Without prejudice to the provisions of this Act, the officers appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act are authorised to be the proper officers for the purposes of this Act, subject to such conditions as the Government shall, on the recommendations of the Council, by notification, specify.
- (2) Subject to the conditions specified in the notification issued under subsection (1),--
 - (a) where any proper officer issues an order under this Act, he shall also issue an order under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as authorised by the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, under intimation to the jurisdictional officer of State tax or Union territory tax;
 - (b) where a proper officer under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act has initiated any proceedings on a subject matter, no proceedings shall be initiated by the proper officer under this Act on the same subject matter.
- (3) Any proceedings for rectification, appeal and revision, wherever applicable, of any order passed by an officer appointed under this Act shall not lie before

an officer appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act.

Author comments:

Section 3 to 6 deal with classes, appointment and powers of officer who will administer CGST and SGST.

Chapter-III

LEVY AND COLLECTION OF TAX

7. Scope of supply

- (1) For the purposes of this Act, the expression "supply" includes--
- (a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;
 - (b) import of services for a consideration whether or not in the course or furtherance of business; **and**
 - (c) the activities specified in Schedule I, made or agreed to be made without a consideration; **and**
 - (d) ~~the activities to be treated as supply of goods or supply of services as referred to in Schedule II.~~

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

- (2) Notwithstanding anything contained in sub-section (1), --
- (a) activities or transactions specified in Schedule III; or
 - (b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, shall be treated neither as a supply of goods nor a supply of services.
- (3) Subject to the provisions of ~~sub-sections~~ sub-sections (1), (1A) and (2) ~~(1) and (2)~~, the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as—
- (a) a supply of goods and not as a supply of services; or
 - (b) a supply of services and not as a supply of goods.

Author comments:

Amendments in Section 7 are applicable **retrospectively** from 1st July 2017.

As per section 9, CGST is leviable on all intra-State **supplies** on the value of the goods and/or services. It can be observed that the taxable event under GST regime is 'supply'.

In the earlier indirect tax regime, State imposed 'Value Added Tax' on 'intra-State sales' and retain Central Sales Tax (CST) on inter-State sales on origin-based principle. Further, Centre imposed Excise Duty at the stage of "Manufacture" and Service Tax on the "Provision of Service". As far as local authorities concern it imposed various taxes like LBT (Local Body Tax), Octroi etc. Under GST regime all taxable event or activity like manufacture, provision of services etc. becomes irrelevant and GST will apply on 'supply'.

At section 7, the term 'supply' has been defined in an inclusive manner (like definition of 'manufacture' in excise). As per **clause 1 (a)** Supply is said to include certain transactions like sale, transfer, barter, etc. made or agreed to be made for a consideration by a person in the course or furtherance of business. Thus, under clause 1 (a) an activity of sale transfer etc. will qualify as supply if it is made or agreed to be made for a consideration by a person in the course or furtherance of business.

As per **clause 1 (b)** includes importation of service **for a consideration** whether or not in the course or furtherance of business.

As per **clause 1 (c)** supply specified in the schedule I even made or agreed to be made without consideration will be liable to GST. The schedule I comprises of following list of matters or transactions:

1. Permanent transfer/disposal of business assets where input tax credit has been availed on such assets.
2. Supply of goods or services between related persons, or between distinct persons as specified in section 10, when made in the course or furtherance of business.
3. Supply of goods—
 - (a) by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal, or
 - (b) by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.
4. Importation of services by a taxable person from a related person or from any of his other establishments outside India, in the course or furtherance of business.

Sr. no. 2 aforesaid will cover stock/ branch transfer of goods.

Clause (2)

As per this clause certain matters covered in the Schedule II shall be used to determine whether given supply will be treated as supply of 'goods' and supply of 'services'. Schedule II clarifies the certain transaction whether should be treated as goods or services so as to avoid litigation.

Further, Schedule II is amended by the CGST (Amendment) Act, 2018. The rationale provided in one of the official documents on amendment stated that *'Classification of certain specified activities or transactions (which qualify as a supply under the CGST Act) either as supply of goods or supply of services is supposed to be done in Schedule II. However, it is observed that clause (d) being part of the subsection defining the term 'supply' leads to a situation where an activity listed in Schedule II would be deemed to be a supply even if it does not constitute a supply as per clauses (a), (b) and (c) of sub-section (1). Hence, it is proposed to insert a new sub-section (1A) in section 7 and omit clause (d) of sub-section (1).'*

Advance Ruling

Numerous advance ruling discussed the question of levy of under GST. In one of the Advance ruling the Advance Ruling Authority (ARA) held that GST is applicable on liquidated charges recovered from the customer. (refer Maharashtra State Power Generation Company 2018-TIOL-33-AAR-GST) however, the question of availability of GST credit was left un-answered. It is pertinent to note that in other jurisdictions, such as United Arab Emirates

(UAE), clarification is issued that Value Added Tax (VAT) may not be applicable on liquidated damages as there is no underlying supply of goods/ services.

Further, in the ruling of Caltech Polymers (2018-TIOL-01-AAR-GST) the ARA held that recovery from employee towards canteen food is subject to GST. It may be noted that this ruling did not discuss what will be the value of supply if the organization recovers only subsidized amount from the employees (as employees are covered under the ambit of 'related persons'). This ruling appears to be invoked by the GST Authorities to demand GST the all types of recoveries from employees (such as telephone recovery, notice pay recovery etc).

In the ruling of Columbia Asia Hospitals Pvt Ltd (Dated: July 27, 2018) [2018-TIOL-113-AAR-GST] the question of applicability of GST on services provided by head office (HO) to branch is decided. Herein it is held that, *Activities performed by the employees at the corporate office in the course of or in relation to employment such as accounting, other administrative and IT system maintenance for the units located in the other states as well i.e. distinct persons as per Section 25(4) of the Central Goods and Services*

Tax Act, 2017 (CGST Act) shall be treated as supply as per Entry 2 of Schedule I of the CGST Act.

8. Tax liability on composite and mixed supplies

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

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

Author comments: Section 8 prescribes the levy of GST in case of composite supply and mixed supply.

In the ruling of BC Examinations And English Services India Pvt Ltd (Dated: June 1, 2018) [2018-TIOL-103-AAR-GST] wherein the applicant company is the Indian subsidiary of the British Council, which is the UK's International Organization for cultural relations and educational opportunities. The BC UK offers services of conducting examinations such as IELTS & ESOL which support proficiency in the English language. Hence the applicant entered into agreement with the BC UK for providing Examination Support service & Student Facilitation Services. In said ruling

it is decided that, the activity of exam support service constitutes a composite supply. Also, since the principal supply is conducting of IELTS exam, it would be covered under service code 999299 Group 99929 and Heading 9992 as education support service - Hence it would be taxable @ 18%, being 9% CGST & 9% Haryana GST, under Sr No 30 of Notfn No 11/2017-CT(R) dated 28.6.17 and State Notfn No 46/ST-2 dated 30.06.17.

9. Levy and Collection

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

goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

~~(4) The 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.~~

(4) The Government may, on the recommendations of the Council, by notification, specify a class of registered persons who shall, in respect of supply of specified categories of goods or services or both received from an unregistered supplier, pay the tax on reverse charge basis as the recipient of such supply of goods or services or both, and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to such supply of goods or services or both."

(5) The Government may, on the recommendations of the Council, by notification, specify categories of services the tax on intra-State supplies of which shall be paid by the electronic commerce operator if such services are supplied through it, and all the provisions of this Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services:

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

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

Author comments:

Section 9 is charging section and tax shall be levied and collected on all intra-state **supplies** of the goods and/or services **on the value** and at the rate as may be notified by Centre/State but not exceeding 20%. Thus, GST is levied on **supply** of the goods and/or services as defined in section 7 of the CGST/SGST Act. Thus, effectively, **intra-state supplies** of the goods and/or services liable to CGST and SGST.

Amendment by the CGST (Amendment) Act, 2018

Section 9(4) is amended by the CGST (Amendment) Act, 2018. Earlier, section 9 (4) of the CGST Act, mandates that all registered persons required

to pay the GST under reverse charge mechanism (RCM) in case of procurement of goods and services from unregistered persons.

Further, considering the challenges during implementation this provision is suspended till 30.09.2018.

Now, it appears that this RCM is proposed to be made applicable only for a certain notified class of registered persons (and not all registered persons). This amendment will be welcomed by lucky taxpayers, who would be excluded from the clutches of this RCM. However, the un-lucky ones will still bear the brunt of this provision and its compliance. Certainly, this amendment proves the proverb that all taxpayers are equal in the eyes of law and others are more equal!

Additionally, for certain taxpayers, like bank and financial institutions, this will lead to additional cost (as they are supposed to reverse 50 per cent credit). Thus, the Government should clarify this aspect (like second proviso to section 17 (4) of CGST Act).

10. Composition levy

- (1) Notwithstanding anything to the contrary contained in this Act but subject to the provisions of sub-sections (3) and (4) of section 9, a registered person, whose aggregate turnover in the preceding financial year did not exceed fifty lakh rupees, may opt to pay, ~~in lieu of the tax payable by him,~~

~~an amount calculated at such rate~~ in lieu of the tax payable by him under sub-section (1) of section 9, an amount of tax calculated at such rate” as

may be prescribed, but not exceeding, --

- (a) **one per cent.** of the turnover in State or turnover in Union territory in case of a manufacturer,
- (b) **two and a half per cent.** of the turnover in State or turnover in Union territory in case of persons engaged in making supplies referred to in clause (b) of paragraph 6 of Schedule II, and
- (c) **half per cent.** of the turnover in State or turnover in Union territory in case of other suppliers,

subject to such conditions and restrictions as may be prescribed:

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

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

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

(a) ~~he is not engaged in the supply of services other than supplies referred to in clause (b) of paragraph 6 of Schedule II; "save as provided in sub-section (1), he is not engaged in the supply of services~~

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

(c) he is not engaged in making any inter-State outward supplies of goods;

(d) he 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; and

(e) he is not a manufacturer of such goods as may be notified by the Government on the recommendations of the Council:

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

(3) The option availed of by a registered person under sub-section (1) shall lapse with effect from the day on which his aggregate turnover during a financial year exceeds the limit specified under sub-section (1).

(4) A taxable person to whom the provisions of sub-section (1) apply shall not collect any tax from the recipient on supplies made by him nor shall he be entitled to any credit of input tax.

- (5) If the proper officer has reasons to believe that a taxable person has paid tax under sub-section (1) despite not being eligible, such person shall, in addition to any tax that may be payable by him under any other provisions of this Act, be liable to a penalty and the provisions of section 73 or section 74 shall, mutatis mutandis, apply for determination of tax and penalty.

Author comments:

Amendment by the CGST (Amendment) Act, 2018

Now, the limit is being raised from INR 1 crore to INR 1.50 crore.

Further, when GST law was introduced the service provider (other than restaurant services) is not allowed to opt for composition scheme. Given this, manufacturers and traders supplying services (even of negligible portion) are unable to opt for composition scheme. Hence to enable these taxpayers to avail of the benefit of composition scheme, now said taxpayer are allowed the supply of services higher of :

- Value not exceeding 10% of the turnover in a State or Union territory in the preceding financial year or
- Rs. 5 lakhs

Given the aforesaid now even the, manufacturer or trader engaged in negligible amount of supply of service (like repair and maintenance) can opt for composition scheme.

11. Power to grant exemption from tax

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

Explanation – For the purposes of this section, where an exemption in respect of any goods or services or both from the whole or part of the tax leviable thereon has been granted absolutely, the registered person supplying such goods or services or both shall not collect the tax, in excess of the effective rate, on such supply of goods or services or both.

12. Time of supply of goods

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

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

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

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

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

- (a) the date of the receipt of goods; or
- (b) the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or
- (c) the date immediately following thirty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier:

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

(4) In case of supply of vouchers by a supplier, the time of supply shall be—

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

Author comments:

The liability to pay CGST / SGST will arise at the time of supply as determined for goods and services. In this regard, separate provisions i.e. section 12 and section 13 prescribe what will time of supply for goods and services.

The provisions broadly contemplate payment of GST at the earliest for:

a. 'Goods'- Date of issuance of invoice or the last date by which invoice is required to be issued or the date of receipt of advance

b. 'Service'- Date of issuance of invoice or the last date by which invoice is required to be issued or the date of receipt of advance

Further, there are special provisions for continuous supply of goods / services, Reverse Charge Mechanism etc. It can be observed that there are many parameters in determining 'time' of supply. Thus, determining the 'time' of supply and further maintaining reconciliation between revenue as per financials and as per GST rules could be a major challenge to meet.

From 15th November 2017 GST is not levied on receipt of advance on supply of goods. However, if advance received is for supply of services then GST will be payable as per time of Supply.

13. Time of supply of Services

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

- (a) the date of issue of invoice by the supplier, if the invoice is issued within the period prescribed under ~~sub-section (2)~~ of section 31 or the date of receipt of payment, whichever is earlier; or
- (b) the date of provision of service, if the invoice is not issued within the period prescribed under sub-section (2) of section 31 or the date of receipt of payment, whichever is earlier; or
- (c) the date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or clause (b) do not apply:

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

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

- (i) the supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment;
- (ii) **“the date of receipt of payment”** shall be the date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank account, whichever is earlier.

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

- (a) the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or
- (b) the date immediately following sixty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier:

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

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

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

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

Amendment by the CGST (Amendment) Act, 2018

To correct the error in drafting law amendment is Section 12 and section 13 of the CGST Act, is done so that to cover all the provisions for issuance of invoices/other documents which are contained in other sub-sections of section 31.

Advance Ruling

In the case Vesuvius India Ltd (Dated: July 20, 2018) [2018-TIOL-117-AAR-GST] a supplier who is engaged in end to end system solutions for controlled casting of iron and steel which includes supply of refractory components and associated services intends to offer a new supply, namely Contract

Management System (CMS). The verdict given by ARA in said case is Activities proposed to undertaken are services associated with manufacturing of metal, and may be termed as continuous supply of service within the meaning of Section 2(33) of the GST Act, provided the service is agreed to be provisioned for a period exceeding three months. Further, time of supply shall be the date of issue of invoice in terms of Section 13(2) (a), read with Section 31(2) of the GST Act and Rule 47 of the GST Rules

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

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

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

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

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

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

Author comments: The section applies for the change in rate of GST for services and for goods. It splits the scenarios in two baskets:

- a. In case where the goods / services have been supplied **before** the change in rate of tax
- b. In case where the goods / services have been supplied **after** the change in rate of tax

15. Value of taxable supply

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

 - (a) any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;
 - (b) any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;

- (c) incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;
- (d) interest or late fee or penalty for delayed payment of any consideration for any supply; and
- (e) subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments.

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

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

- (4) Where the value of the supply of goods or services or both cannot be determined under sub-section (1), the same shall be determined in such manner as may be prescribed.
- (5) Notwithstanding anything contained in sub-section (1) or sub-section (4), the value of such supplies as may be notified by the Government on the recommendations of the Council shall be determined in such manner as may be prescribed. *Explanation* - For the purposes of this Act,--
- (a) persons shall be deemed to be "**related persons**" if--
- (i) such persons are officers or directors of one another's businesses;
 - (ii) such persons are legally recognised partners in business;
 - (iii) such persons are employer and employee;
 - (iv) any person directly or indirectly owns, controls or holds twenty-five per cent or more of the outstanding voting stock or shares of both of them;
 - (v) one of them directly or indirectly controls the other;
 - (vi) both of them are directly or indirectly controlled by a third person;
 - (vii) together they directly or indirectly control a third *persons; or*
 - (viii) they are members of the same family;
- (b) the term "person" also includes legal persons;
- (c) persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other, shall be deemed to be related.

Author comments: GST would be payable on the 'transaction value'.

Transaction value is the price actually paid or payable for the said supply of goods and/or services between un-related parties and where price is the sole consideration.

The value is said to include all expenses in relation to sale such as packing, commission etc. Even subsidies linked to supply, except provided by Government, will be includable. Even interest for delayed payment of consideration needs to be included.

Discounts

As regards discounts/ incentives, it will not form part of 'transaction value' subject to fulfilment of conditions as under:

- a. Discount given **before** or **at** the time of the supply provided such discount has been duly recorded in the invoice issued in respect of such supply;
- b. Discount given **after supply is affected** provided that:
 - i. such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and

- ii. input tax credit has been reversed by the recipient of the supply as is attributable to the discount on the basis of document issued by the supplier

Taxes

In current regime of indirect taxes paid are not included in the price on which tax/ duty is charged. However, GST will be payable on all the taxes other than tax paid as CGST, SGST or IGST. This may hamper the very basic objective of removing cascading effect of taxes.

Related Persons

This section defines 'related persons' for the purpose of GST Act. This definition is relevant from the perspective of sr. no. 2 and 4 of Schedule I [Matters to be treated as supply even if made without Consideration] as discussed under:

1...

2. *Supply of goods or services between related persons, or between distinct persons as specified in section 10, when made in the course or furtherance of business.*

...

4. Importation of services by a taxable person from a related person or from any of his other establishments outside India, in the course or furtherance of business'

Advance Ruling

In the ruling of Ultratech Cement Ltd (Dated: June 27, 2018) [2018-TIOL-110-AAR-GST] it was decided that the amount paid to authorised dealers on account of **rate difference** after supplying goods to authorised dealers & stockists [i.e. Post-Sale discount] cannot be considered for determining transaction value u/s 15 of CGST Act.

Chapter-V

INPUT TAX CREDIT

16. Eligibility and Conditions for taking Input Tax Credit

- (1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless, --

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

(b) he has received the goods or services or both.

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

I. where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

I.II. where the services are provided by the supplier to any person on the direction of and on account of such registered person

- (c) subject to the provisions of ~~section 41~~ section 41 or section 43A, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and
- (d) he has furnished the return under section 39:

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

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

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

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

Author comments: Section 16 and 17 of CGST Act and Rule 36 to 45 of CGST Rules deal with Input Tax Credit.

Section 16 (2) of the Act, prescribes following four conditions for availment of credit:

- (a) he is in **possession of** a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;
- (b) he has **received** the goods or services or both¹.

¹ Explanation.—For the purposes of this clause, it shall be deemed that the registered person has received the goods where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether

(c) subject to the provisions of section 41/43A, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and

(d) he has furnished the return under section 39:

The aforesaid, *inter-alia*, two conditions appears to be un-justified as typically, credit should be available basis invoice and recipient should not be burdened with the responsibility of knowing whether the tax has actually been credited to the Government or not. Putting such a kind of onerous condition on buyer leads to un-necessary burden and may pave way of litigation.

Section 16 (2) (b) of the CGST Act prescribes that for availment of input tax credit, *inter-alia*, services should be received. The condition of receipt of goods can be proved through GRN (Goods Received Note) however, it services are intangible in nature and thus its not clear why a condition of 'receipt' of service is provided for.

180 days condition

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

To continue to claim the input tax credit the buyer has to ensure that he pays the supplier within 180 days from date of invoice. If payment to vendor is not made within 180 days, then **proportionate** input tax credit will have to be reversed in FORM GSTR-2 for the month immediately following the period of one hundred and eighty days from the date of issue of invoice (refer Rule 37 of CGST Rules).

It may be noted that similar provision (payment within 90 days) was contained in CENVAT Credit Rules, 2004, however, it was applicable only for services and further, interest was not applicable (which is applicable in GST regime).

Amendment by the CGST (Amendment) Act, 2018

Now, vide amendment deeming fiction is provided in case of services as well which can be used in case of availing ITC with respect to services received through agent by way of document transfer.

17. Apportionment of credit and blocked credits

- (1) Where the goods or services or both are used by the registered person partly for the purpose of any business and partly for other purposes, the amount of credit shall be restricted to so much of the input tax as is attributable to the purposes of his business.

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

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

Amendment by the CGST (Amendment) Act, 2018

Subsection (1) to (4) of Section 17 of the CGST Act, prescribes about apportionment of ITC in certain scenario (like if a person engaged in taxable as well as exempt supply required to reverse ITC with respect to exempt supply).

Now, CGST (Amendment) Act, 2018 has amended sub-section (3), to insert the following Explanation namely: --'

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

Schedule III contain the activities which are neither treated as supply of good nor supply of services (like Services of funeral, burial, crematorium or mortuary including transportation of the deceased, Actionable claims, other than lottery, betting and gambling etc). Act is now amended to allow availment of ITC on activities or transactions specified in Schedule III (other than sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building) by excluding it from the ambit of ‘exempt supply’ on which ITC is blocked.

Given the aforesaid, in case of developer the value of sale of land forms the part of value of exempt supply for reversal of ITC up to the proportion of exempt supply however other supply covered under schedule III are not included for computing proportion of exempt supply vis a vis other supply.

- (4) A banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances shall have the option to either comply with the provisions of 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 and the rest shall lapse:

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

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

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

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

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

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

~~(B) transportation of passengers; or~~

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

~~(ii) for transportation of goods; motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons~~

(including the driver), except when they are used for making the following taxable supplies, namely:—

(A) further supply of such motor vehicles; or

(B) transportation of passengers; or

(C) imparting training on driving such motor vehicles

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

I. for making the following taxable supplies, namely:—

A. further supply of such vessels or aircraft; or

B. transportation of passengers; or

C. imparting training on navigating such vessels; or

D. imparting training on flying such aircraft;

II. for transportation of goods

(ab) services of general insurance, servicing, repair and maintenance in so far as they relate to motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa):

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

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

ii. where received by a taxable person engaged—

I. in the manufacture of such motor vehicles, vessels or aircraft; or

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

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

~~(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery except where an inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;~~

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

~~(iii) rent a cab, life insurance and health insurance except where—~~

~~(A) the Government notifies the services which are obligatory for an employer to provide to its employees under any law for the time being in force; or~~

~~(B) such inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as part of a taxable composite or mixed supply; and~~

~~(C) travel benefits extended to employees on vacation such as leave or home travel concession;~~

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

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

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

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

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

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

Amendment by the CGST (Amendment) Act, 2018

Section 17 of the CGST Act, prescribe the list of ineligible ITC. The table given below depict the scenario or comparison of ineligible credit as per the CGST Act 2017 vis a vis the CGST (Amendment) Act, 2018.

No.	GST Act 2018	Amendment	Remark
1.	(a) motor vehicles and other conveyances except when they are used-- (i) for making the following taxable supplies, namely:— (A) further supply of such vehicles or conveyances ; or (B) transportation of passengers; or (C) imparting training on driving, flying, navigating such	a) motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver), except when they are used for making the following taxable supplies, namely:— (A)further supply of such motor vehicles; or (B)transportation of passengers; or	Given this, now ITC motor vehicles for transportation of persons having approved seating capacity of more than thirteen persons is allowed irrespective of use. Alternatively, ITC of the motor vehicles for transportation of persons having approved seating less than thirteen person is allowed only if used for (A)further supply of such motor vehicles; or (B)transportation of passengers; or (C)imparting training on driving such motor vehicles; The amendment is sought to make it clear that input tax credit

	vehicles or conveyances;	(C)imparting training on driving such motor vehicles;	would now available in respect of dumpers, work-trucks, fork-lift trucks and other special purpose motor vehicles. After the amendment is carried out, input tax credit would be denied only in respect of motor vehicles for transport of persons having approved seating capacity of not more than 13 persons (including the driver), vessels and aircraft when these are used for personal purposes.
2.	----	(aa) vessels and aircraft except when they are used-- i. for making the following taxable supplies, namely: — (A)further supply of such vessels or aircraft; or	ITC of vessels and aircraft is blocked except when they used for further supply of such vessels or aircraft; or transportation of passengers; or imparting training on navigating such vessels; or imparting training on flying such aircraft;

		<p>(B) transportation of passengers; or (C) imparting training on navigating such vessels; or (D) imparting training on flying such aircraft;</p>	
3.	---	<p>(ab) services of general insurance, servicing, repair and maintenance in so far as they relate to motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa): Provided that the input tax</p>	<p>Earlier nothing was specified about the eligibility of ITC with respect to services related to motor vehicle which leads to ambiguity. Hence now ITC with respect to services of general insurance, servicing, repair and maintenance in so far as they relate to motor vehicles, vessels or aircraft as specified in clause (a) and (aa) of the section 17(5) of the Act are also disallowed. However, same is available if</p>

		<p>credit in respect of such services shall be available—</p> <p>(i) where the motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) are used for the purposes specified therein;</p> <p>(ii) where received by a taxable person engaged—</p> <p>(I) in the manufacture of such motor vehicles, vessels or aircraft; or</p> <p>(II) in the supply of general</p>	<p>- where used for the purposes specified</p> <p>- where received by a taxable person engaged in the manufacture of such motor vehicles, vessels or aircraft; or in the supply of general insurance services in respect of such motor vehicles, vessels or aircraft insured by him.</p>
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		insurance services in respect of such motor vehicles, vessels or aircraft insured by him;	
	Food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery except where an inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of	Food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) except when used for the purposes specified therein, life insurance and health insurance:	Earlier, in accordance with the provisions of section 17(5)(b), ITC was not available in respect of food and beverages, health services, travel benefits to employees etc. This sub-section is being amended to allow ITC in respect of such goods or services or both where the provision of such goods or services or both is obligatory for an employer to provide to its employees under any law for the time being in force.

	<p>a taxable composite or mixed supply;</p> <p>(ii) membership of a club, health and fitness centre;</p> <p>(iii) rent-a-cab, life insurance and health insurance except where --</p> <p>(A) the Government notifies the services which are obligatory for an employer to provide to its employees under any law for the time being in force; or</p> <p>(B) such inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same</p>	<p>Provided that the input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;</p> <p>(i)membership of a club, health and fitness centre; an</p> <p>(ii)travel benefits extended to employees on</p>		
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	<p>category of goods or services or both or as part of a taxable composite or mixed supply; and (iv) travel benefits extended to employees on vacation such as leave or home travel concession;</p>	<p>vacation such as leave or home travel concession: Provided that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide to its employees under any law for the time being in force</p>	

- C. Works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service;
- D. goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account

including when such goods or services or both are used in the course or furtherance of business.

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

- E. goods or services or both on which tax has been paid under section 10 or;
- F. goods or services or both received by a non-resident taxable person except on goods imported by him;
- G. goods or services or both used for personal consumption;
- H. goods **lost**, stolen, destroyed, written off or disposed of by way of gift or **free samples**; and
- I. any tax paid in accordance with the provisions of sections 74, 129 and 130.

(6) The Government may prescribe the manner in which the credit referred to in sub-35 sections (1) and (2) may be attributed.

Explanation - For the purposes of this Chapter and Chapter VI, the expression “plant and machinery” means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes—

- (i) land, building or any other civil structures;
- (ii) telecommunication towers; and

(iii) pipelines laid outside the factory premises.

Authors comments:

Credit is proposed to be denied on goods and/or services used for **personal consumption**. Also, input tax credit shall not be available on **goods lost, stolen, destroyed, written off or** disposed of by way of **gift or free samples**. This continuation of denial will lead to substantial tax cascading (as rate of GST will be higher than the current rate of service tax!).

Also, another round of litigation as interpretation issues will crop up while determining eligibility or otherwise of GST paid on personal consumptions such as business lunch with clients.

Banking and NBFC

For a banking company or a financial institution including a NBFC, restriction of 50% on availment of credit shall not apply to tax paid on supplies made by one registered person to another registered person having the same PAN.

(6) The Government may prescribe the manner in which the credit referred to in sub-35 sections (1) and (2) may be attributed.

Explanation - For the purposes of this Chapter and Chapter VI, the expression “plant and machinery” means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes—

- (iv) land, building or any other civil structures;
- (v) telecommunication towers; and
- (vi) pipelines laid outside the factory premises.

18. Availability of credit in special circumstances

- (1) Subject to such conditions and restrictions as may be prescribed—
- (a) a person who has applied for registration under this Act within thirty days from the date on which he becomes liable to registration and has been granted such registration shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of this Act;
 - (b) a person who takes registration under sub-section (3) of section 25 shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date of grant of registration;

- (c) where any registered person ceases to pay tax under section 10 or, he shall be 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 becomes liable to pay tax under section 9:

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

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

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

- (2) A registered person shall not be entitled to take input tax credit under subsection (1) in respect of any supply of goods or services or both to him after

the expiry of one year from the date of issue of tax invoice relating to such supply.

- (3) Where there is a change in the constitution of a registered person on account of sale, merger, demerger, amalgamation, lease or transfer of the business with the specific provisions for transfer of liabilities, the said registered person shall be allowed to transfer the input tax credit which remains unutilised in his electronic credit ledger to such sold, merged, demerged, amalgamated, leased or transferred business in such manner as may be prescribed.
- (4) Where any registered person who has availed of input tax credit opts to pay tax under section 10 or, where the goods or services or both supplied by him become wholly exempt, he shall pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger, equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock and on capital goods, reduced by such percentage points as may be prescribed, on the day immediately preceding the date of exercising of such option or, as the case may be, the date of such exemption:
- Provided that after payment of such amount, the balance of input tax credit, if any, lying in his electronic credit ledger shall lapse.
- (5) The amount of credit under sub-section (1) and the amount payable under sub-section (4) shall be calculated in such manner as may be prescribed.

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

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

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

- (1) The principal shall, subject to such conditions and restrictions as may be prescribed, be allowed input tax credit on inputs sent to a job-worker for job-work.
- (2) Notwithstanding anything contained in clause (b) of sub-section (2) of section 16, the principal shall be entitled to take credit of input tax on inputs even if the inputs are directly sent to a job worker for job-work without being first brought to his place of business.
- (3) Where the inputs sent for job work are not received back by the principal after completion of job-work or otherwise or are not supplied from the place

of business of the job worker in accordance with clause (a) or clause (b) of sub-section (1) of section 143 within **one year** of being sent out, it shall be deemed that such inputs had been supplied by the principal to the job-worker on the day when the said inputs were sent out:

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

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

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

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

Explanation – For the purpose of this section, “**principal**” means the person referred to in section 143.

Author comments: As per section 19, “principal” (typically a person who is sending the goods for job-work) shall, be entitled to take credit of input tax on inputs sent to a job-worker for job-work if the said inputs.

In case they are not received back within **one year** then deemed that such inputs had been supplied by the principal to the job-worker on the day when the said inputs were sent out. For capital goods (other than moulds and dies, jigs and fixtures, or tools) the time limit will be **three years**.

20. Manner of distribution of credit by Input Service Distributor

- (1) The Input Service Distributor shall distribute the credit of central tax as central tax or integrated tax and integrated tax as integrated tax or central tax, by way of issue of a document containing the amount of input tax credit being distributed in such manner as may be prescribed.
- (2) The Input Service Distributor may distribute the credit subject to the following conditions, namely:–
- (a) the credit can be distributed to the recipients of credit against a document containing such details as may be prescribed;

- (b) the amount of the credit distributed shall not exceed the amount of credit available for distribution;
- (c) the credit of tax paid on input services attributable to a recipient of credit shall be distributed only to that recipient;
- (d) the credit of tax paid on input services attributable to more than one recipient of credit shall be distributed amongst such recipients to whom the input service is attributable and such distribution shall be pro rata on the basis of the turnover in a State or turnover in a Union territory of such recipient, during the relevant period, to the aggregate of the turnover of all such recipients to whom such input service is attributable and which are operational in the current year, during the said relevant period;
- (e) the credit of tax paid on input services attributable to all recipients of credit shall be distributed amongst such recipients and such distribution shall be pro rata on the basis of the turnover in a State or turnover in a Union territory of such recipient, during the relevant period, to the aggregate of the turnover of all recipients and which are operational in the current year, during the said relevant period.

Explanation - For the purposes of this section, --

- (a) the "**relevant period**" shall be--

- (i) if the recipients of credit have turnover in their States or Union territories in the financial year preceding the year during which credit is to be distributed, the said financial year; or
 - (ii) if some or all recipients of the credit do not have any turnover in their States or Union territories in the financial year preceding the year during which the credit is to be distributed, the last quarter for which details of such turnover of all the recipients are available, previous to the month during which credit is to be distributed;
- (b) the expression "**recipient of credit**" means the supplier of goods or services or both having the same Permanent Account Number as that of the Input Service Distributor;
- (c) the term '**turnover**', in relation to any registered person engaged in the supply of taxable goods as well as goods not taxable under this Act, means the value of turnover, reduced by the amount of any duty or tax levied under ~~entry 84~~ "under entries 84 and 92A" of List I of the Seventh Schedule to the Constitution and entry 51 and 54 of List II of the said Schedule.

Author comments:

As per section 2 (61) of the GST Act, "Input Service Distributor" means an office of the supplier of goods and / or services which receives tax invoices issued under section 31 towards receipt of input services and issues tax invoice

or such other document as prescribed for the purposes of distributing the credit of CGST (SGST in State Acts) and / or IGST paid on the said services to a supplier of taxable goods and / or services having same PAN as that of the office referred to above. Thus, it appears that only credit on 'input services' can be distributed (and not on inputs or capital goods).

Amendment by the CGST (Amendment) Act, 2018

As discussed aforesaid, Section 20 of the CGST Act prescribes manner of distribution of credit by Input Service Distributor. In one of the draft official document stated the rationale behind the amendment:

'It was inadvertently left out from clause (c) of Explanation to section 20. Section 20 deals with the manner of distribution of credit by the Input Service Distributor. Section 20 (2) (d) provides that where the credit is attributable to more than one recipient, such credit shall be distributed amongst the recipient's pro rata on the basis of turnover in the State or Union territory.'

As per clause (c) of Explanation to section 20, the expression "turnover" does not include any duty or tax levied under entry 84 of List I of the Seventh Schedule to the Constitution and entries 51 and 54 of List II of the said Schedule.

Entry 54 of List II covers taxes on the sale or purchase of goods other than newspapers, subject to the provisions of entry 92A of List I while Entry 92A of

List I covers taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce.

21. Manner of recovery of credit distributed in excess

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

Author comments:

This section provides for recovery in cases where the credit is wrongly distributed.

Chapter-VI

REGISTRATION

22. Persons liable for registration

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

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

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

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

- (2) Every person who, on the day immediately preceding the appointed day, is registered or holds a *licence under* an existing law, shall be liable to be registered under this Act with effect from the appointed day.
- (3) Where a business carried on by a taxable person registered under this Act is transferred, whether on account of succession or otherwise, to another person as a going concern, the transferee or the successor, as the case may be, shall be liable to be registered with effect from the date of such transfer or succession.
- (4) Notwithstanding anything contained in sub-sections (1) and (3), in a case of transfer pursuant to sanction of a scheme or an arrangement for

amalgamation or, as the case may be, de-merger of two or more companies pursuant to an order of a High Court, Tribunal or otherwise, the transferee shall be liable to be registered, with effect from the date on which the Registrar of Companies issues a certificate of incorporation giving effect to such order of the High Court or Tribunal.

Explanation – For the purposes of this section,--

- (i) the expression **“aggregate turnover”** shall include all supplies made by the taxable person, whether on his own account or made on behalf of all his principals;
- (ii) the supply of goods, after completion of job-work, by a registered job worker shall be treated as the supply of goods by the principal referred to in section 143, and the value of such goods shall not be included in the aggregate turnover of the registered job worker;
- (iii) the expression **“special category States”** shall mean the States as specified in sub-clause (g) of clause (4) of Article 279A of the Constitution. [except the state of Jammu and Kashmir and States of Arunachal Pradesh, Assam, Himachal Pradesh, Meghalaya, Sikkim and Uttarakhand]¹ }²

¹ Ins by Act 26 of 2017, sec 2(2)(b) (w.e.f. 08-07-2017)

Author comments:

Every person who is liable to be registered under Schedule V of this Act is required to apply for registration in **every such State** in which he is so liable **within thirty days** from the date on which he becomes liable to registration.

Casual/ non-residents should apply at-least five days before their commencement of business.

Registration number in GST will be PAN based and hence, having PAN would be a pre-requisite for obtaining registration. Further, as registration under GST will be State-wise, thus the assessee will have to obtain separate registration for each State. Further, the GST law provides for an option to obtain separate registration for each of the 'business vertical' in the same State.

Amendment by the CGST (Amendment) Act, 2018

Earlier, threshold was 10 lakhs, now, proviso is inserted so that the Government may, at the request of a special category State and on the recommendations of the Council, can enhance the aggregate turnover from ten lakh rupees to such amount, not exceeding twenty lakh rupees. Rational behind insertion of said provision seems that the State of Assam has requested that the threshold exemption for registration in their State should be raised from Rs. 10 lakhs to Rs. 20 lakhs.

23. Persons not liable for registration

- (1) The following persons shall not be liable to registration, namely:–
 - (a) any person engaged **exclusively** in the business of supplying goods or services or both that are not liable to tax or wholly exempt from tax under this Act or under the Integrated Goods and Services Tax Act;
 - (b) an **agriculturist**, to the extent of supply of produce out of cultivation of land.
- (2) The Government may, on the recommendations of the Council, by notification, specify the category of persons who may be exempted from obtaining registration under this Act.

Author comments:

Earlier an e-commerce operator was required to take compulsory registration in terms of section 24(x) even if his aggregate turnover in a financial year does not exceed Rs. 20 lakhs. Said clause is amended by CGST (Amendment) Act, 2018 to provide that only those e-commerce operators who are required to collect tax at source under section 52 of the CGST Act would be required to take compulsory registration. Other e-commerce operators who are not required to collect tax at source under section 52 would henceforth not be required to take registration if their aggregate turnover in a financial year does not exceed 20 lakhs.

24. Compulsory registration in certain cases

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

–

- (i) persons making any inter-State taxable supply;
- (ii) casual taxable persons making taxable supply;
- (iii) persons who are required to pay tax under reverse charge;
- (iv) person who are required to pay tax under sub-section (5) of section 9;
- (v) non-resident taxable persons making taxable supply;
- (vi) persons who are required to deduct tax under section 51, whether or not separately registered under this Act;
- (vii) persons who make taxable supply of goods or services or both on behalf of other taxable persons whether as an agent or otherwise;
- (viii) Input Service Distributor, whether or not separately registered under this Act;
- (ix) persons who supply goods or services or both, other than supplies specified under sub-section (5) of section 9, through such electronic commerce operator who is required to collect tax at source under section 52;
- (x) every electronic commerce operator who is required to collect tax at source under section 52;

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

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

25. Procedure for registration

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

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

"Provided further that a person having a unit, as defined in the Special Economic Zones Act, 2005, in a Special Economic Zone or being a Special Economic Zone developer shall have to apply for a separate registration, as distinct from his place of business located outside the Special Economic Zone in the same State or Union territory.";

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

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

Provided that a person having multiple business verticals in a State or Union territory may be granted a separate registration for each business vertical, subject to such conditions as may be prescribed.

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

- (3) A person, though not liable to be registered under section 22 or section 24 may get himself registered voluntarily, and all provisions of this Act, as are applicable to a registered person, shall apply to such person.
- (4) A person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as distinct persons for the purposes of this Act.
- (5) Where a person who has obtained or is required to obtain registration in a State or Union territory in respect of an establishment, has an establishment in another State or Union territory, then such establishments shall be treated as establishments of distinct persons for the purposes of this Act.

(6) Every person shall have a Permanent Account Number issued under the Income-tax Act, 1961 in order to be eligible for grant of registration:

Provided that a person required to deduct tax under section 51 may have, in lieu of a Permanent Account Number, a Tax Deduction and Collection Account Number issued under the said Act in order to be eligible for grant of registration.

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

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

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

(a) any specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries; and

(b) any other person or class of persons, as may be notified by the Commissioner, shall be granted a Unique Identity Number in such manner and for such purposes, including refund of taxes on the notified

supplies of goods or services or both received by them, as may be prescribed.

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

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

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

Comments with respect to Amendment in GST Act :

A person having multiple places of business in a State or Union territory can obtain separate registration for each such place of business or business vertical. Similarly, now proviso is inserted to allow a person having multiple units in an SEZ to take separate registration for each such unit.

26. Deemed registration

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

Number under this Act subject to the condition that the application for registration or the Unique Identity Number has not been rejected under this Act within the time specified in sub-section (10) of section 25.

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

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

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

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

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

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

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

Author comments: Section 27 prescribes special provisions relating to casual taxable person and non-resident taxable person. As per the provisions, a person may obtain a temporary registration for a period of 90 days (extendable for additional 90 days). A person who obtains registration in accordance with this section, will be required to make advance deposit of GST (based on his estimated tax liability).

28. Amendment of registration

- (1) Every registered person and a person to whom a Unique Identity Number has been assigned shall inform the proper officer of any changes in the information furnished at the time of registration or subsequent thereto, in such form and manner and within such period as may be prescribed.
- (2) The proper officer may, on the basis of information furnished under subsection (1) or as ascertained by him, approve or reject amendments in the registration particulars in such manner and within such period as may be prescribed:

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

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

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

Author comments: This section deals with amendment in registration certificate in case any information furnished at the time of registration has subsequently undergone any change.

29. **Cancellation or suspension of registration**

(1) The proper officer may, either on his own motion or on an application filed by the registered person or by his legal heirs, in case of death of such person, cancel the registration, in such manner and within such period as may be prescribed, having regard to the circumstances where,—

(a) the business has been discontinued, transferred fully for any reason including death of the proprietor, amalgamated with other legal entity, demerged or otherwise disposed of; or

(b) there is any change in the constitution of the business; or

(c) the taxable person, other than the person registered under sub-section (3) of section 25, is no longer liable to be registered under section 22 or section 24.

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

(2) The proper officer may cancel the registration of a person from such date, including any retrospective date, as he may deem fit, where,—

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

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

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

- (3) The cancellation of registration under this section shall not affect the liability of the person to pay tax and other dues under this Act or to discharge any obligation under this Act or the rules made thereunder for any period prior

to the date of cancellation whether or not such tax and other dues are determined before or after the date of cancellation.

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

(5) Every registered person whose registration is cancelled shall pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger, equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock or capital goods or plant and machinery on the day immediately preceding the date of such cancellation or the output tax payable on such goods, whichever is higher, calculated in such manner as may be prescribed:

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

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

Author comments: This section deals with cancellation of registration certificate. The registration certificate may be cancelled by the Authorities on their own motion or basis the application filed by the assessee/ his heirs.

Surprisingly, as per section 29 (2) registration certificate can even be cancelled **retrospectively** (!). If this enabling power is exercised by the Authorities then it may lead to denial of credits to the bona-fide buyers.

Amendment by the CGST (Amendment) Act, 2018

Section 29 of CGST Act, amended so that to provide that the proper officer may temporarily suspend registration in case where a registered person is applied for cancellation of registration and same is pending before the authorities due to certain procedural formalities.

This will relieve the taxpayer from compliance burden under the law up to the time cancellation of registration is completed.

30. Revocation of cancellation of registration

- (1) Subject to such conditions as may be prescribed, any registered person, whose registration is cancelled by the proper officer on his own motion, may apply to such officer for revocation of cancellation of the registration in the

prescribed manner within thirty days from the date of service of the cancellation order.

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

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

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

Author comments: This section will be applicable **only** in the cases in which registration is cancelled by Officer on his own motion and not when registration was cancelled after filing of application. It is provided that if the cancellation registration of registration is revoked than it will be deemed that the cancellation is revoked under both the acts i.e. CGST and SGST.

Chapter-VII

TAX INVOICE, CREDIT AND DEBIT NOTES

31. Tax invoice

- (1) A registered person supplying taxable goods shall, before or at the time of,—
- (a) removal of goods for supply to the recipient, where the supply involves movement of goods; or
 - (b) delivery of goods or making available thereof to the recipient, in any other case, issue a tax invoice showing the description, quantity and value of goods, the tax charged thereon and such other particulars as may be prescribed:

Provided that the Government may, on the recommendations of the Council, by notification, specify the categories of goods or supplies in respect of which a tax invoice shall be issued, within such time and in such manner as may be prescribed.

- (2) A registered person supplying taxable services shall, before or after the provision of service but within a prescribed period, issue a tax invoice, showing the description, value, tax charged thereon and such other particulars as may be prescribed:

Provided that the Government may, on the recommendations of the Council, by notification and subject to such conditions as may be mentioned therein, specify the categories of services in respect of which--

- (a) any other document issued in relation to the supply shall be deemed to be a tax invoice; or
 - (b) tax invoice may not be issued.
- (3) Notwithstanding anything contained in sub-sections (1) and (2)–
- (a) a registered person may, within one month from the date of issuance of certificate of registration and in such manner as may be prescribed, issue a revised invoice against the invoice already issued during the period beginning with the effective date of registration till the date of issuance of certificate of registration to him;
 - (b) a registered person may not issue a tax invoice if the value of the goods or services or both supplied is less than two hundred rupees subject to such conditions and in such manner as may be prescribed;
 - (c) a registered person supplying exempted goods or services or both or paying tax under the provisions of section 10 shall issue, instead of a tax invoice, a bill of supply containing such particulars and in such manner as may be prescribed:

Provided that the registered person may not issue a bill of supply if the value of the goods or services or both supplied is less than two hundred rupees subject to such conditions and in such manner as may be prescribed;
 - (d) a registered person shall, on receipt of advance payment with respect to any supply of goods or services or both, issue a receipt voucher or any

- other document, containing such particulars as may be prescribed, evidencing receipt of such payment;
- (e) where, on receipt of advance payment with respect to any supply of goods or services or both the registered person issues a receipt voucher, but subsequently no supply is made and no tax invoice is issued in pursuance thereof, the said registered person may issue to the person who had made the payment, a refund voucher against such payment;
 - (f) a registered person who is liable to pay tax under sub-section (3) or sub-section (4) of section 9 shall issue an invoice in respect of goods or services or both received by him from the supplier who is not registered on the date of receipt of goods or services or both;
 - (g) a registered person who is liable to pay tax under sub-section (3) or sub-section (4) of section 9 shall issue a payment voucher at the time of making payment to the supplier.
- (4) In case of continuous supply of goods, where successive statements of accounts or successive payments are involved, the invoice shall be issued before or at the time each such statement is issued or, as the case may be, each such payment is received.
- (5) Subject to the provisions of clause (d) of sub-section (3), in case of continuous supply of services,--
- (a) where the due date of payment is ascertainable from the contract, the invoice shall be issued on or before the due date of payment;

- (b) where the due date of payment is not ascertainable from the contract, the invoice shall be issued before or at the time when the supplier of service receives the payment;
 - (c) where the payment is linked to the completion of an event, the invoice shall be issued on or before the date of completion of that event.
- (6) In a case where the supply of services ceases under a contract before the completion of the supply, the invoice shall be issued at the time when the supply ceases and such invoice shall be issued to the extent of the supply made before such cessation.
- (7) Notwithstanding anything contained in sub-section (1), where the goods being sent or taken on approval for sale or return are removed before the supply takes place, the invoice shall be issued before or at the time of supply or six months from the date of removal, whichever is earlier.

Explanation - For the purposes of this section, the expression “**tax invoice**” shall include any revised invoice issued by the supplier in respect of a supply made earlier.

Author comments: This section prescribes when invoice should be issued and prescribed particulars to be mentioned on the invoice.

As per Rule 47 of CGST Rules its provided that invoice should be issued within **30 days** from the date of supply of service. For insurer or a banking company

or a financial institution, including a non-banking financial company, this period is **45 days**.

32. Prohibition of unauthorised collection of tax

- (1) A person who is not a registered person shall not collect in respect of any supply of goods or services or both any amount by way of tax under this Act.
- (2) No registered person shall collect tax except in accordance with the provisions of this Act or the rules made thereunder.

33. Amount of tax to be indicated in tax invoice and other documents

Notwithstanding anything contained in this Act or any other law for the time being in force, where any supply is made for a consideration, every person who is liable to pay tax for such supply shall prominently indicate in all documents relating to assessment, tax 40 invoice and other like documents, the amount of tax which shall form part of the price at which such supply is made.

34. Credit and debit notes

- (1) ~~Where a tax invoice has~~ Where one or more tax invoices have been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to exceed the taxable value or tax payable in respect of such supply, or where the goods supplied are returned by 45 the recipient, or where goods or services or both supplied are found

to be deficient, the registered person, who has supplied such goods or services or both, may issue to the recipient ~~a credit note~~ one or more credit notes for supplies made in a financial year containing such particulars as may be prescribed.

- (2) Any registered person who issues a credit note in relation to a supply of goods or services or both shall declare the details of such credit note in the return for the month during which such credit note has been issued but not later than September following the end of the financial year in which such supply was made, or the date of furnishing of the relevant annual return, whichever is earlier, and the tax liability shall be adjusted in such manner as may be prescribed:

Provided that no reduction in output tax liability of the supplier shall be permitted, if the incidence of tax and interest on such supply has been passed on to any other person.

- (3) ~~Where a tax invoice~~ Where one or more tax invoices have been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to be less than the taxable value or tax payable in respect of such supply, the registered person, who has supplied such goods or services or both, shall issue to the recipient ~~a debit note~~ one or more debit notes for one or more debit notes for containing such particulars as may be prescribed.

- (4) Any registered person who issues a debit note in relation to a supply of goods or services or both shall declare the details of such debit note in the return for the month during which such debit note has been issued and the tax liability shall be adjusted in such manner as may be prescribed.

Explanation - For the purposes of this Act, the expression “**debit note**” shall include a supplementary invoice.

Comments of amended GST Law:

Earlier a credit/debit note which is issued by the registered person is required to be issued invoice-wise. Hence one invoice one credit/debit note was allowed. This causes a compliance burden for tax payers where value is revised for more than one invoice.

Given this now section 34 of the CGST Act is amended to allow issuance of consolidated credit/debit.

The amendment seeks to permit a registered person to issue consolidated credit / debit notes in respect of multiple invoices issued in a Financial Year without linking the same to individual invoices.

ACCOUNTS AND RECORDS

35. Accounts and other records

- (1) Every registered person shall keep and maintain, at his principal place of business, as mentioned in the certificate of registration, a true and correct account of—
- (a) production or manufacture of goods;
 - (b) inward and outward supply of goods or services or both;
 - (c) stock of goods;
 - (d) input tax credit availed;
 - (e) output tax payable and paid; and
 - (f) such other particulars as may be prescribed:

Provided that where more than one place of business is specified in the certificate of registration, the accounts relating to each place of business shall be kept at such places of business:

Provided further that the registered person may keep and maintain such accounts and other particulars in electronic form in such manner as may be prescribed.

- (2) Every owner or operator of warehouse or godown or any other place used for storage of goods and every transporter, irrespective of whether he is a

registered person or not, shall maintain records of the consigner, consignee and other relevant details of the goods in such manner as may be prescribed.

(3) The Commissioner may notify a class of taxable persons to maintain additional 40 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) Every registered person whose turnover during a financial year **exceeds the prescribed limit shall get his accounts audited** by a chartered accountant or a cost accountant and shall submit a copy of the audited annual accounts, the reconciliation statement under sub-section (2) of section 44 and such other documents in such form and manner as may be prescribed.

“Provided that nothing contained in this sub-section shall apply to any department of the Central Government or a State Government or a local authority, whose books of account are subject to audit by the Comptroller and Auditor-General of India or an auditor appointed for auditing the accounts of local authorities under any law for the time being in force

~~(5)~~(6) Subject to the provisions of clause (h) of sub-section (5) of section 17, where the registered person fails to account for the goods or services or both in accordance with the provisions of sub-section (1), the proper officer shall determine the amount of tax payable on the goods or services or both that are not accounted for, as if such goods or services or both had been supplied by such person and the provisions of section 73 or section 74, as the case may be, shall, mutatis mutandis, apply for determination of such tax.

Author comments: Every registered person will be required to keep and maintain, at his principal place of business, as mentioned in the certificate of registration, a true and correct account of production or manufacture of goods, of inward or outward supply of goods and/or services, of stock of goods, of input tax credit availed, of output tax payable and paid, and such other particulars as may be prescribed in this behalf.

Further, it is also provided that every registered taxable person whose turnover during a financial year exceeds the prescribed limit shall get his accounts audited by a chartered accountant or a cost accountant and shall submit to the proper officer a copy of the audited statement of accounts, the reconciliation statement under sub-section (2) of section 30 and such other documents in the form and manner as may be prescribed in this behalf.

Amendment by the CGST (Amendment) Act, 2018

In terms of section 35 (5) of the CGST Act, every registered person whose turnover during a financial year exceeds the prescribed limit (presently, Rs. 2 crore) shall require to get his accounts audited by a chartered accountant or a cost accountant and shall submit a copy of the audited annual accounts, the reconciliation statement under sub-section (2) of section 44 and other prescribed documents.

However, proviso to said section is inserted to so that to provide that any department of the Central or State Government / local authority which is subject to audit by CAG need not get their books of account audited by any Chartered Accountant or Cost Accountant.

Rational provided by the Government for this amendment is that, Ministry of Defence has represented that the annual accounts of Canteen Stores Department (CSD) are internally audited by the Controller of Defence Accounts (CDA) and therefore, should not be subject to audit by a Chartered Accountant or a Cost Accountant.

36. Period of retention of accounts

Every registered person required to keep and maintain books of account or other records in accordance with the provisions of sub-section (1) of section

35 shall retain them until the expiry of **seventy two months** from the due date of furnishing of annual return for the year pertaining to such accounts and records:

Provided that a registered person, who is a party to an appeal or revision or any other proceedings before any Appellate Authority or Revisional Authority or Appellate Tribunal or court, whether filed by him or by the Commissioner, or is under investigation for an offence under Chapter XIX, shall retain the books of account and other records pertaining to the subject matter of such appeal or revision or proceedings or investigation for a period of one year after final disposal of such appeal or revision or proceedings or investigation, or for the period specified above, whichever is later.

Author comments: Every registered taxable person will be required to keep and maintain books of account or other records until the expiry of **seventy two months** from the last date of filing of Annual Return for the year pertaining to such accounts and records. Further in case of appeal/revision, records should be maintained for a period of one year after final disposal of such appeal /revision.

Chapter-IX

RETURNS

37. Furnishing details of outward supplies

- (1) Every registered person, other than an Input Service Distributor, a non-resident taxable person and a person paying tax under the provisions of section 10 or section 51 or section 52, shall furnish, electronically, in such form and manner as may be prescribed, the details of outward supplies of goods or services or both effected during a tax period on or before the tenth day of the month succeeding the said tax period and such details shall be communicated to the recipient of the said supplies within such time and in such manner as may be prescribed:

Provided that the registered person shall not be allowed to furnish the details of outward supplies during the period from the eleventh day to the fifteenth day of the month succeeding the tax period:

Provided further that the Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing such details for such class of taxable persons as may be specified therein:

Provided also that any extension of time limit notified by the Commissioner of State tax or Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.

- (2) Every registered person who has been communicated the details under sub-section (3) of section 38 or the details pertaining to inward supplies of Input Service Distributor under sub-section (4) of section 38, shall either accept or reject the details so communicated, on or before the seventeenth day, but not before the fifteenth day, of the month succeeding the tax period and the details furnished by him under sub-section (1) shall stand amended accordingly.
- (3) Any registered person, who has furnished the details under sub-section (1) for any tax period and which have remained unmatched under section 42 or section 43, shall, upon discovery of any error or omission therein, rectify such error or omission in such manner as may be prescribed, and shall pay the tax and interest, if any, in case there is a short payment of tax on account of such error or omission, in the return to be furnished for such tax period:

Provided that no rectification of error or omission in respect of the details furnished under sub-section (1) shall be allowed after furnishing of the return under section 39 for the month of September following the end of the financial year to which such details pertain, or furnishing of the relevant annual return, whichever is earlier.

Explanation - For the purposes of this Chapter, the expression “**details of outward supplies**” shall include details of invoices, debit notes, credit notes and revised invoices issued in relation to outward supplies made during any tax period.

Author comments: Every registered taxable person will be required to furnish, electronically (in GSTR-1 format), the details of outward supplies of goods and/or services effected, during a tax period on or before the 10th day of the month succeeding month. Thus, all the GST assessee throughout India are required to upload the details of outward supplies by 10th of subsequent month.

38. Furnishing details of inward supplies

- (1) Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of *section 10 or section 51 or section 52*, shall verify, validate, modify or delete, if required, the details relating to outward supplies and credit or debit notes communicated under sub-section (1) of section 37 to prepare the details of his inward supplies and credit or debit notes and may include therein, the details of inward supplies and credit or debit notes received by him in respect of such supplies that have not been declared by the supplier under subsection (1) of section 37.

- (2) Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52, shall furnish, electronically, the details of inward supplies of taxable goods or services or both, including inward supplies of goods or services or both on which the tax is payable on reverse charge basis under this Act and inward supplies of goods or services or both taxable under the Integrated Goods and Services Tax Act or on which integrated goods and services tax is payable under section 3 of the Customs Tariff Act, 1975, and credit or debit notes received in respect of such supplies during a tax period after the tenth day but on or before the fifteenth day of the month succeeding the tax period in such form and manner as may be prescribed:

Provided that the Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing such details for such class of taxable persons as may be specified therein:

Provided further that any extension of time limit notified by the Commissioner of State tax or Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.

- (3) The details of supplies modified, deleted or included by the recipient and furnished under sub-section (2) shall be communicated to the supplier concerned in such manner and within such time as may be prescribed.

- (4) The details of supplies modified, deleted or included by the recipient in the return furnished under sub-section (2) or sub-section (4) of section 39 shall be communicated to the supplier concerned in such manner and within such time as may be prescribed.
- (5) Any registered person, who has furnished the details under sub-section (2) for any tax period and which have remained unmatched under section 42 or section 43, shall, upon discovery of any error or omission therein, rectify such error or omission in the tax period during which such error or omission is noticed in such manner as may be prescribed, and shall pay the tax and interest, if any, in case there is a short payment of tax on account of such error or omission, in the return to be furnished for such tax period:

Provided that no rectification of error or omission in respect of the details furnished under sub-section (2) shall be allowed after furnishing of the return under section 39 for the month of September following the end of the financial year to which such details pertain, or furnishing of the relevant annual return, whichever is earlier.

Author comments: Every registered taxable person will be required to furnish, electronically (in GSTR-1 format), the details of outward supplies of goods and/or services effected, during a tax period on or before the

10th day of the month succeeding month. Thus, all the GST assessee throughout India will upload the details of outward supplies by 10th of subsequent month and details of inward supplies are expected to be auto-populated in GSTR-2A. In this, the taxpayer is expected to verify the details, add RCM and import data etc and then prepare GSTR-2 for onward submission.

39. Furnishing of returns

(1) Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of *section 10 or section 51 or section 52* shall, for every calendar month or part thereof, furnish, ~~in such form and manner as may be prescribed in such form, manner and within such time as may be prescribed~~, a return, electronically, of inward and outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid and such other particulars as may be prescribed, ~~on or before the twentieth day of the month succeeding such calendar month or part thereof.~~

~~Provided that the Government may, on the recommendations of the Council, notify certain classes of registered persons who shall furnish return for every quarter or part thereof, subject to such conditions and safeguards as may be specified therein.”;~~

~~(1)~~(2) A registered person paying tax under the provisions of section 10 shall, for each quarter or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, of turnover in the State or Union territory, inward supplies of goods or services or both, tax payable and tax paid within eighteen days after the end of such quarter.

~~(2)~~(3) Every registered person required to deduct tax at source under the provisions of section 51 shall furnish, in such form and manner as may be prescribed, a return, electronically, for the month in which such deductions have been made within ten days after the end of such month.

~~(3)~~(4) Every taxable person registered as an Input Service Distributor shall, for every calendar month or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, within thirteen days after the end of such month.

~~(4)~~(5) Every registered non-resident taxable person shall, for every calendar month or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, within twenty days after the end of a calendar month or within seven days after the last day of the period of registration specified under sub-section (1) of section 27, whichever is earlier.

~~(5)~~(6) The Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing the returns under this section for such class of registered persons as may be specified therein:

Provided that any extension of time limit notified by the Commissioner of State tax or Union territory tax shall be deemed to be notified by the Commissioner.

~~(6)~~(7) Every registered person, who is required to furnish a return under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (5), shall pay to the Government the tax due as per such return not later than the last date on which he is required to furnish such return. “Provided that the Government may, on the recommendations of the Council, notify certain classes of registered persons who shall pay to the Government the tax due or part thereof as per the return on or before the last date on which he is required to furnish such return, subject to such conditions and safeguards as may be specified therein

~~(7)~~(8) Every registered person who is required to furnish a return under sub-section (1) or subsection (2) shall furnish a return for every tax period whether or not any supplies of goods or services or both have been made during such tax period.

~~(8)~~(9) Subject to the provisions of sections 37 and 38, if any registered person after furnishing a return under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (4) or sub-section (5) discovers any omission or incorrect particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, he shall rectify such omission or incorrect particulars ~~in the return to be furnished for the~~

~~month or quarter during which such omission or incorrect particulars are noticed in such form and manner as may be perscribed~~, subject to payment of interest under this Act:

Provided that no such rectification of any omission or incorrect particulars shall be allowed after the due date for furnishing of return for the month of September or second quarter following ~~the end of the financial year~~ the end of the financial year to which such details pertain, or the actual date of furnishing of relevant annual return, whichever is earlier.

~~(9)~~(10) A registered person shall not be allowed to furnish a return for a tax period if the return for any of the previous tax periods has not been furnished by him.

Amendment by the CGST (Amendment) Act, 2018

The GST Council in its 27th meeting held on 4th May 2018 had approved the basic principles of new GST return design. Further, in its 28th meeting held on 21st July, 2018, GST Council approved the key features and new format of the GST returns. The return format is revised with a view to simplify compliance procedure.

Given this certain amendment are made in said section. Additionally, subclause 9 of the section 39 of the CGST Act is amended so that to allow the taxpayers to amend the returns.

40. First return

Every registered person who has made outward supplies in the period between the date on which he became liable to registration till the date on which registration has been granted shall declare the same in the first return furnished by him after grant of registration.

41. Claim of input tax credit and provisional acceptance thereof

- (1) Every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to take the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited on a provisional basis to his electronic credit ledger.
- (2) The credit referred to in sub-section (1) shall be utilised only for payment of self-10 assessed output tax as per the return referred to in the said sub-section.

Author comments: Every taxable person will be entitled to take credit of input tax, as self-assessed, in his return and such amount shall

be credited, on a provisional basis, to his electronic credit ledger to be maintained in the manner as may be prescribed.

42. Matching, reversal and reclaim of input tax credit

- (1) The details of every inward supply furnished by a registered person (hereafter in this section referred to as the “recipient”) for a tax period shall, in such manner and within such time as may be prescribed, be matched--
 - (a) with the corresponding details of outward supply furnished by the corresponding registered person (hereafter in this section referred to as the “supplier”) in his valid return for the same tax period or any preceding tax period;
 - (b) with the integrated goods and services tax paid under section 3 of the Customs Tariff Act, 1975 in respect of goods imported by him; and
 - (c) for duplication of claims of input tax credit.
- (2) The claim of input tax credit in respect of invoices or debit notes relating to inward supply that match with the details of corresponding outward supply or with the integrated goods and services tax paid under section 3 of the Customs Tariff Act, 1975 in respect of goods imported by him shall be finally accepted and such acceptance shall be communicated, in such manner as may be prescribed, to the recipient.
- (3) Where the input tax credit claimed by a recipient in respect of an inward supply is in excess of the tax declared by the supplier for the same supply

or the outward supply is not declared by the supplier in his valid returns, the discrepancy shall be communicated to both such persons in such manner as may be prescribed.

- (4) The duplication of claims of input tax credit shall be communicated to the recipient in such manner as may be prescribed.
- (5) The amount in respect of which any discrepancy is communicated under sub-section (3) and which is not rectified by the supplier in his valid return for the month in which discrepancy is communicated shall be added to the output tax liability of the recipient, in such manner as may be prescribed, in his return for the month succeeding the month in which the discrepancy is communicated.
- (6) The amount claimed as input tax credit that is found to be in excess on account of duplication of claims shall be added to the output tax liability of the recipient in his return for the month in which the duplication is communicated.
- (7) The recipient shall be eligible to reduce, from his output tax liability, the amount added under sub-section (5), if the supplier declares the details of the invoice or debit note in his valid return within the time specified in sub-section (9) of section 39.
- (8) A recipient in whose output tax liability any amount has been added under sub-section (5) or sub-section (6), shall be liable to pay interest at the rate specified under subsection (1) of section 50 on the amount so added from

the date of availing of credit till the corresponding additions are made under the said sub-sections.

- (9) Where any reduction in output tax liability is accepted under sub-section (7), the interest paid under sub-section (8) shall be refunded to the recipient by crediting the amount in the corresponding head of his electronic cash ledger in such manner as may be prescribed:

Provided that the amount of interest to be credited in any case shall not exceed the amount of interest paid by the supplier.

- (10) The amount reduced from the output tax liability in contravention of the provisions of sub-section (7) shall be added to the output tax liability of the recipient in his return for the month in which such contravention takes place and such recipient shall be liable to pay interest on the amount so added at the rate specified in sub-section (3) of section 50.

Author comments: This section provides for matching of details of outward supplies and inward supplies. This section also provides that in case of mismatch of details the discrepancies will be communicated with the both the buyer and supplier to enable them take the corrective actions.

43. Matching, reversal and reclaim of reduction in output tax liability

- (1) The details of every credit note relating to outward supply furnished by a registered person (hereafter in this section referred to as the "supplier") for a tax period shall, in such manner and within such time as may be prescribed, be matched–
 - (a) with the corresponding reduction in the claim for input tax credit by the corresponding registered person (hereafter in this section referred to as the "recipient") in his valid return for the same tax period or any subsequent tax period; and
 - (b) for duplication of claims for reduction in output tax liability.
- (2) The claim for reduction in output tax liability by the supplier that matches with the corresponding reduction in the claim for input tax credit by the recipient shall be finally accepted and communicated, in such manner as may be prescribed, to the supplier.
- (3) Where the reduction of output tax liability in respect of outward supplies exceeds the corresponding reduction in the claim for input tax credit or the corresponding credit note is not declared by the recipient in his valid returns, the discrepancy shall be communicated to both such persons in such manner as may be prescribed.
- (4) The duplication of claims for reduction in output tax liability shall be communicated to the supplier in such manner as may be prescribed.

- (5) The amount in respect of which any discrepancy is communicated under sub-section (3) and which is not rectified by the recipient in his valid return for the month in which discrepancy is communicated shall be added to the output tax liability of the supplier, in such manner as may be prescribed, in his return for the month succeeding the month in which the discrepancy is communicated.
- (6) The amount in respect of any reduction in output tax liability that is found to be on account of duplication of claims shall be added to the output tax liability of the supplier in his return for the month in which such duplication is communicated.
- (7) The supplier shall be eligible to reduce, from his output tax liability, the amount added under sub-section (5) if the recipient declares the details of the credit note in his valid return within the time specified in sub-section (9) of section 39.
- (8) A supplier in whose output tax liability any amount has been added under sub-section (5) or sub-section (6), shall be liable to pay interest at the rate specified under subsection (1) of section 50 in respect of the amount so added from the date of such claim for reduction in the output tax liability till the corresponding additions are made under the said sub-sections.
- (9) Where any reduction in output tax liability is accepted under sub-section (7), the interest paid under sub-section (8) shall be refunded to the supplier by

crediting the amount in the corresponding head of his electronic cash ledger in such manner as may be prescribed:

Provided that the amount of interest to be credited in any case shall not exceed the amount of interest paid by the recipient.

(10) The amount reduced from output tax liability in contravention of the provisions of subsection (7) shall be added to the output tax liability of the supplier in his return for the month in which such contravention takes place and such supplier shall be liable to pay interest on the amount so added at the rate specified in sub-section (3) of section 50.

"43A.

(1) Notwithstanding anything contained in sub-section (2) of section 16, section 37 or section 38, every registered person shall in the returns furnished under sub-section (1) of section 39 verify, validate, modify or delete the details of supplies furnished by the suppliers.

(2) Notwithstanding anything contained in section 41, section 42 or section 43, the procedure for availing of input tax credit by the recipient and verification thereof shall be such as may be prescribed.

(3) The procedure for furnishing the details of outward supplies by the supplier on the common portal, for the purposes of availing input tax credit by the recipient shall be such as may be prescribed.

(4) The procedure for availing input tax credit in respect of outward supplies not furnished under sub-section (3) shall be such as may be prescribed and such procedure may include the maximum amount of the input tax credit which can be so availed, not exceeding twenty per cent. of the input tax credit available, on the basis of details furnished by the suppliers under the said sub-section.

(5) The amount of tax specified in the outward supplies for which the details have been furnished by the supplier under sub-section (3) shall be deemed to be the tax payable by him under the provisions of the Act.

(6) The supplier and the recipient of a supply shall be jointly and severally liable to pay tax or to pay the input tax credit availed, as the case may be, in relation to outward supplies for which the details have been furnished under sub-section (3) or sub-section (4) but return thereof has not been furnished.

(7) For the purposes of sub-section (6), the recovery shall be made in such manner as may be prescribed and such procedure may provide for non-recovery of an amount of tax or input tax credit wrongly availed not exceeding one thousand rupees.

(8) The procedure, safeguards and threshold of the tax amount in relation to outward supplies, the details of which can be furnished under sub-section (3) by a registered person,—

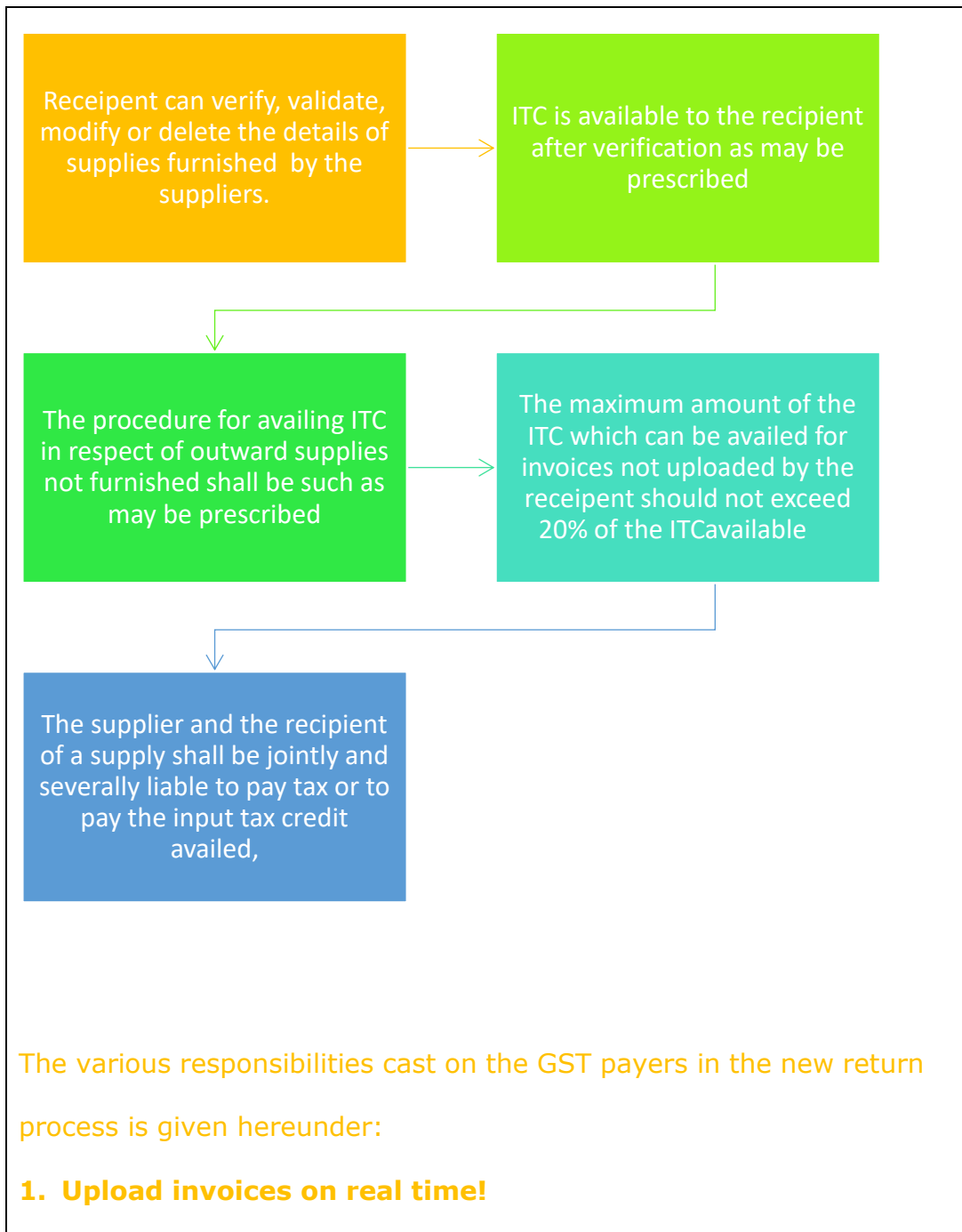
I. within six months of taking registration;

II. who has defaulted in payment of tax and where such default has continued for more than two months from the due date of payment of such defaulted amount,

shall be such as may be prescribed

Author comments:

A new section is being introduced in order to enable the new return filing procedure as proposed by the Returns Committee and approved by GST Council. In line with the new format of the GST returns certain provisions are inserted so that to explain key features as given hereunder.



In new return system, the taxpayer would be able to upload the invoices continuously (anytime during the month). Further, such uploaded invoice shall be continuously visible to the recipient.

Due to this new system, all the buyers are expected to request their respective vendors to upload invoices immediate basis to enable them check the same online.

2. Credit to be available only based on details uploaded by supplier

It is proposed that the maximum limit of eligible input tax credit will be based on the invoices uploaded by the supplier upto 10th of the subsequent month. Invoices uploaded by the supplier by 10th of succeeding month shall be 'auto-populated' in the liability table of the main return of the supplier. Recipient can also see the invoice details uploaded by supplier (referred as 'viewing facility').

It may be noted that if the supplier uploads invoices after due date for September (say on 18th October) then the buyer will be able to claim credit in the month of October (and not September).

However, during the transition phase of first six months after the new system of return is implemented, the recipient would be able to avail input tax credit on self-declaration basis even though the invoices are not uploaded by the supplier by 10th of the next month (or thereafter) using the facility of availing input tax credit on 'missing invoices'.

3. Every month, accept, reject or keep pending the invoices

Typically, by 10th of subsequent the suppliers would have uploaded their invoice details on GSTN portal. After 11th of the next month the recipient shall be able to accept, reject or keep pending a particular invoice.

The buyer can 'lock' the invoices uploaded by the supplier. In cases where say wrong GSTIN is mentioned, buyer can 'reject' the invoice instead of 'locking'. Amendment of an invoice may be carried out by the supplier where input tax credit has not been availed and the invoice has not been reported as locked by the recipient. Once an invoice is locked by the recipient, no amendment of the same shall be allowed. However, credit note or debit note for the same can still be issued by the supplier to change value, rate of tax, quantity or the tax payable.

A wrongly locked invoice can be 'unlocked' online by the recipient himself subject to reversal of the input tax credit by him and online confirmation thereof.

It may be noted that on filing of the return by recipient, all invoices shall deemed to be accepted except invoices kept pending or rejected. In certain cases such as non-receipt of supply (this means even GST payer is required to track receipt of goods/services), invoice needs amendment, unable to decide (to claim credit or not), the buyer can keep the invoice as 'Pending' and no input tax credit shall be availed by the recipient on such pending invoices.

Once new return system is implemented, it seems that more than 1 crore registered GST payers will be busy in checking their procurement details from 11th to 20th!

4. Match all your procurements with your financials!

At present, one of the biggest challenge of GST payers is to match the invoices appearing on GST portal (as the invoice details are not freely downloadable in xl format). In new return system, for matching of invoices, a tool/facility will be made available.

Using the tool/ facility taxpayer will be able to filter invoices downloaded on the basis of Dates of invoice, date on which the invoice was uploaded and GSTIN of the supplier.

5. Report 'missing invoices' within two tax periods

Missing invoices of supplier can be reported by buyer. However, buyer will get maximum two tax periods to report 'missing invoice' (i.e. invoice for January can be reported as missing maximum by March return). In case any 'missing invoices' are uploaded by buyer then the supplier will be notified about the same.

It is pertinent to note that if a buyer claims credit on 'missing invoices' (i.e. invoices which are not uploaded by supplier) but the supplier does not upload the same, then after prescribed time period, such credit will be recoverable from the recipient. Also it may be noted that amendment of missing invoices reported later by the supplier shall be carried out through the 'amendment return' (discussed in subsequent paras) of the relevant tax period to which the invoice pertains.

6. Track whether return is filed by all the suppliers!

At present, the buyer can see on GSTN portal whether the vendor has upload the invoices, however, whether the said GST amount is

deposited by the supplier cannot be tracked. Now, its proposed that buyer shall also be able to see the return filing status of the supplier.

This effectively mean that all the GST registered buyers will be required to check whether their vendors are uploading the invoices (on daily basis!) and whether the said vendors are paying taxes and filing returns (on monthly basis!).

Additionally, for newly registered taxpayer and a taxpayer who has defaulted in payment of tax beyond a time period and/or above a threshold, uploading of invoices shall be allowed only upto a threshold amount or only after the default in payment of tax is made good respectively.

Seems, all GST payers, will now be un-paid GST Officers keeping real-time check on all their respective vendors!

7. Pay the credit availed (in certain cases) if vendor doesn't deposit GST!

In the new system, at the time of filing return, the GST liability is expected to be discharged in full (as presently applicable).

As regards availability of credit of GST to a buyer, if the supplier does not deposit the GST, then will not be any automatic reversal of input tax credit. First, the GST Authorities will initiated recovery against supplier and in some exceptional circumstances like missing taxpayer, closure of business by the supplier or supplier not having adequate assets or in cases of connivance between recipient and the supplier, etc. recovery of input tax credit from the recipient shall be made through a due process of service of notice and issue of order.

This provision leads to a scenario wherein say a particular supplier is declared as insolvent or is not traceable (though recovery proceedings are initiated by the GST as well as other Authorities), then the genuine buyer, without any fault of his, could be penalised (through denial of input tax credit). Casting such onerous condition on every buyer leads to un-manageable burden on GST payers.

Earlier, the right of excise/ service tax payer was effectively protected (unless it's a case of fraud/collusion). Seems, in the new return system, right of revenue (i.e. Government) is protected but 'right to credit' is not given equal importance.

8. Large taxpayers to file monthly return!

Multiplicity and complex returns is one of the biggest reason for aggravation of pains of GST payers in India. Now, the multiple returns are proposed to be replaced with one return per month for large taxpayers (having turnover of more than INR 5 crore).

The main return shall have two main tables, one for reporting supplies on which tax liability arises and one for availing input tax credit. Return shall have annexure of invoices which shall auto-populate the output liability table in the main return.

The due date for filing of invoice level details (i.e. outward supply) will be 10th of subsequent month whereas the due date for filing GST return (i.e. both outward and inward supply) a large taxpayer shall be 20th of the next month. These dates are similar to the due dates of GSTR-1 and GSTR-3B respectively.

9. Small taxpayers – Opt to file quarterly return

Small taxpayers (turnover upto Rs. 5 Cr. in the last financial year) will have 'option' to file quarterly return (with monthly payment). Also, the taxpayer can check on the common portal whether he falls in the category of a small taxpayer.

For small taxpayers, it is proposed that the return filing dates shall be staggered based on the turnover of the taxpayer which shall be calculated based on the reported turnover in the last year i.e. 2017-18, annualized for the full year.

It appears that filing of 'nil' return for registered small taxpayers will be required. Interestingly, its proposed taxpayer can report 'NIL' transaction even by sending a SMS.

10. In case of errors, file amendment return!

To address the problem of human error i.e. wrong entries being made in the return, there would be a facility for filing of 'amendment return'. Amendment return appears to be different than a regular return. GST payers will have facility to file two amendment returns for each tax period earliest before the date of September or Annual return.

11. Update your profile!

GST payer will be required to update their GST profiles (no, its not facebook!). Based on the profile, requisite details / tables would be made available to the GST payer (for example small manufacturer without exports will see table for details for local supplies).

In case of exports, upload shipping bill details!

The registered person can fill information of shipping bill, either, at the time of filing the return or after filing the return. Filing the details of the Shipping bill in the return at a later date shall not be considered as filing of an 'amendment return'.

A separate facility for uploading shipping bill details at a later date is expected to be provided to the exporters.

12. Submit HSN level details monthly

The table for reporting supplies with the tax liability at various tax rates shall not capture HSN but would continue to capture supplies at different tax rates (as is the present methodology).

The details of HSN shall be captured at four digit or more in a separate table in the regular monthly return.

13. Separately report the ineligible credits in annual returns

Invoices/ Supplies on which the recipient does not intend to take input tax credit (such as ineligible ITC supplies) but are kept pending or rejected will have to be reported separately in the Annual return.

44. Annual return

- (1) Every registered person, other than an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person, shall furnish an annual return for every financial year electronically in such form and manner as may be prescribed on or before the thirty-first day of December following the end of such financial year.
- (2) Every registered person who is required to get his accounts audited in accordance with the provisions of sub-section (5) of section 35 shall furnish, electronically, the annual return under sub-section (1) along with a copy of the audited annual accounts and a reconciliation statement, reconciling the value of supplies declared in the return furnished for the financial year with the audited annual financial statement, and such other particulars as may be prescribed.

Author comments: This section prescribes that every registered taxable person, (a person paying tax under section 46 or section 56, a casual taxable person and a non-resident taxable person), will be required to furnish an annual return for every financial year electronically on or before the 31st December following the end of such financial year.

Further, through Notification No. 39/2018-Central Tax dated 4th September 2018 the Format of GSTR-8 for **Annual Return** is put in the public domain.

45. Final return

Every registered person who is required to furnish a return under sub section (1) of section 39 and whose registration has been cancelled shall furnish a final return within three months of the date of cancellation or date of order of cancellation, whichever is later, in such form and manner as may be prescribed.

Author comments: This return is applicable for a taxable person who applies for cancellation of registration certificate.

46. Notice to return defaulters

Where a registered person fails to furnish a return under section 39 or section 44 or section 45, a notice shall be issued requiring him to furnish such return within fifteen days in such form and manner as may be prescribed.

47. Levy of late fee

(1) Any registered person who fails to furnish the details of outward or inward supplies required under section 37 or section 38 or returns required under section 39 or section 45 by the due date shall pay a late fee of one hundred rupees for every day during which such failure continues subject to a maximum amount of five thousand rupees.

- (2) Any registered person who fails to furnish the return required under section 44 by the due date shall be liable to pay a late fee of one hundred rupees for every day during which such failure continues subject to a maximum of an amount calculated at a quarter per cent. of his turnover in the State or Union territory.

48. Goods and services tax practitioners

- (1) The manner of approval of goods and services tax practitioners, their eligibility conditions, duties and obligations, manner of removal and other conditions relevant for their functioning shall be such as may be prescribed.
- (2) A registered person may authorise an approved goods and services tax practitioner to furnish the details of outward supplies under section 37, the details of inward supplies under section 38 and the return under section 39 or section 44 or section 45 and to perform such other functions in such manner as may be prescribed.
- (3) Notwithstanding anything contained in sub-section (2), the responsibility for correctness of any particulars furnished in the return or other details filed by the goods and services tax practitioners shall continue to rest with the registered person on whose behalf such return and details are furnished.

Author comments:

This amendment allows the GST practitioner to perform other functions such as, filing refund claim, filing application for cancellation of registration etc.

Chapter-X

PAYMENT OF TAX

49. Payment of tax, interest, penalty and other amounts

- (1) Every deposit made towards tax, interest, penalty, fee or any other amount by a person by internet banking or by using credit or debit cards or National Electronic Fund Transfer or Real Time Gross Settlement or by such other mode and subject to such conditions and restrictions as may be prescribed, shall be credited to the electronic cash ledger of such person to be maintained in such manner as may be prescribed.
- (2) The input tax credit as self-assessed in the return of a registered person shall be credited to his electronic credit ledger, in accordance with ~~section 41~~ section 41 or section 43A, to be maintained in such manner as may be prescribed.
- (3) The amount available in the electronic cash ledger may be used for making any payment towards tax, interest, penalty, fees or any other amount payable under the provisions of this Act or the rules made thereunder in

such manner and subject to such conditions and within such time as may be prescribed.

- (4) The amount available in the electronic credit ledger may be used for making any payment towards output tax under this Act or under the Integrated Goods and Services Tax Act in such manner and subject to such conditions and within such time as may be prescribed.
- (5) The amount of input tax credit available in the electronic credit ledger of the registered person on account of--
- (a) integrated tax shall first be utilised towards payment of integrated tax and the amount remaining, if any, may be utilised towards the payment of central tax and State tax, or as the case may be, Union territory tax, in that order;
 - (b) the central tax shall first be utilised towards payment of central tax and the amount remaining, if any, may be utilised towards the payment of integrated tax;
 - (c) the State tax shall first be utilised towards payment of State tax and the amount remaining, if any, may be utilised towards payment of integrated tax;
“Provided that the input tax credit on account of State tax shall be utilised towards payment of integrated tax only where the balance of the input tax credit on account of central tax is not available for payment of integrated tax;

(d) the Union territory tax shall first be utilised towards payment of Union territory tax and the amount remaining, if any, may be utilised towards payment of integrated tax;

“Provided that the input tax credit on account of Union territory tax shall be utilised towards payment of integrated tax only where the balance of the input tax credit on account of central tax is not available for payment of integrated tax;”.

~~(e)~~(e) the central tax shall not be utilised towards payment of State tax or Union territory tax; and

~~(f)~~(f) the State tax or Union territory tax shall not be utilised towards payment of central tax.

- (6) The balance in the electronic cash ledger or electronic credit ledger after payment of tax, interest, penalty, fee or any other amount payable under this Act or the rules made thereunder may be refunded in accordance with the provisions of section 54.
- (7) All liabilities of a taxable person under this Act shall be recorded and maintained in an electronic liability register in such manner as may be prescribed.
- (8) Every taxable person shall discharge his tax and other dues under this Act or the rules made thereunder in the following order, namely:--
- (a) self-assessed tax, and other dues related to returns of previous tax periods;

- (b) self-assessed tax, and other dues related to the return of the current tax period;
 - (c) any other amount payable under this Act or the rules made thereunder including the demand determined under section 73 or section 74;
- (9) Every person who has paid the tax on goods or services or both under this Act shall, unless the contrary is proved by him, be deemed to have passed on the full incidence of such tax to the recipient of such goods or services or both. *Explanation* - For the purposes of this section,—
- (a) the date of credit to the account of the Government in the authorised bank shall be deemed to be the date of deposit in the electronic cash ledger;
 - (b) the expression,—
 - (i) **“tax dues”** means the tax payable under this Act and does not include interest, fee and penalty; and
 - (ii) **“other dues”** means interest, penalty, fee or any other amount payable under this Act or the rules made thereunder.

“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 been utilised fully towards such payment.

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.

Author comments:

This section provides for payment of tax, interest, penalty and other amounts (such as late fees for delayed return). In this regard, section provides for mechanism to pay the liability through cash and credit.

Electronic cash ledger

(1) The amount available in the electronic cash ledger may be used for making any payment towards:

- a. Tax
- b. Interest
- c. Penalty
- d. Fees or any other amount payable under the provisions of the Act or rules

Electronic credit ledger

The amount available in the electronic cash ledger may be used for making any payment towards tax. The manner of utilisation of credit for tax payment is provided as under:

Credit of	Utilisation
IGST	First against IGST then against CGST and later against SGST
CGST	First against CGST then against IGST
SGST	First against SGST then against IGST

Further, the every taxable person shall discharge his tax and other dues in the order given below:

1. Self-assessed tax, and other dues related **previous** periods;
2. Self-assessed tax, and other dues related **current** period;
3. Any other amount including the demand determined under section 73 or 74

Amendment by the CGST (Amendment) Act, 2018

As discussed aforesaid, Section 49(5)(c) provides that the amount of ITC available in the electronic credit ledger of the registered person on account of the State tax

shall first be utilized towards payment of State tax and the amount remaining, if any, may be utilized towards payment of integrated tax.

Further the credit of State tax/ Union territory tax can be utilized for payment of integrated tax only when the balance of the input tax credit on account of central tax is not available for payment of integrated tax.

The rationale behind this amendment is since the GST common portal has placed this restriction in the utilization of input tax credit of State tax/Union territory tax towards payment of integrated tax.

50. Interest on delayed payment of tax

- (1) Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent., as may be notified by the Government on the recommendations of the Council.
- (2) The interest under sub-section (1) shall be calculated, in such manner as may be prescribed, from the day succeeding the day on which such tax was due to be paid.
- (3) A taxable person who makes an undue or excess claim of input tax credit under subsection (10) of section 42 or undue or excess reduction in output tax liability under subsection (10) of section 43, shall pay interest on such

undue or excess claim or on such undue or excess reduction, as the case may be, at such rate not exceeding twenty-four per cent., as may be notified by the Government on the recommendations of the Council.

Author comments: This section provides for interest in case an assessee fails to pay the tax or any part thereof to the account. Also, if the Person makes an undue or excess claim of the input tax credit and undue and excess reduction in the output tax liability shall be liable to pay interest at the specified rate.

Notification [13/2017](#) is issued to prescribe interest rate.

51. Tax deduction at source

TDS (Section 51) and TCS (Section 52) of the CGST / SGST Act 2017 has been postponed (refer press note and Not. No. 9/2017-CT).

- (1) Notwithstanding anything to the contrary contained in this Act, the Government may mandate,--
- (a) a department or establishment of the Central Government or State Government; or
 - (b) local authority; or
 - (c) Governmental agencies; or

- (d) such persons or category of persons as may be notified by the Government on the recommendations of the Council, (hereafter in this section referred to as “the deductor”), to deduct tax at the rate of one per cent. from the payment made or credited to the supplier (hereafter in this section referred to as “the deductee”) of taxable goods or services or both, where the total value of such supply, under a contract, exceeds two lakh and fifty thousand rupees:

Provided that no deduction shall be made if the location of the supplier and the place of supply is in a State or Union territory which is different from the State or as the case may be, Union territory of registration of the recipient.

Explanation.—For the purpose of deduction of tax specified above, the value of supply shall be taken as the amount excluding the central tax, State tax, Union territory tax, integrated tax and cess indicated in the invoice.

- (2) The amount deducted as tax under this section shall be paid to the Government by the deductor within ten days after the end of the month in which such deduction is made, in such manner as may be prescribed.
- (3) The deductor shall furnish to the deductee a certificate mentioning therein the contract value, rate of deduction, amount deducted, amount paid to the Government and such other particulars in such manner as may be prescribed.

- (4) If any deductor fails to furnish to the deductee the certificate, after deducting the tax at source, within five days of crediting the amount so deducted to the Government, the deductor shall pay, by way of a late fee, a sum of one hundred rupees per day from the day after the expiry of such *five days* period until the failure is rectified, subject to a maximum amount of five thousand rupees.
- (5) The deductee shall claim credit, in his electronic cash ledger, of the tax deducted and reflected in the return of the deductor furnished under sub-section (3) of section 39, in such manner as may be prescribed.
- (6) If any deductor fails to pay to the Government the amount deducted as tax under subsection (1), he shall pay interest in accordance with the provisions of sub-section (1) of section 50, in addition to the amount of tax deducted.
- (7) The determination of the amount in default under this section shall be made in the manner specified in section 73 or section 74.
- (8) The refund to the deductor or the deductee arising on account of excess or erroneous deduction shall be dealt with in accordance with the provisions of section 54:

Provided that no refund to the deductor shall be granted, if the amount deducted has been credited to the electronic cash ledger of the deductee.

Author comments:

This section deals with Tax Deduction at Source. The rate specified is 1%. The liability to deduct TDS will trigger in cases where total value of supply exceeds Rs 5 lakhs. The amount deducted is required to be deposited within 10 days of after the end of the month. Deductor is liable to pay penalty of Rs 100/- per day if the certificate of the tax deduction is not issued within 5 days from the date of payment. Detuctee can claim the credit of TDS.

52. Collection of tax at source

TDS (Section 51) and TCS (Section 52) of the CGST / SGST Act 2017 has been postponed (refer press note and Not. No. 9/2017-CT).

- (1) Notwithstanding anything to the contrary contained in this Act, every electronic commerce operator (hereafter in this section referred to as the "operator"), not being an agent, shall collect an amount calculated at such rate not exceeding one per cent., as may be notified by the Government on the recommendations of the Council, of the net value of taxable supplies made through it by other suppliers where the consideration with respect to such supplies is to be collected by the operator.

Explanation - For the purposes of this sub-section, the expression "net value of taxable supplies" shall mean the aggregate value of taxable supplies of

goods or services or both, other than services notified under sub-section (5) of section 9, made during any month by all registered persons through the operator reduced by the aggregate value of taxable supplies returned to the suppliers during the said month.

- (2) The power to collect the amount specified in sub-section (1) shall be without prejudice to any other mode of recovery from the operator.
- (3) The amount collected under sub-section (1) shall be paid to the Government by the operator within ten days after the end of the month in which such collection is made, in such manner as may be prescribed.
- (4) Every operator who collects the amount specified in sub-section (1) shall furnish a statement, electronically, containing the details of outward supplies of goods or services or both effected through it, including the supplies of goods or services or both returned through it, and the amount collected under sub-section (1) during a month, in such form and manner as may be prescribed, within ten days after the end of such month.
- (5) Every operator who collects the amount specified in sub-section (1) shall furnish an annual statement, electronically, containing the details of outward supplies of goods or services or both effected through it, including the supplies of goods or services or both returned through it, and the amount collected under the said sub-section during the financial year, in such form and manner as may be prescribed, before the thirty first day of December following the end of such financial year.

- (6) If any operator after furnishing a statement under sub-section (4) discovers any omission or incorrect particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, he shall rectify such omission or incorrect particulars in the statement to be furnished for the month during which such omission or incorrect particulars are noticed, subject to payment of interest, as specified in sub-section (1) of section 50:

Provided that no such rectification of any omission or incorrect particulars shall be allowed after the due date for furnishing of statement for the month of September following the end of the financial year or the actual date of furnishing of the relevant annual statement, whichever is earlier.

- (7) The supplier who has supplied the goods or services or both through the operator shall claim credit, in his electronic cash ledger, of the amount collected and reflected in the statement of the operator furnished under sub-section (4), in such manner as may be prescribed.
- (8) The details of supplies furnished by every operator under sub-section (4) shall be matched with the corresponding details of outward supplies furnished by the concerned supplier registered under this Act in such manner and within such time as may be prescribed.
- (9) Where the details of outward supplies furnished by the operator under sub-section (4) do not match with the corresponding details furnished by the supplier under ~~section 37~~ section 37 or section 39, the discrepancy shall be

communicated to both persons in such manner and within such time as may be prescribed.

(10) The amount in respect of which any discrepancy is communicated under sub-section (9) and which is not rectified by the supplier in his valid return or the operator in 50 his statement for the month in which discrepancy is communicated, shall be added to the output tax liability of the said supplier, where the value of outward supplies furnished by the operator is more than the value of outward supplies furnished by the supplier, in his return for the month succeeding the month in which the discrepancy is communicated in such manner as may be prescribed.

(11) The concerned supplier, in whose output tax liability any amount has been added under sub-section (10), shall pay the tax payable in respect of such supply along with interest, at the rate specified under sub-section (1) of section 50 on the amount so added from the date such tax was due till the date of its payment.

(12) Any authority not below the rank of Deputy Commissioner may serve a notice, either before or during the course of any proceedings under this Act, requiring the operator to furnish such details relating to—

- (a) supplies of goods or services or both effected through such operator during any period; or
- (b) stock of goods held by the suppliers making supplies through such operator in the godowns or warehouses, by whatever name called, managed by such

operator and declared as additional places of business by such suppliers, as may be specified in the notice.

(13) Every operator on whom a notice has been served under sub-section (12) shall furnish the required information within fifteen working days of the date of service of such notice.

(14) Any person who fails to furnish the information required by the notice served under subsection (12) shall, without prejudice to any action that may be taken under section 122, be liable to a penalty which may extend to twenty-five thousand rupees.

Explanation - For the purposes of this section, the expression “**concerned supplier**” shall mean the supplier of goods or services or both making supplies through the operator.

53. Transfer of input tax credit

On utilisation of input tax credit availed under this Act for payment of tax dues under the Integrated Goods and Services Tax Act in accordance with the provisions of sub-section (5) of section 49, as reflected in the valid return furnished under sub-section (1) of section 39, the amount collected as central tax shall stand reduced by an amount equal to such credit so utilised and the Central Government shall transfer an amount equal to the amount so reduced from the central tax account to the integrated tax account in such manner and within such time as may be prescribed.

Chapter-XI

REFUNDS

54. Refund of Tax

- (1) Any person claiming refund of any tax and interest, if any, paid on such tax or Refund of tax. any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed:

Provided that a registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49, may claim such refund in the return furnished under section 39 in such manner as may be prescribed.

- (2) A specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries or any other person or class of persons, as notified under section 55, entitled to a refund of tax paid by it on inward supplies of goods or services or both, may make an application for such refund, in such form and manner as may be prescribed, before the expiry of six months from the last day of the quarter in which such supply was received.
- (3) Subject to the provisions of sub-section (10), a registered person may claim refund of any unutilised input tax credit at the end of any tax period:

Provided that no refund of unutilised input tax credit shall be allowed in cases other than--

- (i) zero rated supplies made without payment of tax;
- (ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council:

Provided further that no refund of unutilised input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty:

Provided also that no refund of input tax credit shall be allowed, if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies.

- (4) The application shall be accompanied by—
 - (a) such documentary evidence as may be prescribed to establish that a refund is due to the applicant; and
 - (b) such documentary or other evidence (including the documents referred to in section 33) as the applicant may furnish to establish that the amount of tax and interest, if any, paid on such tax or any other amount paid in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such tax and interest had not been passed on to any other person:

Provided that where the amount claimed as refund is less than two lakh rupees, it shall not be necessary for the applicant to furnish any documentary and other evidences but he may file a declaration, based on the documentary or other evidences available with him, certifying that the incidence of such tax and interest had not been passed on to any other person.

- (5) If, on receipt of any such application, the proper officer is satisfied that the whole or part of the amount claimed as refund is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund referred to in section 57.
- (6) Notwithstanding anything contained in sub-section (5), the proper officer may, in the case of any claim for refund on account of zero-rated supply of goods or services or both made by registered persons, other than such category of registered persons as may be notified by the Government on the recommendations of the Council, refund on a provisional basis, ninety per cent. of the total amount so claimed, excluding the amount of input tax credit provisionally accepted, in such manner and subject to such conditions, limitations and safeguards as may be prescribed and thereafter make an order under sub-section (5) for final settlement of the refund claim after due verification of documents furnished by the applicant.
- (7) The proper officer shall issue the order under sub-section (5) within sixty days from the date of receipt of application complete in all respects.

(8) Notwithstanding anything contained in sub-section (5), the refundable amount shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to—

- (a) refund of tax paid on ~~zero-rated supplies- export~~ of goods or services or both or on inputs or input services used in making such ~~zero-rated supplies exports~~;
- (b) refund of unutilised input tax credit under sub-section (3);
- (c) refund of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued, or where a refund voucher has been issued;
- (d) refund of tax in pursuance of section 77;
- (e) the tax and interest, if any, or any other amount paid by the applicant, if he had not passed on the incidence of such tax and interest to any other person; or
- (f) the tax or interest borne by such other class of applicants as the Government may, on the recommendations of the Council, by notification, specify.

(9) Notwithstanding anything to the contrary contained in any judgment, decree, order or direction of the Appellate Tribunal or any court or in any other provisions of this Act or the rules made thereunder or in any other law for the time being in force, no refund shall be made except in accordance with the provisions of sub-section (8).

- (10) Where any refund is due under sub-section (3) to a registered person who has defaulted in furnishing any return or who is required to pay any tax, interest or penalty, which has not been stayed by any court, Tribunal or Appellate Authority by the specified date, the proper officer may—
- (a) withhold payment of refund due until the said person has furnished the return or paid the tax, interest or penalty, as the case may be;
 - (b) deduct from the refund due, any tax, interest, penalty, fee or any other amount which the taxable person is liable to pay but which remains unpaid under this Act or under the existing law.

Explanation - For the purposes of this sub-section, the expression "specified date" shall mean the last date for filing an appeal under this Act.

- (11) W
- here an order giving rise to a refund is the subject matter of an appeal or further proceedings or where any other proceedings under this Act is pending and the Commissioner is of the opinion that grant of such refund is likely to adversely affect the revenue in the said appeal or other proceedings on account of malfeasance or fraud committed, he may, after giving the taxable person an opportunity of being heard, withhold the refund till such time as he may determine.

- (12) Where a refund is withheld under sub-section (11), the taxable person shall, notwithstanding anything contained in section 56, be entitled to interest at such rate not exceeding six per cent. as may be notified on the

recommendations of the Council, if as a result of the appeal or further proceedings he becomes entitled to refund.

(13) Notwithstanding anything to the contrary contained in this section, the amount of advance tax deposited by a casual taxable person or a non-resident taxable person under sub-section (2) of section 27, shall not be refunded unless such person has, in respect of the entire period for which the certificate of registration granted to him had remained in force, furnished all the returns required under section 39.

(14) Notwithstanding anything contained in this section, no refund under sub-section (5) or sub-section (6) shall be paid to an applicant, if the amount is less than one thousand rupees.

Explanation - For the purposes of this section,--

(1) **“refund”** includes refund of tax paid on zero-rated supplies of goods or services or both or on inputs or input services used in making such zero-rated supplies, or refund of tax on the supply of goods regarded as deemed exports, or refund of unutilised input tax credit as provided under sub-section (3).

(2) **“relevant date”** means—

(a) in the case of goods exported out of India where a refund of tax paid is available

in respect of goods themselves or, as the case may be, the inputs or input services used in such goods,--

- (i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India; or
- (ii) if the goods are exported by land, the date on which such goods pass the frontier; or
- (iii) if the goods are exported by post, the date of despatch of goods by the Post Office concerned to a place outside India;
- (b) in the case of supply of goods regarded as deemed exports where a refund of tax paid is available in respect of the goods, the date on which the return relating to such deemed exports is furnished;
- (c) in the case of services exported out of India where a refund of tax paid is available in respect of services themselves or, as the case may be, the inputs or input services used in such services, the date of--
 - (i) receipt of payment in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India, where the supply of services had been completed prior to the receipt of such payment; or
 - (ii) issue of invoice, where payment for the services had been received in advance prior to the date of issue of the invoice;
- (d) in case where the tax becomes refundable as a consequence of judgment, decree, order or direction of the Appellate Authority, Appellate Tribunal or any court, the date of communication of such judgment, decree, order or direction;

- (e) in the case of refund of unutilised input tax credit under clause (ii) of the first proviso to sub-section (3), the due date for furnishing of return under section 39 for the period in which such claim for refund arises;~~in the case of refund of unutilised input tax credit under sub-section (3), the end of the financial year in which such claim for refund arises;~~
- (f) in the case where tax is paid provisionally under this Act or the rules made thereunder, the date of adjustment of tax after the final assessment thereof;
- (g) in the case of a person, other than the supplier, the date of receipt of goods or services or both by such person; and
- (h) in any other case, the date of payment of tax.

Author comments: Section 48 deals with refunds. The section provides that the refund is permissible in following cases:

- a. Exports (Including Zero rate supply) or
- b. Credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on outputs.

The time limit prescribed for claiming refund is **two years** from relevant date. The meaning of **relevant date** is provided at Explanation to section 38 (11) (B). Typically for goods the 'relevant date' will be the date on which goods leave India and for services it will be receipt of payment (where payment is received after

completion of service) or date of issue of invoice (where payment is received in advance).

For refunds, also refer [Rule 89 to 97](#) of CGST Rules.

Amendment by the CGST (Amendment) Act, 2018

Section 54 (8) provides a list of situations where the principle of unjust enrichment does not apply for the purposes of payment of refund. One such situation is zero-rated supplies of goods or services.

Zero-rated supply under section 16 (1) of the IGST Act includes physical exports of goods or services and supplies made to an SEZ unit/SEZ developer and the principle of unjust enrichment does not apply in such cases. Given this under section 16 (3) of the IGST Act, only the supplier making supplies of goods or services to an SEZ unit/SEZ developer can claim refund.

However, said section is amended to allow ITC to the SEZ developer or SEZ unit and the supplier in DTA may recover the tax amount from such SEZ unit, etc.

It is allowed to receive payment in Indian rupees in case of export of services where permitted by the Reserve Bank of India since particularly in the case of

exports to Nepal and Bhutan, the payment is received in Indian rupees as per RBI regulations.

In this respect, the provisions of section 2(6)(iv) of the IGST Act are also being amended to provide that services shall qualify as exports even if the payment for the services supplied is received in Indian rupees as per RBI regulations.

55. Refund in certain cases

The Government may, on the recommendations of the Council, by notification, specify any specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries and any other person or class of persons as may be specified in this behalf, who shall, subject to such conditions and restrictions as may be prescribed, be entitled to claim a refund of taxes paid on the notified supplies of goods or services or both received by them.

Author comments:

This section gives the power to Central or state government to notify on the recommendation of the council any other person or class of persons who is entitled to claim the refund of taxes paid.

56. Interest on delayed refunds

If any tax ordered to be refunded under sub-section (5) of section 54 to any applicant is not refunded within sixty days from the date of receipt of application under sub-section (1) of that section, interest at such rate not exceeding six per cent. as may be specified in the notification issued by the Government on the recommendations of the Council shall be payable in respect of such refund from the date immediately after the expiry of sixty days from the date of receipt of application under the said sub-section till the date of refund of such tax:

Provided that where any claim of refund arises from an order passed by an adjudicating authority or Appellate Authority or Appellate Tribunal or court which has attained finality and the same is not refunded within sixty days from the date of receipt of application filed consequent to such order, interest at such rate not exceeding nine per cent. as may be notified by the Government on the recommendations of the Council shall be payable in respect of such refund from the date immediately after the expiry of sixty days from the date of receipt of application till the date of refund.

Explanation – For the purposes of this section, where any order of refund is made by an Appellate Authority, Appellate Tribunal or any court against an order of the proper officer under sub-section (5) of section 54, the order passed by the Appellate Authority, Appellate Tribunal or by the court shall be deemed to be an order passed under the said sub-section (5).

Author comments:

This section provides that in case there is any delay in processing of refund claim of an assessee for than 60 days from date of receipt of application then the assessee will be entitled to interest on such delay.

57. Consumer Welfare Fund

The Government shall constitute a Fund, to be called the Consumer Welfare Fund and there shall be credited to the Fund, -

- (a) the amount referred to in sub-section (5) of section 54;
- (b) any income from investment of the amount credited to the Fund; and (c) such other monies received by it, in such manner as may be prescribed.

58. Utilisation of Fund

- (1) All sums credited to the Fund shall be utilised by the Government for the 15 welfare of the consumers in such manner as may be prescribed.
- (2) The Government or the authority specified by it shall maintain proper and separate account and other relevant records in relation to the Fund and

prepare an annual statement of accounts in such form as may be prescribed in consultation with the Comptroller and Auditor General of India.

Chapter-XII

ASSESSMENT

59. Self-assessment

Every registered person shall self assess the taxes payable under this Act and furnish a return for each tax period as specified under section 39.

Author comments:

The assessment under GST regime will be self –assessment.

60. Provisional assessment

- (1) Subject to the provisions of sub-section (2), where the taxable person is unable to determine the value of goods or services or both or determine the rate of tax applicable thereto, he may request the proper officer in writing giving reasons for payment of tax on a provisional basis and the proper officer shall pass an order, within a period not later than ninety days from the date of receipt of such request, allowing payment of tax on provisional basis at such rate or on such value as may be specified by him.
- (2) The payment of tax on provisional basis may be allowed, if the taxable person executes a bond in such form as may be prescribed, and with

such surety or security as the proper officer may deem fit, binding the taxable person for payment of the difference between the amount of tax as may be finally assessed and the amount of tax provisionally assessed.

- (3) The proper officer shall, within a period not exceeding six months from the date of the communication of the order issued under sub-section (1), pass the final assessment order after taking into account such information as may be required for finalizing the assessment:

Provided that the period specified in this sub-section may, on sufficient cause being shown and for reasons to be recorded in writing, be extended by the Joint Commissioner or Additional Commissioner for a further period not exceeding six months and by the Commissioner for such further period not exceeding four years.

- (4) The registered person shall be liable to pay interest on any tax payable on the supply of goods or services or both under provisional assessment but not paid on the due date specified under sub-section (7) of section 39 or the rules made thereunder, at the rate specified under sub-section (1) of section 50, from the first day after the due date of payment of tax in respect of the said supply of goods or services or both till the date of actual payment, whether such amount is paid before or after the issuance of order for final assessment.

- (5) Where the registered person is entitled to a refund consequent to the order of final assessment under sub-section (3), subject to the provisions of sub-section (8) of section 54, interest shall be paid on such refund as provided in section 56.

Author comments:

This deals with provisional assessment. Provisional Assessment can be requested by an assessee in case he is unable to determine value or rate.

61. Scrutiny of returns

- (1) The proper officer may scrutinize the return and related particulars furnished by the registered person to verify the correctness of the return and inform him of the discrepancies noticed, if any, in such manner as may be prescribed and seek his explanation thereto.
- (2) In case the explanation is found acceptable, the registered person shall be informed accordingly and no further action shall be taken in this regard.
- (3) In case no satisfactory explanation is furnished within a period of thirty days of being informed by the proper officer or such further period as may be permitted by him or where the registered person, after accepting the discrepancies, fails to take the corrective measure in his

return for the month in which the discrepancy is accepted, the proper officer may initiate appropriate action including those under section 65 or section 66 or section 67, or proceed to determine the tax and other dues under section 73 or section 74.

Author comments: Under Section 59 proper officer may scrutinize the return and related particulars furnished and if any discrepancies noticed then then such proper officer may seek an explanation from taxable person. The proper officer may initiate appropriate action including (under section 63, 64 or section 79), or proceed to determine the tax and other dues under sub-section (7) of section 66 or under sub-section (7) of section 67 if:

- No satisfactory explanation is furnished within a period of thirty days of being informed or
- After accepting the discrepancies, fails to take the corrective measure in his return

62. Assessment of non-filers of returns

- (1) Notwithstanding anything to the contrary contained in section 73 or section 74, where a registered person fails to furnish the return under section 39 or section 45, even after the service of a notice under section 46, the proper officer may proceed to assess the tax liability of

the said person to the best of his 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 specified under section 44 for furnishing of the annual return for the financial year to which the tax not paid relates.

- (2) Where the registered person furnishes a valid return within thirty days of the service of the assessment order under sub-section (1), the said assessment order shall be deemed to have been withdrawn but the liability for payment of interest under subsection (1) of section 50 or for payment of late fee under section 47 shall continue.

Author comments:

This section deals with best judgment assessment of registered taxable person. It enables the GST Authorities to proceed to assess the tax liability of the specified person to the best of his judgement. It is also provided that in case valid return is furnished within 30 days of service of assessment order then the said assessment order will be deemed to be withdrawn.

63. Assessment of unregistered persons

Notwithstanding anything to the contrary contained in section 73 or section 74, where a taxable person fails to obtain registration even

though liable to do so or whose registration has been cancelled under sub-section (2) of section 29 but who was liable to pay tax, the proper officer may proceed to assess the tax liability of such taxable person to the best of his judgment for the relevant tax periods and issue an assessment order within a period of five years from the date specified under section 44 for furnishing of the annual return for the financial year to which the tax not paid relates:

Provided that no such assessment order shall be passed without giving the person an opportunity of being heard.

Author comments:

This section deals with best judgment assessment of **un-registered** assessee. It enables the GST Authorities to proceed to assess the tax liability of such persons to the best of his judgement for the relevant tax periods and issue an assessment order within a period of **5 years** from the due date for filing of the annual return for the year to which the tax not paid relates. It is also provided that no such assessment order shall be passed without giving a **notice to show cause** and without giving the person a reasonable opportunity of being heard

64. Summary assessment in certain special cases

- (1) The proper officer may, on any evidence showing a tax liability of a person coming to his notice, with the previous permission of Additional Commissioner or Joint Commissioner, proceed to assess the tax liability of such person to protect the interest of revenue and issue an assessment order, if he has sufficient grounds to believe that any delay in doing so may adversely affect the interest of revenue:

Provided that where the taxable person to whom the liability pertains is not ascertainable and such liability pertains to supply of goods, the person in charge of such goods shall be deemed to be the taxable person liable to be assessed and liable to pay tax and any other amount due under this section.

- (2) On an application made by the taxable person within thirty days from the date of receipt of order passed under sub-section (1) or on his own motion, if the Additional Commissioner or Joint Commissioner considers that such order is erroneous, he may withdraw such order and follow the procedure laid down in section 73 or section 74.

Chapter-XIII

AUDIT

65. Audit by tax authorities

- (1) The Commissioner or any officer authorised by him, by way of a general or a specific order, may undertake audit of any registered person for such period, at such frequency and in such manner as may be prescribed.
- (2) The officers referred to in sub-section (1) may conduct audit at the place of business of the registered person or in their office.
- (3) The registered person shall be informed by way of a notice not less than fifteen working days prior to the conduct of audit in such manner as may be prescribed.
- (4) The audit under sub-section (1) shall be completed within a period of three months from the date of commencement of the audit:

Provided that where the Commissioner is satisfied that audit in respect of such registered person cannot be completed within three months, he may, for the reasons to be recorded in writing, extend the period by a further period not exceeding six months.

Explanation – For the purposes of this sub-section, the expression “commencement of audit” shall mean the date on which the records

and other documents, called for by the tax authorities, are made available by the registered person or the actual institution of audit at the place of business, whichever is later.

- (5) During the course of audit, the authorised officer may require the registered person,—
 - (i) to afford him the necessary facility to verify the books of account or other documents as he may require;
 - (ii) to furnish such information as he may require and render assistance for timely completion of the audit.
- (6) On conclusion of audit, the proper officer shall, within thirty days, inform the registered person, whose records are audited, about the findings, his rights and obligations and the reasons for such findings.
- (7) Where the audit conducted under sub-section (1) results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilised, the proper officer may initiate action under section 73 or section 74.

Author comments:

This section provides for audit to be conducted by Authorities. Further, the section provides that such audit should be completed within 3 months (extendable by additional six months).

66. Special audit

- (1) If at any stage of scrutiny, inquiry, investigation or any other proceedings before him, any officer not below the rank of Assistant Commissioner, having regard to the nature and complexity of the case and the interest of revenue, is of the opinion that the value has not been correctly declared or the credit availed is not within the normal limits, he may, with the prior approval of the Commissioner, direct such registered person by a communication in writing to get his records including books of account examined and audited by a chartered accountant or a cost accountant as may be nominated by the Commissioner.
- (2) The chartered accountant or cost accountant so nominated shall, within the period of ninety days, submit a report of such audit duly signed and certified by him to the said Assistant Commissioner mentioning therein such other particulars as may be specified:

Provided that the Assistant Commissioner may, on an application made to him in this behalf by the registered person or the chartered accountant or cost accountant or for any material and sufficient reason, extend the said period by a further period of ninety days.

- (3) The provisions of sub-section (1) shall have effect notwithstanding that the accounts of the registered person have been audited under any other provisions of this Act or any other law for the time being in force.
- (4) The registered person shall be given an opportunity of being heard in respect of any material gathered on the basis of special audit under sub-section (1) which is proposed to be used in any proceedings against him under this Act or the rules made thereunder.
- (5) The expenses of the examination and audit of records under sub-section (1), including the remuneration of such chartered accountant or cost accountant, shall be determined and paid by the Commissioner and such determination shall be final.
- (6) Where the special audit conducted under sub-section (1) results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilised, the proper officer may initiate action under section 73 or section 74.

Author comments: This section deals with Special Audit by Chartered Accountant or Cost Accountant nominated by Commissioner. Further, the section provides that such audit should be completed within 90 days (extendable upto additional 90 days).

CHAPTER-XIV

INSPECTION, SEARCH, SEIZURE AND ARREST

67. Power of inspection, search and seizure

- (1) Where the proper officer, not below the rank of Joint Commissioner, has reasons to believe that--
 - (a) a taxable person has suppressed any transaction relating to supply of goods or services or both or the stock of goods in hand, or has claimed input tax credit in excess of his entitlement under this Act or has indulged in contravention of any of the provisions of this Act or the rules made thereunder to evade tax under this Act; or
 - (b) any person engaged in the business of transporting goods or an owner or operator of a warehouse or a godown or any other place is keeping goods which have escaped payment of tax or has kept his accounts or goods in such a manner as is likely to cause evasion of tax payable

under this Act, he may authorise in writing any other officer of central tax to inspect any places of business of the taxable person or the persons engaged in the business of transporting goods or the owner or the operator of warehouse or godown or any other place.

- (2) Where the proper officer, not below the rank of Joint Commissioner, either pursuant to an inspection carried out under sub-section (1) or otherwise, has reasons to believe that any goods liable to confiscation or any documents or books or things, which in his opinion shall be useful for or relevant to any proceedings under this Act, are secreted in any place, he may authorise in writing any other officer of central tax to search and seize or may himself search and seize such goods, documents or books or things:

Provided that where it is not practicable to seize any such goods, the proper officer, or any officer authorized by him, may serve on the owner or the custodian of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer:

Provided further that the documents or books or things so seized shall be retained by such officer only for so long as may be necessary for their examination and for any inquiry or proceedings under this Act.

- (3) The documents, books or things referred to in sub-section (2) or any other documents, books or things produced by a taxable person or any other person, which have not been relied upon for the issue of notice under this Act or the rules made thereunder, shall be returned to such person within a period not exceeding thirty days of the issue of the said notice.
- (4) The officer authorised under sub-section (2) shall have the power to seal or break open the door of any premises or to break open any almirah, electronic devices, box, receptacle in which any goods, accounts, registers or documents of the person are suspected to be concealed, where access to such premises, almirah, electronic devices, box or receptacle is denied.
- (5) The person from whose custody any documents are seized under sub-section (2) shall be entitled to make copies thereof or take extracts therefrom in the presence of an authorised officer at such place and time as such officer may indicate in this behalf except where making such copies or taking such extracts may, in the opinion of the proper officer, prejudicially affect the investigation.
- (6) The goods so seized under sub-section (2) shall be released, on a provisional basis, upon execution of a bond and furnishing of a security, in such manner and of such quantum, respectively, as may be

prescribed or on payment of applicable tax, interest and penalty payable, as the case may be.

- (7) Where any goods are seized under sub-section (2) and no notice in respect thereof is given within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized:

Provided that the period of six months may, on sufficient cause being shown, be extended by the proper officer for a further period not exceeding six months.

- (8) The Government may, having regard to the perishable or hazardous nature of any goods, depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or any other relevant considerations, by notification, specify the goods or class of goods which shall, as soon as may be after its seizure under sub-section (2), be disposed of by the proper officer in such manner as may be prescribed.
- (9) Where any goods, being goods specified under sub-section (8), have been seized by a proper officer, or any officer authorised by him under sub-section (2), he shall prepare an inventory of such goods in such manner as may be prescribed.

- (10) The provisions of the Code of Criminal Procedure, 1973, relating to search and seizure, shall, so far as may be, apply to search and seizure under this section subject to the modification that sub-section (5) of section 165 of the said Code shall have effect as if for the word "Magistrate", wherever it occurs, the word "Commissioner" were substituted.
- (11) Where the proper officer has reasons to believe that any person has evaded or is attempting to evade the payment of any tax, he may, for reasons to be recorded in writing, seize the accounts, registers or documents of such person produced before him and shall grant a receipt for the same, and shall retain the same for so long as may be necessary in connection with any proceedings under this Act or the rules made thereunder for prosecution.
- (12) The Commissioner or an officer authorised by him may cause purchase of any goods or services or both by any person authorised by him from the business premises of any taxable person, to check the issue of tax invoices or bills of supply by such taxable person, and on return of goods so purchased by such officer, such taxable person or any person in charge of the business premises shall refund the amount so paid

towards the goods after cancelling any tax invoice or bill of supply issued earlier.

Author comments:

This section empowers CAG for carrying out audit. The responsibility to provide details is cast on the Proper Officer.

68. Inspection of goods in movement

- (1) The Government may require the person in charge of a conveyance carrying any consignment of goods of value exceeding such amount as may be specified to carry with him such documents and such devices as may be prescribed.
- (2) The details of documents required to be carried under sub-section (1) shall be 40 validated in such manner as may be prescribed.
- (3) Where any conveyance referred to in sub-section (1) is intercepted by the proper officer at any place, he may require the person in charge of the said conveyance to produce the documents prescribed under the said sub-section and devices for verification, and the said person shall be liable to produce the documents and devices and also allow the inspection of goods.

Author comments:

The proper officer is empowered to intercept any conveyance carrying goods. Further, documents to be accompanying such goods will be prescribed in cases where the value of goods is more than specified amount.

69. Power to arrest

- (1) Where the Commissioner has reasons to believe that a person has committed any offence specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) of section 132 which is punishable under clause (i) or (ii) of sub-section (1), or subsection (2) of the said section, he may, by order, authorise any officer of central tax to arrest such person.
- (2) Where a person is arrested under sub-section (1) for an offence specified under subsection (5) of section 132, the officer authorised to arrest the person shall inform such person of the grounds of arrest and produce him before a Magistrate within twenty four hours.
- (3) Subject to the provisions of the Code of Criminal Procedure, 1973,—
 - (a) where a person is arrested under sub-section (1) for any offence specified under sub-section (4) of section 132, he shall be admitted to bail or in default of bail, forwarded to the custody of the Magistrate;

- (b) in the case of a non-cognizable and bailable offence, the Deputy Commissioner or the Assistant Commissioner shall, for the purpose of releasing an arrested person on bail or otherwise, have the same powers and be subject to the same provisions as an officer-in-charge of a police station.

Author comments: Section 81 read with section 92 of GST Act provides for arrest and prosecution. GST being an economic legislation and not criminal legislation, proposed introduction of arrest/ prosecution provisions appears to be un-called for. At least for initial years, when the GST provisions would be new, it is expected that the Government should tackle such issues with soft hands than threats of arrest. The GST law entrusted the power to arrest with the Commissioner if he has 'reason to believe' that a taxpayer has committed the aforesaid offense. Given the subjective wording (i.e. reason to believe), even genuine taxpayer, say the one who did not pay GST for bonafide belief that his activities do not attract GST, could end up in jail. Further, non-payment of GST could be an issue of 'interpretation' (as taxpayer may think his activity is covered under exemptions) than 'intention'. Thus, appropriate check and balances should be

introduced by the Government in the GST law to ensure that the genuine taxpayers don't get nightmares

Recently, arrest of a travel portals executive was in news and in the said case even the Delhi High Court directed the Central Government to first establish evasion basis documents before taking coercive action against the said taxpayer. Thus, the Government should form a well thought strategy and should reconsider introduction of arrest provisions else atleast increase the threshold for arrest.

70. Power to summon persons to give evidence and produce documents

(1) The proper officer under this Act shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry in the same manner, as provided in the case of a civil court under the provisions of the Code of Civil Procedure, 1908.

- (2) Every such inquiry referred to in sub-section (1) shall be deemed to be a “judicial proceedings” within the meaning of section 193 and section 228 of the Indian Penal Code.

71. Access to business premises

- (1) Any officer under this Act, authorised by the proper officer not below the rank of Joint Commissioner, shall have access to any place of business of a registered person to inspect books of account, documents, computers, computer programs, computer software whether installed in a computer or otherwise and such other things as he may require and which may be available at such place, for the purposes of carrying out any audit, scrutiny, verification and checks as may be necessary to safeguard the interest of revenue.
- (2) Every person in charge of place referred to in sub-section (1) shall, on demand, make available to the officer authorised under sub-section (1) or the audit party deputed by the proper officer or a cost accountant or chartered accountant nominated under section 66—
- (i) such records as prepared or maintained by the registered person and declared to the proper officer in such manner as may be prescribed;
 - (ii) trial balance or its equivalent;

- (iii) statements of annual financial accounts, duly audited, wherever required;
- (iv) cost audit report, if any, under section 148 of the Companies Act, 2013;
- (v) the income-tax audit report, if any, under section 44AB of the Income-tax Act, 1961; and
- (vi) any other relevant record, for the scrutiny by the officer or audit party or the chartered accountant or cost accountant within a period not exceeding fifteen working days from the day when such demand is made, or such further period as may be allowed by the said officer or the audit party or the chartered accountant or cost accountant.

Author comments:

This section empowers proper officer to access to any business premises to inspect

72. Officers to assist proper officers

- (1) All officers of Police, Railways, Customs, and those officers engaged in the collection of land revenue, including village officers, officers of State tax and officers of Union territory tax shall assist the proper officers in the implementation of this Act.

- (2) The Government may, by notification, empower and require any other class of officers to assist the proper officers in the implementation of this Act when called upon to do so by the Commissioner.

Chapter-XV

DEMANDS AND RECOVERY

73. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful misstatement or suppression of facts.

- (1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilized for any reason, other than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable

thereon under section 50 and a penalty leviable under the provisions of this Act or the rules made thereunder.

- (2) The proper officer shall issue the notice under sub-section (1) at least three months prior to the time limit specified in sub-section (10) for issuance of order.
- (3) Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax.
- (4) The service of such statement shall be deemed to be service of notice on such person under sub-section (1), subject to the condition that the grounds relied upon for such tax periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.
- (5) The person chargeable with tax may, before service of notice under sub-section (1) or, as the case may be, the statement under sub-section (3), pay the amount of tax along with interest payable thereon under section 50 on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

- (6) The proper officer, on receipt of such information, shall not serve any notice under subsection (1) or, as the case may be, the statement under sub-section (3), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.
- (7) Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.
- (8) Where any person chargeable with tax under sub-section (1) or sub-section (3) pays the said tax along with interest payable under section 50 within thirty days of issue of show cause notice, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded.
- (9) The proper officer shall, after considering the representation, if any, made by person chargeable with tax, determine the amount of tax, interest and a penalty equivalent to ten per cent. of tax or ten thousand rupees, whichever is higher, due from such person and issue an order.
- (10) The proper officer shall issue the order under sub-section (9) within three years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit

wrongly availed or utilised relates to or within three years from the date of erroneous refund.

- (11) Notwithstanding anything contained in sub-section (6) or sub-section (8), penalty under sub-section (9) shall be payable where any amount of self-assessed tax or any amount collected as tax has not been paid within a period of thirty days from the due date of payment of such tax.

74. Determination of tax not paid or short paid

or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful-misstatement or suppression of facts

- (1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilized by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified

in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.

- (2) The proper officer shall issue the notice under sub-section (1) at least six months prior to the time limit specified in sub-section (10) for issuance of order.
- (3) Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax.
- (4) The service of statement under sub-section (3) shall be deemed to be service of notice under sub-section (1) of section 73, subject to the condition that the grounds relied upon in the said statement, except the ground of fraud, or any wilful-misstatement or suppression of facts to evade tax, for periods other than those covered under subsection (1) are the same as are mentioned in the earlier notice.
- (5) The person chargeable with tax may, before service of notice under sub-section (1), pay the amount of tax along with interest payable under section 50 and a penalty equivalent to fifteen per cent. of such tax on the basis of his own ascertainment of such tax or the tax as

ascertained by the proper officer and inform the proper officer in writing of such payment.

- (6) The proper officer, on receipt of such information, shall not serve any notice under subsection (1), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.
- (7) Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.
- (8) Where any person chargeable with tax under sub-section (1) pays the said tax along with interest payable under section 50 and a penalty equivalent to twenty-five per cent. of such tax within thirty days of issue of the notice, all proceedings in respect of the said notice shall be deemed to be concluded.
- (9) The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order.
- (10) The proper officer shall issue the order under sub-section (9) within a period of five years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input

tax credit wrongly availed or utilised relates to or within five years from the date of erroneous refund.

- (11) Where any person served with an order issued under sub-section (9) pays the tax along with interest payable thereon under section 50 and a penalty equivalent to fifty per cent. of such tax within thirty days of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded.

Explanation 1.- For the purposes of section 73 and this section,—

- (i) the expression **“all proceedings in respect of the said notice”** shall not include proceedings under section 132;
- (ii) where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under section 73 or section 74, the proceedings against all the persons liable to pay penalty under sections 122, 125, 129 and 130 are deemed to be concluded.

Explanation 2.--For the purposes of this Act, the expression **“suppression”** shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer.

75. General provisions relating to determination of tax

- (1) Where the service of notice or issuance of order is stayed by an order of a court or Appellate Tribunal, the period of such stay shall be excluded in computing the period specified in sub-sections (2) and (10) of section 73 or sub-sections (2) and (10) of section 74, as the case may be.
- (2) Where any Appellate Authority or Appellate Tribunal or court concludes that the notice issued under sub-section (1) of section 74 is not sustainable for the reason that the charges of fraud or any wilful-misstatement or suppression of facts to evade tax has not been established against the person to whom the notice was issued, the proper officer shall determine the tax payable by such person, deeming as if the notice were issued under sub-section (1) of section 73.
- (3) Where any order is required to be issued in pursuance of the direction of the Appellate Authority or Appellate Tribunal or a court, such order shall be issued within two years from the date of communication of the said direction.
- (4) An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person.

- (5) The proper officer shall, if sufficient cause is shown by the person chargeable with tax, grant time to the said person and adjourn the hearing for reasons to be recorded in writing:

Provided that no such adjournment shall be granted for more than three times to a person during the proceedings.

- (6) The proper officer, in his order, shall set out the relevant facts and the basis of his decision.
- (7) The amount of tax, interest and penalty demanded in the order shall not be in excess of the amount specified in the notice and no demand shall be confirmed on the grounds other than the grounds specified in the notice.
- (8) Where the Appellate Authority or Appellate Tribunal or court modifies the amount of tax determined by the proper officer, the amount of interest and penalty shall stand modified accordingly, taking into account the amount of tax so modified.
- (9) The interest on the tax short paid or not paid shall be payable whether or not specified in the order determining the tax liability.
- (10) The adjudication proceedings shall be deemed to be concluded, if the order is not issued within three years as provided for in sub-section (10) of section 73 or within five years as provided for in sub-section (10) of section 74.

- (11) An issue on which the Appellate Authority or the Appellate Tribunal or the High Court has given its decision which is prejudicial to the interest of revenue in some other proceedings and an appeal to the Appellate Tribunal or the High Court or the Supreme Court against such decision of the Appellate Authority or the Appellate Tribunal or the High Court is pending, the period spent between the date of the decision of the Appellate Authority and that of the Appellate Tribunal or the date of decision of the Appellate Tribunal and that of the High Court or the date of the decision of the High Court and that of the Supreme Court shall be excluded in computing the period referred to in sub-section (10) of section 73 or sub-section (10) of section 74 where proceedings are initiated by way of issue of a show cause notice under the said sections.
- (12) Notwithstanding anything contained in section 73 or section 74, where any amount of self-assessed tax in accordance with a return furnished under section 39 remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be recovered under the provisions of section 79.
- (13) Where any penalty is imposed under section 73 or section 74, no penalty for the same act or omission shall be imposed on the same person under any other provision of this Act.

76. Tax collected but not paid to Government

- (1) Notwithstanding anything to the contrary contained in any order or direction of any Appellate Authority or Appellate Tribunal or court or in any other provisions of this Act or the rules made thereunder or any other law for the time being in force, every person who has collected from any other person any amount as representing the tax under this Act, and has not paid the said amount to the Government, shall forthwith pay the said amount to the Government, irrespective of whether the supplies in respect of which such amount was collected are taxable or not.
- (2) Where any amount is required to be paid to the Government under sub-section (1), and which has not been so paid, the proper officer may serve on the person liable to pay such amount a notice requiring him to show cause as to why the said amount as specified in the notice, should not be paid by him to the Government and why a penalty equivalent to the amount specified in the notice should not be imposed on him under the provisions of this Act.
- (3) The proper officer shall, after considering the representation, if any, made by the person on whom the notice is served under sub-section

(2), determine the amount due from such person and thereupon such person shall pay the amount so determined.

- (4) The person referred to in sub-section (1) shall in addition to paying the amount referred to in sub-section (1) or sub-section (3) also be liable to pay interest thereon at the rate specified under section 50 from the date such amount was collected by him to the date such amount is paid by him to the Government.
- (5) An opportunity of hearing shall be granted where a request is received in writing from the person to whom the notice was issued to show cause.
- (6) The proper officer shall issue an order within one year from the date of issue of the notice.
- (7) Where the issuance of order is stayed by an order of the court or Appellate Tribunal, the period of such stay shall be excluded in computing the period of one year.
- (8) The proper officer, in his order, shall set out the relevant facts and the basis of his decision.
- (9) The amount paid to the Government under sub-section (1) or sub-section (3) shall be adjusted against the tax payable, if any, by the person in relation to the supplies referred to in sub-section (1).

- (10) Where any surplus is left after the adjustment under sub-section (9), the amount of such surplus shall either be credited to the Fund or refunded to the person who has borne the incidence of such amount.
- (11) The person who has borne the incidence of the amount, may apply for the refund of the same in accordance with the provisions of section 54.

77. Tax wrongfully collected and paid to Central Government or State Government

- (1) A registered person who has paid the Central tax and State tax or, as the case may be, the central tax and the Union territory tax on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall be refunded the amount of taxes so paid in such manner and subject to such conditions as may be prescribed.
- (2) A registered person who has paid integrated tax on a transaction considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall not be required to pay any interest on the amount of central tax and State tax or, as the case may be, the central tax and the Union territory tax payable.

Author comments:

It may be noted that section 70 (and section 19 of IGST Act) provides that if an assessee wrongly pays say CGST and SGST (on a belief that the transaction is intra-State) instead of IGST, then the assessee will be granted refund of wrongfully paid taxes. Further refund mechanism shall be separately provided in such cases to reclaim the tax wrongly paid. Accordingly, it is one of the beneficial change in the revised draft law as no interest shall be payable on payment of correct tax subsequently and refund may not require 2 years' time as given for normal refund.

Thus, determining each transaction to be 'intra-State' supply or an 'Inter-State' as GST could be very crucial in GST regime as wrong payment can lead to going through the onerous process of claiming refund and paying tax correct taxes.

78. Initiation of recovery proceedings

Any amount payable by a taxable person in pursuance of an order passed under this Act shall be paid by such person within a period of three months from the date of service of such order failing which recovery proceedings shall be initiated:

Provided that where the proper officer considers it expedient in the interest of revenue, he may, for reasons to be recorded in writing, require the said taxable person to make such payment within such period less than a period of three months as may be specified by him.

79. Recovery of tax

- (1) Where any amount payable by a person to the Government under any of the provisions of this Act or the rules made thereunder is not paid, the proper officer shall proceed to recover the amount by one or more of the following modes, namely:--
 - (a) the proper officer may deduct or may require any other specified officer to deduct the amount so payable from any money owing to such person which may be under the control of the proper officer or such other specified officer;
 - (b) the proper officer may recover or may require any other specified officer to recover the amount so payable by detaining and selling any goods belonging to such person which are under the control of the proper officer or such other specified officer;
 - (c) (i) the proper officer may, by a notice in writing, require any other person from whom money is due or may become due to such person or who holds or may subsequently hold money for or on account of such person, to pay to the Government either forthwith upon the

money becoming due or being held, or within the time specified in the notice not being before the money becomes due or is held, so much of the money as is sufficient to pay the amount due from such person or the whole of the money when it is equal to or less than that amount;

- (ii) every person to whom the notice is issued under sub-clause (i) shall be bound to comply with such notice, and in particular, where any such notice is issued to a post office, banking company or an insurer, it shall not be necessary to produce any pass book, deposit receipt, policy or any other document for the purpose of any entry, endorsement or the like being made before payment is made, notwithstanding any rule, practice or requirement to the contrary;
- (iii) in case the person to whom a notice under sub-clause (i) has been issued, fails to make the payment in pursuance thereof to the Government, he shall be deemed to be a defaulter in respect of the amount specified in the notice and all the consequences of this Act or the rules made thereunder shall follow;
- (iv) the officer issuing a notice under sub-clause (i) may, at any time, amend or revoke such notice or extend the time for making any payment in pursuance of the notice;

'Explanation.--For the purposes of this section, the word person shall include "distinct persons" as referred to in sub-section (4) or, as the case may be, sub-section (5) of section 25.'

~~(iv)~~(v) any person making any payment in compliance with a notice issued under sub-clause (i) shall be deemed to have made the payment under the authority of the person in default and such payment being credited to the Government shall be deemed to constitute a good and sufficient discharge

of the liability of such person to the person in default to the extent of the amount specified in the receipt;

~~(v)~~(vi) any person discharging any liability to the person in default after service on him of the notice issued under sub-clause (i) shall be personally liable to the Government to the extent of the liability discharged or to the extent of the liability of the person in default for tax, interest and penalty, whichever is less;

~~(vi)~~(vii) where a person on whom a notice is served under sub-clause (i) proves to the satisfaction of the officer issuing the notice that the money demanded or any part thereof was not due to the person in default or that he did not hold any money for or on account of the person in default, at the time the notice was served on him, nor is the money demanded or any part thereof, likely to become due to the said

person or be held for or on account of such person, nothing contained in this section shall be deemed to require the person on whom the notice has been served to pay to the Government any such money or part thereof;

- (d) the proper officer may, in accordance with the rules to be made in this behalf, distrain any movable or immovable property belonging to or under the control of such person, and detain the same until the amount payable is paid; and in case, any part of the said amount payable or of the cost of the distress or keeping of the property, remains unpaid for a period of thirty days next after any such distress, may cause the said property to be sold and with the proceeds of such sale, may satisfy the amount payable and the costs including cost of sale remaining unpaid and shall render the surplus amount, if any, to such person;
- (e) the proper officer may prepare a certificate signed by him specifying the amount due from such person and send it to the Collector of the district in which such person owns any property or resides or carries on his business or to any officer authorised by the Government and the said Collector or the said officer, on receipt of such certificate, shall proceed to recover from such person the amount specified thereunder as if it were an arrear of land revenue;

- (f) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the proper officer may file an application to the appropriate Magistrate and such Magistrate shall proceed to recover from such person the amount specified thereunder as if it were a fine imposed by him.
- (2) Where the terms of any bond or other instrument executed under this Act or any rules or regulations made thereunder provide that any amount due under such instrument may be recovered in the manner laid down in sub-section (1), the amount may, without prejudice to any other mode of recovery, be recovered in accordance with the provisions of that sub-section.
- (3) Where any amount of tax, interest or penalty is payable by a person to the Government under any of the provisions of this Act or the rules made thereunder and which remains unpaid, the proper officer of State tax or Union territory tax, during the course of recovery of said tax arrears, may recover the amount from the said person as if it were an arrear of State tax or Union territory tax and credit the amount so recovered to the account of the Government.
- (4) Where the amount recovered under sub-section (3) is less than the amount due to the Central Government and State Government, the

amount to be credited to the account of the respective Governments shall be in proportion to the amount due to each such Government.

Author comments:

This section is amended so that to allow recovery from distinct persons present in different States / UTs in order to ensure speedy recovery from other establishments of the registered person.

80. Payment of tax and other amount in instalments

On an application filed by a taxable person, the Commissioner may, for reasons to be recorded in writing, extend the time for payment or allow payment of any amount due under this Act, other than the amount due as per the liability self-assessed in any return, by such person in monthly instalments not exceeding twenty four, subject to payment of interest under section 50 and subject to such conditions and limitations as may be prescribed:

Provided that where there is default in payment of any one instalment on its due date, the whole outstanding balance payable on such date shall become due and payable forthwith and shall, without any further notice being served on the person, be liable for recovery.

81. Transfer of property to be void in certain cases

Where a person, after any amount has become due from him, creates a charge on or parts with the property belonging to him or in his possession by way of sale, mortgage, exchange, or any other mode of transfer whatsoever of any of his properties in favour of any other person with the intention of defrauding the Government revenue, such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by the said person:

Provided that, such charge or transfer shall not be void if it is made for adequate consideration, in good faith and without notice of the pendency of such proceedings under this Act or without notice of such tax or other sum payable by the said person, or with the previous permission of the proper officer.

82. Tax to be first charge on property

Notwithstanding anything to the contrary contained in any law for the time being ^{31 of 2016.} 20 in force, save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, any amount payable by a taxable person or any other person on account of tax, interest or penalty which he is liable to pay to the Government shall be a first charge on the property of such taxable person or such person.

83. Provisional attachment to protect revenue in certain cases

- (1) Where during the pendency of any proceedings under section 62 or section 63 or section 64 or section 67 or section 73 or section 74, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue, it is necessary so to do, he may, by order in writing attach provisionally any property, including bank account, belonging to the taxable person in such manner as may be prescribed.
- (2) Every such provisional attachment shall cease to have effect after the expiry of a 30 period of one year from the date of the order made under sub-section (1).

84. Continuation and validation of certain recovery proceedings

Where any notice of demand in respect of any tax, penalty, interest or any other amount payable under this Act, (hereafter in this section referred to as "Government dues"), is served upon any taxable person or any other person and any appeal or revision application is filed or any other proceedings is initiated in respect of such Government dues, then--

- (a) where such Government dues are enhanced in such appeal, revision or other proceedings, the Commissioner shall serve upon the taxable person or any other person another notice of demand in respect of the amount by which such Government dues are enhanced and any

recovery proceedings in relation to such Government dues as are covered by the notice of demand served upon him before the disposal of such appeal, revision or other proceedings may, without the service of any fresh notice of demand, be continued from the stage at which such proceedings stood immediately before such disposal;

- (b) where such Government dues are reduced in such appeal, revision or in other proceedings--
 - (i) it shall not be necessary for the Commissioner to serve upon the taxable person a fresh notice of demand;
 - (ii) the Commissioner shall give intimation of such reduction to him and to the appropriate authority with whom recovery proceedings is pending;
 - (iii) any recovery proceedings initiated on the basis of the demand served upon him prior to the disposal of such appeal, revision or other proceedings may be continued in relation to the amount so reduced from the stage at which such proceedings stood immediately before such disposal

Chapter-XVI

LIABILITY TO PAY IN CERTAIN CASES

85. Liability in case of transfer of business

- (1) Where a taxable person, liable to pay tax under this Act, transfers his business in whole or in part, by sale, gift, lease, leave and license, hire or in any other manner whatsoever, the taxable person and the person to whom the business is so transferred shall, jointly and severally, be liable wholly or to the extent of such transfer, to pay the tax, interest or any penalty due from the taxable person upto the time of such transfer, whether such tax, interest or penalty has been determined before such transfer, but has remained unpaid or is determined thereafter.
- (2) Where the transferee of a business referred to in sub-section (1) carries on such business either in his own name or in some other name, he shall be liable to pay tax on the supply of goods or services or both effected by him with effect from the date of such transfer and shall, if he is a registered person under this Act, apply within the prescribed time for amendment of his certificate of registration.

86. Liability of agent and principal

Where an agent supplies or receives any taxable goods on behalf of his principal, such agent and his principal shall, jointly and severally, be liable to pay the tax payable on such goods under this Act.

87. Liability in case of amalgamation or merger of Companies

- (1) When two or more companies are amalgamated or merged in pursuance of an order of court or of Tribunal or otherwise and the order is to take effect from a date earlier to the date of the order and any two or more of such companies have supplied or received any goods or services or both to or from each other during the period commencing on the date from which the order takes effect till the date of the order, then such transactions of supply and receipt shall be included in the turnover of supply or receipt of the respective companies and they shall be liable to pay tax accordingly.
- (2) Notwithstanding anything contained in the said order, for the purposes of this Act, the said two or more companies shall be treated as distinct companies for the period up to the date of the said order and the registration certificates of the said companies shall be cancelled with effect from the date of the said order.

88. Liability in case of Company in liquidation

- (1) When any company is being wound up whether under the orders of a court or Tribunal or otherwise, every person appointed as receiver of any assets of a company (hereafter in this section referred to as the “liquidator”), shall, within thirty days after his appointment, give intimation of his appointment to the Commissioner.
- (2) The Commissioner shall, after making such inquiry or calling for such information as he may deem fit, notify the liquidator within three months from the date on which he receives intimation of the appointment of the liquidator, the amount which in the opinion of the Commissioner would be sufficient to provide for any tax, interest or penalty which is then, or is likely thereafter to become, payable by the company.
- (3) When any private company is wound up and any tax, interest or penalty determined under this Act on the company for any period, whether before or in the course of or after its liquidation, cannot be recovered, then every person who was a director of such company at any time during the period for which the tax was due shall, jointly and severally, be liable for the payment of such tax, interest or penalty, unless he proves to the satisfaction of the Commissioner that such

non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

89. Liability of directors of private Company

- (1) Notwithstanding anything contained in the Companies Act, 2013, where any tax, interest or penalty due from a private company in respect of any supply of goods or services or both for any period cannot be recovered, then, every person who was a director of the private company during such period shall, jointly and severally, be liable for the payment of such tax, interest or penalty unless he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.
- (2) Where a private company is converted into a public company and the tax, interest or penalty in respect of any supply of goods or services or both for any period during which such company was a private company cannot be recovered before such conversion, then, nothing contained in sub-section (1) shall apply to any person who was a director of such private company in relation to any tax, interest or penalty in respect of such supply of goods or services or both of such private company:

Provided that nothing contained in this sub-section shall apply to any personal penalty imposed on such director.

90. Liability of partners of Firm to pay tax

Notwithstanding any contract to the contrary and any other law for the time being in force, where any firm is liable to pay any tax, interest or penalty under this Act, the firm and each of the partners of the firm shall, jointly and severally, be liable for such payment:

Provided that where any partner retires from the firm, he or the firm, shall intimate the date of retirement of the said partner to the Commissioner by a notice in that behalf in writing and such partner shall be liable to pay tax, interest or penalty due up to the date of his retirement whether determined or not, on that date:

Provided further that if no such intimation is given within one month from the date of retirement, the liability of such partner under the first proviso shall continue until the date on which such intimation is received by the Commissioner.

91. Liability of guardians, trustees, etc.

Where the business in respect of which any tax, interest or penalty is payable under this Act is carried on by any guardian, trustee or agent of a minor or other incapacitated person on behalf of and for the benefit of such minor or other incapacitated person, the tax, interest

or penalty shall be levied upon and recoverable from such guardian, trustee or agent in like manner and to the same extent as it would be determined and recoverable from any such minor or other incapacitated person, as if he were a major or capacitated person and as if he were conducting the business himself, and all the provisions of this Act or the rules made thereunder shall apply accordingly.

92. Liability of Court of Wards, etc.

Where the estate or any portion of the estate of a taxable person owning a business in respect of which any tax, interest or penalty is payable under this Act is under the control of the Court of Wards, the Administrator General, the Official Trustee or any receiver or manager (including any person, whatever be his designation, who in fact manages the business) appointed by or under any order of a court, the tax, interest or penalty shall be levied upon and be recoverable from such Court of Wards, Administrator General, Official Trustee, receiver or manager in like manner and to the same extent as it would be determined and be recoverable from the taxable person as if he were conducting the business himself, and all the provisions of this Act or the rules made thereunder shall apply accordingly.

93. Special provisions regarding liability to pay tax, interest or penalty in certain cases

- (1) Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, 40 where a person, liable to pay tax, interest or penalty under this Act, dies, then--
 - (a) if a business carried on by the person is continued after his death by his legal representative or any other person, such legal representative or other person, shall be liable to pay tax, interest or penalty due from such person under this Act; and
 - (b) if the business carried on by the person is discontinued, whether before or after his death, his legal representative shall be liable to pay, out of the estate of the deceased, to the extent to which the estate is capable of meeting the charge, the tax, interest or penalty due from such person under this Act, whether such tax, interest or penalty has been determined before his death but has remained unpaid or is determined after his death.
- (2) Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, where a taxable person, liable to pay tax, interest or penalty under this Act, is a Hindu Undivided Family or an association of persons and the property of the Hindu Undivided Family or the association of persons is partitioned amongst the various members or groups of

members, then, each member or group of members shall, jointly and severally, be liable

to pay the tax, interest or penalty due from the taxable person under this Act up to the time of the partition whether such tax, penalty or interest has been determined before partition but has remained unpaid or is determined after the partition.

- (3) Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, where a taxable person, liable to pay tax, interest or penalty under this Act, is a firm, and the firm is dissolved, then, every person who was a partner shall, jointly and severally, be liable to pay the tax, interest or penalty due from the firm under this Act up to the time of dissolution whether such tax, interest or penalty has been determined before the dissolution, but has remained unpaid or is determined after dissolution.
- (4) Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, where a taxable person liable to pay tax, interest or penalty under this Act,--
 - (a) is the guardian of a ward on whose behalf the business is carried on by the guardian; or
 - (b) is a trustee who carries on the business under a trust for a beneficiary, then, if the guardianship or trust is terminated, the ward or the

beneficiary shall be liable to pay the tax, interest or penalty due from the taxable person upto the time of the termination of the guardianship or trust, whether such tax, interest or penalty has been determined before the termination of guardianship or trust but has remained unpaid or is determined thereafter.

94. Liability in other cases

- (1) Where a taxable person is a firm or an association of persons or a Hindu Undivided Family and such firm, association or family has discontinued business--
 - (a) the tax, interest or penalty payable under this Act by such firm, association or family up to the date of such discontinuance may be determined as if no such discontinuance had taken place; and
 - (b) every person who, at the time of such discontinuance, was a partner of such firm, or a member of such association or family, shall, notwithstanding such discontinuance, jointly and severally, be liable for the payment of tax and interest determined and penalty imposed and payable by such firm, association or family, whether such tax and interest has been determined or penalty imposed prior to or after such discontinuance and subject as aforesaid, the provisions of this Act shall, so far as may be, apply as if every such person or partner or member were himself a taxable person.

- (2) Where a change has occurred in the constitution of a firm or an association of persons, the partners of the firm or members of association, as it existed before and as it exists after the reconstitution, shall, without prejudice to the provisions of section 90, jointly and severally, be liable to pay tax, interest or penalty due from such firm or association for any period before its reconstitution.
- (3) The provisions of sub-section (1) shall, so far as may be, apply where the taxable person, being a firm or association of persons is dissolved or where the taxable person, being a Hindu Undivided Family, has effected partition with respect to the business carried on by it and accordingly references in that sub-section to discontinuance shall be construed as reference to dissolution or to partition. *Explanation* –For the purposes of this Chapter,--
- (i) a **“Limited Liability Partnership”** formed and registered under the provisions of the Limited Liability Partnership Act, 2008 shall also be considered as a firm; (ii) **“court”** means the District Court, High Court or Supreme Court.

Chapter-XVII

ADVANCE RULING

Author comments:

Advance Ruling is an interesting provision in GST, which candidly, accepts that interpretation of Goods and Services Tax (GST) is not an easy task and thus, tries to provide solution to the taxpayer with written guidance or advice about the Authority's interpretation and position on specific transactions.

How do advance rulings help businesses in getting better understanding of tax positions?

GST regime, being self-assessment regimes, entails the taxpayer to take tax positions on day to day business transactions such as whether GST is applicable on supplies, whether the transaction is intra-State or inter-State, whether the transaction will qualify for zero rating, whether reverse charge mechanism is applicable etc. Given the numerous business transactions, taxpayers need to take tax positions at drop of the hat.

Fortunately, advance ruling provides a mechanism to the taxpayers to seek clarifications on the key issues. In the long run, this step of

seeking clarifications will certainly prove to be a step in the right direction and save the taxpayer from litigation as well as from penal consequence.

What are the categories that have attracted most number of disputes over the last one year?

Till now, more than hundred advance rulings have been passed! If one peruses the hundred advance rulings, its apparent that 'classification' related rulings top the chart with more than forty rulings, followed by GST applicability related twenty rulings and balance rulings are on other aspects (such as on the aspect of valuation, place of supply etc) of GST.

How does India compare to other jurisdictions - after one year of roll out - when it comes to GST/VAT related disputes?

The analyses the aforesaid rulings shows that the underlying question in most of the classification disputes was about rate of GST. The underlying reason for this trend appears to be the multi-tier GST rate slabs in India. This multi-tier GST rate structure is a stark contrast to Value Added Tax (VAT) in other jurisdictions including United Arab Emirates (UAE).

In UAE, VAT was introduced in UAE on 1st January 2018 with a single rate of 5 per cent! No other rates! Even the exemptions in UAE are restricted to four items only (one of them is residential leasing). This has ensured lesser complications in the UAE VAT law and accordingly much lesser advance rulings (referred as 'Clarifications' in UAE VAT).

Have there been instances of contradictory ruling on the same issue by two benches?

Recently, few instances of contradictory rulings were observed! One of such issue is authorities pronouncing the advance ruling were said as tilting more towards protection of interest of the revenue. One of such instance is applicability of rate on solar power plant wherein one rulings stated that the appropriate rate is 5 per cent whereas another ruling said its 18 per cent. These varying advance rulings can be seen as the advance ruling mechanism at present is decentralized. Thus, GST Council should certainly look into the aspect of centralization of the advance ruling mechanism.

As we enter the second year of GST, do you expect a step up in tax litigation?

This trend in advance rulings is worrying as it brings back the memory of erstwhile era where disputes relating to classification, levy/ exemption, etc were norm of the day. Additionally, in the coming days, views proposed in some of the advance rulings (particularly levy of GST on liquidated damages, employee recoveries, whether to treat a transaction as works contract etc) may not found as acceptable and it may then bring second wave of litigation.

95. Definitions

In this Chapter, unless the context otherwise requires,--

- (a) **"advance ruling"** means a decision provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant;
- (b) **"Appellate Authority"** means the Appellate Authority for Advance Ruling referred to in section 99;
- (c) **"applicant"** means any person registered or desirous of obtaining registration under this Act;

- (d) **“application”** means an application made to the Authority under sub-section (1) of section 97;
- (e) **“Authority”** means the Authority for Advance Ruling referred to in section 96.

96. Authority for advance ruling

Subject to the provisions of this Chapter, for the purposes of this Act, the Authority for advance ruling constituted under the provisions of a State Goods and Services Tax Act or Union Territory Goods and Services Tax Act shall be deemed to be the Authority for advance ruling in respect of that State or Union territory.

97. Application for Advance Ruling

- (1) An applicant desirous of obtaining an advance ruling under this Chapter may make an application in such form and manner and accompanied by such fee as may be prescribed, stating the question on which the advance ruling is sought.
- (2) The question on which the advance ruling is sought under this Act, shall be in respect of,—
 - (a) classification of any goods or services or both;
 - (b) applicability of a notification issued under the provisions of this Act;
 - (c) determination of time and value of supply of goods or services or both;

- (d) admissibility of input tax credit of tax paid or deemed to have been paid;
- (e) determination of the liability to pay tax on any goods or services or both;
- (f) whether applicant is required to be registered;
- (g) whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.

98. Procedure on receipt of application

- (1) On receipt of an application, the Authority shall cause a copy thereof to be forwarded to the concerned officer and, if necessary, call upon him to furnish the relevant records:

Provided that where any records have been called for by the Authority in any case, such records shall, as soon as possible, be returned to the said concerned officer.

- (2) The Authority may, after examining the application and the records called for and after hearing the applicant or his authorised representative and the concerned officer or his authorised representative, by order, either admit or reject the application:

Provided that the Authority shall not admit the application where the question raised in the application is already pending or decided in any

proceedings in the case of an applicant under any of the provisions of this Act:

Provided further that no application shall be rejected under this sub-section unless an opportunity of hearing has been given to the applicant:

Provided also that where the application is rejected, the reasons for such rejection shall be specified in the order.

- (3) A copy of every order made under sub-section (2) shall be sent to the applicant and to the concerned officer.
- (4) Where an application is admitted under sub-section (2), the Authority shall, after examining such further material as may be placed before it by the applicant or obtained by the Authority and after providing an opportunity of being heard to the applicant or his authorised representative as well as to the concerned officer or his authorised representative, pronounce its advance ruling on the question specified in the application.
- (5) Where the members of the Authority differ on any question on which the advance ruling is sought, they shall state the point or points on

which they differ and make a reference to the Appellate Authority for hearing and decision on such question.

- (6) The Authority shall pronounce its advance ruling in writing within ninety days from the date of receipt of application.
- (7) A copy of the advance ruling pronounced by the Authority duly signed by the members and certified in such manner as may be prescribed shall be sent to the applicant, the concerned officer and the jurisdictional officer after such pronouncement.

99. Appellate Authority for Advance Ruling

Subject to the provisions of this Chapter, for the purposes of this Act, the Appellate Authority for Advance Ruling constituted under the provisions of a State Goods and Services Tax Act or a Union Territory Goods and Services Tax Act shall be deemed to be the Appellate Authority in respect of that State or Union territory.

100. Appeal to Appellate Authority

- (1) The concerned officer, the jurisdictional officer or an applicant aggrieved by any advance ruling pronounced under sub-section (4) of section 98, may appeal to the Appellate Authority.
- (2) Every appeal under this section shall be filed within a period of thirty days from the date on which the ruling sought to be appealed against

is communicated to the concerned officer, the jurisdictional officer and the applicant:

Provided that the Appellate Authority may, if it is satisfied that the appellant was prevented by a sufficient cause from presenting the appeal within the said period of thirty days, allow it to be presented within a further period not exceeding thirty days.

- (3) Every appeal under this section shall be in such form, accompanied by such fee and verified in such manner as may be prescribed.

101. Orders of Appellate Authority

- (1) The Appellate Authority may, after giving the parties to the appeal or reference an opportunity of being heard, pass such order as it thinks fit, confirming or modifying the ruling appealed against or referred to.
- (2) The order referred to in sub-section (1) shall be passed within a period of ninety days from the date of filing of the appeal under section 100 or a reference under sub-section (5) of section 98.
- (3) Where the members of the Appellate Authority differ on any point or points referred to in appeal or reference, it shall be deemed that no advance ruling can be issued in respect of the question under the appeal or reference.

- (4) A copy of the advance ruling pronounced by the Appellate Authority duly signed by the Members and certified in such manner as may be prescribed shall be sent to the applicant, the concerned officer, the jurisdictional officer and to the Authority after such pronouncement.

102. Rectification of Advance Ruling

The Authority or the Appellate Authority may amend any order passed by it under section 98 or section 101, so as to rectify any error apparent on the face of the record, if such error is noticed by the Authority or the Appellate Authority on its own accord, or is brought to its notice by the concerned officer, the jurisdictional officer, the applicant or the appellant within a period of six months from the date of the order:

Provided that no rectification which has the effect of enhancing the tax liability or reducing the amount of admissible input tax credit shall be made unless the applicant or the appellant has been given an opportunity of being heard.

103. Applicability of Advance Ruling

- (1) The advance ruling pronounced by the Authority or the Appellate Authority under this Chapter shall be binding only—
 - (a) on the applicant who had sought it in respect of any matter referred to in subsection (2) of section 97 for advance ruling;

- (b) on the concerned officer or the jurisdictional officer in respect of the applicant
- (2) The advance ruling referred to in sub-section (1) shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.

104. Advance ruling to be void in certain circumstances

- (1) Where the Authority or the Appellate Authority finds that advance ruling pronounced by it under sub-section (4) of section 98 or under sub-section (1) of section 101 has been obtained by the applicant or the appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void ab-initio and thereupon all the provisions of this Act or the rules made thereunder shall apply to the applicant or the appellant as if such advance ruling had never been made:

Provided that no order shall be passed under this sub-section unless an opportunity of being heard has been given to the applicant or the appellant.

Explanation – The period beginning with the date of such advance ruling and ending with the date of order under this sub-section shall be excluded while computing the period specified in sub-sections (2) and (10) of section 73 or sub-sections (2) and (10) of section 74.

- (2) A copy of the order made under sub-section (1) shall be sent to the applicant, the concerned officer and the jurisdictional officer.

105. Powers of Authority and Appellate Authority

- (1) The Authority or the Appellate Authority shall, for the purpose of exercising its powers regarding—
- (a) discovery and inspection;
 - (b) enforcing the attendance of any person and examining him on oath;
 - (c) issuing commissions and compelling production of books of account and other records, have all the powers of a civil court under the Code of Civil Procedure, 1908.
- (2) The Authority or the Appellate Authority shall be deemed to be a civil court for the purposes of section 195, but not for the purposes of Chapter XXVI of the Code of Criminal Procedure, 1973, and every proceeding before the Authority or the Appellate Authority shall be deemed to be a judicial proceedings within the meaning of sections 193 and 228, and for the purpose of section 196 of the Indian Penal Code.

106. Procedure of Authority and Appellate Authority

The Authority or the Appellate Authority shall, subject to the provisions of this Chapter, have power to regulate its own procedure.

Author comments:

Who can request AR as per GST Law?

Any person who desirous to seek clarification under GST can request for AR. Further, as per section 95(c) of the CGST Act, "applicant" means any person registered or desirous of obtaining registration under this Act;

Given this, AR can be sought by any person registered under the GST Act or desirous of obtaining registration under the Act.

Why and When AR is to be preferred?

The taxpayer can prefer AR whenever there is an interpretation issue or uncertainty about the provision with respect to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant. Hence, GST law permit AR not only for those supplies which are proposed to be undertaken but also supplies which are already being undertaken. In other words, AR can be preferred anytime before completion of the supply of goods or services or both.

As per Section 97 of the CGST Act, given below are the questions on which AR could be sought by the taxpayer.

1. Classification of any goods and/or services under the Act.
2. Applicability of a notification which affects the rate of tax.
3. Determination of time and value of supply of goods/services.
4. Whether input tax credit paid (or deemed to be paid) will be allowed.
5. Determination of the liability to pay tax on any goods/services.
6. Whether the applicant has to be registered under GST.
7. Whether anything done by the applicant regarding goods/services will result in a supply.

How AR supports for effective litigation management?

Disputes between the tax administration and the taxpayers are a perennial phenomenon. Advance ruling is one mechanism by which such disputes may be settled in advance so that the taxpayer knows of his tax liabilities in advance to enable him to assess the transaction where it involves a question of law. Broadly speaking, the concept of advance rulings implies a written confirmation from a tax authority, in advance, regarding the tax implications of a proposed transaction.

In every legal dispute resolution is must. However, litigation management even before legal dispute could be subject to risk analysis as well as cost benefit analysis. In each case effective litigation management requires:

- Identification of the issues that need to be resolved
- Identification of a preferred resolution
- A strategy to achieve the preferred resolution and
- An understanding of costs to be incurred

Hence, a proactive taxpayer should consider aforesaid factor before seeking AR in addition to broad objectives of advance ruling as specified hereunder:

- Provide certainty in tax liability in advance for transaction undertaken or proposed to be undertaken.
- Reduction in likely litigation
- Pronounce ruling expeditiously in transparent and inexpensive manner for proper compliance by the taxpayer.

Section 95 of the CGST Act prescribes that, AR means a decision provided by the Authority or the Appellate Authority to an applicant

on matters or on questions specified. Further, as per section 103 of the CGST Act, 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

Here, it is key to understand once Advance Ruling Authority (ARA) decide the question of law it is binding on both the taxpayer and jurisdictional officer. Hence, AR safeguard taxpayer from future litigation, levy of interest and penalty.

Interestingly, the advance ruling does not have the precedent value of a judgement of a High Court or Supreme court. However, even for the person other than applicant and the respondent, the AR would be of a persuasive nature.

Considering the importance of advance management of litigation, constitution of separate ARA under GST at its developing stage is one of the positive moves of the Government to expediate the ruling under GST.

Present Status of AR under GST

The AAR have been set up in all states. One of the first ruling which was available in public domain was by AAR West Bengal in the case of M/s Akansha Hair and Skin Care dated 9th April 2018 in respect to classification of certain product as medicament. Later, many important clarifications have been issued by the AAR like recovery from employee for canteen services, outdoor catering service provided by factory owner, supply of goods with brand name or otherwise etc.

Key Challenges required to be considered

As advance ruling is at nascent stage challenges given below can be considered before seeking it

-Presently advance ruling is decided by multiple authorities (i.e. Authorities equal to number of state)

-Each state pronouncing it's ruling even if the matter is covered by some other state AAR's ruling

-There would be situation where different rulings could be available on same question.

Chapter-XVIII

APPEALS AND REVISION

107. Appeals to Appellate Authority

- (1) Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within **three** months from the date on which the said decision or order is communicated to such person.
- (2) The Commissioner may, on his own motion, or upon request from the Commissioner of State tax or the Commissioner of Union territory tax, call for and examine the record of any proceedings in which an adjudicating authority has passed any decision or order under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, for the purpose of satisfying himself as to the legality or propriety of the said decision or order and may, by order, direct any officer subordinate to him to apply to the Appellate Authority within six months from the date of communication of the said decision or order for the determination of such points arising out of the said decision or order as may be specified by the Commissioner in his order.

- (3) Where, in pursuance of an order under sub-section (2), the authorised officer makes an application to the Appellate Authority, such application shall be dealt with by the Appellate Authority as if it were an appeal made against the decision or order of the adjudicating authority and such authorised officer were an appellant and the provisions of this Act relating to appeals shall apply to such application.
- (4) The Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months or six months, as the case may be, allow it to be presented within a further period of **one** month.
- (5) Every appeal under this section shall be in such form and shall be verified in such manner as may be prescribed.
- (6) No appeal shall be filed under sub-section (1), unless the appellant has paid—
 - (a) **in full**, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and
 - (b) **a sum equal to ten per cent.** of the remaining amount of tax in dispute arising from the said order subject to a maximum of twenty-five crore rupees, in relation to which the appeal has been filed.

- (7) Where the appellant has paid the amount under sub-section (6), the recovery proceedings for the balance amount shall be deemed to be stayed.
- (8) The Appellate Authority shall give an opportunity to the appellant of being heard.
- (9) The Appellate Authority may, if sufficient cause is shown at any stage of hearing of an appeal, grant time to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing: Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.
- (10) The Appellate Authority may, at the time of hearing of an appeal, allow an appellant to add any ground of appeal not specified in the grounds of appeal, if it is satisfied that the omission of that ground from the grounds of appeal was not wilful or unreasonable.
- (11) The Appellate Authority shall, after making such further inquiry as may be necessary, pass such order, as it thinks just and proper, confirming, modifying or annulling the decision or order appealed against but shall not refer the case back to the adjudicating authority that passed the said decision or order:

Provided that an order enhancing any fee or penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the

amount of refund or input tax credit shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed order:

Provided further that where the Appellate Authority is of the opinion that any tax has not been paid or short-paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised, no order requiring the appellant to pay such tax or input tax credit shall be passed unless the appellant is given notice to show cause against the proposed order and the order is passed within the time limit specified under section 73 or section 74.

(12) The order of the Appellate Authority disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for such decision.

(13) The Appellate Authority shall, where it is possible to do so, hear and decide every appeal within a period of **one** year from the date on which it is filed:

Provided that where the issuance of order is stayed by an order of a court or Tribunal, the period of such stay shall be excluded in computing the period of one year.

- (14) On disposal of the appeal, the Appellate Authority shall communicate the order passed by it to the appellant, respondent and to the adjudicating authority.
- (15) A copy of the order passed by the Appellate Authority shall also be sent to the jurisdictional Commissioner or the authority designated by him in this behalf and the jurisdictional Commissioner of State tax or Commissioner of Union Territory Tax or an authority designated by him in this behalf.
- (16) Every order passed under this section shall, subject to the provisions of section 108 or section 113 or section 117 or section 118 be final and binding on the parties.

Author comments: This Section deals with appeal provisions under CGST law. A person aggrieved by any decision or order passed against him under this Act by an adjudicating authority, may appeal to the prescribed First Appellate Authority. The time limit prescribed for filing of appeal is **3 months**.

It is also provided that no appeal shall be filed unless the appellant has deposited a sum equal to **10%** of the amount in dispute (typically the GST payable plus fees/ penalties payable) arising from the said order, in relation to which the appeal has been filed. It is also provided that the First Appellate Authority shall, where it is

possible to do so, hear and decide every appeal within a period of 1 year from the date on which it is filed.

As per section 107(6), the appellant is required to pay a sum equal to 10% of the tax in dispute arising from the order being appealed against for filing an appeal before the Appellate Authority. Now it is amended to provide a ceiling of Rs. 25 crore for filing an appeal before the Appellate Authority.

108. Powers of Revisional Authority

- (1) Subject to the provisions of section 121 and any rules made thereunder, the Revisional Authority may, on his own motion, or upon information received by him or on request from the Commissioner of State tax, or the Commissioner of Union territory tax, call for and examine the record of any proceedings, and if he considers that any decision or order passed under this Act or under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by any officer subordinate to him is erroneous in so far as it is prejudicial to the interest of revenue and is illegal or improper or has not taken into account certain material facts, whether available at the time of issuance of the said order or not or in consequence of an observation by the Comptroller and Auditor General of India, he may, if necessary,

stay the operation of such decision or order for such period as he deems fit and after giving the person concerned an opportunity of being heard and after making such further inquiry as may be necessary, pass such order, as he thinks just and proper, including enhancing or modifying or annulling the said decision or order.

- (2) The Revisional Authority shall not exercise any power under sub-section (1), if—
- (a) the order has been subject to an appeal under section 107 or section 112 or section 117 or section 118; or
 - (b) the period specified under sub-section (2) of section 107 has not yet expired or more than three years have expired after the passing of the decision or order sought to be revised; or
 - (c) the order has already been taken for revision under this section at an earlier stage; or
 - (d) the order has been passed in exercise of the powers under sub-section (1):

Provided that the Revisional Authority may pass an order under sub-section (1) on any point which has not been raised and decided in an appeal referred to in clause (a) of sub-section (2), before the expiry of a period of one year from the date of the order in such appeal or before

the expiry of a period of three years referred to in clause (b) of that sub-section, whichever is later.

- (3) Every order passed in revision under sub-section (1) shall, subject to the provisions of section 113 or section 117 or section 118, be final and binding on the parties.
- (4) If the said decision or order involves an issue on which the Appellate Tribunal or the High Court has given its decision in some other proceedings and an appeal to the High Court or the Supreme Court against such decision of the Appellate Tribunal or the High Court is pending, the period spent between the date of the decision of the Appellate Tribunal and the date of the decision of the High Court or the date of the decision of the High Court and the date of the decision of the Supreme Court shall be excluded in computing the period of limitation referred to in clause (b) of sub-section (2) where proceedings for revision have been initiated by way of issue of a notice under this section.
- (5) Where the issuance of an order under sub-section (1) is stayed by the order of a court or Appellate Tribunal, the period of such stay shall be excluded in computing the period of limitation referred to in clause (b) of sub-section (2).
- (6) For the purposes of this section, the term,--

- (i) **“record”** shall include all records relating to any proceedings under this Act available at the time of examination by the Revisional Authority;
- (ii) **“decision”** shall include intimation given by any officer lower in rank than the Revisional Authority.

109. Constitution of Appellate Tribunal and Benches thereof

- (1) The Government shall, on the recommendations of the Council, by notification, constitute with effect from such date as may be specified therein, an Appellate Tribunal known as the Goods and Services Tax Appellate Tribunal for hearing appeals against the orders passed by the Appellate Authority or the Revisional Authority.
- (2) The powers of the Appellate Tribunal shall be exercisable by the National Bench and Benches thereof (hereinafter in this Chapter referred to as “Regional Benches”), State Bench and Benches thereof (hereinafter in this Chapter referred to as “Area Benches”).
- (3) The National Bench of the Appellate Tribunal shall be situated at New Delhi which shall be presided over by the President and shall consist of one Technical Member (Centre) and one Technical Member (State).
- (4) The Government shall, on the recommendations of the Council, by notification, constitute such number of Regional Benches as may be

required and such Regional Benches shall consist of a Judicial Member, one Technical Member (Centre) and one Technical Member (State).

(5) The National Bench or Regional Benches of the Appellate Tribunal shall have jurisdiction to hear appeals against the orders passed by the Appellate Authority or the Revisional Authority in the cases where one of the issues involved relates to the place of supply.

(6) The Government shall, by notification, specify for each State or Union territory, a Bench of the Appellate Tribunal (hereafter in this Chapter, referred to as "State Bench") for exercising the powers of the Appellate Tribunal within the concerned State or Union territory:

Provided that the Government shall, on receipt of a request from any State Government, constitute such number of Area Benches in that State, as may be recommended by the Council:

Provided further that the Government may, on receipt of a request from any State, or on its own motion for a Union territory, notify the Appellate Tribunal in a State to act as the Appellate Tribunal for any other State or Union territory, as may be recommended by the Council, subject to such terms and conditions as may be prescribed.

(7) The State Bench or Area Benches shall have jurisdiction to hear appeals against the orders passed by the Appellate Authority or the

Revisional Authority in the cases involving matters other than those referred to in sub-section (5).

- (8) The President and the State President shall, by general or special order, distribute the business or transfer cases among Regional Benches or, as the case may be, Area Benches 10 in a State.
- (9) Each State Bench and Area Benches of the Appellate Tribunal shall consist of a Judicial Member, one Technical Member (Centre) and one Technical Member (State) and the State Government may designate the senior most Judicial Member in a State as the State President.
- (10) In the absence of a Member in any Bench due to vacancy or otherwise, any appeal may, with the approval of the President or, as the case may be, the State President, be heard by a Bench of two Members: Provided that any appeal where the tax or input tax credit involved or the difference in tax or input tax credit involved or the amount of fine, fee or penalty determined in any order appealed against, does not exceed five lakh rupees and which does not involve any question of law may, with the approval of the President and subject to such conditions as may be prescribed on the recommendations of the Council, be heard by a bench consisting of a single member.
- (11) If the Members of the National Bench, Regional Benches, State Bench or Area Benches differ in opinion on any point or points, it shall be

decided according to the opinion of the majority, if there is a majority, but if the Members are equally divided, they shall state the point or points on which they differ, and the case shall be referred by the President or as the case may be, State President for hearing on such point or points to one or more of the other Members of the National Bench, Regional Benches, State Bench or Area Benches and such point or points shall be decided according to the opinion of the majority of Members who have heard the case, including those who first heard it.

- (12) The Government, in consultation with the President may, for the administrative convenience, transfer—
- (a) any Judicial Member or a Member Technical (State) from one Bench to another Bench, whether National or Regional; or
 - (b) any Member Technical (Centre) from one Bench to another Bench, whether National, Regional, State or Area.
- (13) The State Government, in consultation with the State President may, for the administrative convenience, transfer a Judicial Member or a Member Technical (State) from one Bench to another Bench within the State.
- (14) No act or proceedings of the Appellate Tribunal shall be questioned or shall be invalid merely on the ground of the existence of any vacancy or defect in the constitution of the Appellate Tribunal.

110. President and Members of Appellate Tribunal, their qualification, appointment, conditions of service, etc.

- (1) A person shall not be qualified for appointment as—
- (a) the President, unless he has been a Judge of the Supreme Court or is or has been the Chief Justice of a High Court, or is or has been a Judge of a High Court for a period not less than five years; (b) a Judicial Member, unless he—
 - (i) has been a Judge of the High Court; or
 - (ii) is or has been a District Judge qualified to be appointed as a Judge of a High Court; or
 - (iii) is or has been a Member of Indian Legal Service and has held a post not less than Additional Secretary for three years;
 - (c) a Technical Member (Centre) unless he is or has been a member of Indian Revenue (Customs and Central Excise) Service, Group A, and has completed at least fifteen years of service in Group A;
 - (d) a Technical Member (State) unless he is or has been an officer of the State Government not below the rank of Additional Commissioner of Value Added Tax or the State goods and services tax or such rank as may be notified by the concerned State Government on the recommendations of the Council with at least three years of experience

in the administration of an existing law or the State Goods and Services Tax Act or in the field of finance and taxation.

- (2) The President and the Judicial Members of the National Bench and the Regional Benches shall be appointed by the Government after consultation with the Chief Justice of India or his nominee:

Provided that in the event of the occurrence of any vacancy in the office of the President by reason of his death, resignation or otherwise, the senior most Member of the National Bench shall act as the President until the date on which a new President, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office:

Provided further that where the President is unable to discharge his functions owing to absence, illness or any other cause, the senior most Member of the National Bench

shall discharge the functions of the President until the date on which the President resumes his duties.

- (3) The Technical Member (Centre) and Technical Member (State) of the National Bench and Regional Benches shall be appointed by the Government on the recommendations of a Selection Committee consisting of such persons and in such manner as may be prescribed.

- (4) The Judicial Member of the State Bench or Area Benches shall be appointed by the State Government after consultation with the Chief Justice of the High Court of the State or his nominee.
- (5) The Technical Member (Centre) of the State Bench or Area Benches shall be appointed by the Central Government and Technical Member (State) of the State Bench or Area Benches shall be appointed by the State Government in such manner as may be prescribed.
- (6) No appointment of the Members of the Appellate Tribunal shall be invalid merely by the reason of any vacancy or defect in the constitution of the Selection Committee.
- (7) Before appointing any person as the President or Members of the Appellate Tribunal, the Central Government or, as the case may be, the State Government, shall satisfy itself that such person does not have any financial or other interests which are likely to prejudicially affect his functions as such President or Member.
- (8) The salary, allowances and other terms and conditions of service of the President, State President and the Members of the Appellate Tribunal shall be such as may be prescribed:

Provided that neither salary and allowances nor other terms and conditions of service of the President, State President or Members of

the Appellate Tribunal shall be varied to their disadvantage after their appointment.

- (9) The President of the Appellate Tribunal shall hold office for a term of three years from the date on which he enters upon his office, or until he attains the age of seventy years, whichever is earlier and shall be eligible for reappointment.
- (10) The Judicial Member of the Appellate Tribunal and the State President shall hold office for a term of three years from the date on which he enters upon his office, or until he attains the age of sixty-five years, whichever is earlier and shall be eligible for reappointment.
- (11) The Technical Member (Centre) or Technical Member (State) of the Appellate Tribunal shall hold office for a term of five years from the date on which he enters upon his office, or until he attains the age of sixty-five years, whichever is earlier and shall be eligible for reappointment.
- (12) The President, State President or any Member may, by notice in writing under his hand addressed to the Central Government or, as the case may be, the State Government resign from his office:
- Provided that the President, State President or Member shall continue to hold office until the expiry of three months from the date of receipt of such notice by the Central Government, or, as the case may be, the

State Government or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

- (13) The Central Government may, after consultation with the Chief Justice of India, in case of the President, Judicial Members and Technical Members of the National Bench, Regional Benches or Technical Members (Centre) of the State Bench or Area Benches, and the State Government may, after consultation with the Chief Justice of High Court, in case of the State President, Judicial Members, Technical Members (State) of the State Bench or Area Benches, may remove from the office such President or Member, who—
- (a) has been adjudged an insolvent; or
 - (b) has been convicted of an offence which, in the opinion of such Government involves moral turpitude; or
 - (c) has become physically or mentally incapable of acting as such President, State President or Member; or
 - (d) has acquired such financial or other interest as is likely to affect prejudicially his functions as such President, State President or Member; or
 - (e) has so abused his position as to render his continuance in office prejudicial to the public interest:

Provided that the President, State President or the Member shall not be removed on any of the grounds specified in clauses (d) and (e), unless he has been informed of the charges against him and has been given an opportunity of being heard.

(14) Without prejudice to the provisions of sub-section (13),--

- (a) the President or a Judicial and Technical Member of the National Bench or Regional Benches, Technical Member (Centre) of the State Bench or Area Benches shall not be removed from their office except by an order made by the Central Government on the ground of proved misbehaviour or incapacity after an inquiry made by a Judge of the Supreme Court nominated by the Chief Justice of India on a reference made to him by the Central Government and of which the President or the said Member had been given an opportunity of being heard;
- (b) the Judicial Member or Technical Member (State) of the State Bench or Area Benches shall not be removed from their office except by an order made by the State Government on the ground of proved misbehaviour or incapacity after an inquiry made by a Judge of the concerned High Court nominated by the Chief Justice of the concerned High Court on a reference made to him by the State Government and of which the said Member had been given an opportunity of being heard.

- (15) The Central Government, with the concurrence of the Chief Justice of India, may suspend from office, the President or a Judicial or Technical Members of the National Bench or the Regional Benches or the Technical Member (Centre) of the State Bench or Area Benches in respect of whom a reference has been made to the Judge of the Supreme Court under sub-section (14).
- (16) The State Government, with the concurrence of the Chief Justice of the High Court, may suspend from office, a Judicial Member or Technical Member (State) of the State Bench or Area Benches in respect of whom a reference has been made to the Judge of the High Court under sub-section (14).
- (17) Subject to the provisions of article 220 of the Constitution, the President, State President or other Members, on ceasing to hold their office, shall not be eligible to appear, act or plead before the National Bench and the Regional Benches or the State Bench and the Area Benches thereof where he was the President or, as the case may be, a Member.

111. Procedure before Appellate Tribunal

- (1) The Appellate Tribunal shall not, while disposing of any proceedings before it or an appeal before it, be bound by the procedure laid down in the Code of Civil Procedure, 1908, but shall be guided by the

principles of natural justice and subject to the other provisions of this Act and the rules made thereunder, the Appellate Tribunal shall have power to regulate its own procedure.

- (2) The Appellate Tribunal shall, for the purposes of discharging its functions under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, namely:—
 - (a) summoning and enforcing the attendance of any person and examining him on oath;
 - (b) requiring the discovery and production of documents;
 - (c) receiving evidence on affidavits;
 - (d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or a copy of such record or document from any office;
 - (e) issuing commissions for the examination of witnesses or documents;
 - (f) dismissing a representation for default or deciding it ex parte;
 - (g) setting aside any order of dismissal of any representation for default or any order passed by it ex parte; and
 - (h) any other matter which may be prescribed.
- (3) Any order made by the Appellate Tribunal may be enforced by it in the same manner as if it were a decree made by a court in a suit pending

therein, and it shall be lawful for the Appellate Tribunal to send for execution of its orders to the court within the local limits of whose jurisdiction,—

- (a) in the case of an order against a company, the registered office of the company is situated; or
 - (b) in the case of an order against any other person, the person concerned voluntarily resides or carries on business or personally works for gain.
- (4) All proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228, and for the purposes of section 196 of the Indian Penal Code, and the Appellate Tribunal shall be deemed to be civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

112. Appeals to Appellate Tribunal

- (1) Any person aggrieved by an order passed against him under section 107 or section 108 of this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act may appeal to the Appellate Tribunal against such order within **three months** from the date on which the order sought to be appealed against is communicated to the person preferring the appeal.

- (2) The Appellate Tribunal may, in its discretion, refuse to admit any such appeal where the tax or input tax credit involved or the difference in tax or input tax credit involved or the amount of fine, fee or penalty determined by such order, does not exceed fifty thousand rupees.
- (3) The Commissioner may, on his own motion, or upon request from the Commissioner of State tax or Commissioner of Union territory tax, call for and examine the record of any order passed by the Appellate Authority or the Revisional Authority under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act for the purpose of satisfying himself as to the legality or propriety of the said order and may, by order, direct any officer subordinate to him to apply to the Appellate Tribunal within six months from the date on which the said order has been passed for determination of such points arising out of the said order as may be specified by the Commissioner in his order.
- (4) Where in pursuance of an order under sub-section (3) the authorised officer makes an application to the Appellate Tribunal, such application shall be dealt with by the Appellate Tribunal as if it were an appeal made against the order under sub-section (11) of section 107 or under sub-section (1) of section 108 and the provisions of this Act shall apply

to such application, as they apply in relation to appeals filed under subsection (1).

- (5) On receipt of notice that an appeal has been preferred under this section, the party against whom the appeal has been preferred may, notwithstanding that he may not have appealed against such order or any part thereof, file, within forty-five days of the receipt of notice, a memorandum of cross-objections, verified in the prescribed manner, against any part of the order appealed against and such memorandum shall be disposed of by the Appellate Tribunal, as if it were an appeal presented within the time specified in sub-section (1).
- (6) The Appellate Tribunal may admit an appeal within three months after the expiry of the period referred to in sub-section (1), or permit the filing of a memorandum of crossobjections within forty-five days after the expiry of the period referred to in sub-section (5) if it is satisfied that there was sufficient cause for not presenting it within that period.
- (7) An appeal to the Appellate Tribunal shall be in such form, verified in such manner and shall be accompanied by such fee, as may be prescribed.
- (8) No appeal shall be filed under sub-section (1), unless the appellant has paid--

- (a) **in full**, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him, and
- (b) **a sum equal to twenty per cent.** of the remaining amount of tax in dispute, in addition to the amount paid under sub-section (6) of section 107, ~~arising from the said order~~, subject to a maximum of fifty crore rupees in relation to which the appeal has been filed.
- (9) Where the appellant has paid the amount as per sub-section (8), the recovery proceedings for the balance amount shall be deemed to be stayed till the disposal of the appeal.
- (10) Every application made before the Appellate Tribunal,—
- (a) in an appeal for rectification of error or for any other purpose; or
- (b) for restoration of an appeal or an application, shall be accompanied by such fees as may be prescribed.

Author comments:

Section 100 deals with appeal before Appellate Tribunal under CGST law. A person aggrieved, may appeal to the Appellate Tribunal within 3 months.

It is also provided that no appeal shall be filed unless the appellant has deposited a sum equal to 10% of the amount in dispute (typically the GST payable plus fees/ penalties payable) arising from the said order, in relation to which the appeal has been filed.

As per section 112 (8), the appellant is required to pay a sum equal to 20% of the tax in dispute, in addition to the amount paid under section 107 (6), arising from the order of the Appellate Authority for filing an appeal before the Appellate Tribunal. This section is amended to provide a ceiling of Rs. 50 crores for filing an appeal before the Appellate Tribunal.

113. Orders of Appellate Tribunal

- (1) The Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the decision or order appealed against or may refer the case back to the Appellate Authority, or the Revisional Authority or to the original adjudicating authority, with such directions as it may think fit, for a fresh adjudication or decision after taking additional evidence, if necessary.
- (2) The Appellate Tribunal may, if sufficient cause is shown, at any stage of hearing of an appeal, grant time to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing: Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.
- (3) The Appellate Tribunal may amend any order passed by it under subsection (1) so as to rectify any error apparent on the face of the record,

if such error is noticed by it on its own accord, or is brought to its notice by the Commissioner or the Commissioner of State tax or the Commissioner of the Union territory tax or the other party to the appeal within a period of three months from the date of the order:

Provided that no amendment which has the effect of enhancing an assessment or reducing a refund or input tax credit or otherwise increasing the liability of the other party, shall be made under this subsection, unless the party has been given an opportunity of being heard.

- (4) The Appellate Tribunal shall, as far as possible, hear and decide every appeal within a period of one year from the date on which it is filed.
- (5) The Appellate Tribunal shall send a copy of every order passed under this section to the Appellate Authority or the Revisional Authority, or the original adjudicating authority, as the case may be, the appellant and the jurisdictional Commissioner or the Commissioner of State tax or the Union territory tax.
- (6) Save as provided in section 117 or section 118, orders passed by the Appellate Tribunal on an appeal shall be final and binding on the parties.

114. Financial and administrative powers of President

The President shall exercise such financial and administrative powers over the National Bench and Regional Benches of the Appellate Tribunal as may be prescribed:

Provided that the President shall have the authority to delegate such of his financial and administrative powers as he may think fit to any other Member or any officer of the National Bench and Regional Benches, subject to the condition that such Member or officer shall, while exercising such delegated powers, continue to act under the direction, control and supervision of the President.

115. Interest on refund of amount paid for admission of appeal

Where an amount paid by the appellant under sub-section (6) of section 107 or subsection (8) of section 112 is required to be refunded consequent to any order of the Appellate Authority or of the Appellate Tribunal, interest at the rate specified under section 56 shall be payable in respect of such refund from the date of payment of the amount till the date of refund of such amount.

116. Appearance by authorised representative

- (1) Any person who is entitled or required to appear before an officer appointed under this Act, or the Appellate Authority or the Appellate Tribunal in connection with any proceedings under this Act, may,

otherwise than when required under this Act to appear personally for examination on oath or affirmation, subject to the other provisions of this section, appear by an authorised representative.

(2) For the purposes of this Act, the expression “authorised representative” shall mean a person authorised by the person referred to in sub-section (1) to appear on his behalf, being—

- (a) his relative or regular employee; or
- (b) an advocate who is entitled to practice in any court in India, and who has not been debarred from practicing before any court in India; or
- (c) any chartered accountant, a cost accountant or a company secretary, who holds a certificate of practice and who has not been debarred from practice; or
- (d) a retired officer of the Commercial Tax Department of any State Government or Union territory or of the Board who, during his service under the Government, had worked in a post not below the rank than that of a Group-B Gazetted officer for a period of not less than two years:

Provided that such officer shall not be entitled to appear before any proceedings under this Act for a period of one year from the date of his retirement or resignation; or

- (e) any person who has been authorised to act as a goods and services tax practitioner on behalf of the concerned registered person.
- (3) No person,—
 - (a) who has been dismissed or removed from Government service; or
 - (b) who is convicted of an offence connected with any proceedings under this Act, the State Goods and Services Tax Act, the Integrated Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, or under the existing law or under any of the Acts passed by a State Legislature dealing with the imposition of taxes on sale of goods or supply of goods or services or both; or
 - (c) who is found guilty of misconduct by the prescribed authority;
 - (d) who has been adjudged as an insolvent,
shall be qualified to represent any person under sub-section (1)—
 - (i) for all times in case of persons referred to in clauses (a), (b) and (c);
and
 - (ii) for the period during which the insolvency continues in the case of a person referred to in clause (d).
- (4) Any person who has been disqualified under the provisions of the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act shall be deemed to be disqualified under this Act.

117. Appeal to High Court

(1) Any person aggrieved by any order passed by the State Bench or Area Benches of the Appellate Tribunal may file an appeal to the High Court and the High Court may admit such appeal, if it is satisfied that the case involves a substantial question of law.

(2) An appeal under sub-section (1) shall be filed within a period of one hundred and eighty days from the date on which the order appealed against is received by the aggrieved person and it shall be in such form, verified in such manner as may be prescribed:

Provided that the High Court may entertain an appeal after the expiry of the said period if it is satisfied that there was sufficient cause for not filing it within such period.

(3) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question and the appeal shall be heard only on the question so formulated, and the respondents shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question:

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question.

- (4) The High Court shall decide the question of law so formulated and deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit.
- (5) The High Court may determine any issue which--
 - (a) has not been determined by the State Bench or Area Benches; or
 - (b) has been wrongly determined by the State Bench or Area Benches, by reason of a decision on such question of law as herein referred to in sub-section (3).
- (6) Where an appeal has been filed before the High Court, it shall be heard by a Bench of not less than two Judges of the High Court, and shall be decided in accordance with the opinion of such Judges or of the majority, if any, of such Judges.
- (7) Where there is no such majority, the Judges shall state the point of law upon which they differ and the case shall, then, be heard upon that point only, by one or more of the other Judges of the High Court and such point shall be decided according to the opinion of the majority of the Judges who have heard the case including those who first heard it.
- (8) Where the High Court delivers a judgment in an appeal filed before it under this section, effect shall be given to such judgment by either side on the basis of a certified copy of the judgment.

- (9) Save as otherwise provided in this Act, the provisions of the Code of Civil Procedure, 1908, relating to appeals to the High Court shall, as far as may be, apply in the case of appeals under this section.

118. Appeal to Supreme Court

- (1) An appeal shall lie to the Supreme Court—
- (a) from any order passed by the National Bench or Regional Benches of the Appellate Tribunal; or
 - (b) from any judgment or order passed by the High Court in an appeal made under section 117 in any case which, on its own motion or on an application made by or on behalf of the party aggrieved, immediately after passing of the judgment or order, the High Court certifies to be a fit one for appeal to the Supreme Court.
- (2) The provisions of the Code of Civil Procedure, 1908, relating to appeals to the Supreme Court shall, so far as may be, apply in the case of appeals under this section as they apply in the case of appeals from decrees of a High Court.
- (3) Where the judgment of the High Court is varied or reversed in the appeal, effect shall be given to the order of the Supreme Court in the manner provided in section 117 in the case of a judgment of the High Court.

119. Sums due to be paid notwithstanding appeal, etc.

Notwithstanding that an appeal has been preferred to the High Court or the Supreme Court, sums due to the Government as a result of an order passed by the National or Regional Benches of the Appellate Tribunal under sub-section (1) of section 113 or an order passed by the State Bench or Area Benches of the Appellate Tribunal under subsection (1) of section 113 or an order passed by the High Court under section 117, as the case may be, shall be payable in accordance with the order so passed.

120. Appeal not to be filed in certain cases

- (1) The Board may, on the recommendations of the Council, from time to time, issue orders or instructions or directions fixing such monetary limits, as it may deem fit, for the purposes of regulating the filing of appeal or application by the officer of the central tax under the provisions of this Chapter.
- (2) Where, in pursuance of the orders or instructions or directions issued under sub-section (1), the officer of the central tax has not filed an appeal or application against any decision or order passed under the provisions of this Act, it shall not preclude such officer of the central tax from filing appeal or application in any other case involving the same or similar issues or questions of law.

- (3) Notwithstanding the fact that no appeal or application has been filed by the officer of the central tax pursuant to the orders or instructions or directions issued under sub-section (1), no person, being a party in appeal or application shall contend that the officer of the central tax has acquiesced in the decision on the disputed issue by not filing an appeal or application.
- (4) The Appellate Tribunal or court hearing such appeal or application shall have regard to the circumstances under which appeal or application was not filed by the officer of the central tax in pursuance of the orders or instructions or directions issued under subsection (1).

121. Non-appealable decisions and orders

Notwithstanding anything to the contrary in any provisions of this Act, no appeal shall lie against any decision taken or order passed by an officer of central tax if such decision taken or order passed relates to any one or more of the following matters, namely:—

- (a) an order of the Commissioner or other authority empowered to direct transfer of proceedings from one officer to another officer; or
- (b) an order pertaining to the seizure or retention of books of account, register and other documents; or
- (c) an order sanctioning prosecution under this Act; or
- (d) an order passed under section 80.

Chapter-XIX

OFFENCES AND PENALTIES

122. Penalty for certain offences

- (1) Where a taxable person who--
- (i) supplies any goods or services or both without issue of any invoice or issues an incorrect or false invoice with regard to any such supply;
 - (ii) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act or the rules made thereunder;
 - (iii) collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;
 - (iv) collects any tax in contravention of the provisions of this Act but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;
 - (v) fails to deduct the tax in accordance with the provisions of sub-section (1) of section 51, or deducts an amount which is less than the amount required to be deducted under the said sub-section, or where he fails to pay to the Government under sub-section (2) thereof, the amount deducted as tax;

- (vi) fails to collect tax in accordance with the provisions of sub-section (1) of section 52, or collects an amount which is less than the amount required to be collected under the said sub-section or where he fails to pay to the Government the amount collected as tax under sub-section (3) of section 52;
- (vii) takes or *utilises input* tax credit without actual receipt of goods or services or both either fully or partially, in contravention of the provisions of this Act or the rules made thereunder;
- (viii) fraudulently obtains refund of tax under this Act;
- (ix) takes or distributes input tax credit in contravention of section 20, or the rules made thereunder;
- (x) falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information or return with an intention to evade payment of tax due under this Act;
- (xi) is liable to be registered under this Act but fails to obtain registration;
- (xii) furnishes any false information with regard to registration particulars, either at the time of applying for registration, or subsequently;
- (xiii) obstructs or prevents any officer in discharge of his duties under this Act;
- (xiv) transports any taxable goods without the cover of documents as may be specified in this behalf;

- (xv) suppresses his turnover leading to evasion of tax under this Act;
- (xvi) fails to keep, maintain or retain books of account and other documents in accordance with the provisions of this Act or the rules made thereunder;
- (xvii) fails to furnish information or documents called for by an officer in accordance with the provisions of this Act or the rules made thereunder or furnishes false information or documents during any proceedings under this Act;
- (xviii) supplies, transports or stores any goods which he has reasons to believe are liable to confiscation under this Act;
- (xix) issues any invoice or document by using the registration number of another registered person;
- (xx) tampers with, or destroys any material evidence or document;
- (xxi) disposes off or tampers with any goods that have been detained, seized, or attached under this Act,

he shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the tax evaded or the tax not deducted under section 51 or short deducted or deducted but not paid to the Government or tax not collected under section 52 or short collected or collected but not paid to the Government or input tax credit availed of or passed on or

distributed irregularly, or the refund claimed fraudulently, whichever is higher.

- (2) Any registered person who supplies any goods or services or both on which any tax has not been paid or short-paid or erroneously refunded, or where the input tax credit has been wrongly availed or utilised,—
 - (a) for any reason, other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty of ten thousand rupees or ten per cent. of the tax due from such person, whichever is higher;
 - (b) for reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty equal to ten thousand rupees or the tax due from such person, whichever is higher.
- (3) Any person who—
 - (a) aids or abets any of the offences specified in clauses (i) to (xxi) of subsection (1);
 - (b) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with any goods which he knows or has reasons to believe are liable to confiscation under this Act or the rules made thereunder;

- (c) receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reasons to believe are in contravention of any provisions of this Act or the rules made thereunder;
- (d) fails to appear before the officer of central tax, when issued with a summon for appearance to give evidence or produce a document in an inquiry;
- (e) fails to issue invoice in accordance with the provisions of this Act or the rules made thereunder or fails to account for an invoice in his books of account, shall be liable to a penalty which may extend to twenty five thousand rupees.

Author comments: This section contains 21 omissions / commissions and prescribes penalty for the same.

123. Penalty for failure to furnish information return

If a person who is required to furnish an information return under section 150 fails to do so within the period specified in the notice issued under sub-section (3) thereof, the proper officer may direct that such person shall be liable to pay a penalty of one hundred rupees for each day of the period during which the failure to furnish such return continues:

Provided that the penalty imposed under this section shall not exceed five thousand rupees.

124. Fine for failure to furnish statistics

If any person required to furnish any information or return under section 151,—

- (a) without reasonable cause fails to furnish such information or return as may be required under that section, or
- (b) wilfully furnishes or causes to furnish any information or return which he knows to be false,

he shall be punishable with a fine which may extend to ten thousand rupees and in case of a continuing offence to a further fine which may extend to one hundred rupees for each day after the first day during which the offence continues subject to a maximum limit of twenty five thousand rupees.

125. General penalty

Any person, who contravenes any of the provisions of this Act or any rules made thereunder for which no penalty is separately provided for in this Act, shall be liable to a penalty which may extend to twenty five thousand rupees.

Author comments: This section prescribes generic penalty of Rs 25,000/-.

126. General disciplines related to penalty

- (1) No officer under this Act shall impose any penalty for minor breaches of tax regulations or procedural requirements and in particular, any omission or mistake in documentation which is easily rectifiable and made without fraudulent intent or gross negligence.

Explanation – For the purpose of this sub-section,--

- (a) a breach shall be considered a '**minor breach**' if the amount of tax involved is less than five thousand rupees;
 - (b) an omission or mistake in documentation shall be considered to be easily rectifiable if the same is an error apparent on the face of record.
- (2) The penalty imposed under this Act shall depend on the facts and circumstances of each case and shall be commensurate with the degree and severity of the breach.
 - (3) No penalty shall be imposed on any person without giving him an opportunity of being heard.
 - (4) The officer under this Act shall while imposing penalty in an order for a breach of any law, regulation or procedural requirement, specify the nature of the breach and the applicable law, regulation or procedure under which the amount of penalty for the breach has been specified.

- (5) When a person voluntarily discloses to an officer under this Act the circumstances of a breach of the tax law, regulation or procedural requirement prior to the discovery of the breach by the officer under this Act, the proper officer may consider this fact as a mitigating factor when quantifying a penalty for that person.
- (6) The provisions of this section shall not apply in such cases where the penalty specified under this Act is either a fixed sum or expressed as a fixed percentage.

127. Power to impose penalty in certain cases

Where the proper officer is of the view that a person is liable to a penalty and the same is not covered under any proceedings under section 62 or section 63 or section 64 or section 73 or section 74 or section 129 or section 130, he may issue an order levying such penalty after giving a reasonable opportunity of being heard to such person.

128. Power to waive penalty or fee or both

The Government may, by notification, waive in part or full, any penalty referred to in section 122 or section 123 or section 125 or any late fee referred to in section 47 for such class of taxpayers and under such mitigating circumstances as may be specified therein on 5 the recommendations of the Council.

129. Detention, seizure and release of goods and conveyances in transit

- (1) Notwithstanding anything contained in this Act, where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act or the rules made thereunder, all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure and after detention or seizure, shall be released,—
- (a) on payment of the applicable tax and penalty equal to one hundred per cent. of the tax payable on such goods and, in case of exempted goods, on payment of
- an amount equal to two per cent of the value of goods or twenty five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such tax and penalty;
- (b) on payment of the applicable tax and penalty equal to the fifty per cent. of the value of the goods reduced by the tax amount paid thereon and, in case of exempted goods, on payment of an amount equal to five per cent. of the value of goods or twenty five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such tax and penalty;

- (c) upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) in such form and manner as may be prescribed:

Provided that no such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods.

- (2) The provisions of sub-section (6) of section 67 shall, mutatis mutandis, apply for detention and seizure of goods and conveyances.
- (3) The proper officer detaining or seizing goods or conveyances shall issue a notice specifying the tax and penalty payable and thereafter, pass an order for payment of tax and penalty under clause (a) or clause (b) or clause (c).
- (4) No tax, interest or penalty shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard.
- (5) On payment of amount referred in sub-section (1), all proceedings in respect of the notice specified in sub-section (3) shall be deemed to be concluded.
- (6) Where the person transporting any goods or the owner of the goods fails to pay the amount of tax and penalty as provided in sub-section (1) within ~~seven days~~ fourteen days of such detention or seizure,

further proceedings shall be initiated in accordance with the provisions of section 130:

Provided that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of seven days may be reduced by the proper officer.

Author comments:

As per section 129 (6), Where the person transporting any goods or the owner of the goods fails to pay the amount of tax and penalty within seven days of detention or seizure, further proceedings shall be initiated in accordance with the provisions of section 130.

This section is amended to increase time up to fourteen days.

130. Confiscation of goods or conveyances and levy of penalty

- (1) Notwithstanding anything contained in this Act, if any person—
 - (i) supplies or receives any goods in contravention of any of the provisions of this

Act or the rules made thereunder with intent to evade payment of tax;
or

- (ii) does not account for any goods on which he is liable to pay tax under this Act; or
- (iii) supplies any goods liable to tax under this Act without having applied for registration; or
- (iv) contravenes any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or
- (iv) uses any conveyance as a means of transport for carriage of goods in contravention of the provisions of this Act or the rules made thereunder unless the owner of the conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance, then, all such goods or conveyances shall be liable to confiscation and the person shall be liable to penalty under section 122.

- (2) Whenever confiscation of any goods or conveyance is authorised by this Act, the officer adjudging it shall give to the owner of the goods an option to pay in lieu of confiscation, such fine as the said officer thinks fit:

Provided that such fine leviable shall not exceed the market value of the goods confiscated, less the tax chargeable thereon:

Provided further that the aggregate of such fine and penalty leviable shall not be less than the amount of penalty leviable under sub-section (1) of section 129:

Provided also that where any such conveyance is used for the carriage of the goods or passengers for hire, the owner of the conveyance shall be given an option to pay in lieu of the confiscation of the conveyance a fine equal to the tax payable on the goods being transported thereon.

- (3) Where any fine in lieu of confiscation of goods or conveyance is imposed under subsection (2), the owner of such goods or conveyance or the person referred to in subsection (1), shall, in addition, be liable to any tax, penalty and charges payable in respect of such goods or conveyance.
- (4) No order for confiscation of goods or conveyance or for imposition of penalty shall be issued without giving the person an opportunity of being heard.
- (5) Where any goods or conveyance are confiscated under this Act, the title of such goods or conveyance shall thereupon vest in the Government.
- (6) The proper officer adjudging confiscation shall take and hold possession of the things confiscated and every officer of Police, on the

requisition of such proper officer, shall assist him in taking and holding such possession.

- (7) The proper officer may, after satisfying himself that the confiscated goods or conveyance are not required in any other proceedings under this Act and after giving reasonable time not exceeding three months to pay fine in lieu of confiscation, dispose of such goods or conveyance and deposit the sale proceeds thereof with the Government.

131. Confiscation or penalty not to interfere with other punishments

Without prejudice to the provisions contained in the Code of Criminal Procedure, 1973, no confiscation made or penalty imposed under the provisions of this Act or the rules made thereunder shall prevent the infliction of any other punishment to which the person affected thereby is liable under the provisions of this Act or under any other law for the time being in force.

132. Punishment for certain offences

- (1) Whoever commits 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);
- (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 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 thereunder;

- (i) receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reasons to believe are in contravention of any provisions of this Act or the rules made thereunder;
- (j) tampers with or destroys any material evidence or documents;
- (k) fails to supply any information which he is required to supply under this Act or the rules made thereunder or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information; or
- (l) attempts to commit, or abets the commission of any of the offences mentioned in clauses (a) to (k) of this section, shall be punishable--
 - (i) in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds

five hundred lakh rupees, with imprisonment for a term which may extend to five years and with fine;
 - (ii) in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds two hundred lakh rupees but does not exceed five hundred lakh rupees, with imprisonment for a term which may extend to three years and with fine;

- (iii) in the case of any other offence where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds one hundred lakh rupees but does not exceed two hundred lakh rupees, with imprisonment for a term which may extend to one year and with fine;
 - (iv) in cases where he commits or abets the commission of an offence specified in clause (f) or clause (g) or clause (j), he shall be punishable with imprisonment for a term which may extend to six months or with fine or with both.
- (2) Where any person convicted of an offence under this section is again convicted of an offence under this section, then, he shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend to five years and with fine.
- (3) The imprisonment referred to in clauses (i), (ii) and (iii) of sub-section (1) and subsection (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 noncognizable and bailable.

- (5) The offences specified in clause (a) or clause (b) or clause (c) or clause (d) of subsection (1) and punishable under clause (i) of that subsection shall be cognizable and non-bailable.
- (6) A person shall not be prosecuted for any offence under this section except with the previous sanction of the Commissioner.

Explanation - For the purposes of this section, the term "tax" shall include the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or refund wrongly taken under the provisions of this Act, the State Goods and Services Tax Act, the Integrated Goods and Services Tax Act or the Union Territory Goods and Services Tax Act and cess levied under the Goods and Services Tax (Compensation to States) Act.

133. Liability of officers and certain other persons

- (1) Where any person engaged in connection with the collection of statistics under section 151 or compilation or computerisation thereof or if any officer of central tax having access to information specified under sub-section (1) of section 150, or if any person engaged in connection with the provision of service on the common portal or the agent of common portal, wilfully discloses any information or the contents of any return furnished under this Act or rules made

thereunder otherwise than in execution of his duties under the said sections or for the purposes of prosecution for an offence under this Act or under any other Act for the time being in force, he shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to twenty-five thousand rupees, or with both.

(2) Any person—

- (a) who is a Government servant shall not be prosecuted for any offence under this section except with the previous sanction of the Government;
- (b) who is not a Government servant shall not be prosecuted for any offence under this section except with the previous sanction of the Commissioner.

134. Cognizance of offences

No court shall take cognizance of any offence punishable under this Act or the rules made thereunder except with the previous sanction of the Commissioner, and no court inferior to that of a Magistrate of the First Class, shall try any such offence.

135. Presumption of culpable mental state

In any prosecution for an offence under this Act which requires a culpable mental state on the part of the accused, the court shall presume the

existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution. *Explanation* - For the purposes of this section,--

- (i) the expression "**culpable mental state**" includes intention, motive, knowledge of a fact, and belief in, or reason to believe, a fact;
- (ii) a fact is said to be proved only when the court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

136. Relevancy of statements under certain circumstances

A statement made and signed by a person on appearance in response to any summons issued under section 70 during the course of any inquiry or proceedings under this Act shall be relevant, for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains,--

- (a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable; or

- (b) when the person who made the statement is examined as a witness in the case before the court and the court is of the opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interest of justice.

137. Offences by Companies

- (1) Where an offence committed by a person under this Act is a company, every person who, at the time the offence was committed was in charge of, and was responsible to, 5 the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.
- (2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been 10 committed with the consent or connivance of, or is attributable to any negligence on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

- (3) Where an offence under this Act has been committed by a taxable person being a 15 partnership firm or a Limited Liability Partnership or a Hindu undivided family or a trust, the partner or karta or managing trustee shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly and the provisions of sub-section (2) shall, mutatis mutandis, apply to such persons.
- (4) Nothing contained in this section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

Explanation – For the purposes of this section,--

- (i) **“company”** means a body corporate and includes a firm or other association of individuals; and
- (ii) **“director”**, in relation to a firm, means a partner in the firm.

138. Compounding of offences

- (1) Any offence under this Act may, either before or after the institution of prosecution, be compounded by the Commissioner on payment, by the person accused of the offence, to the Central Government or the State Government, as the case be, of such compounding amount in such manner as may be prescribed:

Provided that nothing contained in this section shall apply to—

- (a) a person who has been allowed to compound once in respect of any of the offences specified in clauses (a) to (f) of sub-section (1) of section 132 and the offences specified in clause (l) which are relatable to offences specified in clauses (a) to (f) of the said sub-section;
- (b) a person who has been allowed to compound once in respect of any offence, other than those in clause (a), under this Act or under the provisions of any State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act or the Integrated Goods and Services Tax Act in respect of supplies of value exceeding one crore rupees;
- (c) a person who has been accused of committing an offence under this Act which is also an offence under any other law for the time being in force;
- (d) a person who has been convicted for an offence under this Act by a court;
- (e) a person who has been accused of committing an offence specified in clause
- (g)

or clause (j) or clause (k) of sub-section (1) of section 132; and

(f) any other class of persons or offences as may be prescribed:

Provided further that any compounding allowed under the provisions of this section shall not affect the proceedings, if any, instituted under any other law:

Provided also that compounding shall be allowed only after making payment of tax, interest and penalty involved in such offences.

- (2) The amount for compounding of offences under this section shall be such as may be prescribed, subject to the minimum amount not being less than ten thousand rupees or fifty per cent of the tax involved, whichever is higher, and the maximum amount not being less than thirty thousand rupees or one hundred and fifty per cent. of the tax, whichever is higher.
- (3) On payment of such compounding amount as may be determined by the Commissioner, no further proceedings shall be initiated under this Act against the accused person in respect of the same offence and any criminal proceedings, if already initiated in respect of the said offence, shall stand abate.

Chapter-XX

TRANSITIONAL PROVISIONS

Author comments: Circular No.58/32/2018-GST dated 4th September 2018 has clarified about the methodology of recovery of arrear of wrongly availed transitional cenvat credit.

139. Migration of existing taxpayers

- (1) On and from the appointed day, every person registered under any of the existing laws and having a valid Permanent Account Number shall be issued a certificate of registration on provisional basis, subject to such conditions and in such form and manner as may be prescribed, which unless replaced by a final certificate of registration under sub-section (2), shall be liable to be cancelled if the conditions so prescribed are not complied with.
- (2) The final certificate of registration shall be granted in such form and manner and subject to such conditions as may be prescribed.
- (3) The certificate of registration issued to a person under sub-section (1) shall be deemed to have not been issued if the said registration is cancelled in pursuance of an application filed by such person that he was not liable to registration under section 22 or section 24.

140. Transitional arrangements for input tax credit

- (1) A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, the amount of CENVAT credit of eligible duties carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the existing law in such manner as may be prescribed:

Provided that the registered person shall not be allowed to take credit in the following circumstances, namely:—

- (i) where the said amount of credit is not admissible as input tax credit under this Act; or
 - (ii) where he has not furnished all the returns required under the existing law for the period of six months immediately preceding the appointed date; or
 - (iii) where the said amount of credit relates to goods manufactured and cleared under such exemption notifications as are notified by the Government.
- (2) A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, credit of the unavailed CENVAT credit in respect of capital goods,

not carried forward in a return, furnished under the existing law by him, for the period ending with the day immediately preceding the appointed day in such manner as may be prescribed:

Provided that the registered person shall not be allowed to take credit unless the said credit was admissible as CENVAT credit under the existing law and is also admissible as input tax credit under this Act.

Explanation – For the purposes of this sub-section, the expression “**unavailed CENVAT credit**” means the amount that remains after subtracting the amount of CENVAT credit already availed in respect of capital goods by the taxable person under the existing law from the aggregate amount of CENVAT credit to which the said person was entitled in respect of the said capital goods under the existing law;

- (3) A registered person, who was not liable to be registered under the existing law, or who was engaged in the manufacture of exempted goods or provision of exempted services, or who was providing works contract service and was availing of the benefit of notification No. 26/2012—Service Tax, dated the 20th June, 2012 or a first stage dealer or a second stage dealer or a registered importer or a depot of a manufacturer, shall be entitled to take, in his electronic

credit ledger, credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day subject to the following conditions, namely:--

- (i) such inputs or goods are used or intended to be used for making taxable supplies under this Act;
- (ii) the said registered person is eligible for input tax credit on such inputs under this Act;
- (iii) the said registered person is in possession of invoice or other prescribed documents evidencing payment of duty under the existing law in respect of such inputs;
- (iv) such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day; and
- (v) the supplier of services is not eligible for any abatement under this Act:

Provided that where a registered person, other than a manufacturer or a supplier of services, is not in possession of an invoice or any other documents evidencing payment of duty in respect of inputs, then, such registered person shall, subject to such conditions, limitations and safeguards as may be prescribed, including that the said taxable person shall pass on the benefit of

such credit by way of reduced prices to the recipient, be allowed to take credit at such rate and in such manner as may be prescribed.

- (4) A registered person, who was engaged in the manufacture of taxable as well as exempted goods under the Central Excise Act, 1944 or provision of taxable as well as exempted services under Chapter V of the Finance Act, 1994, but which are liable to tax under this Act, shall be entitled to take, in his electronic credit ledger,—
- (a) the amount of CENVAT credit carried forward in a return furnished under the existing law by him in accordance with the provisions of sub-section (1); and
- (b) the amount of CENVAT credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day, relating to such exempted goods or services, in accordance with the provisions of sub-section (3).
- (5) A registered person shall be entitled to take, in his electronic credit ledger, credit of eligible duties and taxes in respect of inputs or input services received on or after the appointed day but the duty or tax in respect of which has been paid by the supplier under the existing law, subject to the condition that the invoice or any other duty or tax paying document of the same was recorded in the *books*

of account of such person within a period of thirty days from the appointed day:

Provided that the period of thirty days may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding thirty days:

Provided further that said registered person shall furnish a statement, in such manner as may be prescribed, in respect of credit that has been taken under this sub-section.

- (6) A registered person, who was either paying tax at a fixed rate or paying a fixed amount in lieu of the tax payable under the existing law shall be entitled to take, in his electronic credit ledger, credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day subject to the following conditions, namely:--
- (i) such inputs or goods are used or intended to be used for making taxable supplies under this Act;
 - (ii) the said registered person is not paying tax under section 10;
 - (iii) the said registered person is eligible for input tax credit on such inputs under this Act;

- (iv) the said registered person is in possession of invoice or other prescribed documents evidencing payment of duty under the existing law in respect of inputs; and
- (v) such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day.
- (7) Notwithstanding anything to the contrary contained in this Act, the input tax credit on account of any services received prior to the appointed day by an Input Service Distributor shall be eligible for distribution as credit under this Act even if the invoices relating to such services are received on or after the appointed day.
- (8) Where a registered person having centralised registration under the existing law has obtained a registration under this Act, such person shall be allowed to take, in his electronic credit ledger, credit of the amount of CENVAT credit carried forward in a return, furnished under the existing law by him, in respect of the period ending with the day immediately preceding the appointed day in such manner as may be prescribed:

Provided that if the registered person furnishes his return for the period ending with the day immediately preceding the appointed day within three months of the appointed day, such credit shall be allowed subject to the condition that the said return is either an

original return or a revised return where the credit has been reduced from that claimed earlier:

Provided further that the registered person shall not be allowed to take credit unless the said amount is admissible as input tax credit under this Act:

Provided also that such credit may be transferred to any of the registered persons having the same Permanent Account Number for which the centralised registration was obtained under the existing law.

- (9) Where any CENVAT credit availed for the input services provided under the existing law has been reversed due to non-payment of the consideration within a period of three months, such credit can be reclaimed subject to the condition that the registered person has made the payment of the consideration for that supply of services within a period of three months from the appointed day.
- (10) The amount of credit under sub-sections (3), (4) and (6) shall be calculated in such manner as may be prescribed.

Explanation 1.- For the purposes of ~~sub-sections (3), (4)~~ sub-sections (1), (3), (4) and (6), the expression **"eligible duties"** means--

- (i) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957;
- (ii) the additional duty leviable under sub-section (1) of section 3 of the Customs Tariff Act, 1975;
- (iii) the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, 1975;
- ~~the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978;~~
- (iv) the duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985;
- (v) the duty of excise specified in the Second Schedule to the Central Excise Tariff Act, 1985; and
- (vi) the National Calamity Contingent Duty leviable under section 136 of the Finance Act, 2001;

in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day.

Explanation 2. - For the purposes of ~~sub-section (5)~~ sub-sections (1) and (5), the expression **“eligible duties and taxes”** means--

- (i) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957;
- (ii) the additional duty leviable under sub-section (1) of section 3 of the Customs Tariff Act, 1975;
- (iii) the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, 1975;
- ~~(iv) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978;~~
- (iv) the duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985;
- (v) the duty of excise specified in the Second Schedule to the Central Excise Tariff Act, 1985;
- (vi) the National Calamity Contingent Duty leviable under section 136 of the Finance Act, 2001; and
- (vii) the service tax leviable under section 66B of the Finance Act, 1994, in respect of inputs and input services received on or after the appointed day.

'Explanation 3.—For removal of doubts, it is hereby clarified that the expression "eligible duties and taxes" excludes any cess which has not

been specified in Explanation 1 or Explanation 2 and any cess which is collected as additional duty of customs under sub-section (1) of section 3 of the Customs Tariff Act, 1975.’.

Author comments:

Earlier, as per Sec 140 (1) of the CGST Act, a registered person, other than a person opting to pay tax under section 10, shall be entitled to take cenvat credit balance available as on 30th June 2018 in his electronic credit ledger. This section is amended by CGST (Amendment)Act, 2018 to include the word ‘CENVAT credit of eligible duties’ retrospectively from 1st July 2018. Hence, now cenvat credit balance available with respect to eligible duties as defined under section 140 is available. As per one of the official document intention of the said amendment is to ensure that the credit of various cesses was not transitioned.

However, it is to be noted that, the definition of ‘eligible duties’ does not include the word ‘Service Tax’. The absence of ‘Service Tax’ under the definition of ‘eligible duties’ would mean that, the transitional credit of service tax could be now denied.

Also, the definition of eligible duties refers only to various duties in respect of inputs held in stock but credits in respect of capital goods are not covered. This could lead to litigation hence immediate clarification will be awaited in this regard.

141. Transitional provisions relating to job work

- (1) Where any inputs received at a place of business had been removed as such or removed after being partially processed to a job worker for further processing, testing, repair, reconditioning or any other purpose in accordance with the provisions of existing law prior to the appointed day and such inputs are returned to the said place on or after the appointed day, no tax shall be payable if such inputs, after completion of the job work or otherwise, are returned to the said place within six months from the appointed day:

Provided that the period of six months may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding two months:

Provided further that if such inputs are not returned within the period specified in this sub-section, the input tax credit shall be

liable to be recovered in accordance with the provisions of clause (a) of sub-section (8) of section 142.

- (2) Where any semi-finished goods had been removed from the place of business to any other premises for carrying out certain manufacturing processes in accordance with the provisions of existing law prior to the appointed day and such goods (hereafter in this section referred to as "the said goods") are returned to the said place on or after the appointed day, no tax shall be payable, if the said goods, after undergoing manufacturing processes or otherwise, are returned to the said place within six months from the appointed day:

Provided that the period of six months may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding two months:

Provided further that if the said goods are not returned within the period specified in this sub-section, the input tax credit shall be liable to be recovered in accordance with the provisions of clause (a) of sub-section (8) of section 142:

Provided also that the manufacturer may, in accordance with the provisions of the existing law, transfer the said goods to the premises of any registered person for the purpose of supplying therefrom on payment of tax in India or without payment of tax for exports within the period specified in this sub-section.

- (3) Where any excisable goods manufactured at a place of business had been removed without payment of duty for carrying out tests or any other process not amounting to manufacture, to any other premises, whether registered or not, in accordance with the provisions of existing law prior to the appointed day and such goods, are returned to the said place on or after the appointed day, no tax shall be payable if the said goods, after undergoing tests or any other process, are returned to the said place within six months from the appointed day:

Provided that the period of six months may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding two months:

Provided further that if the said goods are not returned within the period specified in this sub-section, the input tax credit shall be liable to be recovered in accordance with the provisions of clause (a) of sub-section (8) of section 142:

Provided also that the manufacturer may, in accordance with the provisions of the existing law, transfer the said goods from the said other premises on payment of tax in India or without payment of tax for exports within the period specified in this subsection.

- (4) The tax under sub-sections (1), (2) and (3) shall not be payable, only if the manufacturer and the job-worker declare the details of the inputs or goods held in stock by the job-worker on behalf of the manufacturer on the appointed day in such form and manner and within such time as may be prescribed.

142. Miscellaneous transitional provisions

- (1) Where any goods on which duty, if any, had been paid under the existing law at the time of removal thereof, not being earlier than six months prior to the appointed day, are returned to any place of business on or after the appointed day, the registered person shall be eligible for refund of the duty paid under the existing law where

such goods are returned by a person, other than a registered person, to the said place of business within a period of six months from the appointed day and such goods are identifiable to the satisfaction of the proper officer:

Provided that if the said goods are returned by a registered person, the return of such goods shall be deemed to be a supply.

- (2) (a) where, in pursuance of a contract entered into prior to the appointed day, the price of any goods or services or both is revised upwards on or after the appointed day, the registered person who had removed or provided such goods or services or both shall issue to the recipient a supplementary invoice or debit note, containing such particulars as may be prescribed, within thirty days of such price revision and for the purposes of this Act such supplementary invoice or debit note shall be deemed to have been issued in respect of an outward supply made under this Act;
- (b) where, in pursuance of a contract entered into prior to the appointed day, the price of any goods or services or both is revised downwards on or after the appointed day, the registered person who had removed or provided such goods or services or both may issue to the recipient a credit note, containing such particulars as

may be prescribed, within thirty days of such price revision and for the purposes of this Act such credit note shall be deemed to have been issued in respect of an outward supply made under this Act:

Provided that the registered person shall be allowed to reduce his tax liability on account of issue of the credit note only if the recipient of the credit note has reduced his input tax credit corresponding to such reduction of tax liability.

- (3) Every claim for refund filed by any person before, on or after the appointed day, for refund of any amount of CENVAT credit, duty, tax, interest or any other amount paid under the existing law, shall be disposed of in accordance with the provisions of existing law and any amount eventually accruing to him shall be paid in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944:

Provided that where any claim for refund of CENVAT credit is fully or partially rejected, the amount so rejected shall lapse:

Provided further that no refund shall be allowed of any amount of CENVAT credit where the balance of the said amount as on the appointed day has been carried forward under this Act.

- (4) Every claim for refund filed after the appointed day for refund of any duty or tax paid under existing law in respect of the goods or services exported before or after the appointed day, shall be disposed of in accordance with the provisions of the existing law:

Provided that where any claim for refund of CENVAT credit is fully or partially rejected, the amount so rejected shall lapse:

Provided further that no refund shall be allowed of any amount of CENVAT credit where the balance of the said amount as on the appointed day has been carried forward under this Act.

- (5) Every claim filed by a person after the appointed day for refund of tax paid under the existing law in respect of services not provided shall be disposed of in accordance with the provisions of existing law and any amount eventually accruing to him shall be paid in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944.

- (6) (a) every proceeding of appeal, review or reference relating to a claim for CENVAT credit initiated whether before, on or after the appointed day under the existing law shall be disposed of in accordance with the provisions of existing law, and any amount of credit found to be admissible to the claimant shall be refunded to him in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 and the amount rejected, if any, shall not be admissible as input tax credit under this Act:

Provided that no refund shall be allowed of any amount of CENVAT credit where the balance of the said amount as on the appointed day has been carried forward under this Act;

- (b) every proceeding of appeal, review or reference relating to recovery of CENVAT credit initiated whether before, on or after the appointed day under the existing law shall be disposed of in accordance with the provisions of existing law and if any amount of credit becomes recoverable as a result of such appeal, review or reference, the same shall, unless recovered under the existing law, be recovered

as an arrear of tax under this Act and the amount so recovered shall not be admissible as input tax credit under this Act.

- (7) (a) every proceeding of appeal, review or reference relating to any output duty or tax liability initiated whether before, on or after the appointed day under the existing law, shall be disposed of in accordance with the provisions of the existing law, and if any amount becomes recoverable as a result of such appeal, review or reference, the same shall, unless recovered under the existing law, be recovered as an arrear of duty or tax under this Act and the amount so recovered shall not be admissible as input tax credit under this Act.
- (b) every proceeding of appeal, review or reference relating to any output duty or tax liability initiated whether before, on or after the appointed day under the existing law, shall be disposed of in accordance with the provisions of the existing law, and any amount found to be admissible to the claimant shall be refunded to him in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 and the amount rejected, if any, shall not be admissible as input tax credit under this Act.

- (8) (a) where in pursuance of an assessment or adjudication proceedings instituted, whether before, on or after the appointed day, under the existing law, any amount of tax, interest, fine or penalty becomes recoverable from the person, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under this Act and the amount so recovered shall not be admissible as input tax credit under this Act;
- (b) where in pursuance of an assessment or adjudication proceedings instituted, whether before, on or after the appointed day, under the existing law, any amount of tax, interest, fine or penalty becomes refundable to the taxable person, the same shall be refunded to him in cash under the said law, notwithstanding anything to the contrary contained in the said law. other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 and the amount rejected, if any, shall not be admissible as input tax credit under this Act.
- (9) (a) where any return, furnished under the existing law, is revised after the appointed day and if, pursuant to such revision, any amount is found to be recoverable or any amount of CENVAT credit is found to be inadmissible, the same shall, unless recovered under

the existing law, be recovered as an arrear of tax under this Act and the amount so recovered shall not be admissible as input tax credit under this Act;

- (b) where any return, furnished under the existing law, is revised after the appointed day but within the time limit specified for such revision under the existing law and if, pursuant 30 to such revision, any amount is found to be refundable or CENVAT credit is found to be admissible to any taxable person, the same shall be refunded to him in cash under the existing law, notwithstanding anything to the contrary contained in the said law other than the 1 of 1944. provisions of subsection (2) of section 11B of the Central Excise Act, 1944 and the amount rejected, if any, shall not be admissible as input tax credit under this Act.
- (10) Save as otherwise provided in this Chapter, the goods or services or both supplied on or after the appointed day in pursuance of a contract entered into prior to the appointed day shall be liable to tax under the provisions of this Act.
- (11) (a) notwithstanding anything contained in section 12, no tax shall be payable on goods under this Act to the extent the tax was leviable on the said goods under the Value Added Tax Act of the State;

- (b) notwithstanding anything contained in section 13, no tax shall be payable on services under this Act to the extent the tax was leviable on the said services under Chapter V of the Finance Act, 1994;
- (c) where tax was paid on any supply both under the Value Added Tax Act and under 32 of 1994. 45 Chapter V of the Finance Act, 1994, tax shall be leviable under this Act and the taxable person shall be entitled to take credit of value added tax or service tax paid under the existing law to the extent of supplies made after the appointed day and such credit shall be calculated in such manner as may be prescribed.
- (12) Where any goods sent on approval basis, not earlier than six months before the appointed day, are rejected or not approved by the buyer and returned to the seller on or after the appointed day, no tax shall be payable thereon if such goods are returned within six months from the appointed day:
- Provided that the said period of six months may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding two months:

Provided further that the tax shall be payable by the person returning the goods if such goods are liable to tax under this Act, and are returned after a period specified in this sub-section:

Provided also that tax shall be payable by the person who has sent the goods on approval basis if such goods are liable to tax under this Act, and are not returned within a period specified in this sub-section.

- (13) Where a supplier has made any sale of goods in respect of which tax was required to be deducted at source under any law of a State or Union territory relating to Value Added Tax and has also issued an invoice for the same before the appointed day, no deduction of tax at source under section 51 shall be made by the deductor under the said section where payment to the said supplier is made on or after the appointed day.

Explanation - For the purposes of this Chapter, the expressions **“capital goods”**, **“Central Value Added Tax (CENVAT) credit”**, **“first stage dealer”**, **“second stage dealer”**, **“manufacture”** shall have the same meaning as respectively assigned to them in the Central Excise Act, 1944 or the rules made thereunder.

Chapter-XXI

MISCELLANEOUS

143. Job work procedure

- (1) A registered person (hereafter in this section referred to as the “principal”) may under intimation and subject to such conditions as may be prescribed, send any inputs or capital goods, without payment of tax, to a job worker for job-work and from there subsequently send to another job worker and likewise, and shall,—
-
- (a) bring back inputs, after completion of job work or otherwise, or capital goods, other than moulds and dies, jigs and fixtures, or tools, within one year and three years, respectively, of their being sent out, to any of his place of business, without payment of tax;
- (b) supply such inputs, after completion of job work or otherwise, or capital goods, other than moulds and dies, jigs and fixtures, or tools, within one year and three years, respectively, of their being sent out from the place of business of a job worker on payment of tax within India, or with or without payment of tax for export, as the case may be:

Provided that the principal shall not supply the goods from the place of business of a job worker in accordance with the provisions

of this clause unless the said principal declares the place of business of the job-worker as his additional place of business except in a case—

“Provided further that the period of one year and three years may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding one year and two years respectively

- (i) where the job worker is registered under section 25; or
 - (ii) where the principal is engaged in the supply of such goods as may be notified by the Commissioner.
- (2) The responsibility for keeping proper accounts for the inputs or capital goods shall lie with the principal.
 - (3) Where the inputs sent for job work are not received back by the principal after completion of job work or otherwise in accordance with the provisions of clause (a) of sub-section (1) or are not supplied from the place of business of the job worker in accordance with the provisions of clause (b) of sub-section (1) within a period of one year of their being sent out, it shall be deemed that such inputs had been supplied by the principal to the job-worker on the day when the said inputs were sent out.

(4) Where the capital goods, other than moulds and dies, jigs and fixtures, or tools, sent for job work are not received back by the principal in accordance with the provisions of clause (a) of sub-section (1) or are not supplied from the place of business of the job worker in accordance with the provisions of clause (b) of sub-section (1) within a period of three years of their being sent out, it shall be deemed that such capital goods had been supplied by the principal to the job-worker on the day when the said capital goods were sent out.

(5) Notwithstanding anything contained in sub-sections (1) and (2), any waste and scrap generated during the job work may be supplied by the job worker directly from his place of business on payment of tax, if such job worker is registered, or by the principal, if the job worker is not registered.

Explanation.--For the purposes of job work, input includes intermediate goods arising from any treatment or process carried out on the inputs by the principal or the job worker.

Author comments: Section 55 prescribes the procedure for removal of goods to job worker through an **approval** from Commissioner. It is provided that the responsibility for accountability of the goods shall lie with the "principal". The Inputs sent for the Job work may bring back

within 1 year and specified capital goods within 3 year without payment of the duty.

As per section 143 of the CGST Act, a registered person (Principal) is allowed to send inputs or capital goods to a job worker for job work without payment of tax subject to the conditions inter-alia, that the inputs and capital goods are brought back within a period of one year and three years respectively.

A proviso in section 143 is inserted so that to provide that the period of one year or three years may, can be extended by the Commissioner on sufficient cause being shown by the taxpayer. However such extension should be for a further period not exceeding one year and two years respectively.”.

144. Presumption as to documents in certain cases

Where any document--

- (i) is produced by any person under this Act or any other law for the time being in force; or
- (ii) has been seized from the custody or control of any person under this Act or any other law for the time being in force; or

- (iii) has been received from any place outside India in the course of any proceedings under this Act or any other law for the time being in force, and such document is tendered by the prosecution in evidence against him or any other 25 person who is tried jointly with him, the court shall—
 - (a) unless the contrary is proved by such person, presume—
 - (i) the truth of the contents of such document;
 - (ii) that the signature and every other part of such document which purports to be in the handwriting of any particular person or which the court may reasonably assume to have been signed by, or to be in the handwriting of, any particular person, is in that person's handwriting, and in the case of a document executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested;
 - (b) admit the document in evidence notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence.

145. Admissibility of micro films, facsimile copies of documents and computer printouts as documents and as evidence

- (1) Notwithstanding anything contained in any other law for the time being in force,—

- (a) a micro film of a document or the reproduction of the image or images embodied in such micro film (whether enlarged or not); or
 - (b) a facsimile copy of a document; or
 - (c) a statement contained in a document and included in a printed material produced by a computer, subject to such conditions as may be prescribed; or
 - (d) any information stored electronically in any device or media, including any hard copies made of such information, shall be deemed to be a document for the purposes of this Act and the rules made thereunder and shall be admissible in any proceedings thereunder, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.
- (2) In any proceedings under this Act or the rules made thereunder, where it is desired to give a statement in evidence by virtue of this section, a certificate,—
- (a) identifying the document containing the statement and describing the manner in which it was produced;
 - (b) giving such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer, shall be evidence

of any matter stated in the certificate and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

146. Common Portal

The Government may, on the recommendations of the Council, notify the Common Goods and Services Tax Electronic Portal for facilitating registration, payment of tax, furnishing of returns, computation and settlement of integrated tax, electronic way bill and for carrying out such other functions and for such purposes as may be prescribed.

147. Deemed Exports

The Government may, on the recommendations of the Council, notify certain supplies of goods as deemed exports, where goods supplied do not leave India, and payment for such supplies is received either in Indian rupees or in convertible foreign exchange, if such goods are manufactured in India.

148. Special procedure for certain processes

The Government may, on the recommendations of the Council, and subject to such conditions and safeguards as may be prescribed, notify certain classes of registered persons, and the special procedures to be followed by such persons including those with regard to registration, furnishing of return, payment of tax and administration of such persons.

149. Goods and services tax compliance rating

- (1) Every registered person may be assigned a goods and services tax compliance rating score by the Government based on his record of compliance with the provisions of this Act.
- (2) The goods and services tax compliance rating score may be determined on the basis of such parameters as may be prescribed.
- (3) The goods and services tax compliance rating score may be updated at periodic intervals and intimated to the registered person and also placed in the public domain in such manner as may be prescribed.

Authors comments: In GST regime, every taxable person shall be assigned a GST compliance rating score based on his record of compliance with the provisions of this Act. Thus, in GST regime compliances will be of paramount importance as non-compliance will

impact the rating which will be placed in the public domain (and thus could affect reputation of a business).

150. Obligation to furnish information return

- (1) Any person, being—
 - (a) a taxable person; or
 - (b) a local authority or other public body or association; or
 - (c) any authority of the State Government responsible for the collection of value added tax or sales tax or State excise duty or an authority of the Central Government responsible for the collection of excise duty or customs duty; or
 - (d) an income tax authority appointed under the provisions of the Income-tax Act, 1961; or
 - (e) a banking company within the meaning of clause (a) of section 45A of the Reserve Bank of India Act, 1934; or
 - (f) a State Electricity Board or an electricity distribution or transmission licensee under the Electricity Act, 2003, or any other entity entrusted with such functions by the Central Government or the State Government; or
 - (g) the Registrar or Sub-Registrar appointed under section 6 of the Registration Act, 1908; or

- (h) a Registrar within the meaning of the Companies Act, 2013; or
- (i) the registering authority empowered to register motor vehicles under the Motor Vehicles Act, 1988; or
- (j) the Collector referred to in clause (c) of section 3 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013; or
- (k) the recognised stock exchange referred to in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956; or
- (l) a depository referred to in clause (e) of sub-section (1) of section 2 of the Depositories Act, 1996; or
- (m) an officer of the Reserve Bank of India as constituted under section 3 of the Reserve Bank of India Act, 1934; or
- (n) the Goods and Services Tax Network, a company registered under the Companies Act, 2013; or
- (o) a person to whom a Unique Identity Number has been granted under sub-section (9) of section 25; or
- (p) any other person as may be specified, on the recommendations of the Council, by the Government, who is responsible for maintaining record of registration or statement of accounts or any periodic return or document containing details of payment of tax and other details of transaction of goods or services or both or transactions

related to a bank account or consumption of electricity or transaction of purchase, sale or exchange of goods or property or right or interest in a property under any law for the time being in force, shall furnish an information return of the same in respect of such periods, within such time, in such form and manner and to such authority or agency as may be prescribed.

- (2) Where the Commissioner, or an officer authorised by him in this behalf, considers that the information furnished in the information return is defective, he may intimate the defect to the person who has furnished such information return and give him an opportunity of rectifying the defect within a period of thirty days from the date of such intimation or within such further period which, on an application made in this behalf, the said authority may allow and if the defect is not rectified within the said period of thirty days or, the further period so allowed, then, notwithstanding anything contained in any other provisions of this Act, such information return shall be treated as not furnished and the provisions of this Act shall apply.
- (3) Where a person who is required to furnish information return has not furnished the same within the time specified in sub-section (1) or sub-section (2), the said authority may serve upon him a notice

requiring furnishing of such information return within a period not exceeding ninety days from the date of service of the notice and such person shall furnish the information return.

151. Power to collect statistics

- (1) The Commissioner may, if he considers that it is necessary so to do, by notification, direct that statistics may be collected relating to any matter dealt with by or in connection with this Act.
- (2) Upon such notification being issued, the Commissioner, or any person authorised by him in this behalf, may call upon the concerned persons to furnish such information or returns, in such form and manner as may be prescribed, relating to any matter in respect of which statistics is to be collected

152. Bar on disclosure of information

- (1) No information of any individual return or part thereof with respect to any matter given for the purposes of section 150 or section 151 shall, without the previous consent in writing of the concerned person or his authorised representative, be published in such manner so as to enable such particulars to be identified as referring to a particular person and no such information shall be used for the purpose of any proceedings under this Act.

- (2) Except for the purposes of prosecution under this Act or any other Act for the time being in force, no person who is not engaged in the collection of statistics under this Act or compilation or computerisation thereof for the purposes of this Act, shall be permitted to see or have access to any information or any individual return referred to in section 151.
- (3) Nothing in this section shall apply to the publication of any information relating to ¹⁰ a class of taxable persons or class of transactions, if in the opinion of the Commissioner, it is desirable in the public interest to publish such information.

153. Taking assistance from an expert

Any officer not below the rank of Assistant Commissioner may, having regard to the nature and complexity of the case and the interest of revenue, take assistance of any expert at any stage of scrutiny, inquiry, investigation or any other proceedings before him.

154. Power to take samples

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

155. Burden of proof

Where any person claims that he is eligible for input tax credit under this Act, the burden of proving such claim shall lie on such person.

156. Persons deemed to be public servants

All persons discharging functions under this Act shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

157. Protection of action taken under this Act

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

158. Disclosure of information by a public servant

- (1) All particulars contained in any statement made, return furnished or accounts or documents produced in accordance with this Act, or in any record of evidence given in the course of any proceedings

under this Act (other than proceedings before a criminal court), or in any record of any proceedings under this Act shall, save as provided in sub-section (3), not be disclosed.

- (2) Notwithstanding anything contained in the Indian Evidence Act, 1872, no court shall, save as otherwise provided in sub-section (3), require any officer appointed or authorised under this Act to produce before it or to give evidence before it in respect of particulars referred to in sub-section (1).
- (3) Nothing contained in this section shall apply to the disclosure of,—
 - (a) any particulars in respect of any statement, return, accounts, documents, evidence, affidavit or deposition, for the purpose of any prosecution under the Indian Penal Code or the Prevention of Corruption Act, 1988, or any other law for the time being in force; or
 - (b) any particulars to the Central Government or the State Government or to any person acting in the implementation of this Act, for the purposes of carrying out the objects of this Act; or
 - (c) any particulars when such disclosure is occasioned by the lawful exercise under this Act of any process for the service of any notice or recovery of any demand; or

- (d) any particulars to a civil court in any suit or proceedings, to which the Government or any authority under this Act is a party, which relates to any matter arising out of any proceedings under this Act or under any other law for the time being in force authorising any such authority to exercise any powers thereunder; or
- (e) any particulars to any officer appointed for the purpose of audit of tax receipts or refunds of the tax imposed by this Act; or
- (f) any particulars where such particulars are relevant for the purposes of any inquiry into the conduct of any officer appointed or authorised under this Act, to any person or persons appointed as an inquiry officer under any law for the time being in force; or
- (g) any such particulars to an officer of the Central Government or of any State Government, as may be necessary for the purpose of enabling that Government to levy or realise any tax or duty; or
- (h) any particulars when such disclosure is occasioned by the lawful exercise by a public servant or any other statutory authority, of his or its powers under any law for the time being in force; or
- (i) any particulars relevant to any inquiry into a charge of misconduct in connection with any proceedings under this Act against a practising advocate, a tax practitioner, a practising cost accountant, a practising chartered accountant, a practicing company secretary

to the authority empowered to take disciplinary action against the members practising the profession of a legal practitioner, a cost accountant, a chartered accountant or a company secretary, as the case may be; or

- (j) any particulars to any agency appointed for the purposes of data entry on any automated system or for the purpose of operating, upgrading or maintaining any automated system where such agency is contractually bound not to use or disclose such particulars except for the aforesaid purposes; or
- (k) any particulars to an officer of the Government as may be necessary for the purposes of any other law for the time being in force; or
- (l) any information relating to any class of taxable persons or class of transactions for publication, if, in the opinion of the Commissioner, it is desirable in the public interest, to publish such information.

159. Publication of information in respect of persons in certain cases

- (1) If the Commissioner, or any other officer authorised by him in this behalf, is of the opinion that it is necessary or expedient in the public interest to publish the name of any person and any other particulars relating to any proceedings or prosecution under this Act

in respect of such person, it may cause to be published such name and particulars in such manner as it thinks fit.

- (2) No publication under this section shall be made in relation to any penalty imposed under this Act until the time for presenting an appeal to the Appellate Authority under section 107 has expired without an appeal having been presented or the appeal, if presented, has been disposed of.

Explanation – In the case of firm, company or other association of persons, the names of the partners of the firm, directors, managing agents, secretaries and treasurers or managers of the company, or the members of the association, as the case may be, may also be published if, in the opinion of the Commissioner, or any other officer authorised by him in this behalf, circumstances of the case justify it.

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

- (1) No assessment, re-assessment, adjudication, review, revision, appeal, rectification, notice, summons or other proceedings done, accepted, made, issued, initiated, or purported to have been done, accepted, made, issued, initiated in pursuance of any of the provisions of this Act shall be invalid or deemed to be invalid merely

by reason of any mistake, defect or omission therein, if such assessment, re-assessment, adjudication, review, revision, appeal, rectification, notice, summons or other proceedings are in substance and effect in conformity with or according to the intents, purposes and requirements of this Act or any existing law.

- (2) The service of any notice, order or communication shall not be called in question, if the notice, order or communication, as the case may be, has already been acted upon by the person to whom it is issued or where such service has not been called in question at or in the earlier proceedings commenced, continued or finalised pursuant to such notice, order or communication.

161. Rectification of errors apparent on the face of record

Without prejudice to the provisions of section 160, and notwithstanding anything contained in any other provisions of this Act, any authority, who has passed or issued any decision or order or notice or certificate or any other document, may rectify any error which is apparent on the face of record in such decision or order or notice or certificate or any other document, either on its own motion or where such error is brought to its notice by any officer appointed under this Act or an officer appointed under the State Goods and Services Tax Act or an officer appointed under the Union Territory

Goods and Services Tax Act or by the affected person within a period of three months from the date of issue of such decision or order or notice or certificate or any other document, as the case may be:

Provided that no such rectification shall be done after a period of six months from the date of issue of such decision or order or notice or certificate or any other document:

Provided further that the said period of six months shall not apply in such cases where the rectification is purely in the nature of correction of a clerical or arithmetical error, arising from any accidental slip or omission:

Provided also that where such rectification adversely affects any person, the principles of natural justice shall be followed by the authority carrying out such rectification.

162. Bar on jurisdiction of Civil Courts

Save as provided in sections 117 and 118, no civil court shall have jurisdiction to deal with or decide any question arising from or relating to anything done or purported to be done under this Act.

163. Levy of fee

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

164. Power of Government to make rules

- (1) The Government may, on the recommendations of the Council, by notification, make rules for carrying out the provisions of this Act.
- (2) Without prejudice to the generality of the provisions of sub-section (1), the Government may make rules for all or any of the matters which by this Act are required to be, or may be, prescribed or in respect of which provisions are to be or may be made by rules.
- (3) The power to make rules conferred by this section shall include the power to give retrospective effect to the rules or any of them from a date not earlier than the date on which the provisions of this Act come into force.
- (4) Any rules made under sub-section (1) or sub-section (2) may provide that a contravention thereof shall be liable to a penalty not exceeding ten thousand rupees.

165. Power to make regulations

The Board may, by notification, make regulations consistent with this Act and the rules made thereunder to carry out the provisions of this Act.

166. Laying of rules, regulations and notifications

Every rule made by the Government, every regulation made by the Board and every notification issued by the Government under this Act, shall be laid, as soon as may be after it is made or issued, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or in the notification, as the case may be, or both Houses agree that the rule or regulation or the notification should not be made, the rule or regulation or notification, as the case may be, shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity

of anything previously done under that rule or regulation or notification, as the case may be.

167. Delegation of powers

The Commissioner may, by notification, direct that subject to such conditions, if any, as may be specified in the notification, any power exercisable by any authority or officer 10 under this Act may be exercisable also by another authority or officer as may be specified in such notification.

168. Power to issue instructions or directions

- (1) The Board may, if it considers it necessary or expedient so to do for the purpose of uniformity in the implementation of this Act, issue such orders, instructions or directions to the central tax officers as it may deem fit, and thereupon all such officers and all other persons employed in the implementation of this Act shall observe and follow such orders, instructions or directions.
- (2) The Commissioner specified in clause (91) of section 2, sub-section (3) of section 5, clause (b) of sub-section (9) of section 25, sub-sections (3) and (4) of section 35, subsection (1) of section 37, sub-section (2) of section 38, sub-section (6) of section 39, sub-section (5) of section 66, sub-section (1) of section 143, sub-section (1) of section 151, clause (l) 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.

169. Service of notice in certain circumstances

- (1) Any decision, order, summons, notice or other communication under this Act or the rules made thereunder shall be served by any one of the following methods, namely:—
 - (a) by giving or tendering it directly or by a messenger including a courier to the addressee or the taxable person or to his manager or authorised representative or an advocate or a tax practitioner holding authority to appear in the proceedings on behalf of the taxable person or to a person regularly employed by him in connection with the business, or to any adult member of family residing with the taxable person; or
 - (b) by registered post or speed post or courier with acknowledgement due, to the person for whom it is intended or his authorised representative, if any, at his last known place of business or residence; or
 - (c) by sending a communication to his e-mail address provided at the time of registration or as amended from time to time; or
 - (d) by making it available on the common portal; or

- (e) by publication in a newspaper circulating in the locality in which the taxable person or the person to whom it is issued is last known to have resided, carried on business or personally worked for gain; or
 - (f) if none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence and if such mode is not practicable for any reason, then by affixing a copy thereof on the notice board of the office of the concerned officer or authority who or which passed such decision or order or issued such summons or notice.
- (2) Every decision, order, summons, notice or any communication shall be deemed to have been served on the date on which it is tendered or published or a copy thereof is affixed in the manner provided in sub-section (1).
- (3) When such decision, order, summons, notice or any communication is sent by registered post or speed post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by such post in transit unless the contrary is proved.

170. Rounding off of tax, etc

The amount of tax, interest, penalty, fine or any other sum payable, and the amount of refund or any other sum due, under the provisions of this Act shall be rounded off to the nearest rupee and,

for this purpose, where such amount contains a part of a rupee consisting of paise, then, if such part is fifty paise or more, it shall be increased to one rupee and if such part is less than fifty paise it shall be ignored.

171. Anti-profiteering measure

- (1) Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices.
- (2) The Central Government may, on recommendations of the Council, by notification, constitute an Authority, or empower an existing Authority constituted under any law for the time being in force, to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.
- (3) The Authority referred to in sub-section (2) shall exercise such powers and discharge such functions as may be prescribed.

Author comments:

What are the legal provisions?

Central GST Act, 2017 contains an anti-profiteering clause (section 171) which mandates manufacturers and others in the supply chain to pass on the benefits, due to rate reduction and

more credits being available in GST regime, to the consumer by way of commensurate reduction in prices.

Section 171 of CGST Act also empowers the Government to constitute an authority or entrust an existing authority to ensure compliance of anti-profiteering provisions.

What is the role of the Authority?

In accordance with aforesaid provisions, National Anti-Profiteering Authority (NAPA) was constituted. NAPA has authority to ask details, order price reduction and even levy penalty or cancel GST registration (refer Rule 127). As per recent news reports, NAPA has started questioning the taxpayers about the passing of benefit in accordance with the provisions.

Any global precedence on anti-profiteering provision?

Globally, Australia is said to be the first country to introduce anti-profiteering provisions during GST introduction in the year 2000, followed by Malaysia in the year 2015. At present, Malaysia, may not be considered as a source of reference as it has substituted its GST from 1 June 2018 with erstwhile Sales and Service Tax.

Any guidance available on computation of anti-profiteering benefits?

Its pertinent to note that no specific guidance is made available by the Government except few Press Releases (PR) issued last year by Central Board of Indirect Taxes and Customs ('CBIC'). These PR only highlights likely industry/ product-wise benefits

(for products like cement, medicaments etc and two services telecom and entertainment). The challenge with these PR is that whilst they highlight few benefits arising in GST regime, being just a one or two pager, they end up being high level analysis than reliable documents.

How to compute impact of Anti-profiteering' provision'?

Though at present, guidelines to compute the benefits are not prescribed, still on a broad level the taxpayer is expected to compute the likely benefit and pass on the same. Anti-profiteering provision categories the benefits in two baskets, one, additional input tax credits becoming available in GST regime and second, reduction in tax rates, if any.

First lets understand which are the benefits expected to arise from input tax credits perspective. Pre-GST regime, Central Sales Tax was a cost in the supply chain and in GST, there isn't CST. This could be construed as a benefit arising due to transition to GST. Similarly, all additional credits, which are expected to accrue to a taxpayer, being manufacturer or trader or service provider, need to be computed and passed on to the consumer.

Next challenge is computing benefits from GST rate reduction, if any. This benefit may be computed at product level. Say for example a toothpaste of Rs 10 at present attracts excise and vat of Rs 3 and in GST regime the GST payable on toothpaste is say Rs 2 then Rs 1 would be the likely benefit.

Whilst computing the benefit, additional difficult for the taxpayer is to determine whether to identify the benefits at an organizational level or at product level. For example, what should a manufacturer of say soap and shampoo do, if more credits are available in one product (say shampoo) and lesser credits in another product (say soap). Should only the net benefits be passed on to the consumer or product-wise benefits should be passed (without netting off)?

Should the benefits arising to vendor also be passed on?

Another question that arises is whether the business are expected to pass on the entire benefit which the business ecosystem has gained in GST i.e. whether the taxpayer is also required to ensure that the vendors pass on the benefits by way of price reduction to him so that he can pass it on onwards to consumer?

This is a million-dollar question because the anti-profiteering provision is silent on this aspect also (like other aspects!). Thus, even now, it's a mystery as to whether the taxpayer is required to compute the benefits available at the vendor level and then pass on the gross benefit (i.e. arising at taxpayer level plus benefits passed on by the vendors) to the customer.

Further, whether the benefit should be computed for Tier-I vendors or Tier-II (i.e. vendors vendor) and Tier-III (i.e. vendors vendor's vendor) as well? If the intention of the anti-profiteering provision is so then the question is how taxpayer are expected to

obtain cost data from vendors? Further, even if few vendors, share the data, how then the veracity of the details shared by vendor could be verified by the Company? The biggest stumbling block is the fact that the ability of the taxpayer, to get data from suppliers is limited, as anti-profiteering provisions do not empower the taxpayers for the same.

Whether its expected that the manufacture should also ensure compliance through his distributors?

One of the biggest practical challenge of anti-profiteering provision was how to ensure that the benefit of price reduction actually reaches the consumer. This is particularly true in case of B2C (i.e. business to consumer) segment. The challenge is, in case there is any price reduction in view of anti-profiteering provisions, how the manufacturer of say medicine could ensure that the prices of the medicines on the shelf of his distributor are actually sold at a reduced price to the consumer.

Way forward

Though anti-profiteering provision was much celebrated provision of GST, the irony is that this provision was just 10 lines long and it failed short of explaining the methodology to compute the benefit, leaving everything to the imagination of taxpayers/consultants and discretion of authorities. However, hopes are still high that the Government issues detailed guidelines to enable industry self-assess whether they are anti-profiteering compliant or not.

172. Removal of difficulties

- (1) If any difficulty arises in giving effect to any provisions of this Act, the Government may, on the recommendations of the Council, by a general or a special order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act or the rules or regulations made thereunder, as may be necessary or expedient for the purpose of removing the said difficulty:

Provided that no such order shall be made after the expiry of a period of three years from the date of commencement of this Act.

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

173. Amendment of Act 32 of 1994

Save as otherwise provided in this Act, Chapter V of the Finance Act, 1994 shall be omitted.

174. Repeal and saving

- (1) Save as otherwise provided in this Act, on and from the date of commencement of this Act, the Central Excise Act, 1944 (except as respects goods included in entry 84 of the Union List of the Seventh Schedule to the Constitution), the Medicinal and Toilet Preparations (Excise Duties) Act, 1955, the Additional Duties of Excise (Goods of

Special Importance) Act, 1957, the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978, and the Central Excise Tariff Act, 1985 (hereafter referred to as the repealed Acts) are hereby repealed.

- (2) The repeal of the said Acts and the amendment of the Finance Act, 1994 (hereafter referred to as "such amendment" or "amended Act", as the case may be) to the extent mentioned in the subsection (1) or section 173 shall not—
- (a) revive anything not in force or existing at the time of such amendment or repeal; or
 - (b) affect the previous operation of the amended Act or repealed Acts and orders or anything duly done or suffered thereunder; or
 - (c) affect any right, privilege, obligation, or liability acquired, accrued or incurred under the amended Act or repealed Acts or orders under such repealed or amended Acts:

Provided that any tax exemption granted as an incentive against investment through a notification shall not continue as privilege if the said notification is rescinded on or after the appointed day; or

- (d) affect any duty, tax, surcharge, fine, penalty, interest as are due or may become due or any forfeiture or punishment incurred or

inflicted in respect of any offence or violation committed against the provisions of the amended Act or repealed Acts; or

- (e) affect any investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and any other legal proceedings or recovery of arrears or remedy in respect of any such duty, tax, surcharge, penalty, fine, interest, right, privilege, obligation, liability, forfeiture or punishment, as aforesaid, and any such investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and other legal proceedings or recovery of arrears or remedy may be instituted, continued or enforced, and any such tax, surcharge, penalty, fine, interest, forfeiture or punishment may be levied or imposed as if these Acts had not been so amended or repealed;
 - (f) affect any proceedings including that relating to an appeal, review or reference, instituted before on, or after the appointed day under the said amended Act or repealed Acts and such proceedings shall be continued under the said amended Act or repealed Acts as if this Act had not come into force and the said Acts had not been amended or repealed.
- (3) The mention of the particular matters referred to in sub-sections (1) and (2) shall not be held to prejudice or affect the general

application of section 6 of the General Clauses Act, 1897 with regard to the effect of repeal.

SCHEDULE-I

[See Section 7]

ACTIVITIES TO BE TREATED AS SUPPLY EVEN IF MADE WITHOUT CONSIDERATION

1. Permanent transfer or disposal of business assets where input tax credit has been availed on such assets.
2. Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business:

Provided that gifts not exceeding fifty thousand rupees in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.

3. Supply of goods—
 - (a) by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or
 - (b) by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.
4. Import of services by a ~~taxable person~~ person from a related person or from any of his other establishments outside India, in the course or furtherance of business.

Author comments:

Earlier, as per paragraph 4 of the schedule I, import of services by a taxable person from a related person or from any of his other establishments outside India, in the in the course or furtherance of business is liable to GST even made without consideration.

This amendment is to ensure that import of services by entities which are not registered under GST (say, they are only making exempted supplies) but are otherwise engaged in business activities is taxed when received from a related person or from any of their establishments outside India.

SCHEDULE-II

[See Section 7]

ACTIVITIES OR TRANSACTIONS TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES

1. Transfer

- (a) any transfer of the title in goods is a supply of goods;
- (b) any transfer of right in goods or of undivided share in goods without the transfer of title thereof, is a supply of services;
- (c) any transfer of title in goods under an agreement which stipulates that property in goods shall pass at a future date upon payment of full consideration as agreed, is a supply of goods.

2. Land and Building

- (a) any lease, tenancy, easement, licence to occupy land is a supply of services;
- (b) any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly, is a supply of services.

3. Treatment or process

Any treatment or process which is applied to another person's goods is a supply of services.

4. Transfer of business assets

- (a) where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, whether or not for a consideration, such transfer or disposal is a supply of goods by the person;
- (b) where, by or under the direction of a person carrying on a business, goods held or used for the purposes of the business are put to any private use or are used, or made available to any person for use, for any purpose other than a purpose of the business, whether or not for a consideration, the usage or making available of such goods is a supply of services;
- (c) where any person ceases to be a taxable person, any goods forming part of the assets of any business carried on by him shall be deemed to be supplied by him in the course or furtherance of his business immediately before he ceases to be a taxable person, unless—
 - (i) the business is transferred as a going concern to another person;
or
 - (ii) the business is carried on by a personal representative who is deemed to be a taxable person.

5. Supply of services

The following shall be treated as supply of service, namely:—

- (a) renting of immovable property;
- (b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.

Explanation - For the purposes of this clause—

- (1) the expression "competent authority" means the Government or any authority authorised to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely:—
 - (i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972; or
 - (ii) a chartered engineer registered with the Institution of Engineers (India); or
 - (iii) a licensed surveyor of the respective local body of the city or town or village or development or planning authority;
- (2) the expression "construction" includes additions, alterations, replacements or remodelling of any existing civil structure;

- (c) temporary transfer or permitting the use or enjoyment of any intellectual property right;
- (d) development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software;
- (e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act; and
- (f) transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration.

6. Composite supply

The following composite supplies shall be treated as a supply of services, namely:—

- (a) works contract as defined in clause (119) of section 2; and
- (b) supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration.

7. Supply of Goods

The following shall be treated as supply of goods, namely:—

[CGST Act](#) | [IGST Act](#) | [UTGST Act](#) | [CGST Rules](#) | [Compensation Act](#)

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

SCHEDULE-III

[See Section 7]

ACTIVITIES OR TRANSACTIONS WHICH SHALL BE TREATED NEITHER AS A SUPPLY OF GOODS NOR A SUPPLY OF SERVICES

1. Services by an employee to the employer in the course of or in relation to his employment.
2. Services by any court or Tribunal established under any law for the time being in force.
 - (a) the functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities;
 - (b) the duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or
 - (c) the duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause.
4. Services of funeral, burial, crematorium or mortuary including transportation of the deceased.
5. Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.
6. Actionable claims, other than lottery, betting and gambling.

~~7. *Explanation* – For the purposes of paragraph 2, the term "**Court**" includes District Court, High Court and Supreme Court. Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India.~~

8. (a) Supply of warehoused goods to any person before clearance for home consumption;

(b) Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption.";

Explanation - For the purposes of paragraph 12, the term "**Court**" includes District Court, High Court and Supreme Court.

'Explanation 2.--For the purposes of paragraph 8, the expression "warehoused goods" shall have the same meaning as assigned to it in the Customs Act, 1962.'

Author comments:

The paragraph 8 in schedule II is inserted so that to ensure there is no double taxation of transactions where supply of goods occurs in the course of high sea sales and sale of warehoused goods, before clearance for home consumption.

It was observed that in case of supply of goods as high seas sales and sale of warehoused goods, before being cleared for home consumption, IGST was being levied twice, once under the Customs Tariff Act, 1975 (read with the IGST Act) and then for a second time, on clearance for home consumption under the IGST Act.

Since double taxation was to be avoided, circulars were issued to state that IGST would be payable only once at the time of clearance of goods for home consumption.

5. IGST Act, 2018

1. Short title, extent and commencement

- (1) This Act may be called the Integrated Goods and Services Tax Act, 2017.
- (2) It shall extend to the whole of India except the State of Jammu and Kashmir.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

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

2. Definitions

In this Act, unless the context otherwise requires,--

- (1) **“Central Goods and Services Tax Act”** means the Central Goods and Services Tax Act, 2017;
- (2) **“central tax”** means the tax levied and collected under the Central Goods and Services Tax Act;
- (3) **“continuous journey”** means a journey for which a single or more than one ticket or invoice is issued at the same time, either by a single supplier of service or through an agent acting on behalf of more than one supplier

of service, and which involves no stopover between any of the legs of the journey for which one or more separate tickets or invoices are issued.

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

- (4) **"customs frontiers of India"** means the limits of a customs area as defined in section 2 of the Customs Act, 1962;
- (5) **"export of goods"** with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India;
- (6) **"export of services"** means the supply of any service when,--
 - (i) the supplier of service is located in India;
 - (ii) the recipient of service is located outside India;
 - (iii) the place of supply of service is outside India;
 - (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India; and
 - (v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8; to a Panchayat under article 243G or a municipality under article 243W of the Constitution;

- (7) **“online information and database access or retrieval services”** means services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention and impossible to ensure in the absence of information technology and includes electronic services such as,--
- (i) advertising on the internet;
 - (ii) providing cloud services;
 - (iii) provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet;
 - (iv) providing data or information, retrievable or otherwise, to any person in electronic form through a computer network;
 - (v) online supplies of digital content (movies, television shows, music and the like);
 - (vi) digital data storage; and
 - (vii) online gaming;
- (8) **“output tax”**, in relation to a taxable person, means the integrated tax chargeable under this Act on taxable supply of goods or services or both made by him or by his agent but excludes tax payable by him on reverse charge basis;
- (9) **“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;

- (10) **“Special Economic Zone developer”** shall have the same meaning as assigned to it in clause (g) of section 2 of the Special Economic Zones Act, 2005 and includes an Authority as defined in clause (d) and a Co-Developer as defined in clause (f) of section 2 of the said Act;
- (11) **“supply”** shall have the same meaning as assigned to it in section 7 of the Central Goods and Services Tax Act;
- (12) **“taxable territory”** means the territory to which the provisions of this Act apply;
- (13) **“zero-rated supply”** shall have the meaning assigned to it in section 16;
- (14) words and expressions used and not defined in this Act but defined in the Central Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act shall have the same meaning as assigned to them in those Acts;
- (15) any reference in this Act to a law which is not in force in the State of Jammu and Kashmir, shall, in relation to that State or Union territory be construed as a reference to the corresponding law, if any, in force in that State.

CHAPTER-II

ADMINISTRATION

3. Appointment of officers

The Board may appoint such central tax officers as it thinks fit for exercising the powers under this Act.

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

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

CHAPTER-III

LEVY AND COLLECTION OF TAX

5. Levy and Collection

- (1) Subject to the provisions of sub-section (2), there shall be levied a tax called the integrated goods and services tax on all inter-State supplies of goods or services or both; except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 of the Central Goods and Services Tax Act and at such rates, not exceeding forty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person:

Provided that the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 on the value as determined under the said Act at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962.

- (2) The integrated tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council.
- (3) The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is

the person liable for paying the tax in relation to the supply of such goods or services or both.

~~(4) The integrated tax in respect of the supply of taxable goods or services or both by a supplier, who is not registered, to a registered person shall be paid by such person on reverse charge basis as the recipient and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.~~

~~(4) The Government may, on the recommendations of the Council, by notification, specify a class of registered persons who shall, in respect of supply of specified categories of goods or services or both received from an unregistered supplier, pay the tax on reverse charge basis as the recipient of such supply of goods or services or both, and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to such supply of goods or services or both.~~

(5) The Government may, on the recommendations of the Council, by notification, specify categories of services, the tax on inter-State supplies of which shall be paid by the electronic commerce operator if such services are supplied through it, and all the provisions of this Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services:

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

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

Author comments:

Section 5 of the IGST Act is charging section and tax shall be levied and collected on all inter-state **supplies** of the goods and/or services **on the value** and at the rate as may be notified by Centre/State but not exceeding 20%.

In tune with the CGST (Amendment Act) Section 9(4) of the IGST ACT is also amended by the IGST (Amendment) Act, 2018. Given this, now, power has been given to the Government to notify a class of registered persons who would be liable to pay tax on reverse charge basis in case of procurement from unregistered supplier. Given this now only specified person will be liable to pay GST under reverse charge in case of unregistered supplier procurement.

6. Power to grant exemption from tax

- (1) Where the Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by notification, exempt generally, either absolutely or subject to such conditions as may be specified therein, goods or services or both of any specified description from the whole

or any part of the tax leviable thereon with effect from such date as may be specified in such notification.

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

Explanation.-- For the purposes of this section, where an exemption in respect of any goods or services or both from the whole or part of the tax leviable thereon has been granted absolutely, the registered person supplying such goods or services or both shall not collect the tax, in excess of the effective rate, on such supply of goods or services or both.

CHAPTER-IV

DETERMINATION OF NATURE OF SUPPLY

7. Inter-State supply

- (1) Subject to the provisions of section 10, supply of goods, where the location of the supplier and the place of supply are in--
 - (a) two different States;
 - (b) two different Union territories; or
 - (c) a State and a Union territory,shall be treated as a supply of goods in the course of inter-State trade or commerce.
- (2) Supply of goods imported into the territory of India, till they cross the customs frontiers of India, shall be treated to be a supply of goods in the course of inter-State trade or commerce.
- (3) Subject to the provisions of section 12, supply of services, where the location of the supplier and the place of supply are in--
 - (a) two different States;
 - (b) two different Union territories; or
 - (c) a State and a Union territory, shall be treated as a supply of services in the course of inter-State trade or commerce.
- (4) Supply of services imported into the territory of India shall be treated to be a supply of services in the course of inter-State trade or commerce.
- (5) Supply of goods or services or both,--

- (a) when the supplier is located in India and the place of supply is outside India;
- (b) to or by a Special Economic Zone developer or a Special Economic Zone unit; or
- (c) in the taxable territory, not being an intra-State supply and not covered elsewhere in this section, shall be treated to be a supply of goods or services or both in the course of inter-State trade or commerce.

8. Intra-State supply

- (1) Subject to the provisions of section 10, supply of goods where the location of the supplier and the place of supply of goods are in the same State or same Union territory shall be treated as intra-State supply:

Provided that the following supply of goods shall not be treated as intra-State supply, namely:--

- i. supply of goods to or by a Special Economic Zone developer or a Special Economic Zone unit;
 - ii. goods imported into the territory of India till they cross the customs frontiers of India; or
 - iii. supplies made to a tourist referred to in section 15.
- (2) Subject to the provisions of section 12, supply of services where the location of the supplier and the place of supply of services are in the same State or same Union territory shall be treated as intra-State supply:

Provided that the intra-State supply of services shall not include supply of services to or by a Special Economic Zone developer or a Special Economic Zone unit.

Explanation 1.--For the purposes of this Act, where a person has,--

- (i) an establishment in India and any other establishment outside India;
- (ii) an establishment in a State or Union territory and any other establishment outside *that State or Union territory*; or
- (iii) an establishment in a State or Union territory and any other establishment ~~being a business-vertical~~ registered within that State or Union territory, then such establishments shall be treated as establishments of distinct persons.

Explanation 2.--A person carrying on a business through a branch or an agency or a representational office in any territory shall be treated as having an establishment in that territory.

9. Supplies in territorial waters

Notwithstanding anything contained in this Act,--

- (a) where the location of the supplier is in the territorial waters, the location of such supplier; or
- (b) where the place of supply is in the territorial waters, the place of supply, shall, for the purposes of this Act, be deemed to be in the coastal State or Union territory where the nearest point of the appropriate baseline is located.

CHAPTER-V

PLACE OF SUPPLY OF GOODS OR SERVICES OR BOTH

10. Place of supply of goods other than supply of goods imported into, or exported from India

- (1) The place of supply of goods, other than supply of goods imported into, or exported from India, shall be as under,--
 - (a) where the supply involves movement of goods, whether by the supplier or the recipient or by any other person, the place of supply of such goods shall be the location of the goods at the time at which the movement of goods terminates for delivery to the recipient;
 - (b) where the goods are delivered by the supplier to a recipient or any other person on the direction of a third person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to the goods or otherwise, it shall be deemed that the said third person has received the goods and the place of supply of such goods shall be the principal place of business of such person;
 - (c) where the supply does not involve movement of goods, whether by the supplier or the recipient, the place of supply shall be the location of such goods at the time of the delivery to the recipient;
 - (d) where the goods are assembled or installed at site, the place of supply shall be the place of such installation or assembly;

- (e) where the goods are supplied on board a conveyance, including a vessel, an aircraft, a train or a motor vehicle, the place of supply shall be the location at which such goods are taken on board.
- (2) Where the place of supply of goods cannot be determined, the place of supply shall be determined in such manner as may be prescribed.

Author comments:

Section 10 of the IGST Act prescribe the provisions for place of supply other than supply of goods imported into, or exported from India. On other way said place of supply is applicable to determine intra-state and interstate supply of goods.

11. Place of supply of goods imported into, or exported from India

The place of supply of goods,--

- (a) imported into India shall be the location of the importer;
- (b) exported from India shall be the location outside India

Author comments:

Section 11 of the IGST Act prescribe the place of supply for goods imported into, or exported from India. Said provisions is applicable to determine whether supply of goods qualified as export of goods subject to other conditions.

12. Place of supply of services where location of supplier and recipient is in India

- (1) The provisions of this section shall apply to determine the place of supply of services where the location of supplier of services and the location of the recipient of services is in India.
- (2) The place of supply of services, except the services specified in sub-sections (3) to (14),--
 - (a) made to a registered person shall be the location of such person;
 - (b) made to any person other than a registered person shall be,--
 - (i) the location of the recipient where the address on record exists;
and
 - (ii) the location of the supplier of services in other cases.
- (3) The place of supply of services,--
 - (a) directly in relation to an immovable property, including services provided by architects, interior decorators, surveyors, engineers and other related experts or estate agents, any service provided by way of grant of rights to use immovable property or for carrying out or co-ordination of construction work; or
 - (b) by way of lodging accommodation by a hotel, inn, guest house, home stay, club or campsite, by whatever name called, and including a house boat or any other vessel; or
 - (c) by way of accommodation in any immovable property for organising any marriage or reception or matters related thereto, official, social,

cultural, religious or business function including services provided in relation to such function at such property; or

- (d) any services ancillary to the services referred to in clauses (a), (b) and (c), shall be the location at which the immovable property or boat or vessel, as the case may be, is located or intended to be located:

Provided that if the location of the immovable property or boat or vessel is located or intended to be located outside India, the place of supply shall be the location of the recipient.

Explanation.--Where the immovable property or boat or vessel is located in more than one State or Union territory, the supply of services shall be treated as made in each of the respective States or Union territories, in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.

- (4) The place of supply of restaurant and catering services, personal grooming, fitness, beauty treatment, health service including cosmetic and plastic surgery shall be the location where the services are actually performed.
- (5) The place of supply of services in relation to training and performance appraisal to,--
- a. a registered person, shall be the location of such person;
 - b. a person other than a registered person, shall be the location where the services are actually performed.
- (6) The place of supply of services provided by way of admission to a cultural, artistic, sporting, scientific, educational, entertainment event or *amusement*

park or any other place and services ancillary thereto, shall be the place where the event is actually held or where the park or such other place is located.

- (7) The place of supply of services provided by way of,—
- (a) organisation of a cultural, artistic, sporting, scientific, educational or entertainment event including supply of services in relation to a conference, fair, exhibition, celebration or similar events; or
 - (b) services ancillary to organisation of any of the events or services referred to in clause (a) , or assigning of sponsorship to such events,—
 -
 - (i) to a registered person, shall be the location of such person;
 - (ii) to a person other than a registered person, shall be the place where the event is actually held and if the event is held outside India, the place of supply shall be the location of the recipient.

Explanation.—Where the event is held in more than one State or Union territory and a consolidated amount is charged for supply of services relating to such event, the place of supply of such services shall be taken as being in each of the respective States or Union territories in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.

- (8) The place of supply of services by way of transportation of goods, including by mail or courier to,—
- (a) a registered person, shall be the location of such person;
a person other than a registered person, shall be the location at which such goods are handed over for their transportation. "Provided that

where the transportation of goods is to a place outside India, the place of supply shall be the place of destination of such goods."

- (9) The place of supply of passenger transportation service to,—
- (a) a registered person, shall be the location of such person;
 - (b) a person other than a registered person, shall be the place where the passenger embarks on the conveyance for a continuous journey:

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

Explanation.—For the purposes of this sub-section, the return journey shall be treated as a separate journey, even if the right to passage for onward and return journey is issued at the same time.

- (10) The place of supply of services on board a conveyance, including a vessel, an aircraft, a train or a motor vehicle, shall be the location of the first scheduled point of departure of that conveyance for the journey.
- (11) The place of supply of telecommunication services including data transfer, broadcasting, cable and direct to home television services to any person shall,—
- (a) in case of services by way of fixed telecommunication line, leased circuits, internet leased circuit, cable or dish antenna, be the location where the telecommunication line, leased circuit or cable connection or dish antenna is installed for receipt of services;

- (b) in case of mobile connection for telecommunication and internet services provided on post-paid basis, be the location of billing address of the recipient of services on the record of the supplier of services;
- (c) in cases where mobile connection for telecommunication, internet service and direct to home television services are provided on pre-payment basis through a voucher or any other means,--
 - (i) through a selling agent or a re-seller or a distributor of subscriber identity module card or re-charge voucher, be the address of the selling agent or re-seller or distributor as per the record of the supplier at the time of supply; or
 - (ii) by any person to the final subscriber, be the location where such prepayment is received or such vouchers are sold;
- (d) in other cases, be the address of the recipient as per the records of the supplier of services and where such address is not available, the place of supply shall be location of the supplier of services:

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

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

Explanation.--Where the leased circuit is installed in more than one State or Union territory and a consolidated amount is charged for supply of services relating to such circuit, the place of supply of such services shall be taken as being in each of the respective States or Union territories in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.

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

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

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

- (14) The place of supply of advertisement services to the Central Government, a State Government, a statutory body or a local authority meant for the States or Union territories identified in the contract or agreement shall be taken as being in each of such States or Union territories and the value of such supplies specific to each State or Union territory shall be in proportion to the amount attributable to services provided by way of dissemination in the respective States or Union territories as may be determined in terms of the contract or

agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.

Author comments:

Section 12 of the IGST Act prescribe the Place of supply of services where location of supplier and recipient is in India.

13. Place of supply of services where location of supplier or location of recipient is outside India

(1) The provisions of this section shall apply to determine the place of supply of services where the location of the supplier of services or the location of the recipient of services is outside India.

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

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

(3) The place of supply of the following services shall be the location where the services are actually performed, namely:—

a. services supplied in respect of goods which are required to be made physically available by the recipient of services to the supplier of services, or to a person acting on behalf of the supplier of services in order to provide the services:

Provided that when such services are provided from a remote location by way of electronic means, the place of supply shall be the location where goods are situated at the time of supply of services:

~~Provided further that nothing contained in this clause shall apply in the case of services supplied in respect of goods which are temporarily imported into India for repairs and are exported after repairs without being put to any other use in India, than that which is required for such repairs;~~

"Provided further that nothing contained in this clause shall apply in the case of services supplied in respect of goods which are temporarily imported into India for repairs or for any other treatment or process and are exported after such repairs or treatment or process without being put to any use in India, other than that which is required for such repairs or treatment or process;".

- b. services supplied to an individual, represented either as the recipient of services or a person acting on behalf of the recipient, which require the physical presence of the recipient or the person acting on his behalf, with the supplier for the supply of services.
- (4) The place of supply of services supplied directly in relation to an immovable property, including services supplied in this regard by experts and estate agents, supply of accommodation by a hotel, inn, guest house, club or campsite, by whatever name called, grant of rights to use immovable property, services for carrying out or coordination of construction work, including that of architects or interior decorators, shall be the place where the immovable property is located or intended to be located.
- (5) The place of supply of services supplied by way of admission to, or organisation of a cultural, artistic, sporting, scientific, educational or entertainment event,

or a celebration, conference, fair, exhibition or similar events, and of services ancillary to such admission or organisation, shall be the place where the event is actually held.

- (6) Where any services referred to in sub-section (3) or sub-section (4) or sub-section (5) is supplied at more than one location, including a location in the taxable territory, its place of supply shall be the location in the taxable territory.
- (7) Where the services referred to in sub-section (3) or sub-section (4) or sub-section (5) are supplied in more than one State or Union territory, the place of supply of such services shall be taken as being in each of the respective States or Union territories and the value of such supplies specific to each State or Union territory shall be in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.
- (8) The place of supply of the following services shall be the location of the supplier of services, namely:--
 - (a) services supplied by a banking company, or a financial institution, or a nonbanking financial company, to account holders;
 - (b) intermediary services;
 - (c) services consisting of hiring of means of transport, including yachts but excluding aircrafts and vessels, up to a period of one month.

Explanation.--For the purposes of this sub-section, the expression,--

- (a) **“account”** means an account bearing interest to the depositor, and includes a non-resident external account and a non-resident ordinary account;
 - (b) **“banking company”** shall have the same meaning as assigned to it under clause (a) of section 45A of the Reserve Bank of India Act, 1934;
 - (c) **“financial institution”** shall have the same meaning as assigned to it in clause
(c) of section 45-I of the Reserve Bank of India Act, 1934;
 - (d) **“non-banking financial company”** means,--
 - (i) a financial institution which is a company;
 - (ii) a non-banking institution which is a company and which has as its principal business the receiving of deposits, under any scheme or arrangement or in any other manner, or lending in any manner; or
 - (iii) such other non-banking institution or class of such institutions, as the Reserve Bank of India may, with the previous approval of the Central Government and by notification in the Official Gazette, specify.
- (9) The place of supply of services of transportation of goods, other than by way of mail or courier, shall be the place of destination of such goods.
- (10) The place of supply in respect of passenger transportation services shall be the place where the passenger embarks on the conveyance for a continuous journey.

- (11) The place of supply of services provided on board a conveyance during the course of a passenger transport operation, including services intended to be wholly or substantially consumed while on board, shall be the first scheduled point of departure of that conveyance for the journey.
- (12) The place of supply of online information and database access or retrieval services shall be the location of the recipient of services.

Explanation--For the purposes of this sub-section, person receiving such services shall be deemed to be located in the taxable territory, if any two of the following noncontradictory conditions are satisfied, namely:--

- (a) the location of address presented by the recipient of services through internet is in the taxable territory;
- (b) the credit card or debit card or store value card or charge card or smart card or
any other card by which the recipient of services settles payment has been issued in the taxable territory;
- (c) the billing address of the recipient of services is in the taxable territory;
- (d) the internet protocol address of the device used by the recipient of services is in the taxable territory;
- (e) the bank of the recipient of services in which the account used for payment is maintained is in the taxable territory;
- (f) the country code of the subscriber identity module card used by the recipient of services is of taxable territory;
- (g) the location of the fixed land line through which the service is received by the recipient is in the taxable territory.

- (13) In order to prevent double taxation or non-taxation of the supply of a service, or for the uniform application of rules, the Government shall have the power to notify any description of services or circumstances in which the place of supply shall be the place of effective use and enjoyment of a service.

14. Special provision for payment of tax by a supplier of online information and database access or retrieval services

- (1) On supply of online information and database access or retrieval services by any person located in a non-taxable territory and received by a non-taxable online recipient, the supplier of services located in a non-taxable territory shall be the person liable for paying integrated tax on such supply of services:

Provided that in the case of supply of online information and database access or retrieval services by any person located in a non-taxable territory and received by a non-taxable online recipient, an intermediary located in the non-taxable territory, who arranges or facilitates the supply of such services, shall be deemed to be the recipient of such services from the supplier of services in non-taxable territory and supplying such services to the non-taxable online recipient except when such intermediary satisfies the following conditions, namely:--

- (a) the invoice or customer's bill or receipt issued or made available by such intermediary taking part in the supply clearly identifies the service in question and its supplier in non-taxable territory;
- (b) the intermediary involved in the supply does not authorise the charge to the customer or take part in its charge which is that the intermediary neither collects or processes payment in any manner nor is responsible

for the payment between the non-taxable online recipient and the supplier of such services;

- (c) the intermediary involved in the supply does not authorise delivery; and
- (d) the general terms and conditions of the supply are not set by the intermediary involved in the supply but by the supplier of services.

- (2) The supplier of online information and database access or retrieval services referred to in sub-section (1) shall, for payment of integrated tax, take a single registration under the Simplified Registration Scheme to be notified by the Government:

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

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

For the purposes of this section, -

- (a) "online information and database access or retrieval services" has the same meaning as assigned to it in sub-section (17) of section 2 of the said Act;
- (b) "non-taxable online recipient" has the same meaning as assigned to it in sub-section (16) of section 2 of the said Act.

REFUND OF INTEGRATED TAX TO INTERNATIONAL TOURIST

15. Refund of integrated tax paid on supply of goods to tourist leaving India

The integrated tax paid by tourist leaving India on any supply of goods taken out of India by him shall be refunded in such manner and subject to such conditions and safeguards as may be prescribed.

Explanation--For the purposes of this section, the term "**tourist**" means a person not normally resident in India, who enters India for a stay of not more than six months for legitimate non-immigrant purposes.

ZERO RATED SUPPLY

16. Zero rated supply

- (1) **“zero rated supply”** means any of the following supplies of goods or services or both, namely:--
 - (a) export of goods or services or both; or
 - (b) supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit.
- (2) Subject to the provisions of sub-section (5) of section 17 of the Central Goods and Services Tax Act, credit of input tax may be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply.
- (3) A registered person making zero rated supply shall be eligible to claim refund 30 under either of the following options, namely:--
 - (a) he may supply goods or services or both under bond or Letter of Undertaking, subject to such conditions, safeguards and procedure as may be prescribed, without payment of integrated tax and claim refund of unutilised input tax credit; or
 - (b) he may supply goods or services or both, subject to such conditions, safeguards and procedure as may be prescribed, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder.

APPORTIONMENT OF TAX AND SETTLEMENT OF FUNDS

17. Apportionment of tax and settlement of funds

- (1) Out of the integrated tax paid to the Central Government,--

- (a) in respect of inter-State supply of goods or services or both to an unregistered person or to a registered person paying tax under section 10 of the Central Goods and Services Tax Act;
 - (b) in respect of inter-State supply of goods or services or both where registered person is not eligible for input tax credit;
 - (c) in respect of inter-State supply of goods or services or both made in a financial year to a registered person, where he does not avail of the input tax credit within the specified period and thus remains in the integrated tax account after expiry of the due date for furnishing of annual return for such year in which the supply was made;
 - (d) in respect of import of goods or services or both by an unregistered person or by a registered person paying tax under section 10 of the Central Goods and Services Tax Act;
 - (e) in respect of import of goods or services or both where the registered person is not eligible for input tax credit;
 - (f) in respect of import of goods or services or both made in a financial year by a registered person, where he does not avail of the said credit within the specified period and thus remains in the integrated tax account after expiry of the due date for furnishing of annual return for such year in which the supply was received, the amount of tax calculated at the rate equivalent to the central tax on similar intra-State supply shall be apportioned to the Central Government.
- (2) The balance amount of integrated tax remaining in the integrated tax account in respect of the supply for which an apportionment to the Central Government has been done under sub-section (1) shall be apportioned to the,--

- (a) State where such supply takes place; and
- (b) Central Government where such supply takes place in a Union territory:

Provided that where the place of such supply made by any taxable person cannot be determined separately, the said balance amount shall be apportioned to,--

- (a) Each of the States; and
- (b) Central Government in relation to Union territories, in proportion to the total supplies made by such taxable person to each of such States or Union territories, as the case may be, in a financial year:

Provided further that where the taxable person making such supplies is not identifiable, the said balance amount shall be apportioned to all States and the Central Government in proportion to the amount collected as State tax or, as the case may be, Union territory tax, by the respective State or, as the case may be, by the Central Government during the immediately preceding financial year.

“(2A). The amount not apportioned under sub-section (1) and sub-section (2) may, for the time being, on the recommendations of the Council, be apportioned at the rate of fifty per cent. to the Central Government and fifty per cent. to the State Governments or the Union territories, as the case may be, on ad hoc basis and shall be adjusted against the amount apportioned under the said sub-sections.”.

- (3) The provisions of sub-sections (1) and (2) relating to apportionment of integrated tax shall, mutatis mutandis apply to the apportionment of interest,

penalty and compounding amount realised in connection with the tax so apportioned.

- (4) Where an amount has been apportioned to the Central Government or a State Government under sub-section (1) or sub-section (2) or sub-section (3), the amount collected as integrated tax shall stand reduced by an amount equal to the amount so apportioned and the Central Government shall transfer to the central tax account or Union territory tax account, an amount equal to the respective amounts apportioned to the Central Government and shall transfer to the State tax account of the respective States an amount equal to the amount apportioned to that State, in such manner and within such time as may be prescribed.
- (5) Any integrated tax apportioned to a State or, as the case may be, to the Central Government on account of a Union territory, if subsequently found to be refundable to any person and refunded to such person, shall be reduced from the amount to be apportioned under this section, to such State, or Central Government on account of such Union territory, in such manner and within such time as may be prescribed.

18. Transfer of input tax credit

On utilisation of credit of integrated tax availed under this Act for payment of,--

- (a) Central tax in accordance with the provisions of sub-section (5) of section 49 of the Central Goods and Services Tax Act, the amount collected as integrated tax shall stand reduced by an amount equal to the credit so utilised and the Central Government shall transfer an amount equal to the amount so reduced from the integrated tax account to the central tax account in such manner and within such time as may be prescribed;

- (b) Union territory tax in accordance with the provisions of section 9 of the Union Territory Goods and Services Tax Act, the amount collected as integrated tax shall stand reduced by an amount equal to the credit so utilised and the Central Government shall transfer an amount equal to the amount so reduced from the integrated tax account to the Union territory tax account in such manner and within such time as may be prescribed;
- (c) State tax in accordance with the provisions of the respective State Goods and Services Tax Act, the amount collected as integrated tax shall stand reduced by an amount equal to the credit so utilised and shall be apportioned to the appropriate State Government and the Central Government shall transfer the amount so apportioned to the account of the appropriate State Government in such manner and within such time as may be prescribed.

Explanation--For the purposes of this Chapter, "**appropriate State**" in relation to a taxable person, means the State or Union territory where he is registered or is liable to be registered under the provisions of the Central Goods and Services Tax Act.

19. Tax wrongfully collected and paid to Central Government or State Government

- (1) A registered person who has paid integrated tax on a supply considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall be granted refund of the amount of integrated tax so paid in such manner and subject to such conditions as may be prescribed.
- (2) A registered person who has paid central tax and State tax or Union territory tax, as the case may be, on a transaction considered by him to be an intra-

State supply, but which is subsequently held to be an inter-State supply, shall not be required to pay any interest on the amount of integrated tax payable.

MISCELLANEOUS

20. Application of provisions of Central Goods and Services Tax Act

Subject to the provisions of this Act and the rules made thereunder, the provisions 35 of Central Goods and Services Tax Act relating to,—

- (i) scope of supply;
- (ii) composite supply and mixed supply;
- (iii) time and value of supply;
- (iv) input tax credit;
- (v) registration;
- (vi) tax invoice, credit and debit notes;
- (vii) accounts and records;
- (viii) returns, other than late fee;
- (ix) payment of tax;
- (x) tax deduction at source;
- (xi) collection of tax at source;
- (xii) assessment;
- (xiii) refunds;
- (xiv) audit;

- (xv) inspection, search, seizure and arrest;
- (xvi) demands and recovery;
- (xvii) liability to pay in certain cases;
- (xviii) advance ruling;
- (xix) appeals and revision;
- (xx) presumption as to documents;
- (xxi) offences and penalties;
- (xxii) job work;
- (xxiii) electronic commerce;
- (xxiv) transitional provisions; and
- (xxv) miscellaneous provisions including the provisions relating to the imposition of

interest and penalty, shall, *mutatis mutandis*, apply, so far as may be, in relation to integrated tax as they apply in relation to central tax as if they are enacted under this Act:

Provided that in the case of tax deducted at source, the deductor shall deduct tax at the rate of two per cent from the payment made or credited to the supplier:

Provided further that in the case of tax collected at source, the operator shall collect tax at such rate not exceeding two per cent, as may be notified on the recommendations of the Council, of the net value of taxable supplies:

Provided also that for the purposes of this Act, the value of a supply shall include any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier:

Provided also that in cases where the penalty is leviable under the Central Goods and Services Tax Act and the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, the penalty leviable under this Act shall be the sum total of the said penalties.

"Provided also that where the appeal is to be filed before the Appellate Authority or the Appellate Tribunal, the maximum amount payable shall be fifty crore rupees and one hundred crore rupees respectively."

21. Import of services made on or after the appointed day

Import of services made on or after the appointed day shall be liable to tax under the provisions of this Act regardless of whether the transactions for such import of services had been initiated before the appointed day:

Provided that if the tax on such import of services had been paid in full under the existing law, no tax shall be payable on such import under this Act:

Provided further that if the tax on such import of services had been paid in part under the existing law, the balance amount of tax shall be payable on such import under this Act.

Explanation--For the purposes of this section, a transaction shall be deemed to have been initiated before the appointed day if either the invoice relating to such supply or payment, either in full or in part, has been received or made before the appointed day.

22. Power to make rules

- (1) The Government may, on the recommendations of the Council, by notification, make rules for carrying out the provisions of this Act.

- (2) Without prejudice to the generality of the provisions of sub-section (1), the Government may make rules for all or any of the matters which by this Act are required to be, or may be, prescribed or in respect of which provisions are to be or may be made by rules.
- (3) The power to make rules conferred by this section shall include the power to give retrospective effect to the rules or any of them from a date not earlier than the date on which the provisions of this Act come into force.
- (4) Any rules made under sub-section (1) may provide that a contravention thereof shall be liable to a penalty not exceeding ten thousand rupees.

23. Power to make regulations

The Board may, by notification, make regulations consistent with this Act and the rules made thereunder to carry out the provisions of this Act.

24. Laying of rules, regulations and notifications

Every rule made by the Government, every regulation made by the Board and every notification issued by the Government under this Act, shall be laid, as soon as may be, after it is made or issued, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or in the notification, as the case may be, or both Houses agree that the rule or regulation or the notification should not be made, the rule or regulation or notification, as the case may be, shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the

validity of anything previously done under that rule or regulation or notification, as the case may be.

25. Removal of difficulties

- (1) If any difficulty arises in giving effect to any provision of this Act, the Government may, on the recommendations of the Council, by a general or a special order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act or the rules or regulations made thereunder, as may be necessary or expedient for the purpose of removing the said difficulty:

Provided that no such order shall be made after the expiry of a period of three years from the date of commencement of this Act.

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

6. Union Territory Goods and Services Tax Act, 2017

CHAPTER-I PRELIMINARY

1. Short title, extent and commencement

- (1) This Act may be called the Union Territory Goods and Services Tax Act, 2017.
- (2) It extends to the Union territories of the Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli, Daman and Diu, Chandigarh and other territory.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

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

2. Definitions

In this Act, unless the context otherwise requires,—

- (1) “appointed day” means the date on which the provisions of this Act shall come into force.
- (2) “Commissioner” means the Commissioner of Union territory tax appointed under section 3;
- (3) “designated authority” means such authority as may be notified by the Commissioner;
- (4) “exempt supply” means supply of any goods or services or both which attracts nil rate of tax or which may be exempt from tax under section 8, or under

section 6 of the Integrated Goods and Services Tax Act, and includes non taxable supply;

- (5) “existing law” means any law, notification, order, rule or regulation relating to levy and collection of duty or tax on goods or services or both passed or made before the commencement of this Act by Parliament or any Authority or person having the power to make such law, notification, order, rule or regulation;
- (6) “Government” means the Administrator or any authority or officer authorised to act as Administrator by the Central Government;
- (7) “output tax” in relation to a taxable person, means the Union territory tax chargeable under this Act on taxable supply of goods or services or both made by him or by his agent but excludes tax payable by him on reverse charge basis;
- (8) “Union territory” means the territory of,—
- (i) the Andaman and Nicobar Islands;
 - (ii) Lakshadweep;
 - (iii) Dadra and Nagar Haveli;
 - (iv) Daman and Diu;
 - (iv) Chandigarh; or
 - (v) other territory.

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

- (9) “Union territory tax” means the tax levied under this Act;
- (10) words and expressions used and not defined in this Act but defined in the Central Goods and Services Tax Act, the Integrated Goods and Services Tax Act, the State Goods and Services Tax Act, and the Goods and Services Tax

(Compensation to States) Act, shall have the same meaning as assigned to them in those Acts.

CHAPTER-II

ADMINISTRATION

3. **Officers under this Act**

The Administrator may, by notification, appoint Commissioners and such other class of officers as may be required for carrying out the purposes of this Act and such officers shall be deemed to be proper officers for such purposes as may be specified therein:

Provided that the officers appointed under the existing law shall be deemed to be the officers appointed under the provisions of this Act.

4. **Authorisation of officers**

The Administrator may, by order, authorise any officer to appoint officers of Union territory tax below the rank of Assistant Commissioner of Union territory tax for the administration of this Act.

5. **Powers of officers**

- (1) Subject to such conditions and limitations as the Commissioner may impose, an officer of the Union territory tax may exercise the powers and discharge the duties conferred or imposed on him under this Act.
- (2) An officer of a Union territory tax may exercise the powers and discharge the duties conferred or imposed under this Act on any other officer of a Union territory 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.
- (4) Notwithstanding anything contained in this section, an Appellate Authority shall not exercise the powers and discharge the duties conferred or imposed on any other officer of Union territory tax.

6. Authorisation of officers of Central Tax as proper officer in certain circumstances

- (1) Without prejudice to the provisions of this Act, the officers appointed under the Central Goods and Services Tax Act are authorised to be the proper officers for the purposes of this Act, subject to such conditions as the Government shall, on the recommendations of the Council, by notification, specify.
- (2) Subject to the conditions specified in the notification issued under sub-section (1),—
 - (a) where any proper officer issues an order under this Act, he shall also issue an order under the Central Goods and Services Tax Act, as authorised by the said Act under intimation to the jurisdictional officer of central tax;
 - (b) where a proper officer under the Central Goods and Services Tax Act has initiated any proceedings on a subject matter, no proceedings shall be initiated by the proper officer under this Act on the same subject matter.
- (3) Any proceedings for rectification, appeal and revision, wherever applicable, of any order passed by an officer appointed under this Act, shall not lie before an officer appointed under the Central Goods and Services Tax Act.

CHAPTER-III

LEVY AND COLLECTION OF TAX

7. Levy and Collection

- (1) Subject to the provisions of sub-section (2), there shall be levied a tax called the Union territory tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 of the Central Goods and Services Tax Act and at such rates, not exceeding twenty per cent., as may be notified by the Central Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.
- (2) The Union territory 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 Central Government on the recommendations of the Council. .
- (3) The Central Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient

as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

(4) The Union territory 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.

(5) The Central Government may, on the recommendations of the Council, by notification, specify categories of services the tax on intra-State supplies of which shall be paid by the electronic commerce operator if such services are supplied through it, and all the provisions of this Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services:

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

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

Ch-III:

Levy and Collection of Tax

8. Power to grant exemption from tax

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

explanation in such notification or order, as the case may be, by notification at any time within one year of issue of the notification under sub-section (1) or order under sub-section (2), and every such explanation shall have effect as if it had always been the part of the first such notification or order, as the case may be.

- (4) Any notification issued by the Central Government under sub-section (1) of section 11 or order issued under sub-section (2) of the said section of the Central Goods and Services Tax Act shall be deemed to be a notification or, as the case may be, an order issued under this Act.

Explanation.—For the purposes of this section, where an exemption in respect of any goods or services or both from the whole or part of the tax leviable thereon has been granted absolutely, the registered person supplying such goods or services or both shall not collect the tax, in excess of the effective rate, on such supply of goods or services or both.

PAYMENT OF TAX

9. Payment of tax

The amount of input tax credit available in the electronic credit ledger of the registered person on account of,—

- (a) integrated tax shall first be utilised towards payment of integrated tax and the amount remaining, if any, may be utilised towards the payment of central tax and State tax, or as the case may be, Union territory tax, in that order;

- (c) the Union territory tax shall first be utilised towards payment of Union territory tax and the amount remaining, if any, may be utilised towards payment of integrated tax;
- (d) the Union territory tax shall not be utilised towards payment of central tax.

10. Transfer of Input Tax Credit

On utilisation of input tax credit of Union territory tax for payment of tax dues under the Integrated Goods and Services Tax Act in accordance with the provisions of sub-section (5) of section 49 of the Central Goods and Services Tax Act, as reflected in the valid return furnished under sub-section (1) of section 39 of the Central Goods and Services Tax Act, the amount collected as Union territory tax shall stand reduced by an amount equal to such credit so utilised and the Central Government shall transfer an amount equal to the amount so reduced from the Union territory tax account to the integrated tax account in such manner and within such time as may be prescribed.

INSPECTION, SEARCH SEIZURE AND ARREST

11. Officers required to assist proper officers

- (1) All officers of Police, Railways, Customs, and those officers engaged in the collection of land revenue, including village officers, and officers of central tax and officers of the State tax shall assist the proper officers in the implementation of this Act.
- (2) The Government may, by notification, empower and require any other class of officers to assist the proper officers in the implementation of this Act when called upon to do so by the Commissioner.

DEMANDS AND RECOVERY

12. Tax wrongfully collected and paid to Central Government or Union territory Government

- (1) A registered person who has paid the central tax and the Union territory tax on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall be refunded the amount of taxes so paid in such manner and subject to such conditions as may be prescribed.
- (2) A registered person who has paid integrated tax on a transaction considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall not be required to pay any interest on the amount of the central tax and the Union territory tax payable.

13. Recovery of tax

- (1) Where any amount of tax, interest or penalty is payable by a person to the Government under any of the provisions of this Act or the rules made thereunder and which remains unpaid, the proper officer of central tax, during the course of recovery of said tax arrears, may recover the amount from the said person as if it were an arrear of central tax and credit the amount so recovered to the account of the Government under the appropriate head of Union territory tax.
- (2) Where the amount recovered under sub-section (1) is less than the amount due to the Government under this Act and the Central Goods and Services Act, the amount to be credited to the account of the Government shall be in proportion to the amount due as Union territory tax and central tax.

Ch-VII :

ADVANCE RULING

14. Definitions

In this Chapter, unless the context otherwise requires,—

- (a) “advance ruling” means a decision provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100 of the Central Goods and Services Tax Act, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant;
- (b) “Appellate Authority” means the Appellate Authority for Advance Ruling constituted under section 16.
- (c) “applicant” means any person registered or desirous of obtaining registration under this Act;
- (d) “application” means an application made to the Authority under sub-section (1) of section 97 of the Central Goods and Services Tax Act;
- (e) “Authority” means the Authority for Advance Ruling, constituted under section 15;

15. Constitution of Authority for Advance Ruling

- (1) The Central Government shall, by notification, constitute an Authority to be known as the name of the Union territory, Authority for Advance Ruling:
Provided that the Central Government may, on the recommendations of the Council, notify any Authority located in any State or any other Union territory to act as the Authority for the purposes of this Act.
- (2) The Authority shall consist of—

- (i) one member from amongst the officers of central tax; and
 - (ii) one member from amongst the officers of Union territory tax, to be appointed by the Central Government.
- (3) The qualifications, the method of appointment of the members and the terms and conditions of their service shall be such as may be prescribed.

16. Constitution of Appellate Authority for Advance Ruling

- (1) The Central Government shall, by notification, constitute an Appellate Authority to be known as (the name of the Union territory) Appellate Authority for Advance Ruling for Goods and Services Tax for hearing appeals against the advance ruling pronounced by the Advance Ruling Authority:

Provided that the Central Government may, on the recommendations of the Council, notify any Appellate Authority located in any State or any other Union territory to act as the Appellate Authority for the purposes of this Act.

- (2) The Appellate Authority shall consist of—
- (i) the Chief Commissioner of central tax as designated by the Board; and
 - (ii) the Commissioner of Union territory tax having jurisdiction over the applicant.

CHAPTER-VIII

TRANSITIONAL PROVISIONS

17. Migration of existing tax payers

- (1) On and from the appointed day, every person registered under any of the existing laws and having a valid Permanent Account Number shall be issued a certificate of registration on provisional basis, subject to such conditions and in such form and manner as may be prescribed, which unless replaced by a final

certificate of registration under sub-section (2), shall be liable to be cancelled if the conditions so prescribed are not complied with.

- (2) The final certificate of registration shall be granted in such form and manner and subject to such conditions as may be prescribed.
- (3) The certificate of registration issued to a person under sub-section (1) shall be deemed to have not been issued if the said registration is cancelled in pursuance of an application filed by such person that he was not liable to registration under section 22 or section 24 of the Central Goods and Services Tax Act.

18. Transitional arrangements for Input Tax Credit

- (1) A registered person, other than a person opting to pay tax under section 10 of the Central Goods and Services Tax Act, shall be entitled to take, in his electronic credit ledger, credit of the amount of Value Added Tax and Entry Tax, if any, carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the existing law, not later than ninety days after the said day, in such manner as may be prescribed:

Provided that the registered person shall not be allowed to take credit in the following circumstances, namely:—

- (i) where the said amount of credit is not admissible as input tax credit under this Act; or
- (ii) where he has not furnished all the returns required under the existing law for the period of six months immediately preceding the appointed day; or
- (iii) where the said amount of credit relates to goods sold under such exemption notifications as are notified by the Government:

Provided further that so much of the said credit as is attributable to any claim related to section 3, sub-section (3) of section 5, section 6 or section 6A or sub-section (8) of section 74 of 1956. section 8 of the Central Sales Tax Act, 1956 that is not substantiated in the manner, and within the period, prescribed in rule 12 of the Central Sales Tax (Registration and Turnover) Rules, 1957 shall not be eligible to be credited to the electronic credit ledger:

Provided also that an amount equivalent to the credit specified in the second proviso shall be refunded under the existing law when the said claims are substantiated in the manner prescribed in rule 12 of the Central Sales Tax (Registration and Turnover) Rules, 1957.

(2) A registered person, other than a person opting to pay tax under section 10 of the Central Goods and Services Tax Act, shall be entitled to take, in his electronic credit ledger, credit of the unavailed input tax credit in respect of capital goods, not carried forward in a return, furnished under the existing law by him, for the period ending with the day immediately preceding the appointed day in such manner as may be prescribed:

Provided that the registered person shall not be allowed to take credit unless the said credit was admissible as input tax credit under the existing law and is also admissible as input tax credit under this Act.

Explanation.—For the purposes of this section, the expression “unavailed input tax credit” means the amount that remains after subtracting the amount of input tax credit already availed in respect of capital goods by the taxable person under the existing law from the aggregate amount of input tax credit to which the said person was entitled in respect of the said capital goods under the existing law.

(3) A registered person, who was not liable to be registered under the existing law or who was engaged in the sale of exempted goods or tax free goods or goods which have suffered tax at first point of their sale in the Union territory and the subsequent sales of which are not subject to tax in the Union territory under the existing law but which are liable to tax under this Act or where the person was entitled to the credit of input tax at the time of sale of goods, shall be entitled to take, in his electronic credit ledger, credit of the value added tax and entry tax, if any, in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day subject to the following conditions, namely:—

- (i) such inputs or goods are used or intended to be used for making taxable supplies under this Act;
- (ii) the said registered person is eligible for input tax credit on such inputs under this Act;
- (iii) the said registered person is in possession of invoice or other prescribed documents evidencing payment of tax under the existing law in respect of such inputs; and
- (iv) such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day:

Provided that where a registered person, other than a manufacturer or a supplier of services, is not in possession of an invoice or any other documents evidencing payment of tax in respect of inputs, then, such registered person shall, subject to such conditions, limitations and safeguards as may be prescribed, including that the said taxable person shall pass on the benefit of

such credit by way of reduced prices to the recipient, be allowed to take credit at such rate and in such manner as may be prescribed.

- (4) A registered person, who was engaged in the sale of taxable goods as well as exempted goods or tax free goods under the existing law but which are liable to tax under this Act, shall be entitled to take, in his electronic credit ledger,—
- (a) the amount of credit of the value added tax and entry tax, if any, carried forward in a return furnished under the existing law by him in accordance with the provisions of sub-section (1); and
 - (b) the amount of credit of the value added tax and entry tax, if any, in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day, relating to such exempted goods or tax free goods in accordance with the provisions of sub-section (3).
- (5) A registered person shall be entitled to take, in his electronic credit ledger, credit of value added tax and entry tax, if any, in respect of inputs received on or after the appointed day but the tax in respect of which has been paid by the supplier under the existing law, subject to the condition that the invoice or any other tax paying document of the same was recorded in the books of account of such person within a period of thirty days from the appointed day: Provided that the period of thirty days may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding thirty days:
- Provided further that the said registered person shall furnish a statement, in such manner as may be prescribed, in respect of credit that has been taken under this subsection.
- (6) A registered person, who was either paying tax at a fixed rate or paying a fixed amount in lieu of the tax payable under the existing law shall be entitled to take,

in his electronic credit ledger, credit of value added tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day subject to the following conditions, namely:—

- (i) such inputs or goods are used or intended to be used for making taxable supplies under this Act;
- (ii) the said registered person is not paying tax under section 10 of the Central Goods and Services Tax Act;
- (iii) the said registered person is eligible for input tax credit on such inputs under this Act;
- (iv) the said registered person is in possession of invoice or other prescribed documents evidencing payment of tax under the existing law in respect of inputs; and
- (v) such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day.

(7) The amount of credit under sub-sections (3), (4) and (6) shall be calculated in such manner as may be prescribed.

19. Transitional provisions relating to job work.

(1) Where any inputs received at a place of business had been dispatched as such or dispatched after being partially processed to a job worker for further processing, testing, repair, reconditioning or any other purpose in accordance with the provisions of existing law prior to the appointed day and such inputs are returned to the said place on or after the appointed day, no tax shall be payable if such inputs, after completion of the job work or otherwise, are returned to the said place within six months from the appointed day:

Provided that the period of six months may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding two months:

Provided further that if such inputs are not returned within a period of six months or the extended period from the appointed day, the input tax credit shall be liable to be recovered in accordance with the provisions of clause (a) of sub-section (8) of section 142 of the Central Goods and Services Tax Act.

- (2) Where any semi-finished goods had been dispatched from any place of business to any other premises for carrying out certain manufacturing processes in accordance with the provisions of existing law prior to the appointed day and such goods (hereinafter in this section referred to as "the said goods") are returned to the said place on or after the appointed day, no tax shall be payable if the said goods, after undergoing manufacturing processes or otherwise, are returned to the said place within six months from the appointed day:

Provided that the period of six months may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding two months:

Provided further that if the said goods are not returned within a period specified in this sub-section, the input tax credit shall be liable to be recovered in accordance with the provisions of clause (a) of sub-section (8) of section 142 of the Central Goods and Services Tax Act:

Provided also that the person dispatching the goods may, in accordance with the provisions of the existing law, transfer the said goods to the premises of any registered person for the purpose of supplying therefrom on payment of tax in

India or without payment of tax for exports within six months or the extended period, as the case may be, from the appointed day.

- (3) Where any goods had been dispatched from the place of business without payment of tax for carrying out tests or any other process to any other premises, whether registered or not, in accordance with the provisions of existing law prior to the appointed day and such goods are returned to the said place of business on or after the appointed day, no tax shall be payable if the said goods, after undergoing tests or any other process, are returned to such place within six months from the appointed day:

Provided that the period of six months may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding two months:

Provided further that if the said goods are not returned within the period specified in this sub-section, the input tax credit shall be liable to be recovered in accordance with the provisions of clause (a) of sub-section (8) of section 142 of the Central Goods and Services Tax Act:

Provided also that the person dispatching the goods may, in accordance with the provisions of the existing law, transfer the said goods from the said other premises on payment of tax in India or without payment of tax for exports within six months or the extended period, as the case may be, from the appointed day.

- (4) The tax under sub-sections (1), (2) and (3) shall not be payable only if the person dispatching the goods and the job worker declare the details of the inputs or goods held in stock by the job worker on behalf of the said person on the appointed day in such form and manner and within such time as may be prescribed.

20. Miscellaneous transitional provisions

(1) Where any goods on which tax, if any, had been paid under the existing law at the time of sale thereof, not being earlier than six months prior to the appointed day, are returned to any place of business on or after the appointed day, the registered person shall be eligible for refund of the tax paid under the existing law where such goods are returned by a person, other than a registered person, to the said place of business within a period of six months from the appointed day and such goods are identifiable to the satisfaction of the proper officer:

Provided that if the said goods are returned by a registered person, the return of such goods shall be deemed to be a supply.

(2) (a) Where, in pursuance of a contract entered into prior to the appointed day, the price of any goods is revised upwards on or after the appointed day, the registered person who had sold such goods shall issue to the recipient a supplementary invoice or debit note, containing such particulars as may be prescribed, within thirty days of such price revision and for the purposes of this Act, such supplementary invoice or debit note shall be deemed to have been issued in respect of an outward supply made under this Act.

(b) Where, in pursuance of a contract entered into prior to the appointed day, the price of any goods is revised downwards on or after the appointed day, the registered person who had sold such goods may issue to the recipient a credit note, containing such particulars as may be prescribed, within thirty days of such price revision and for the purposes of this Act such credit note shall be deemed to have been issued in respect of an outward supply made under this Act:

Provided that the registered person shall be allowed to reduce his tax liability on account of issue of the credit note only if the recipient of the credit note has reduced his input tax credit corresponding to such reduction of tax liability.

- (3) Every claim for refund filed by any person before, on or after the appointed day, for refund of any amount of input tax credit, tax, interest or any other amount paid under the existing law, shall be disposed of in accordance with the provisions of existing law and any amount eventually accruing to him shall be refunded to him in cash in accordance with the provisions of the said law:

Provided that where any claim for refund of the amount of input tax credit is fully or partially rejected, the amount so rejected shall lapse:

Provided further that no refund shall be allowed of any amount of input tax credit where the balance of the said amount as on the appointed day has been carried forward under this Act.

- (4) Every claim for refund filed after the appointed day for refund of any tax paid under the existing law in respect of the goods exported before or after the appointed day shall be disposed of in accordance with the provisions of the existing law:

Provided that where any for refund of input tax credit is fully or partially rejected, the amount so rejected shall lapse:

Provided further that no refund shall be allowed of any amount of input tax credit where the balance of the said amount as on the appointed day has been carried forward under this Act.

- (5) (a) Every proceeding of appeal, revision, review or reference relating to a claim for input tax credit initiated whether before, on or after the appointed day, under the existing law shall be disposed of in accordance with the provisions of the

existing law, and any amount of credit found to be admissible to the claimant shall be refunded to him in cash in accordance with the provisions of the existing law and the amount rejected, if any, shall not be admissible as input tax credit under this Act:

Provided that no refund shall be allowed of any amount of input tax credit where the balance of the said amount as on the appointed day has been carried forward under this Act.

(b) Every proceeding of appeal, revision, review or reference relating to recovery of input tax credit initiated whether before, on or after the appointed day, under the existing law shall be disposed of in accordance with the provisions of the existing law, and if any amount of credit becomes recoverable as a result of such appeal, revision, review or reference, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under this Act and the amount so recovered shall not be admissible as input tax credit under this Act.

(6) (a) Every proceeding of appeal, revision, review or reference relating to any output tax liability initiated whether before, on or after the appointed day under the existing law, shall be disposed of in accordance with the provisions of the existing law, and if any amount becomes recoverable as a result of such appeal, revision, review or reference, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under this Act and amount so recovered shall not be admissible as input tax credit under this Act.

(b) Every proceeding of appeal, revision, review or reference relating to any output tax liability initiated whether before, on or after the appointed day under the existing law, shall be disposed of in accordance with the provisions of the

existing law, and any amount found to be admissible to the claimant shall be refunded to him in cash in accordance with the provisions of the existing law and the amount rejected, if any, shall not be admissible as input tax credit under this Act.

(7) (a) Where in pursuance of an assessment or adjudication proceedings instituted, whether before, on or after the appointed day, under the existing law, any amount of tax, interest, fine or penalty becomes recoverable from the person, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under this Act and the amount so recovered shall not be admissible as input tax credit under this Act.

(b) Where in pursuance of an assessment or adjudication proceedings instituted, whether before, on or after the appointed day under the existing law, any amount of tax, interest, fine or penalty becomes refundable to the taxable person, the same shall be refunded to him in cash under the said law and the amount rejected, if any, shall not be admissible as input tax credit under this Act.

(8) (a) Where any return, furnished under the existing law, is revised after the appointed day and if, pursuant to such revision, any amount is found to be recoverable or any amount of input tax credit is found to be inadmissible, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under this Act and the amount so recovered shall not be admissible as input tax credit under this Act.

(b) Where any return, furnished under the existing law, is revised after the appointed day but within the time limit specified for such revision under the existing law and if, pursuant to such revision, any amount is found to be

refundable or input tax credit is found to be admissible to any taxable person, the same shall be refunded to him in cash under the existing law and the amount rejected, if any, shall not be admissible as input tax credit under this Act.

- (9) Save as otherwise provided in this Chapter, the goods or services or both supplied on or after the appointed day in pursuance of a contract entered into prior to the appointed day shall be liable to tax under the provisions of this Act.
- (10) (a) Notwithstanding anything contained in section 12 of the Central Goods and Services Tax Act, no tax shall be payable on goods under this Act to the extent the tax was leviable on the said goods under the existing law.
- (b) Notwithstanding anything contained in section 13 of the Central Goods and Services Tax Act, no tax shall be payable on services under this Act to the extent the tax was leviable on the said services under Chapter V of the Finance Act, 1994.
- (c) Where tax was paid on any supply, both under any existing law relating to sale of goods and under Chapter V of the Finance Act, 1994, tax shall be leviable under this Act and the taxable person shall be entitled to take credit of value added tax or service tax paid under the existing law to the extent of supplies made after the appointed day and such credit shall be calculated in such manner as may be prescribed.
- (11) Where any goods sent on approval basis, not earlier than six months before the appointed day, are rejected or not approved by the buyer and returned to the seller on or after the appointed day, no tax shall be payable thereon if such goods are returned within six months from the appointed day:

Provided that the said period of six months may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding two months:

Provided further that the tax shall be payable by the person returning the goods if such goods are liable to tax under this Act and are returned after the period specified in this sub-section:

Provided also that tax shall be payable by the person who has sent the goods on approval basis if such goods are liable to tax under this Act, and are not returned within the period specified in this sub-section.

(12) Where a supplier has made any sale of goods in respect of which tax was required to be deducted at source under any existing law relating to sale of goods and has also issued an invoice for the same before the appointed day, no deduction of tax at source under section 51 of the Central Goods and Services Tax Act, as made applicable to this Act, shall be made by the deductor under the said section where payment to the said supplier is made on or after the appointed day.

Explanation.—For the purposes of this Chapter, the expression “capital goods” shall have the same meaning as assigned to it in any existing law relating to sale of goods.

CHAPTER-IX

MISCELLANEOUS

21. Application of provisions of Central Goods and Services Tax Act

Subject to the provisions of this Act and the rules made thereunder, the provisions of the Central Goods and Services Tax Act, relating to,—

- (i) scope of supply;
- (ii) composition levy;
- (iii) composite supply and mixed supply;
- (iv) time and value of supply;
- (v) input tax credit;
- (vi) registration;
- (vii) tax invoice, credit and debit notes;
- (viii) accounts and records;
- (ix) returns;
- (x) payment of tax;
- (xi) tax deduction at source;
- (xii) collection of tax at source;
- (xiii) assessment;
- (xiv) refunds;
- (xv) audit;
- (xvi) inspection, search, seizure and arrest;
- (xvii) demands and recovery;
- (xviii) liability to pay in certain cases;
- (xix) advance ruling;
- (xx) appeals and revision;
- (xxi) presumption as to documents;
- (xxii) offences and penalties;

(xxiii) job work;

(xxiv) electronic commerce;

(xxv) settlement of funds;

(xxvi) transitional provisions; and

(xxvii) miscellaneous provisions including the provisions relating to the imposition of interest and penalty,

shall, mutatis mutandis, apply,—

(a) so far as may be, in relation to Union territory tax as they apply in relation to central tax as if they were enacted under this Act;

(b) subject to the following modifications and alterations which the Central Government consider necessary and desirable to adapt those provisions to the circumstances, namely:—

(i) references to “this Act” shall be deemed to be references to “the Union Territory Goods and Services Tax Act, 2017”;

(ii) references to “Commissioner” shall be deemed to be references to “Commissioner” of Union territory tax as defined in clause (2) of section 2 of this Act;

(iii) references to “officers of central tax” shall be deemed to be references to “officers of Union territory tax”;

(iv) references to “central tax” shall be deemed to be references¹ to “Union territory tax” and vice versa;

(v) references to “Commissioner of State tax or Commissioner of Union territory tax” shall be deemed to be references to “Commissioner of central tax”;

(vi) references to "State Goods and Services tax Act or Union Territory Goods and Services Tax Act" shall be deemed to be references to "Central Goods and Services Tax Act";

(vii) references to "State tax or Union territory tax" shall be deemed to be references to "central tax".

22. Power to make rules

(1) The Central Government may, on the recommendations of the Council, by notification, make rules for carrying out the provisions of this Act.

(2) Without prejudice to the generality of the provisions of sub-section (1), the Central Government may make rules for all or any of the matters which by this Act are required to be, or may be, prescribed or in respect of which provisions are to be or may be made by rules.

(3) The power to make rules conferred by this section shall include the power to give retrospective effect to the rules or any of them from a date not earlier than the date on which the provisions of this Act come into force.

(4) Any rules made under sub-section (1) may provide that a contravention thereof shall be liable to a penalty not exceeding ten thousand rupees.

23. General power to make regulations

The Board may, by notification, make regulations consistent with this Act and the rules made thereunder to carry out the purposes of this Act.

24. Laying of rules, regulations and notifications

Every rule made by the Central Government, every regulation made by the Board and every notification issued by the Central Government under this Act, shall be

laid, as soon as may be, after it is made or issued, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or in the notification, as the case may be, or both Houses agree that the rule or regulation or the notification should not be made, the rule or regulation or notification, as the case may be, shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation or notification, as the case may be.

25. 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 Union territory tax officers as he 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.

26. Removal of difficulties

(1) If any difficulty arises in giving effect to any provision of this Act, the Central Government may, on the recommendations of the Council, by a general or a special order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act or the rules or regulations made thereunder, as may be necessary or expedient for the purpose of removing the said difficulty:

[CGST Act](#) | [IGST Act](#) | [UTGST Act](#) | [CGST Rules](#) | [Compensation Act](#)

Provided that no such order shall be made after the expiry of a period of three years from the date of commencement of this Act.

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

7. GST (Compensation To States) Act, 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:—

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.

2. Definitions

- (1) 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.

(2) 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.

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.

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.

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 Constitution;
- (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 year.
- (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 notified.
- (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.

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 $(1+14/100)$

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 refunds 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 subsection (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 month 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.

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 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.

9. Returns, payments and refunds

- (1) Every taxable person, making a taxable supply of goods or services or both, 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 thereunder.

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.

11. Other provisions relating to cess

- (1) The provisions of the Central Goods and Services Tax Act, and the rules made thereunder, 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 thereunder.
- (2) The provisions of the Integrated Goods and Services Tax Act, and the rules made thereunder, 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 thereunder:

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.

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 subsection (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.
13. 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 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.

13. Laying of rules before Parliament

(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, on the recommendations of the Council, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for removing the difficulty:

Provided that no order shall be made under this section after the expiry of three years from the commencement of this Act.

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

8. Central Goods and Services Tax (CGST) Rules, 2017

(Updated up to 4th September 2018)

CHAPTER I

PRELIMINARY

1. Short title and Commencement.-(1) 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.
2. Definitions.- 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.

CHAPTER II

COMPOSITION RULES

3. Intimation for composition levy.-(1) Any person who has been granted registration on a provisional basis under clause (b) of sub-rule (1) of rule 24 and who opts to pay tax under section 10, shall electronically file an intimation in FORM GST CMP-01, duly signed or verified through electronic verification code, on the common portal, either directly or through a Facilitation Centre notified by the Commissioner, prior to the appointed day, but not later than thirty days after the said day, or such further period as may be extended by the Commissioner in this behalf:

Provided that where the intimation in FORM GST CMP-01 is filed after the appointed day, the registered person shall not collect any tax from the appointed day but shall issue bill of supply for supplies made after the said day.

(2) Any person who applies for registration under sub-rule (1) of rule 8 may give an option to pay tax under section 10 in Part B of FORM GST REG-01, which shall be considered as an intimation to pay tax under the said section.

(3) Any registered person who opts to pay tax under section 10 shall electronically file an intimation in FORM GST CMP-02, duly signed or verified through electronic verification code, on the common portal, either directly or through a Facilitation Centre notified by the Commissioner, prior to the commencement of the financial year for which the option to pay tax under the aforesaid section is exercised and shall furnish the statement in FORM GST ITC-03 in accordance with the provisions

of sub-rule (4) of rule 44 within a period of sixty days from the commencement of the relevant financial year.

[(3A)Notwithstanding anything contained in sub-rules (1), (2) and (3), a person who has been granted registration on a provisional basis under rule 24 or who has been granted certificate of registration under sub-rule (1) of rule 10 may opt to pay tax under section 10 with effect from the first day of the month immediately succeeding the month in which he files an intimation in FORM GST CMP-02, on the common portal either directly or through a Facilitation Centre notified by the Commissioner, on or before the 31st day of March, 2018, and shall furnish the statement in FORM GST ITC-03 in accordance with the provisions of sub-rule (4) of rule 44 within a period of [one hundred and eighty days]¹⁰ from the day on which such person commences to pay tax under section 10:

Provided that the said persons shall not be allowed to furnish the declaration in FORM GST TRAN-1 after the statement in FORM GST ITC-03 has been furnished.]¹¹

- (4) Any person who files an intimation under sub-rule (1) to pay tax under section 10 shall furnish the 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 to pay tax under the said section, electronically, in FORM GST CMP-03,

¹⁰ Substituted for the word [ninety days] vide Notf no. 03/2018- CT dt 23.01.2018

¹¹ Substituted vide Notf no. 45/2017-CT dt 13.10.2017. for “(3A) Notwithstanding anything contained in subrules (1), (2) and (3), a person who has been granted registration on a provisional basis under rule 24 or who has applied for registration under sub-rule (1) of rule 8 may opt to pay tax under section 10 with effect from the first day of October, 2017 by electronically filing an intimation in FORM GST CMP-02, on the common portal either directly or through a Facilitation Centre notified by the Commissioner, before the said date and

on the common portal, either directly or through a Facilitation Centre notified by the Commissioner, within a period of [ninety]³ days from the date on which the option for composition levy is exercised or within such further period as may be extended by the Commissioner in this behalf.

- (5) Any intimation under sub-rule (1) or sub-rule (3) [or sub-rule (3A)]⁴ in respect of any place of business in any State or Union territory shall be deemed to be an intimation in respect of all other places of business registered on the same Permanent Account Number.

4. Effective date for composition levy.-

(1) The option to pay tax under section 10 shall be effective from the beginning of the financial year, where the intimation is filed under subrule (3) of rule 3 and the appointed day where the intimation is filed under sub-rule (1) of the said rule.

(2) The intimation under sub-rule (2) of rule 3, shall be considered only after the grant of registration to the applicant and his option to pay tax under section 10 shall be effective from the date fixed under sub-rule (2) or (3) of rule 10.

5. Conditions and restrictions for composition levy.-

(1) 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 under sub-rule (1) of rule 3;

- (c) the goods held in stock by him have not been purchased from an unregistered supplier and where purchased, he pays the tax under sub-section (4) of section 9;
- (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 (2) 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 shall furnish the statement in FORM GST ITC-03 in accordance with the provisions of sub - rule (4) of rule 44 within a period of ninety days from the said date:
Provided that the said persons shall not be allowed to furnish the declaration in FORM GST TRAN-1 after the statement in FORM GST ITC-03 has been furnished." which was inserted vide Notf no. 34/2017-CT dt 15.09.2017

Substituted for the word [sixty] with effect from 17.08.2017 vide Notf no. 22/2017 – CT dt 17.08.2017 4 Inserted vide Notf no. 34/2017 – CT dt 15.09.2017

(g) The 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 business.

(2) The registered person paying tax under section 10 may not file a fresh intimation every year and he may continue to pay tax under the said section subject to the provisions of the Act and these rules.

6. Validity of composition levy.-

(1) The option exercised by a registered person to pay tax under section 10 shall remain valid so long as he satisfies all the conditions mentioned in the said section and under these rules.

(2) The person referred to in sub-rule (1) shall be liable to pay tax under sub-section (1) of section 9 from the day he ceases to satisfy any of the conditions mentioned in section 10 or the provisions of this Chapter and shall issue tax invoice for every taxable supply made thereafter and he shall also file an intimation for withdrawal from the scheme in FORM GST CMP-04 within seven days of the occurrence of such event.

(3) The registered person who intends to withdraw from the composition scheme shall, before the date of such withdrawal, file an application in FORM GST CMP-04, duly signed or verified through electronic verification code, electronically on the common portal.

- (4) Where the proper officer has reasons to believe that the registered person was not eligible to pay tax under section 10 or has contravened the provisions of the Act or provisions of this Chapter, he may issue a notice to such person in FORM GST CMP-05 to show cause within fifteen days of the receipt of such notice as to why the option to pay tax under section 10 shall not be denied.
- (5) Upon receipt of the reply to the show cause notice issued under sub-rule (4) from the registered person in FORM GST CMP-06, the proper officer shall issue an order in FORM GST CMP-07 within a period of thirty days of the receipt of such reply, either accepting the reply, or denying the option to pay tax under section 10 from the date of the option or from the date of the event concerning such contravention, as the case may be.
- (6) Every person who has furnished an intimation under sub-rule (2) or filed an application for withdrawal under sub-rule (3) or a person in respect of whom an order of withdrawal of option has been passed in FORM GST CMP-07 under sub-rule (5), may electronically furnish at the common portal, either directly or through a Facilitation Centre notified by the Commissioner, a statement in FORM GST ITC-01 containing details of the stock of inputs and inputs contained in semi-finished or finished goods held in stock by him on the date on which the option is withdrawn or denied, within a period of thirty days from the date from which the option is withdrawn or from the date of the order passed in FORM GST CMP-07, as the case may be.

(7) Any intimation or application for withdrawal under sub-rule (2) or (3) or denial of the option to pay tax under section 10 in accordance with sub-rule (5) in respect of any place of business in any State or Union territory, shall be deemed to be an intimation in respect of all other places of business registered on the same Permanent Account Number.

7. Rate of tax of the composition levy.-The category of registered persons, eligible for composition levy under section 10 and the provisions of this Chapter, specified in column (2) of the Table below shall pay tax under section 10 at the rate specified in column (3) of the said Table:-

Sl. No.	Category of registered persons	Rate of tax
(1)	(2)	(3)
1.	Manufacturers, other than manufacturers of such goods as may be notified by the Government	half per cent. of the turnover in the State or Union territory ⁵
2.	Suppliers making supplies referred to in clause (b) of paragraph 6 of Schedule II	two and a half per cent. of the turnover in the State or Union territory ⁶

3.	Any other supplier eligible for composition levy under section 10 and the provisions of this Chapter	half per cent. of the turnover of taxable supplies of goods in the State or Union territory ⁷
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CHAPTER III

REGISTRATION

8. Application for registration.-

(1) Every person, other than a non-resident taxable person, a person required to deduct tax at source under section 51, a person required to collect tax at source under section 52 and a person supplying online information and database access or retrieval services from a place outside India to a non-taxable online recipient referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) who is liable to be registered under sub-section (1) of section 25 and every person seeking registration under sub-section (3) of section 25 (hereafter in this Chapter referred to as "the applicant") shall, before applying for registration, declare his Permanent Account Number, mobile number, e-mail address, State or Union territory in Part A of FORM GST REG-01 on the common portal, either directly or through a Facilitation Centre notified by the Commissioner:

Provided that a person having a unit(s) in a Special Economic Zone or being a Special Economic Zone developer shall make a separate application for registration as a business vertical distinct from his other units located outside the Special Economic Zone:

Provided further that every person being an Input Service Distributor shall make a separate application for registration as such Input Service Distributor.

(2) (a) The Permanent Account Number shall be validated online by the common portal from the database maintained by the Central Board of Direct Taxes.

- (b) The mobile number declared under sub-rule (1) shall be verified through a one-time password sent to the said mobile number; and
 - (c) The e-mail address declared under sub-rule (1) shall be verified through a separate one-time password sent to the said e-mail address.
- (3) On successful verification of the Permanent Account Number, mobile number and email address, a temporary reference number shall be generated and communicated to the applicant on the said mobile number and e-mail address.
 - (4) Using the reference number generated under sub-rule (3), the applicant shall electronically submit an application in Part B of FORM GST REG-01, duly signed or verified through electronic verification code, along with the documents specified in the said Form at the common portal, either directly or through a Facilitation Centre notified by the Commissioner.
 - (5) On receipt of an application under sub-rule (4), an acknowledgement shall be issued electronically to the applicant in FORM GST REG-02.
 - (6) A person applying for registration as a casual taxable person shall be given a temporary reference number by the common portal for making advance deposit of tax in accordance with the provisions of section 27 and the acknowledgement under sub-rule (5) shall be issued electronically only after the said deposit.

9. Verification of the application and approval.-

- (1) 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 three working days from the date of submission of the application.

- (2) Where the application submitted under rule 8 is found to be deficient, either in terms of any information or any document required to be furnished under the said rule, or where the proper officer requires any clarification with regard to any information provided in the application or documents furnished therewith, he may issue a notice to the applicant electronically in FORM GST REG-03 within a period of three working days from the date of submission of the application and the applicant shall furnish such clarification, information or documents electronically, in FORM GST REG-04, within a period of seven working days from the date of the receipt of such notice.

Explanation.- For the purposes of this sub-rule, the expression "clarification" includes modification or correction of particulars declared in the application for registration, other than Permanent Account Number, State, mobile number and e-mail address declared in Part A of FORM GST REG-01.

- (3) Where the proper officer is satisfied with the clarification, information or documents furnished by the applicant, he may approve the grant of registration to the applicant within a period of seven working days from the date of the receipt of such clarification or information or documents.
- (4) Where no reply is furnished by the applicant in response to the notice issued under sub-rule (2) or where the proper officer is not satisfied with the clarification, information or documents furnished, he shall, for reasons

to be recorded in writing, reject such application and inform the applicant electronically in FORM GST REG-05.

- (5) If the proper officer fails to take any action, -
- (a) within a period of three 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 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.

10. Issue of registration certificate.-

(1) Subject to the provisions of sub-section (12) of section 25, where the application for grant of registration has been approved under rule 9, a certificate of registration in FORM GST REG-06 showing the principal place of business and additional place or places of business shall be made available to the applicant on the common portal and a Goods and Services Tax Identification Number shall be assigned subject to the following characters, namely:-

- (a) two characters for the State code;
- (b) ten characters for the Permanent Account Number or the Tax Deduction and Collection Account Number;
- (c) two characters for the entity code; and
- (d) one checksum character.

- (2) The registration shall be effective from the date on which the person becomes liable to registration where the application for registration has been submitted within a period of thirty days from such date.
- (3) Where an application for registration has been submitted by the applicant after the expiry of thirty days from the date of his becoming liable to registration, the effective date of registration shall be the date of the grant of registration under sub-rule (1) or subrule (3) or sub-rule (5) of rule 9.
- (4) Every certificate of registration shall be [duly signed or verified through electronic verification code]¹² by the proper officer under the Act.
- (5) Where the registration has been granted under sub-rule (5) of rule 9, the applicant shall be communicated the registration number, and the certificate of registration under sub-rule (1), duly signed or verified through electronic verification code, shall be made available to him on the common portal, within a period of three days after the expiry of the period specified in sub-rule (5) of rule 9.

11. Separate registration for multiple business verticals within a State or a Union territory.-

- (1) Any person having multiple business verticals within a State or a Union territory, requiring a separate registration for any of its business verticals under subsection (2) of section 25 shall be granted separate registration in respect of each of the verticals subject to the following conditions, namely:-

¹² Substituted vide Notf no. 7/2017-CT dt 27.06.2017 for the words “digitally signed”

- (a) such person has more than one business vertical as defined in clause (18) of section 2;
- (b) the business vertical of a taxable person shall not be granted registration to pay tax under section 10 if any one of the other business verticals of the same person is paying tax under section 9;
- (c) all separately registered business verticals of such person shall pay tax under the Act on supply of goods or services or both made to another registered business vertical of such person and issue a tax invoice for such supply.

Explanation.- For the purposes of clause (b), it is hereby clarified that where any business vertical of a registered person that has been granted a separate registration becomes ineligible to pay tax under section 10, all other business verticals of the said person shall become ineligible to pay tax under the said section.

- (2) A registered person eligible to obtain separate registration for business verticals may submit a separate application in FORM GST REG-01 in respect of each such vertical.
- (3) The provisions of rule 9 and rule 10 relating to the verification and the grant of registration shall, mutatis mutandis, apply to an application submitted under this rule.

12. Grant of registration to persons required to deduct tax at source or to collect tax at source.-

- (1) Any person required to deduct tax in accordance with the provisions of section 51 or a person required to collect tax at source in accordance with the provisions of section 52 shall electronically submit an application, duly signed or verified through electronic verification code, in FORM GST REG-07 for the grant of registration through the common portal, either directly or through a Facilitation Centre notified by the Commissioner.
- (2) The proper officer may grant registration after due verification and issue a certificate of registration in FORM GST REG-06 within a period of three working days from the date of submission of the application.
- (3) Where, upon an enquiry or pursuant to any other proceeding under the Act, the proper officer is satisfied that a person to whom a certificate of registration in FORM GST REG-06 has been issued is no longer liable to deduct tax at source under section 51 or collect tax at source under section 52, the said officer may cancel the registration issued under sub-rule (2) and such cancellation shall be communicated to the said person electronically in FORM GST REG-08: Provided that the proper officer shall follow the procedure as provided in rule 22 for the cancellation of registration.

13. Grant of registration to non-resident taxable person.-

- (1) A non-resident taxable person shall electronically submit an application, along with a self-attested copy of his valid passport, for registration, duly signed or verified through electronic verification code, in FORM GST REG-09, at least five days prior to the commencement of business at the common portal either directly or through a Facilitation Centre notified by the Commissioner:

Provided that in the case of a business entity incorporated or established outside India, the application for registration shall be submitted along with its tax identification number or unique number on the basis of which the entity is identified by the Government of that country or its Permanent Account Number, if available.

- (2) A person applying for registration as a non-resident taxable person shall be given a temporary reference number by the common portal for making an advance deposit of tax in accordance with the provisions of section 27 and the acknowledgement under sub-rule (5) of rule 8 shall be issued electronically only after the said deposit in his electronic cash ledger.
- (3) The provisions of rule 9 and rule 10 relating to the verification and the grant of registration shall, mutatis mutandis, apply to an application submitted under this rule.
- (4) The application for registration made by a non-resident taxable person shall be [duly signed or verified through electronic verification code]¹³ by his authorised signatory who shall be a person resident in India having a valid Permanent Account Number.

14. Grant of registration to a person supplying online information and database access or retrieval services from a place outside India to a non-taxable online recipient

¹³ Substituted vide Notf no. 7/2017-CT dt 27.06.2017 for “signed”

(1) Any person supplying online information and database access or retrieval services from a place outside India to a non-taxable online recipient shall electronically submit an application for registration, duly signed or verified through electronic verification code, in FORM GST REG-10, at the common portal, either directly or through a Facilitation Centre notified by the Commissioner.

(2) The applicant referred to in sub-rule (1) shall be granted registration, in FORM GST REG-06, subject to such conditions and restrictions and by such officer as may be notified by the Central Government on the recommendations of the Council.

15. Extension in period of operation by casual taxable person and non-resident taxable person.-(1) Where a registered casual taxable person or a non-resident taxable person intends to extend the period of registration indicated in his application of registration, an application in FORM GST REG-11 shall be submitted electronically through the common portal, either directly or through a Facilitation Centre notified by the Commissioner, by such person before the end of the validity of registration granted to him.

(2) The application under sub-rule (1) shall be acknowledged only on payment of the amount specified in sub-section (2) of section 27.

16. **Suo moto registration.-**

(1) Where, pursuant to any survey, enquiry, inspection, search or any other proceedings under the Act, the proper officer finds that a person liable to registration under the Act has failed to apply for such registration, such officer may register the said person on a temporary basis and issue an order in FORM GST REG-

12.

(2) The registration granted under sub-rule (1) shall be effective from the date of such order granting registration.

(3) Every person to whom a temporary registration has been granted under sub-rule (1) shall, within a period of ninety days from the date of the grant of such registration, submit an application for registration in the form and manner provided in rule 8 or rule 12:

Provided that where the said person has filed an appeal against the grant of temporary registration, in such case, the application for registration shall be submitted within a period of thirty days from the date of the issuance of the order upholding the liability to registration by the Appellate Authority.

(4) The provisions of rule 9 and rule 10 relating to verification and the issue of the certificate of registration shall, mutatis mutandis, apply to an application submitted under sub-rule (3).

(5) The Goods and Services Tax Identification Number assigned, pursuant to the verification under sub-rule (4), shall be effective from the date of the order granting registration under sub-rule (1).

17. Assignment of Unique Identity Number to certain special entities.-

(1) Every person required to be granted a Unique Identity Number in accordance with the provisions of sub-section (9) of section 25 may submit an application electronically in FORM GST REG-13, duly signed or verified through electronic verification code, in the manner specified in rule 8 at the common portal, either directly or through a Facilitation Centre notified by the Commissioner.

[(1A) The Unique Identity Number granted under sub-rule (1) to a person under clause (a) of sub-section (9) of section 25 shall be applicable to the territory of India.]¹⁴

(2) The proper officer may, upon submission of an application in FORM GST REG-13 or after filling up the said form or after receiving a recommendation from the Ministry of External Affairs, Government of India¹⁵, assign a Unique Identity Number to the said person and issue a certificate in FORM GST REG-06 within a period of three working days from the date of the submission of the application.

18. Display of registration certificate and Goods and Services Tax Identification Number on the name board.-

(1) Every registered person shall display his certificate of registration in a prominent location at his principal place of business and at every additional place or places of business.

¹⁴ Inserted vide Notf no. 75/2017 – CT dt 29.12.2017

¹⁵ Inserted vide Notf no. 22/2017 – CT dt 17.08.2017

(2) Every registered person shall display his Goods and Services Tax Identification Number on the name board exhibited at the entry of his principal place of business and at every additional place or places of business.

19. Amendment of registration.-

(1) Where there is any change in any of the particulars furnished in the application for registration in FORM GST REG-01 or FORM GST REG-07 or FORM GST REG-09 or FORM GST REG-10 or for Unique Identity Number in FORM GST-REG-13, either at the time of obtaining registration or Unique Identity Number or as amended from time to time, the registered person shall, within a period of fifteen days of such change, submit an application, duly signed or verified through electronic verification code, electronically in FORM GST REG-14, along with the documents relating to such change at the common portal, either directly or through a Facilitation Centre notified by the Commissioner:

Provided that –

(a) where the change relates to,-

- (i) legal name of business;
- (ii) address of the principal place of business or any additional place(s) of business; or
- (iii) addition, deletion or retirement of partners or directors, Karta, Managing Committee, Board of Trustees, Chief Executive Officer or equivalent, responsible for the day to day affairs of the business,- which

does not warrant cancellation of registration under section 29, the proper officer shall, after due verification, approve the amendment within a period of fifteen working days from the date of the receipt of the application in FORM GST REG-14 and issue an order in FORM GST REG-15 electronically and such amendment shall take effect from the date of the occurrence of the event warranting such amendment;

- (b) the change relating to sub-clause (i) and sub-clause (iii) of clause (a) in any State or Union territory shall be applicable for all registrations of the registered person obtained under the provisions of this Chapter on the same Permanent Account Number;
- (c) where the change relates to any particulars other than those specified in clause (a), the certificate of registration shall stand amended upon submission of the application in FORM GST REG- 14 on the common portal;
- (d) where a change in the constitution of any business results in the change of the Permanent Account Number of a registered person, the said person shall apply for fresh registration in FORM GST REG-01:

Provided further that any change in the mobile number or e-mail address of the authorised signatory submitted under this rule, as amended from time to time, shall be carried out only after online verification through the common portal in the manner provided under [sub-rule (2) of rule 8]¹⁶.

[(1A) Notwithstanding anything contained in sub-rule (1), any particular of the application for registration shall not stand amended with effect from a date earlier than the date of submission of the application in FORM GST

¹⁶ Substituted vide Notf no. 7/2017-CT dt 27.06.2017 for “the said rule”

REG-14 on the common portal except with the order of the Commissioner for reasons to be recorded in writing and subject to such conditions as the Commissioner may, in the said order, specify.]¹⁷

- (2) 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.
- (3) The registered person shall furnish a reply to the notice to show cause, issued under sub-rule (2), in FORM GST REG-04, within a period of seven working days from the date of the service of the said notice.
- (4) Where the reply furnished under sub-rule (3) is found to be not satisfactory or where no reply is furnished in response to the notice issued under sub-rule (2) within the period prescribed in sub-rule (3), the proper officer shall reject the application submitted under sub-rule (1) and pass an order in FORM GST REG -05.
- (5) 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

¹⁷ Inserted vide Notf no. 75/2017-CT dt 29.12.2017

(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.

20. **Application for cancellation of registration.-**

A registered person, other than a person to whom a registration has been granted under rule 12 or a person to whom a Unique Identity Number has been granted under rule 17, seeking cancellation of his registration under sub-section (1) of section 29 shall electronically submit an application in FORM GST REG-16, including therein the details of inputs held in stock or inputs contained in semi-finished or finished goods held in stock and of capital goods held in stock on the date from which the cancellation of registration is sought, liability thereon, the details of the payment, if any, made against such liability and may furnish, along with the application, relevant documents in support thereof, at the common portal within a period of thirty days of the occurrence of the event warranting the cancellation, either directly or through a Facilitation Centre notified by the Commissioner:

~~[Provided that no application for the cancellation of registration shall be considered in case of a taxable person, who has registered voluntarily, before the expiry of a period of one year from the effective date of registration.]~~¹⁸

¹⁸ Omitted vide Notf no.03/2018-CT dt 23.01.2018

21. Registration to be cancelled in certain cases.-

The registration granted to a person is liable to be cancelled, if the said person,-

- (a) does not conduct any business from the declared place of business; or
- (b) issues invoice or bill without supply of goods or services in violation of the provisions of this Act, or the rules made thereunder; or
- [(c) violates the provisions of section 171 of the Act or the rules made thereunder]¹⁹.

22. Cancellation of registration.-

- (1) Where the proper officer has reasons to believe that the registration of a person is liable to be cancelled under section 29, he shall issue a notice to such person in FORM GST REG-17, requiring him to show cause, within a period of seven working days from the date of the service of such notice, as to why his registration shall not be cancelled.
- (2) The reply to the show cause notice issued under sub-rule (1) shall be furnished in FORM REG-18 within the period specified in the said sub-rule.
- (3) Where a person who has submitted an application for cancellation of his registration is no longer liable to be registered or his registration is liable to be cancelled, the proper officer shall issue an order in FORM GST REG-19, within a period of thirty days from the date of application submitted under [~~sub-rule (1) of~~]²⁰ rule 20 or, as the case may be, the

¹⁹ Inserted vide Notf no. 7/2017-CT dt 27.06.2017

²⁰ Omitted vide Notf no. 7/2017-CT dt 27.06.2017

date of the reply to the show cause issued under sub-rule (1), cancel the registration, with effect from a date to be determined by him and notify the taxable person, directing him to pay arrears of any tax, interest or penalty including the amount liable to be paid under sub-section (5) of section 29.

- (4) Where the reply furnished under sub-rule (2) is found to be satisfactory, the proper officer shall drop the proceedings and pass an order in FORM GST REG -20.

“Provided that where the person instead of replying to the notice served under sub-rule (1) for contravention of the provisions contained in clause (b) or clause (c) of sub-section (2) of section 29, furnishes all the pending returns and makes full payment of the tax dues along with applicable interest and late fee, the proper officer shall drop the proceedings and pass an order in FORM GST-REG 20.”.

- (5) The provisions of sub-rule (3) shall, mutatis mutandis, apply to the legal heirs of a deceased proprietor, as if the application had been submitted by the proprietor himself.

23. **Revocation of cancellation of registration.-**

(1) A registered person, whose registration is cancelled by the proper officer on his own motion, may submit an application for revocation of cancellation of registration, in FORM GST REG-21, to such proper officer, within a period of thirty days from the date of the service of the order of cancellation of

registration at the common portal, either directly or through a Facilitation Centre notified by the Commissioner:

Provided that no application for revocation shall be filed, if the registration has been cancelled for the failure of the registered person to furnish returns, unless such returns are furnished and any amount due as tax, in terms of such returns, has been paid along with any amount payable towards interest, penalty and late fee in respect of the said returns.

- (2) (a) Where the proper officer is satisfied, for reasons to be recorded in writing, that there are sufficient grounds for revocation of cancellation of registration, he shall revoke the cancellation of registration by an order in FORM GST REG-22 within a period of thirty days from the date of the receipt of the application and communicate the same to the applicant.

(b) The proper officer may, for reasons to be recorded in writing, under circumstances other than those specified in clause (a), by an order in FORM GST REG05, reject the application for revocation of cancellation of registration and communicate the same to the applicant.

- (3) The proper officer shall, before passing the order referred to in clause (b) of sub-rule (2), issue a notice in FORM GST REG-23 requiring the applicant to show cause as to why the application submitted for revocation under sub-rule (1) should not be rejected and the applicant shall furnish the reply within a period of seven working days from the date of the service of the notice in FORM GST REG-24.
- (4) Upon receipt of the information or clarification in FORM GST REG-24, the proper officer shall proceed to dispose of the application in the manner

specified in sub-rule (2) within a period of thirty days from the date of the receipt of such information or clarification from the applicant.

24. Migration of persons registered under the existing law.-

(1) (a) Every person, other than a person deducting tax at source or an Input Service Distributor, registered under an existing law and having a Permanent Account Number issued under the provisions of the Income-tax Act, 1961 (Act 43 of 1961) shall enrol on the common portal by validating his e-mail address and mobile number, either directly or through a Facilitation Centre notified by the Commissioner.

(b) Upon enrolment under clause (a), the said person shall be granted registration on a provisional basis and a certificate of registration in FORM GST REG-25, incorporating the Goods and Services Tax Identification Number therein, shall be made available to him on the common portal:

Provided that a taxable person who has been granted multiple registrations under the existing law on the basis of a single Permanent Account Number shall be granted only one provisional registration under the Act:

(2)(a) Every person who has been granted a provisional registration under sub-rule (1) shall submit an application electronically in FORM GST REG-26, duly signed or verified through electronic verification code, along with the information and documents specified in the said application, on the common portal either directly or through a Facilitation Centre notified by the Commissioner.

(b) The information asked for in clause (a) shall be furnished within a period of three months or within such further period as may be extended by the Commissioner in this behalf.

(c) If the information and the particulars furnished in the application are found, by the proper officer, to be correct and complete, a certificate of registration in FORM GST REG-06 shall be made available to the registered person electronically on the common portal.

(3) Where the particulars or information specified in sub-rule (2) have either not been furnished or not found to be correct or complete, the proper officer shall, after serving a notice to show cause in FORM GST REG-27 and after affording the person concerned a reasonable opportunity of being heard, cancel the provisional registration granted under sub-rule (1) and issue an order in FORM GST REG-28:

[(3A) Where a certificate of registration has not been made available to the applicant on the common portal within a period of fifteen days from the date of the furnishing of information and particulars referred to in clause (c) of sub-rule (2) and no notice has been issued under sub-rule (3) within the said period, the registration shall be deemed to have been granted and the said certificate of registration, duly signed or verified through electronic verification code, shall be made available to the registered person on the common portal.

Provided that the show cause notice issued in FORM GST REG- 27 can be withdrawn by issuing an order in FORM GST REG- 20, if it is found, after

affording the person an opportunity of being heard, that no such cause exists for which the notice was issued.]²¹

(4) Every person registered under any of the existing laws, who is not liable to be registered under the Act may, on or before [31st March, 2018]²²²³, at his option, submit an application electronically in FORM GST REG-29 at the common portal for the cancellation of registration granted to him and the proper officer shall, after conducting such enquiry as deemed fit, cancel the said registration.

25. Physical verification of business premises in certain cases.-

Where the proper officer is satisfied that the physical verification of the place of business of a registered person is required after the grant of registration, he may get such verification done and the verification report along with the other documents, including photographs, shall be uploaded in FORM GST REG-30 on the common portal within a period of fifteen working days following the date of such verification.

26. Method of authentication.-

(1) All applications, including reply, if any, to the notices, returns including the details of outward and inward supplies, appeals or any other document required to be submitted under the provisions of these rules shall be so submitted electronically with digital signature certificate or through e-

²¹ Inserted vide Notf no. 7/2017-CT dt 27.06.2017

²² th

Substituted for [30 October, 2017] vide Notf no. 51/2017-CT dated 28.10.2017

²³ st

Substituted for [31 December, 2017] vide Notf no. 03/2018 – CT dated 23.01.2018

signature as specified under the provisions of the Information Technology Act, 2000 (21 of 2000) or verified by any other mode of signature or verification as notified by the Board in this behalf:

Provided that a registered person registered under the provisions of the Companies Act, 2013 (18 of 2013) shall furnish the documents or application verified through digital signature certificate.

- (2) Each document including the return furnished online shall be signed or verified through electronic verification code-
- (a) in the case of an individual, by the individual himself or where he is absent from India, by some other person duly authorised by him in this behalf, and where the individual is mentally incapacitated from attending to his affairs, by his guardian or by any other person competent to act on his behalf;
 - (b) in the case of a Hindu Undivided Family, by a Karta and where the Karta is absent from India or is mentally incapacitated from attending to his affairs, by any other adult member of such family or by the authorised signatory of such Karta;
 - (c) in the case of a company, by the chief executive officer or authorised signatory thereof;
 - (d) in the case of a Government or any Governmental agency or local authority, by an officer authorised in this behalf;
 - (e) in the case of a firm, by any partner thereof, not being a minor or authorised signatory thereof;

- (f) in the case of any other association, by any member of the association or persons or authorised signatory thereof;
 - (g) in the case of a trust, by the trustee or any trustee or authorised signatory thereof; or
 - (h) in the case of any other person, by some person competent to act on his behalf, or by a person authorised in accordance with the provisions of section 48.
- (3) All notices, certificates and orders under the provisions of this Chapter shall be issued electronically by the proper officer or any other officer authorised to issue such notices or certificates or orders, through digital signature certificate [or through E-signature as specified under the provisions of the Information Technology Act, 2000 (21 of 2000) or verified by any other mode of signature or verification as notified by the Board in this behalf.]²⁴

²⁴ Substituted vide Notf no. 7/2017-CT dated 27.06.2017 for “specified under the provisions of the Information Technology Act, 2000 (21 of 2000)”

CHAPTER IV

DETERMINATION OF VALUE OF SUPPLY

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

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

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

Illustration:

- (1) Where a new phone is supplied for twenty thousand rupees along with the exchange of an old phone and if the price of the new phone without exchange is twenty four thousand rupees, the open market value of the new phone is twenty four thousand rupees.

(2) Where a laptop is supplied for forty thousand rupees along with the barter of a printer that is manufactured by the recipient and the value of the printer known at the time of supply is four thousand rupees but the open market value of the laptop is not known, the value of the supply of the laptop is forty four thousand rupees.

28. Value of supply of goods or services or both between distinct or related persons, other than through an agent.-

The value of the supply of goods or services or both between distinct persons as specified in sub-section (4) and (5) of section 25 or where the supplier and recipient are related, other than where the supply is made through an agent, shall-

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

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

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

29. Value of supply of goods made or received through an agent.-

The value of supply of goods between the principal and his agent shall-

- (a) be the open market value of the goods being supplied, or at the option of the supplier, be ninety percent. of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person, where the goods are intended for further supply by the said recipient.

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

- (b) where the value of a supply is not determinable under clause (a), the same shall be determined by the application of rule 30 or rule 31 in that order.

30. Value of supply of goods or services or both based on cost.-

Where the value of a supply of goods or services or both is not determinable by any of the preceding rules of this Chapter, the value shall be one hundred and ten percent of the cost of production or manufacture or the cost of acquisition of such goods or the cost of provision of such services.

31. Residual method for determination of value of supply of goods or services or both.

Where the value of supply of goods or services or both cannot be determined under rules 27 to 30, the same shall be determined using reasonable means consistent with the principles and the general provisions of section 15 and the provisions of this Chapter:

Provided that in the case of supply of services, the supplier may opt for this rule, ignoring rule 30.

[31A. Value of supply in case of lottery, betting, gambling and horse racing. -

(1) Notwithstanding anything contained in the provisions of this Chapter, the value in respect of supplies specified below shall be determined in the manner provided hereinafter.

(2) (a) The value of supply of lottery run by State Governments shall be deemed to be 100/112 of the face value of ticket or of the price as notified in the Official Gazette by the organising State, whichever is higher.

(b) The value of supply of lottery authorised by State Governments shall be deemed to be 100/128 of the face value of ticket or of the price as notified in the Official Gazette by the organising State, whichever is higher.

Explanation:- For the purposes of this sub-rule, the expressions-

(a) "lottery run by State Governments" means a lottery not allowed to be sold in any State other than the organizing State;

(b) "lottery authorised by State Governments" means a lottery which is authorised to be sold in State(s) other than the organising State also; and

(c) "Organising State" has the same meaning as assigned to it in clause (f) of sub-rule (1) of rule 2 of the Lotteries (Regulation) Rules, 2010.

(3) The value of supply of actionable claim in the form of chance to win in betting, gambling or horse racing in a race club shall be 100% of the face value of the bet or the amount paid into the totalisator.]²⁵

32. Determination of value in respect of certain supplies.-

(1) Notwithstanding anything contained in the provisions of this Chapter, the value in respect of supplies specified below shall, at the option of the supplier, be determined in the manner provided hereinafter.

(2) The value of supply of services in relation to the purchase or sale of foreign currency, including money changing, shall be determined by the supplier of services in the following manner, namely:-

(a) for a currency, when exchanged from, or to, Indian Rupees, the value shall be equal to the difference in the buying rate or the selling rate, as the case may be, and the Reserve Bank of India reference rate for that currency at that time, multiplied by the total units of currency:

Provided that in case where the Reserve Bank of India reference rate for a currency is not available, the value shall be one per cent. of the gross

²⁵ Inserted vide Notf no. 03/2018 – CT dated 23.01.2018

amount of Indian Rupees provided or received by the person changing the money:

Provided further that in case where neither of the currencies exchanged is Indian Rupees, the value shall be equal to one per cent. of the lesser of the two amounts the person changing the money would have received by converting any of the two currencies into Indian Rupee on that day at the reference rate provided by the Reserve Bank of India.

Provided also that a person supplying the services may exercise the option to ascertain the value in terms of clause (b) for a financial year and such option shall not be withdrawn during the remaining part of that financial year.

(b) at the option of the supplier of services, the value in relation to the supply of foreign currency, including money changing, shall be deemed to be-

- (i) one per cent. of the gross amount of currency exchanged for an amount up to one lakh rupees, subject to a minimum amount of two hundred and fifty rupees;
- (ii) one thousand rupees and half of a per cent. of the gross amount of currency exchanged for an amount exceeding one lakh rupees and up to ten lakh rupees; and
- (iii) five thousand and five hundred rupees and one tenth of a per cent. of the gross amount of currency exchanged for an amount exceeding ten lakh rupees, subject to a maximum amount of sixty thousand rupees.

- (3) The value of the supply of services in relation to booking of tickets for travel by air provided by an air travel agent shall be deemed to be an amount calculated at the rate of five percent. of the basic fare in the case of domestic bookings, and at the rate of ten per cent. of the basic fare in the case of international bookings of passage for travel by air.

Explanation.- For the purposes of this sub-rule, the expression "basic fare" means that part of the air fare on which commission is normally paid to the air travel agent by the airlines.

- (4)The value of supply of services in relation to life insurance business shall be,-

- (a) the gross premium charged from a policy holder reduced by the amount allocated for investment, or savings on behalf of the policy holder, if such an amount is intimated to the policy holder at the time of supply of service;
- (b) in case of single premium annuity policies other than (a), ten per cent. of single premium charged from the policy holder; or
- (c) in all other cases, twenty five per cent. of the premium charged from the policy holder in the first year and twelve and a half per cent. of the premium charged from the policy holder in subsequent years:

Provided that nothing contained in this sub-rule shall apply where the entire premium paid by the policy holder is only towards the risk cover in life insurance.

- (5) Where a taxable supply is provided by a person dealing in buying and selling of second hand goods i.e., used goods as such or after such minor processing which does not change the nature of the goods and where no input tax credit has been

availed on the purchase of such goods, the value of supply shall be the difference between the selling price and the purchase price and where the value of such supply is negative, it shall be ignored:

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

- (6) The value of a token, or a voucher, or a coupon, or a stamp (other than postage stamp) which is redeemable against a supply of goods or services or both shall be equal to the money value of the goods or services or both redeemable against such token, voucher, coupon, or stamp.
- (7) The value of taxable services provided by such class of service providers as may be notified by the Government, on the recommendations of the Council, as referred to in paragraph 2 of Schedule I of the said Act between distinct persons as referred to in section 25, where input tax credit is available, shall be deemed to be NIL.

33.Value of supply of services in case of pure agent.-

Notwithstanding anything contained in the provisions of this Chapter, the expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be excluded from the value of supply, if all the following conditions are satisfied, namely,-

(i) the supplier acts as a pure agent of the recipient of the supply, when he makes the payment to the third party on authorisation by such recipient;

(ii) the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and

(iii) the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account. Explanation.- For the purposes of this rule, the expression "pure agent" means a person who-

(a) enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;

(b) neither intends to hold nor holds any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply;

(c) does not use for his own interest such goods or services so procured;

and (d) receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account.

Illustration.- Corporate services firm A is engaged to handle the legal work pertaining to the incorporation of Company B. Other than its service fees, A also recovers from B, registration fee and approval fee for the name of the company paid to the Registrar of Companies. The fees charged by the Registrar of Companies for the registration and approval of the name are compulsorily

levied on B. A is merely acting as a pure agent in the payment of those fees. Therefore, A's recovery of such expenses is a disbursement and not part of the value of supply made by A to B.

[34. Rate of exchange of currency, other than Indian rupees, for determination of value.-

- (1) The rate of exchange for determination of value of taxable goods shall be the applicable rate of exchange as notified by the Board under section 14 of the Customs Act, 1962 for the date of time of supply of such goods in terms of section 12 of the Act.
- (2) The rate of exchange for determination of value of taxable services shall be the applicable rate of exchange determined as per the generally accepted accounting principles for the date of time of supply of such services in terms of section 13 of the Act.]²⁶

35. Value of supply inclusive of integrated tax, central tax, State tax, Union territory tax.-

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

²⁶ Amended vide Notf no. 17/2017-CT dt 27.07.2017. Till then, the rule read as follows—"34. Rate of exchange of currency, other than Indian rupees, for determination of value.-The rate of exchange for the determination of the value of taxable goods or services or both shall be the applicable reference rate for that currency as determined by the Reserve Bank of India on the date of time of supply in respect of such supply in terms of section 12 or, as the case may be, section 13 of the Act."

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

Explanation.-For the purposes of the provisions of this Chapter, the expressions-

- (a) "open market value" of a supply of goods or services or both means the full value in money, excluding the integrated tax, central tax, State tax, Union territory tax and the cess payable by a person in a transaction, where the supplier and the recipient of the supply are not related and the price is the sole consideration, to obtain such supply at the same time when the supply being valued is made;
- (b) "supply of goods or services or both of like kind and quality" means any other supply of goods or services or both made under similar circumstances that, in respect of the characteristics, quality, quantity, functional components, materials, and the reputation of the goods or services or both first mentioned, is the same as, or closely or substantially resembles, that supply of goods or services or both.

CHAPTER V

INPUT TAX CREDIT

36. Documentary requirements and conditions for claiming input tax credit.-

(1) The input tax credit shall be availed by a registered person, including the Input Service Distributor, on the basis of any of the following documents, namely,-

- (a) an invoice issued by the supplier of goods or services or both in accordance with the provisions of section 31;
- (b) an invoice issued in accordance with the provisions of clause (f) of sub-section (3) of section 31, subject to the payment of tax;
- (c) a debit note issued by a supplier in accordance with the provisions of section 34;
- (d) a bill of entry or any similar document prescribed under the Customs Act, 1962 or rules made thereunder for the assessment of integrated tax on imports;
- (e) an Input Service Distributor invoice or Input Service Distributor credit note or any document issued by an Input Service Distributor in accordance with the provisions of sub-rule (1) of rule 54.

(2) Input tax credit shall be availed by a registered person only if all the applicable particulars as specified in the provisions of Chapter VI are contained in the said

document, and the relevant information, as contained in the said document, is furnished in FORMGSTR-2 by such person.

“Provided that if the said document does not contain all the specified particulars but contains the details of the amount of tax charged, description of goods or services, total value of supply of goods or services or both, GSTIN of the supplier and recipient and place of supply in case of inter-State supply, input tax credit may be availed by such registered person.”

- (3) No input tax credit shall be availed by a registered person in respect of any tax that has been paid in pursuance of any order where any demand has been confirmed on account of any fraud, willful misstatement or suppression of facts.

37. Reversal of input tax credit in the case of non-payment of consideration.-

- (1) A registered person, who has availed of input tax credit on any inward supply of goods or services or both, but fails to pay to the supplier thereof, the value of such supply along with the tax payable thereon, within the time limit specified in the second proviso to subsection(2) of section 16, shall furnish the details of such supply, the amount of value not paid and the amount of input tax credit availed of proportionate to such amount not paid to the supplier in FORM GSTR-2 for the month immediately following the period of one hundred and eighty days from the date of the issue of the invoice:

Provided that 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 sub-section (2) of section 16:

[Provided further that the value of supplies on account of any amount added in accordance with the provisions of clause (b) of sub-section (2) of section 15 shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16.]²⁷

- (2) The amount of input tax credit referred to in sub-rule (1) shall be added to the output tax liability of the registered person for the month in which the details are furnished.
- (3) The registered person shall be liable to pay interest at the rate notified under sub-section (1) of section 50 for the period starting from the date of availing credit on such supplies till the date when the amount added to the output tax liability, as mentioned in sub-rule (2), is paid.
- (4) The time limit specified in sub-section (4) of section 16 shall not apply to a claim for reavailing of any credit, in accordance with the provisions of the Act or the provisions of this Chapter, that had been reversed earlier.

38. Claim of credit by a banking company or a financial institution.-A banking company or a financial institution, including a non-banking financial

²⁷ Inserted vide notification No. 26/2018-Central Tax, dated 13.06.2018.

company, engaged in the supply of services by way of accepting deposits or extending loans or advances that chooses not to comply with the provisions of sub-section (2) of section 17, in accordance with the option permitted under sub-section (4) of that section, shall follow the following procedure, namely,-

- (a) the said company or institution shall not avail the credit of,-
 - (i) the tax paid on inputs and input services that are used for non-business purposes; and
 - (ii) the credit attributable to the supplies specified in sub-section (5) of section 17, in FORM GSTR-2;
- (b) the said company or institution shall avail the credit of tax paid on inputs and input services referred to in the second proviso to sub-section (4) of section 17 and not covered under clause (a);
- (c) fifty per cent. of the remaining amount of input tax shall be the input tax credit admissible to the company or the institution and shall be furnished in FORM GSTR-2;
- (d) the amount referred to in clauses (b) and (c) shall, subject to the provisions of sections 41, 42 and 43, be credited to the electronic credit ledger of the said company or the institution.

39. Procedure for distribution of input tax credit by Input Service

Distributor.-

(1) An Input Service Distributor shall distribute input tax credit in the manner and subject to the following conditions, namely,-

- (a) the input tax credit available for distribution in a month shall be distributed in the same month and the details thereof shall be furnished in FORM GSTR6 in accordance with the provisions of Chapter VIII of these rules;
- (b) the Input Service Distributor shall, in accordance with the provisions of clause (d), separately distribute the amount of ineligible input tax credit (ineligible under the provisions of sub-section (5) of section 17 or otherwise) and the amount of eligible input tax credit;
- (c) the input tax credit on account of central tax, State tax, Union territory tax and integrated tax shall be distributed separately in accordance with the provisions of clause (d);
- (d) the input tax credit that is required to be distributed in accordance with the provisions of clause (d) and (e) of sub-section (2) of section 20 to one of the recipients 'R1', whether registered or not, from amongst the total of all the recipients to whom input tax credit is attributable, including the recipient(s) who are engaged in making

exempt supply, or are otherwise not registered for any reason, shall be the amount, "C₁", to be calculated by applying the following formula -

$$C_1 = (t_1 \div T) \times C$$

where,

"C" is the amount of credit to be distributed,

"t₁" is the turnover, as referred to in section 20, of person R₁ during the relevant period, and

"T" is the aggregate of the turnover, during the relevant period, of all recipients to whom the input service is attributable in accordance with the provisions of section 20;

- (e) the input tax credit on account of integrated tax shall be distributed as input tax credit of integrated tax to every recipient;
- (f) the input tax credit on account of central tax and State tax or Union territory tax shall-
 - (i) in respect of a recipient located in the same State or Union territory in which the Input Service Distributor is located, be distributed as input tax credit of central tax and State tax or Union territory tax respectively;

- (ii) in respect of a recipient located in a State or Union territory other than that of the Input Service Distributor, be distributed as integrated tax and the amount to be so distributed shall be equal to the aggregate of the amount of input tax credit of central tax and State tax or Union territory tax that qualifies for distribution to such recipient in accordance with clause (d);

- (g) the Input Service Distributor shall issue an Input Service Distributor invoice, as prescribed in sub-rule (1) of rule 54, clearly indicating in such invoice that it is issued only for distribution of input tax credit;

- (h) the Input Service Distributor shall issue an Input Service Distributor credit note, as prescribed in sub-rule (1) of rule 54, for reduction of credit in case the input tax credit already distributed gets reduced for any reason;

- (i) any additional amount of input tax credit on account of issuance of a debit note to an Input Service Distributor by the supplier shall be distributed in the manner and subject to the conditions specified in clauses (a) to (f) and the amount attributable to any recipient shall be calculated in the manner provided in clause (d) and such credit shall be distributed in the month in which the debit note is included in the return in FORM GSTR-6;

(j) 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 in terms of clause (d), and the amount so apportioned shall be-

(i) reduced from the amount to be distributed in the month in which the credit note is included in the return in FORM GSTR-6; or

(ii) added to the output tax liability of the recipient where the amount so apportioned is in the negative by virtue of the amount of credit under distribution being less than the amount to be adjusted.

(2) If the amount of input tax credit distributed by an Input Service Distributor is reduced later on for any other reason for any of the recipients, including that it was distributed to a wrong recipient by the Input Service Distributor, the process specified in clause (j) of subrule (1) shall apply, mutatis mutandis, for reduction of credit.

(3) Subject to sub-rule (2), the Input Service Distributor shall, on the basis of the Input Service Distributor credit note specified in clause (h) of sub-rule (1), issue an Input Service Distributor invoice to the recipient entitled to such credit and include the Input Service Distributor credit note and the Input Service Distributor invoice in the return in FORM GSTR-6 for the month in which such credit note and invoice was issued.

40. Manner of claiming credit in special circumstances.-

(1) The input tax credit claimed in accordance with the provisions of sub-section (1) of section 18 on the inputs held in stock or inputs contained in semi-finished or finished goods held in stock, or the credit claimed on capital goods in accordance with the provisions of clauses (c) and (d) of the said sub-section, shall be subject to the following conditions, namely,-

(a) the input tax credit on capital goods, in terms of clauses (c) and (d) of sub-section (1) of section 18, shall be claimed after reducing the tax paid on such capital goods by five percentage points per quarter of a year or part thereof from the date of the invoice or such other documents on which the capital goods were received by the taxable person.

[(b) the registered person shall within a period of thirty days from the date of becoming eligible to avail the input tax credit under sub-section (1) of section 18, or within such further period as may be extended by the Commissioner by a notification in this behalf, shall make a declaration, electronically, on the common portal in FORM GST ITC-01 to the effect that he is eligible to avail the input tax credit as aforesaid:

Provided that any extension of the time limit notified by the Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.]²⁸

(c) the declaration under clause (b) shall clearly specify the details relating to the inputs held in stock or inputs contained in semi-finished or finished goods held in stock, or as the case may be, capital goods–

(i) on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of the Act, in the case of a claim under clause (a) of sub-section (1) of section 18;

(ii) on the day immediately preceding the date of the grant of registration, in the case of a claim under clause (b) of sub-section (1) of section 18;

(iii) on the day immediately preceding the date from which he becomes liable to pay tax under section 9, in the case of a claim under clause (c) of sub-section (1) of section 18;

(iv) on the day immediately preceding the date from which the supplies made by the registered person becomes taxable, in the case of a claim under clause (d) of sub-section (1) of section 18;

(d) the details furnished in the declaration under clause (b) shall be duly certified by a practicing chartered accountant or a cost accountant if the

²⁸ Substituted vide Notf no. 22/2017 – CT dt 01.07.2017

[CGST Act](#) | [IGST Act](#) | [UTGST Act](#) | [CGST Rules](#) | [Compensation Act](#)

aggregate value of the claim on account of central tax, State tax, Union territory tax and integrated tax exceeds two lakh rupees;

(e) the input tax credit claimed in accordance with the provisions of clauses (c) and (d) of sub-section (1) of section 18 shall be verified with the corresponding details furnished by the corresponding supplier in FORM GSTR-1 or as the case may be, in FORM GSTR- 4, on the common portal.

(2) The amount of credit in the case of supply of capital goods or plant and machinery, for the purposes of sub-section (6) of section 18, shall be calculated by reducing the input tax on the said goods at the rate of five percentage points for every quarter or part thereof from the date of the issue of the invoice for such goods.

41. Transfer of credit on sale, merger, amalgamation, lease or transfer of a business.-

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

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

- (2) The transferor shall also submit a copy of a certificate issued by a practicing chartered accountant or cost accountant certifying that the sale, merger, demerger, amalgamation, lease or transfer of business has been done with a specific provision for the transfer of liabilities.
- (3) The transferee shall, on the common portal, accept the details so furnished by the transferor and, upon such acceptance, the un-utilized credit specified in FORM GST ITC02 shall be credited to his electronic credit ledger.
- (4) The inputs and capital goods so transferred shall be duly accounted for by the transferee in his books of account.

42. Manner of determination of input tax credit in respect of inputs or input services and reversal thereof.-

(1) The input tax credit in respect of inputs or input services, which attract the provisions of sub-section (1) or sub-section (2) of section 17, being partly used for the purposes of business and partly for other purposes, or partly used for effecting taxable supplies including zero rated supplies and partly for effecting exempt supplies, shall be attributed to the purposes of business or for effecting taxable supplies in the following manner, namely,-

(a) the total input tax involved on inputs and input services in a tax period, be denoted as 'T';

(b) the amount of input tax, out of 'T', attributable to inputs and input services intended to be used exclusively for the purposes other than business, be denoted as 'T₁';

(c) the amount of input tax, out of 'T', attributable to inputs and input services intended to be used exclusively for effecting exempt supplies, be denoted as 'T₂';

(d) the amount of input tax, out of 'T', in respect of inputs and input services on which credit is not available under sub-section (5) of section 17, be denoted as 'T₃';

(e) the amount of input tax credit credited to the electronic credit ledger of registered person, be denoted as 'C₁' and calculated as-

$$C_1 = T - (T_1 + T_2 + T_3);$$

(f) the amount of input tax credit attributable to inputs and input services intended to be used exclusively for effecting supplies other than exempted but including zero rated supplies, be denoted as 'T₄';

(g) 'T₁', 'T₂', 'T₃' and 'T₄' shall be determined and declared by the registered person at the invoice level in FORM GSTR-2;

(h) input tax credit left after attribution of input tax credit under clause (g) shall be called common credit, be denoted as 'C₂' and calculated as-

$$C_2 = C_1 - T_4;$$

(i) the amount of input tax credit attributable towards exempt supplies, be denoted as 'D₁' and calculated as-

$$D_1 = (E \div F) \times C_2$$

where,

'E' is the aggregate value of exempt supplies during the tax period, and

'F' is the total turnover in the State of the registered person during the tax period:

Provided that where the registered person does not have any turnover during the said tax period or the aforesaid information is not available, the value of 'E/F' shall be calculated by taking values of 'E' and 'F' of the last tax period for which the details of such turnover are available, previous to the month during which the said value of 'E/F' is to be calculated;

Explanation: For the purposes of this clause, it is hereby clarified that the aggregate value of exempt supplies and the total turnover shall exclude the amount of any duty or tax levied under entry 84 of List I of the Seventh Schedule to the Constitution and entry 51 and 54 of List II of the said Schedule;

(j) the amount of credit attributable to non-business purposes if common inputs and input services are used partly for business and partly for non-business purposes, be denoted as 'D₂', and shall be equal to five per cent. of C₂; and

(k) the remainder of the common credit shall be the eligible input tax credit attributed to the purposes of business and for effecting supplies other than exempted supplies but including zero rated supplies and shall be denoted as 'C₃', where,-

$$C_3 = C_2 - (D_1 + D_2);$$

(l) the amount 'C₃' shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax;

(m) the amount equal to aggregate of 'D₁' and 'D₂' shall be added to the output tax liability of the registered person:

Provided that where the amount of input tax relating to inputs or input services used partly for the purposes other than business and partly for effecting exempt supplies has been identified and segregated at the invoice level by the registered person, the same shall be included in 'T₁' and 'T₂' respectively, and the remaining amount of credit on such inputs or input services shall be included in 'T₄'.

(2) The input tax credit determined under sub-rule (1) shall be calculated finally for the financial year 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, in the manner specified in the said sub-rule and-

- (a) where the aggregate of the amounts calculated finally in respect of 'D₁' and 'D₂' exceeds the aggregate of the amounts determined under sub-rule (1) in respect of 'D₁' and 'D₂', such excess shall be added to the output tax liability of the registered person in the month not later than the month of September following the end of the financial year to which such credit relates and the said person shall be liable to pay interest on the said excess amount at the rate specified in sub-section (1) of section 50 for the period starting from the first day of April of the succeeding financial year till the date of payment; or
- (b) where the aggregate of the amounts determined under sub-rule (1) in respect of 'D₁' and 'D₂' exceeds the aggregate of the amounts calculated finally in respect of 'D₁' and 'D₂', such excess amount shall be claimed as credit by the

registered person in his return for a month not later than the month of September following the end of the financial year to which such credit relates.

43. Manner of determination of input tax credit in respect of capital goods and reversal thereof in certain cases.-

(1) Subject to the provisions of sub-section (3) of section 16, the input tax credit in respect of capital goods, which attract the provisions of sub-sections (1) and (2) of section 17, being partly used for the purposes of business and partly for other purposes, or partly used for effecting taxable supplies including zero rated supplies and partly for effecting exempt supplies, shall be attributed to the purposes of business or for effecting taxable supplies in the following manner, namely,-

- (a) the amount of input tax in respect of capital goods used or intended to be used exclusively for non-business purposes or used or intended to be used exclusively for effecting exempt supplies shall be indicated in FORM GSTR-2 and shall not be credited to his electronic credit ledger;
- (b) the amount of input tax in respect of capital goods used or intended to be used exclusively for effecting supplies other than exempted supplies but including zero-rated supplies shall be indicated in FORM GSTR-2 and shall be credited to the electronic credit ledger;
- (c) the amount of input tax in respect of capital goods not covered under clauses (a) and (b), denoted as 'A', shall be credited to the electronic

credit ledger and the useful life of such goods shall be taken as five years from the date of the invoice for such goods:

Provided that where any capital goods earlier covered under clause (a) is subsequently covered under this clause, the value of 'A' shall be arrived at by reducing the input tax at the rate of five percentage points for every quarter or part thereof and the amount 'A' shall be credited to the electronic credit ledger;

Explanation.- An item of capital goods declared under clause (a) on its receipt shall not attract the provisions of sub-section (4) of section 18, if it is subsequently covered under this clause.

(d) the aggregate of the amounts of 'A' credited to the electronic credit ledger under clause (c), to be denoted as 'T_c', shall be the common credit in respect of capital goods for a tax period:

Provided that where any capital goods earlier covered under clause (b) is subsequently covered under clause (c), the value of 'A' arrived at by reducing the input tax at the rate of five percentage points for every quarter or part thereof shall be added to the aggregate value 'T_c';

(e) the amount of input tax credit attributable to a tax period on common capital goods during their useful life, be denoted as 'T_m' and calculated as-

$$T_m = T_c \div 60$$

(f) the amount of input tax credit, at the beginning of a tax period, on all common capital goods whose useful life remains during the tax period,

be denoted as 'T_r' and shall be the aggregate of 'T_m' for all such capital goods;

- (g) the amount of common credit attributable towards exempted supplies, be denoted as 'T_e', and calculated as-

$$T_e = (E \div F) \times T_r$$

where,

'E' is the aggregate value of exempt supplies, made, during the tax period, and

'F' is the total turnover of the registered person during the tax period:

Provided that where the registered person does not have any turnover during the said tax period or the aforesaid information is not available, the value of 'E/F' shall be calculated by taking values of 'E' and 'F' of the last tax period for which the details of such turnover are available, previous to the month during which the said value of 'E/F' is to be calculated;

Explanation.- For the purposes of this clause, it is hereby clarified that the aggregate value of exempt supplies and the total turnover shall exclude the amount of any duty or tax levied under entry 84 of List I of the Seventh

Schedule to the Constitution and entry 51 and 54 of List II of the said Schedule;

(h) the amount T_e along with the applicable interest shall, during every tax period of the useful life of the concerned capital goods, be added to the output tax liability of the person making such claim of credit.

(2) The amount T_e shall be computed separately for central tax, State tax, Union territory tax and integrated tax.

[Explanation: -For the purposes of rule 42 and this rule, it is hereby clarified that the aggregate value of exempt supplies shall exclude: -

- (a) the value of supply of services specified in the notification of the Government of India in the Ministry of Finance, Department of Revenue No. 42/2017-Integrated Tax (Rate), dated the 27th October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number GSR 1338(E) dated the 27th October, 2017;
- (b) the value of services by way of accepting deposits, extending loans or advances in so far as the consideration is represented by way of interest or discount, except in case of 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; and (c) the value of supply of services by way of transportation of goods by a vessel from the

25²⁶ customs station of
clearance in India to a place outside India.]

44. Manner of reversal of credit under special circumstances.-

(1) The amount of input tax credit relating to inputs held in stock, inputs contained in semi-finished and finished goods held in stock, and capital goods held in stock shall, for the purposes of sub-section (4) of section 18 or sub-section (5) of section 29, be determined in the following manner, namely,-

- (a) for inputs held in stock and inputs contained in semi-finished and finished goods held in stock, the input tax credit shall be calculated proportionately on the basis of the corresponding invoices on which credit had been availed by the registered taxable person on such inputs;
- (b) for capital goods held in stock, the input tax credit involved in the remaining useful life in months shall be computed on pro-rata basis, taking the useful life as five years.

Illustration:

Capital goods have been in use for 4 years, 6 month and 15 days.

Explanation - For the purposes of rule 42 and this rule, it is hereby clarified that the aggregate value of exempt supplies shall exclude the value of supply of services specified in the notification of the Government of India in the Ministry of Finance, Department of Revenue No. 42/2017-Integrated Tax (Rate), dated the 27th October, 2017 published in the Gazette of India,

Extraordinary, Part II, Section 3, Sub-section (i), vide number GSR 1338(E) dated the 27th October, 2017.

The useful remaining life in months= 5 months ignoring a part of the month

Input tax credit taken on such capital goods= C

Input tax credit attributable to remaining useful life= C multiplied by 5/60

- (2) The amount, as specified in sub-rule (1) shall be determined separately for input tax credit of central tax, State tax, Union territory tax and integrated tax.
- (3) Where the tax invoices related to the inputs held in stock are not available, the registered person shall estimate the amount under sub-rule (1) based on the prevailing market price of the goods on the effective date of the occurrence of any of the events specified in subsection (4) of section 18 or, as the case may be, sub-section (5) of section 29.
- (4) The amount determined under sub-rule (1) shall form part of the output tax liability of the registered person and the details of the amount shall be furnished in FORM GST ITC03, where such amount relates to any event specified in sub-section (4) of section 18 and in FORM GSTR-10, where such amount relates to the cancellation of registration.
- (5) The details furnished in accordance with sub-rule (3) shall be duly certified by a practicing chartered accountant or cost accountant.

- (6) The amount of input tax credit for the purposes of sub-section (6) of section 18 relating to capital goods shall be determined in the same manner as specified in clause (b) of subrule (1) and the amount shall be determined separately for input tax credit of central tax, State tax, Union territory tax and integrated tax:
Provided that where the amount so determined is more than the tax determined on the transaction value of the capital goods, the amount determined shall form part of the output tax liability and the same shall be furnished in FORM GSTR-1.

[44A. Manner of reversal of credit of Additional duty of Customs in respect of Gold dore bar.- The credit of Central tax in the electronic credit ledger taken in terms of the provisions of section 140 relating to the CENVAT Credit carried forward which had accrued on account of payment of the additional duty of customs levied under sub-section (1) of section 3 of the Customs Tariff Act, 1975 (51 of 1975), paid at the time of importation of gold dore bar, on the stock of gold dore bar held on the 1st day of July, 2017 or contained in gold or gold jewellery held in stock on the 1st day of July, 2017 made out of such imported gold dore bar, shall be restricted to one-sixth of such credit and five-sixth of such credit shall be debited from the electronic credit ledger at the time of supply of such gold dore bar or the gold or the gold jewellery made therefrom and where such supply has already been made, such debit shall be within one week from the date of commencement of these Rules.]²⁹

²⁹ Inserted vide Notf no. 22/2017-CT dt 17.08.2017

45. Conditions and restrictions in respect of inputs and capital goods sent to the job worker.-

(1) The inputs, semi-finished goods or capital goods shall be sent to the job worker under the cover of a challan issued by the principal, including where such goods are sent directly to a job-worker, [and where the goods are sent from one job worker to another job worker, the challan may be issued either by the principal or the job worker sending the goods to another job worker:

Provided that the challan issued by the principal may be endorsed by the job worker, indicating therein the quantity and description of goods where the goods are sent by one job worker to another or are returned to the principal:

Provided further that the challan endorsed by the job worker may be further endorsed by another job worker, indicating therein the quantity and description of goods where the goods are sent by one job worker to another or are returned to the principal.]³⁰

(2) The challan issued by the principal to the job worker shall contain the details specified in rule 55.

(3) The details of challans in respect of goods dispatched to a job worker or received from a job worker or sent from one job worker to another during a quarter shall be included in FORM GST ITC-04 furnished for that period on or before the twenty-fifth day of the month succeeding the said quarter [or within such further period as may be extended by the Commissioner by a notification in this behalf:

³⁰ Inserted vide Notf no. 14/2018-CT dt 23.03.2018

Provided that any extension of the time limit notified by the Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.]³¹

- (4) Where the inputs or capital goods are not returned to the principal within the time stipulated in section 143, it shall be deemed that such inputs or capital goods had been supplied by the principal to the job worker on the day when the said inputs or capital goods were sent out and the said supply shall be declared in FORM GSTR-1 and the principal shall be liable to pay the tax along with applicable interest.

Explanation.- For the purposes of this Chapter,-

- (1) the expressions "capital goods" shall include "plant and machinery" as defined in the Explanation to section 17;
- (2) for determining the value of an exempt supply as referred to in sub-section (3) of section 17-
 - (a) the value of land and building shall be taken as the same as adopted for the purpose of paying stamp duty; and
 - (b) the value of security shall be taken as one per cent. of the sale value of such security.

³¹ Inserted vide Notf no. 54/2017-CT dt 28.10.2017

CHAPTER VI

TAX INVOICE, CREDIT AND DEBIT NOTES

46. Tax invoice.-

Subject to rule 54, a tax invoice referred to in section 31 shall be issued by the registered person containing the following particulars, namely,-

- (a) name, address and Goods and Services Tax Identification Number of the supplier;
- (b) a consecutive serial number not exceeding sixteen characters, in one or multiple series, containing alphabets or numerals or special characters- hyphen or dash and slash symbolised as “-” and “/” respectively, and any combination thereof, unique for a financial year;
- (c) date of its issue;
- (d) name, address and Goods and Services Tax Identification Number or Unique Identity Number, if registered, of the recipient;

- (e) name and address of the recipient and the address of delivery, along with the name of the State and its code, if such recipient is un-registered and where the value of the taxable supply is fifty thousand rupees or more;
- (f) name and address of the recipient and the address of delivery, along with the name of the State and its code, if such recipient is un-registered and where the value of the taxable supply is less than fifty thousand rupees and the recipient requests that such details be recorded in the tax invoice;
- (g) Harmonised System of Nomenclature code for goods or services;
- (h) description of goods or services;
- (i) quantity in case of goods and unit or Unique Quantity Code thereof;
- (j) total value of supply of goods or services or both;
- (k) taxable value of the supply of goods or services or both taking into account discount or abatement, if any;
- (l) rate of tax (central tax, State tax, integrated tax, Union territory tax or cess);
- (m) amount of tax charged in respect of taxable goods or services (central tax, State tax, integrated tax, Union territory tax or cess);
- (n) place of supply along with the name of the State, in the case of a supply in the course of inter-State trade or commerce;

- (o) address of delivery where the same is different from the place of supply;
- (p) whether the tax is payable on reverse charge basis; and
- (q) signature or digital signature of the supplier or his authorised representative:

Provided that the Board may, on the recommendations of the Council, by notification, specify-

- (i) the number of digits of Harmonised System of Nomenclature code for goods or services that a class of registered persons shall be required to mention, for such period as may be specified in the said notification; and
- (ii) the class of registered persons that would not be required to mention the Harmonised System of Nomenclature code for goods or services, for such period as may be specified in the said notification:

Provided further that where an invoice is required to be issued under clause (f) of sub-section (3) of section 31, a registered person may issue a consolidated invoice at the end of a month for supplies covered under sub-section (4) of section 9, the aggregate value of such supplies exceeds rupees five thousand in a day from any or all the suppliers:

[Provided also that in the case of the export of goods or services, the invoice shall carry an endorsement "SUPPLY MEANT FOR EXPORT/SUPPLY TO SEZ UNIT OR SEZ DEVELOPER FOR AUTHORISED OPERATIONS ON PAYMENT OF INTEGRATED TAX" or "SUPPLY MEANT FOR EXPORT/SUPPLY

TO SEZ UNIT OR SEZ DEVELOPER FOR AUTHORISED OPERATIONS UNDER BOND OR LETTER OF UNDERTAKING WITHOUT

PAYMENT OF INTEGRATED TAX”, as the case may be, and shall, in lieu of the details specified in clause (e), contain the following details, namely,-

(i) name and address of the recipient; (ii) address of delivery; and (iii) name of the country of destination:]³²

Provided also that a registered person may not issue a tax invoice in accordance with the provisions of clause (b) of sub-section (3) of section 31 subject to the following conditions, namely,-

(a) the recipient is not a registered person; and (b) the recipient does not require such invoice, and shall issue a consolidated tax invoice for such supplies at the close of each day in respect of all such supplies.

³² Amended vide Notf no. 17/2017-CT dt 27.07.2017. Till then it read as follows –

Provided also that in the case of the export of goods or services, the invoice shall carry an endorsement “SUPPLY MEANT FOR EXPORT ON PAYMENT OF INTEGRATED TAX” or “SUPPLY MEANT FOR EXPORT UNDER BOND OR LETTER OF UNDERTAKING WITHOUT PAYMENT OF INTEGRATED TAX”, as the case may be, and shall, in lieu of the details specified in clause (e), contain the following details, namely,-

- (i) name and address of the recipient;
- (ii) address of delivery; and

name of the country of destination.

[46A. Invoice-cum-bill of supply.-

Notwithstanding anything contained in rule 46 or rule 49 or rule 54, where a registered person is supplying taxable as well as exempted goods or services or both to an unregistered person, a single "invoice-cum-bill of supply" may be issued for all such supplies.]³³

47. Time limit for issuing tax invoice.-

The invoice referred to in rule 46, in the case of the taxable supply of services, shall be issued within a period of thirty days from the date of the supply of service:

Provided that where the supplier of services is an insurer or a banking company or a financial institution, including a non-banking financial company, the period within which the invoice or any document in lieu thereof is to be issued shall be forty five days from the date of the supply of service:

Provided further that an insurer or a banking company or a financial institution, including a non-banking financial company, or a telecom operator, or any other class of supplier of services as may be notified by the Government on the recommendations of the Council, making taxable supplies of services between distinct persons as specified in section 25, may issue the invoice before or at the time such supplier records the same in his books of account or before the expiry of the quarter during which the supply was made.

48. Manner of issuing invoice.-

³³ Inserted vide Notf no. 45/2017-CT dt 13.10.2017

(1) The invoice shall be prepared in triplicate, in the case of supply of goods, in the following manner, namely,-

- (a) the original copy being marked as ORIGINAL FOR RECIPIENT;
- (b) the duplicate copy being marked as DUPLICATE FOR TRANSPORTER; and
- (c) the triplicate copy being marked as TRIPLICATE FOR SUPPLIER.

(2) The invoice shall be prepared in duplicate, in the case of the supply of services, in the following manner, namely,-

- (a) the original copy being marked as ORIGINAL FOR RECIPIENT; and
- (b) the duplicate copy being marked as DUPLICATE FOR SUPPLIER.

(3) The serial number of invoices issued during a tax period shall be furnished electronically through the common portal in FORM GSTR-1.

49. **Bill of supply.-**

A bill of supply referred to in clause (c) of sub-section (3) of section 31 shall be issued by the supplier containing the following details, namely,-

- (a) name, address and Goods and Services Tax Identification Number of the supplier;
- (b) a consecutive serial number not exceeding sixteen characters, in one or multiple series, containing alphabets or numerals or special characters hyphen or dash and slash symbolised as “-” and “/”

respectively, and any combination thereof, unique for a financial year;

- (c) date of its issue;
- (d) name, address and Goods and Services Tax Identification Number or Unique Identity Number, if registered, of the recipient;
- (e) Harmonised System of Nomenclature Code for goods or services;
- (f) description of goods or services or both;
- (g) value of supply of goods or services or both taking into account discount or abatement, if any; and
- (h) signature or digital signature of the supplier or his authorised representative:

Provided that the provisos to rule 46 shall, mutatis mutandis, apply to the bill of supply issued under this rule:

Provided further that any tax invoice or any other similar document issued under any other Act for the time being in force in respect of any non-taxable supply shall be treated as a bill of supply for the purposes of the Act.

50. **Receipt voucher.-**

A receipt voucher referred to in clause (d) of sub-section (3) of section 31 shall contain the following particulars, namely,-

- (a) name, address and Goods and Services Tax Identification Number of the supplier;
- (b) a consecutive serial number not exceeding sixteen characters, in one or multiple series, containing alphabets or numerals or special characters hyphen or dash and slash symbolised as “-” and “/” respectively, and any combination thereof, unique for a financial year;
- (c) date of its issue;
- (d) name, address and Goods and Services Tax Identification Number or Unique Identity Number, if registered, of the recipient;
- (e) description of goods or services;
- (f) amount of advance taken;
- (g) rate of tax (central tax, State tax, integrated tax, Union territory tax or cess);
- (h) amount of tax charged in respect of taxable goods or services (central tax, State tax, integrated tax, Union territory tax or cess);
- (i) place of supply along with the name of State and its code, in case of a supply in the course of inter-State trade or commerce;
- (j) whether the tax is payable on reverse charge basis; and

- (k) signature or digital signature of the supplier or his authorised representative:

Provided that where at the time of receipt of advance,-

- (i) the rate of tax is not determinable, the tax shall be paid at the rate of eighteen per cent.;
- (ii) the nature of supply is not determinable, the same shall be treated as inter-State supply.

51. Refund voucher.-

A refund voucher referred to in clause (e) of sub-section (3) of section 31 shall contain the following particulars, namely:-

- (a) name, address and Goods and Services Tax Identification Number of the supplier;
- (b) a consecutive serial number not exceeding sixteen characters, in one or multiple series, containing alphabets or numerals or special characters hyphen or dash and slash symbolised as “-” and “/” respectively, and any combination thereof, unique for a financial year;
- (c) date of its issue;
- (d) name, address and Goods and Services Tax Identification Number or Unique Identity Number, if registered, of the recipient;

- (e) number and date of receipt voucher issued in accordance with the provisions of rule 50;
- (f) description of goods or services in respect of which refund is made;
- (g) amount of refund made;
- (h) rate of tax (central tax, State tax, integrated tax, Union territory tax or cess);
- (i) amount of tax paid in respect of such goods or services (central tax, State tax, integrated tax, Union territory tax or cess);
- (j) whether the tax is payable on reverse charge basis; and
- (k) signature or digital signature of the supplier or his authorised representative.

52. Payment voucher.-

A payment voucher referred to in clause (g) of sub-section (3) of section 31 shall contain the following particulars, namely:-

- (a) name, address and Goods and Services Tax Identification Number of the supplier if registered;
- (b) a consecutive serial number not exceeding sixteen characters, in one or multiple series, containing alphabets or numerals or special characters hyphen or dash and slash symbolised as “-” and “/” respectively, and any combination thereof, unique for a financial year;
- (c) date of its issue;

- (d) name, address and Goods and Services Tax Identification Number of the recipient;
- (e) description of goods or services;
- (f) amount paid;
- (g) rate of tax (central tax, State tax, integrated tax, Union territory tax or cess);
- (h) amount of tax payable in respect of taxable goods or services (central tax, State tax, integrated tax, Union territory tax or cess);
- (i) place of supply along with the name of State and its code, in case of a supply in the course of inter-State trade or commerce; and
- (j) signature or digital signature of the supplier or his authorised representative.

53. Revised tax invoice and credit or debit notes.-

(1)A revised tax invoice referred to in section 31 and credit or debit notes referred to in section 34 shall contain the following particulars, namely:-

- (a) the word "Revised Invoice", wherever applicable, indicated prominently;

- (b) name, address and Goods and Services Tax Identification Number of the supplier;
- (c) nature of the document;
- (d) a consecutive serial number not exceeding sixteen characters, in one or multiple series, containing alphabets or numerals or special charactershyphen or dash and slash symbolised as “-” and “/” respectively, and any combination thereof, unique for a financial year;
- (e) date of issue of the document;
- (f) name, address and Goods and Services Tax Identification Number or Unique Identity Number, if registered, of the recipient;
- (g) name and address of the recipient and the address of delivery, along with the name of State and its code, if such recipient is un-registered;
- (h) serial number and date of the corresponding tax invoice or, as the case may be, bill of supply;
- (i) value of taxable supply of goods or services, rate of tax and the amount of the tax credited or, as the case may be, debited to the recipient; and
- (j) signature or digital signature of the supplier or his authorised representative.

(2) Every registered person who has been granted registration with effect from a date earlier than the date of issuance of certificate of registration to him, may issue revised tax invoices in respect of taxable supplies effected during the period

starting from the effective date of registration till the date of the issuance of the certificate of registration:

Provided that the registered person may issue a consolidated revised tax invoice in respect of all taxable supplies made to a recipient who is not registered under the Act during such period:

Provided further that in the case of inter-State supplies, where the value of a supply does not exceed two lakh and fifty thousand rupees, a consolidated revised invoice may be issued separately in respect of all the recipients located in a State, who are not registered under the Act.

- (3) Any invoice or debit note issued in pursuance of any tax payable in accordance with the provisions of section 74 or section 129 or section 130 shall prominently contain the words "INPUT TAX CREDIT NOT ADMISSIBLE".

54. Tax invoice in special cases.- (1)An Input Service Distributor invoice or, as the case may be, an Input Service Distributor credit note issued by an Input Service Distributor shall contain the following details:-

- (a) name, address and Goods and Services Tax Identification Number of the Input Service Distributor;
- (b) a consecutive serial number not exceeding sixteen characters, in one or multiple series, containing alphabets or numerals or special characters- hyphen or dash and slash symbolised as- "-", "/" respectively, and any combination thereof, unique for a financial year;
- (c) date of its issue;

- (d) name, address and Goods and Services Tax Identification Number of the recipient to whom the credit is distributed;
- (e) amount of the credit distributed; and
- (f) signature or digital signature of the Input Service Distributor or his authorised representative:

Provided that where the Input Service Distributor is an office of a banking company or a financial institution, including a non-banking financial company, a tax invoice shall include any document in lieu thereof, by whatever name called, whether or not serially numbered but containing the information as mentioned above.

[(1A) (a) A registered person, having the same PAN and State code as an Input Service Distributor, may issue an invoice or, as the case may be, a credit or debit note to transfer the credit of common input services to the Input Service Distributor, which shall contain the following details:-

- i. name, address and Goods and Services Tax Identification Number of the registered person having the same PAN and same State code as the Input Service Distributor;
- ii. a consecutive serial number not exceeding sixteen characters, in one or multiple series, containing alphabets or numerals or special characters - hyphen or dash and slash symbolised as "-" and "/" respectively, and any combination thereof, unique for a financial year;
- iii. date of its issue;

- iv. Goods and Services Tax Identification Number of supplier of common service and original invoice number whose credit is sought to be transferred to the Input Service

Distributor;

- v. name, address and Goods and Services Tax Identification Number of the Input Service Distributor;
- vi. taxable value, rate and amount of the credit to be transferred; and
- vii. signature or digital signature of the registered person or his authorised representative. (b) The taxable value in the invoice issued under clause (a) shall be the same as the value of the common services.]³⁴

(2) Where the supplier of taxable service is an insurer or a banking company or a financial institution, including a non-banking financial company, the said supplier [may]³³ issue a [consolidated]³⁵³⁶ tax invoice or any other document in lieu thereof, by whatever name called [for the supply of services made during a month at the end of the month]³⁷, whether issued or made available, physically or electronically whether or not serially numbered, and whether or not containing the address of the recipient of taxable service but containing other information as mentioned under rule 46.

(3) Where the supplier of taxable service is a goods transport agency supplying services in relation to transportation of goods by road in a goods carriage, the said supplier shall issue a tax invoice or any other document in lieu thereof, by whatever name called, containing the gross weight of the consignment, name of

³⁴ Inserted vide Notf no.03/2018- CT dt 23.01.2018

³⁵ Substituted for "shall" vide Notf no. 55/2017-CT dt 15.11.2017

³⁶ Inserted vide Notf no. 45/2017-CT dt 13.10.2017

³⁷ Inserted vide Notf no. 45/2017-CT dt 13.10.2017

the consigner and the consignee, registration number of goods carriage in which the goods are transported, details of goods transported, details of place of origin and destination, Goods and Services Tax Identification Number of the person liable for paying tax whether as consigner, consignee or goods transport agency, and also containing other information as mentioned under rule 46.

(4) Where the supplier of taxable service is supplying passenger transportation service, a tax invoice shall include ticket in any form, by whatever name called, whether or not serially numbered, and whether or not containing the address of the recipient of service but containing other information as mentioned under rule 46.

(5) The provisions of sub-rule (2) or sub-rule (4) shall apply, mutatis mutandis, to the documents issued under rule 49 or rule 50 or rule 51 or rule 52 or rule 53.

55. Transportation of goods without issue of invoice.-

(1) For the purposes of-

- (a) supply of liquid gas where the quantity at the time of removal from the place of business of the supplier is not known,
- (b) transportation of goods for job work,
- (c) transportation of goods for reasons other than by way of supply, or
- (d) such other supplies as may be notified by the Board,

the consigner may issue a delivery challan, serially numbered not exceeding sixteen characters, in one or multiple series, in lieu of invoice at the time of removal of goods for transportation, containing the following details, namely:-

- (i) date and number of the delivery challan;
- (ii) name, address and Goods and Services Tax Identification Number of the consigner, if registered;
- (iii) name, address and Goods and Services Tax Identification Number or Unique Identity Number of the consignee, if registered;
- (iv) Harmonised System of Nomenclature code and description of goods;
- (v) quantity (provisional, where the exact quantity being supplied is not known);
- (vi) taxable value;
- (vii) tax rate and tax amount – central tax, State tax, integrated tax, Union territory tax or cess, where the transportation is for supply to the consignee;
- (viii) place of supply, in case of inter-State movement; and
- (ix) signature.

(2) The delivery challan shall be prepared in triplicate, in case of supply of goods, in the following manner, namely:-

- (a) the original copy being marked as ORIGINAL FOR CONSIGNEE;
- (b) the duplicate copy being marked as DUPLICATE FOR TRANSPORTER; and
- (c) the triplicate copy being marked as TRIPLICATE FOR CONSIGNER.

- (3) Where goods are being transported on a delivery challan in lieu of invoice, the same shall be declared as specified in rule 138.
- (4) Where the goods being transported are for the purpose of supply to the recipient but the tax invoice could not be issued at the time of removal of goods for the purpose of supply, the supplier shall issue a tax invoice after delivery of goods.
- (5) Where the goods are being transported in a semi knocked down or completely knocked down condition or in batches or lots -
 - (a) the supplier shall issue the complete invoice before dispatch of the first consignment;
 - (b) the supplier shall issue a delivery challan for each of the subsequent consignments, giving reference of the invoice;
 - (c) each consignment shall be accompanied by copies of the corresponding delivery challan along with a duly certified copy of the invoice; and
 - (d) the original copy of the invoice shall be sent along with the last consignment.

[55A. Tax Invoice or bill of supply to accompany transport of goods.- The person-incharge of the conveyance shall carry a copy of the tax invoice or the bill of supply issued in accordance with the provisions of rules 46, 46A or 49 in a case where such person is not required to carry an e-way bill under these rules.]³⁸

³⁸ Inserted vide Notf no. 03/2018-CT dt 23.01.2018

CHAPTER VII

ACCOUNTS AND RECORDS

56. Maintenance of accounts by registered persons.-

- (1) Every registered person shall keep and maintain, in addition to the particulars mentioned in sub-section (1) of section 35, a true and correct account of the goods or services imported or exported or of supplies attracting payment of tax on reverse charge along with the relevant documents, including invoices, bills of supply, delivery challans, credit notes, debit notes, receipt vouchers, payment vouchers and refund vouchers.
- (2) Every registered person, other than a person paying tax under section 10, shall maintain the accounts of stock in respect of goods received and supplied by him, and such accounts shall contain particulars of the opening balance, receipt, supply, goods lost, stolen, destroyed, written off or disposed of by way of gift or free sample and the balance of stock including raw materials, finished goods, scrap and wastage thereof.
- (3) Every registered person shall keep and maintain a separate account of advances received, paid and adjustments made thereto.

- (4) Every registered person, other than a person paying tax under section 10, shall keep and maintain an account, containing the details of tax payable (including tax payable in accordance with the provisions of sub-section (3) and sub-section (4) of section 9), tax collected and paid, input tax, input tax credit claimed, together with a register of tax invoice, credit notes, debit notes, delivery challan issued or received during any tax period.
- (5) Every registered person shall keep the particulars of -
 - (a) names and complete addresses of suppliers from whom he has received the goods or services chargeable to tax under the Act;
 - (b) names and complete addresses of the persons to whom he has supplied goods or services, where required under the provisions of this Chapter;
 - (c) the complete address of the premises where goods are stored by him, including goods stored during transit along with the particulars of the stock stored therein.
- (6) If any taxable goods are found to be stored at any place(s) other than those declared under sub-rule (5) 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.
- (7) Every registered person shall keep the books of account at the principal place of business and books of account relating to additional place of business

mentioned in his certificate of registration and such books of account shall include any electronic form of data stored on any electronic device.

- (8) 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 the 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.
- (9) Each volume of books of account maintained manually by the registered person shall be serially numbered.
- (10) 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.
- (11) Every agent referred to in clause (5) of section 2 shall maintain accounts depicting the,-
 - (a) particulars of authorisation received by him from each principal to receive or supply goods or services on behalf of such principal separately;
 - (b) particulars including description, value and quantity (wherever applicable) of goods or services received on behalf of every principal;

- (c) particulars including description, value and quantity (wherever applicable) of goods or services supplied on behalf of every principal;
- (d) details of accounts furnished to every principal; and
- (e) tax paid on receipts or on supply of goods or services effected on behalf of every principal.

(12) Every registered person manufacturing goods shall maintain monthly production accounts showing quantitative details of raw materials or services used in the manufacture and quantitative details of the goods so manufactured including the waste and by products thereof.

(13) Every registered person supplying services shall maintain the accounts showing quantitative details of goods used in the provision of services, details of input services utilised and the services supplied.

(14) Every registered person executing works contract shall keep separate accounts for works contract showing -

- (a) the names and addresses of the persons on whose behalf the works contract is executed;
- (b) description, value and quantity (wherever applicable) of goods or services received for the execution of works contract;
- (c) description, value and quantity (wherever applicable) of goods or services utilized in the execution of works contract;
- (d) the details of payment received in respect of each works contract; and

- (e) the names and addresses of suppliers from whom he received goods or services.

(15)The records under the provisions of this Chapter may be maintained in electronic form and the record so maintained shall be authenticated by means of a digital signature.

(16)Accounts maintained by the registered person together with all the invoices, bills of supply, credit and debit notes, and delivery challans relating to stocks, deliveries, inward supply and outward supply shall be preserved for the period as provided in section 36 and shall, where such accounts and documents are maintained manually, be kept at every related place of business mentioned in the certificate of registration and shall be accessible at every related place of business where such accounts and documents are maintained digitally.

(17)Any person having custody over the goods in the capacity of a carrier or a clearing and forwarding agent for delivery or dispatch thereof to a recipient on behalf of any registered person shall maintain true and correct records in respect of such goods handled by him on behalf of such registered person and shall produce the details thereof as and when required by the proper officer.

(18)Every registered person shall, on demand, produce the books of accounts which he is required to maintain under any law for the time being in force.

57. Generation and maintenance of electronic records.-

- (1) Proper electronic back-up of records shall be maintained and preserved 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.
- (2) The registered person maintaining electronic records shall produce, on demand, the relevant records or documents, duly authenticated by him, in hard copy or in any electronically readable format.
- (3) 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.

58. Records to be maintained by owner or operator of godown or warehouse and transporters.-

- (1) Every person required to maintain records and accounts in accordance with the provisions of sub-section (2) of section 35, if not already registered under the Act, shall submit the details regarding his business electronically on the common portal in FORM GST ENR-01, either directly or through a Facilitation Centre notified by the Commissioner and, upon validation of the details furnished, a unique enrolment number shall be generated and communicated to the said person.

[(1A) For the purposes of Chapter XVI of these rules, a transporter who is registered in more than one State or Union Territory having the same Permanent Account Number, he may apply for a unique common enrolment number by submitting the details in FORM GST ENR-02 using any one of his Goods and Services Tax Identification Numbers, and upon validation of the details furnished, a unique common enrolment number shall be generated and communicated to the said transporter:

Provided that where the said transporter has obtained a unique common enrolment number, he shall not be eligible to use any of the Goods and Services Tax Identification Numbers for the purposes of the said Chapter XVI.]³⁹

- (2) The person enrolled under sub-rule (1) as aforesaid in any other State or Union territory shall be deemed to be enrolled in the State or Union territory.
- (3) Every person who is enrolled under sub-rule (1) shall, where required, amend the details furnished in FORM GST ENR-01 electronically on the common portal either directly or through a Facilitation Centre notified by the Commissioner.
- (4) Subject to the provisions of rule 56,-
 - (a) any person engaged in the business of transporting goods shall maintain records of goods transported, delivered and goods stored in

³⁹ Inserted vide notification No. 28/2018-Central Tax, dated 19.06.2018

transit by him along with the Goods and Services Tax Identification Number of the registered consigner and consignee for each of his branches.

(b) every owner or operator of a warehouse or godown shall maintain books of accounts with respect to the period for which particular goods remain in the warehouse, including the particulars relating to dispatch, movement, receipt and disposal of such goods.

(5) The owner or the operator of the godown shall store the goods in such manner that they can be identified item-wise and owner-wise and shall facilitate any physical verification or inspection by the proper officer on demand.

CHAPTER VIII

RETURNS

59. Form and manner of furnishing details of outward supplies.-

(1) Every registered person, other than a person referred to in section 14 of the Integrated Goods and Services Tax Act, 2017, required to furnish the details of outward supplies of goods or services or both under section 37, shall furnish such details in FORM GSTR-1 electronically through the common portal, either directly or through a Facilitation Centre notified by the Commissioner.

(2) The details of outward supplies of goods or services or both furnished in FORM

GSTR-1 shall include the–

- (a) invoice wise details of all -
 - (i) inter-State and intra-State supplies made to the registered persons; and (ii) inter-State supplies with invoice value more than two and a half lakh rupees made to the unregistered persons;

 - (b) consolidated details of all -
 - (i) intra-State supplies made to unregistered persons for each rate of tax; and (ii) State wise inter-State supplies with invoice value upto two and a half lakh rupees made to unregistered persons for each rate of tax;

 - (c) debit and credit notes, if any, issued during the month for invoices issued previously.
- (3) The details of outward supplies furnished by the supplier shall be made available electronically to the concerned registered persons (recipients) in Part A of FORM GSTR2A, in FORM GSTR-4A and in FORM GSTR-6A through the common portal after the due date of filing of FORM GSTR-1.
- (4) The details of inward supplies added, corrected or deleted by the recipient in his FORM GSTR-2 under section 38 or FORM GSTR-4 or FORM GSTR-6 under section 39 shall be made available to the supplier electronically in FORM GSTR-1A through the common portal and such supplier may either accept or reject the modifications made by the recipient and FORM GSTR-

1 furnished earlier by the supplier shall stand amended to the extent of modifications accepted by him.

60. Form and manner of furnishing details of inward supplies.-

(1) Every registered person, other than a person referred to in section 14 of the Integrated Goods and Services Tax Act, 2017, required to furnish the details of inward supplies of goods or services or both received during a tax period under sub-section (2) of section 38 shall, on the basis of details contained in Part A, Part Band Part C of FORM GSTR-2A, prepare such details as specified in sub-section (1) of the said section and furnish the same in FORM GSTR-2 electronically through the common portal, either directly or from a Facilitation Centre notified by the Commissioner, after including therein details of such other inward supplies, if any, required to be furnished under sub-section (2) of section 38.

(2) Every registered person shall furnish the details, if any, required under sub-section (5) of section 38 electronically in FORM GSTR-2.

(3) The registered person shall specify the inward supplies in respect of which he is not eligible, either fully or partially, for input tax credit in FORM GSTR-2 where such eligibility can be determined at the invoice level.

(4) The registered person shall declare the quantum of ineligible input tax credit on inward supplies which is relatable to non-taxable supplies or for purposes other than business and cannot be determined at the invoice level in FORM GSTR-2.

- (4A) The details of invoices furnished by a non-resident taxable person in his return in FORM GSTR-5 under rule 63 shall be made available to the recipient of credit in Part A of FORM GSTR 2A electronically through the common portal and the said recipient may include the same in FORM GSTR-2.
- (5) The details of invoices furnished by an Input Service Distributor in his return in FORM GSTR-6 under rule 65 shall be made available to the recipient of credit in Part B of FORM GSTR 2A electronically through the common portal and the said recipient may include the same in FORM GSTR-2.
- (6) The details of tax deducted at source furnished by the deductor under sub-section (3) of section 39 in FORM GSTR-7 shall be made available to the deductee in Part C of FORM GSTR-2A electronically through the common portal and the said deductee may include the same in FORM GSTR-2.
- (7) The details of tax collected at source furnished by an e-commerce operator under section 52 in FORM GSTR-8 shall be made available to the concerned person in Part C of FORM GSTR 2A electronically through the common portal and such person may include the same in FORM GSTR-2.
- (8) The details of inward supplies of goods or services or both furnished in FORM GSTR-2 shall include the-
- (a) invoice wise details of all inter-State and intra-State supplies received from registered persons or unregistered persons;
 - (b) import of goods and services made; and
 - (c) debit and credit notes, if any, received from supplier.

61. Form and manner of submission of monthly return.-

- (1) Every registered person other than a person referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 or an Input Service Distributor or a non-resident taxable person or a person paying tax under section 10 or section 51 or, as the case may be, under section 52 shall furnish a return specified under sub-section (1) of section 39 in FORM GSTR-3 electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner.
- (2) Part A of the return under sub-rule (1) shall be electronically generated on the basis of information furnished through FORM GSTR-1, FORM GSTR-2 and based on other liabilities of preceding tax periods.
- (3) Every registered person furnishing the return under sub-rule (1) shall, subject to the provisions of section 49, discharge his liability towards tax, interest, penalty, fees or any other amount payable under the Act or the provisions of this Chapter by debiting the electronic cash ledger or electronic credit ledger and include the details in Part B of the return in FORM GSTR-3.
- (4) A registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49, may claim such refund in Part B of the return in FORM GSTR-3 and such return shall be deemed to be an application filed under section 54.
- [(5) Where the time limit for furnishing of details in FORM GSTR-1 under section 37 and in FORM GSTR-2 under section 38 has been extended and the circumstances so warrant, the Commissioner may, by notification, [specify the

manner and conditions subject to which the]⁴⁰ return shall be furnished in FORM GSTR-3B electronically through the common portal, either directly or through a Facilitation Centre notified by the Commissioner.

(6) Where a return in FORM GSTR-3B has been furnished, after the due date for furnishing of details in FORM GSTR-2—

(a) Part A of the return in FORM GSTR-3 shall be electronically generated on the basis of information furnished through FORM GSTR-1, FORM GSTR-2 and based on other liabilities of preceding tax periods and PART B of the said return shall be electronically generated on the basis of the return in FORM GSTR-3B furnished in respect of the tax period;

(b) the registered person shall modify Part B of the return in FORM GSTR-3 based on the discrepancies, if any, between the return in FORM GSTR-3B and the return in FORM GSTR-3 and discharge his tax and other liabilities, if any; (c) where the amount of input tax credit in FORM GSTR-3 exceeds the amount of input tax credit in terms of FORM GSTR-3B, the additional amount shall be credited to the electronic credit ledger of the registered person.]⁴¹

62. Form and manner of submission of quarterly return by the composition supplier.-

⁴⁰ Substituted wef 01.07.2017 for “specify that” vide Notf no. 22/2017 – CT dt 17.08.2017

⁴¹ Inserted wef 01.07.2017 vide Notf no. 17/2017 – CT dt 27.07.2017

(1) Every registered person paying tax under section 10 shall, on the basis of details contained in FORM GSTR-4A, and where required, after adding, correcting or deleting the details, furnish the quarterly return in FORM GSTR-4 electronically through the common portal, either directly or through a Facilitation Centre notified by the Commissioner.

[Provided that the registered person who opts to pay tax under section 10 with effect from the first day of a month which is not the first month of a quarter shall furnish the return in FORM GSTR-4 for that period of the quarter for which he has paid tax under section 10 and shall furnish the returns as applicable to him for the period of the quarter prior to opting to pay tax under section 10.]⁴²

(2) Every registered person furnishing the return under sub-rule (1) shall discharge his liability towards tax, interest, penalty, fees or any other amount payable under the Act or the provisions of this Chapter by debiting the electronic cash ledger.

(3) The return furnished under sub-rule (1) shall include the-

- (a) invoice wise inter-State and intra-State inward supplies received from registered and un-registered persons; and
- (b) consolidated details of outward supplies made.

(4) A registered person who has opted to pay tax under section 10 from the beginning of a financial year shall, where required, furnish the details of outward and inward supplies and return under rules 59, 60 and 61 relating to the period during which the person was liable to furnish such details and returns till the due

⁴² Inserted vide Notf no. 45/2017 - CT dt 13.10.2017

date of furnishing the return for the month of September of the succeeding financial year or furnishing of annual return of the preceding financial year, whichever is earlier.

Explanation.– For the purposes of this sub-rule, it is hereby declared that the person shall not be eligible to avail of input tax credit on receipt of invoices or debit notes from the supplier for the period prior to his opting for the composition scheme.

- (5) A registered person opting to withdraw from the composition scheme at his own motion or where option is withdrawn at the instance of the proper officer shall, where required, furnish the details relating to the period prior to his opting for payment of tax under section 9 in FORM GSTR- 4 till the due date of furnishing the return for the quarter ending September of the succeeding financial year or furnishing of annual return of the preceding financial year, whichever is earlier.

63. Form and manner of submission of return by non-resident taxable person.

Every registered non-resident taxable person shall furnish a return in FORM GSTR-5 electronically through the common portal, either directly or through a Facilitation Centre notified by the Commissioner, including therein the details of outward supplies and inward supplies and shall pay the tax, interest, penalty, fees or any other amount payable under the Act or the provisions of this Chapter within twenty days after the end of a tax period or within seven days after the last day of the validity period of registration, whichever is earlier.

64. Form and manner of submission of return by persons providing online information and database access or retrieval services.-

Every registered person providing online information and data base access or retrieval services from a place outside India to a person in India other than a registered person shall file return in FORM GSTR-5A on or before the twentieth day of the month succeeding the calendar month or part thereof.

65. Form and manner of submission of return by an Input Service Distributor. Every Input Service Distributor shall, on the basis of details contained in FORM GSTR-6A, and where required, after adding, correcting or deleting the details, furnish electronically the return in FORM GSTR-6, containing the details of tax invoices on which credit has been received and those issued under section 20, through the common portal either directly or from a Facilitation Centre notified by the Commissioner.

66. Form and manner of submission of return by a person required to deduct tax at source.-

- (1) Every registered person required to deduct tax at source under section 51 (hereafter in this rule referred to as deductor) shall furnish a return in FORM GSTR-7 electronically through the common portal either directly or from a Facilitation Centre notified by the Commissioner.
- (2) The details furnished by the deductor under sub-rule (1) shall be made available electronically to each of the suppliers in Part C of FORM GSTR-2A and FORM-GSTR4A on the common portal after the due date of filing of FORM GSTR-7.

- (3) The certificate referred to in sub-section (3) of section 51 shall be made available electronically to the deductee on the common portal in FORM GSTR-7A on the basis of the return furnished under sub-rule (1).

67. Form and manner of submission of statement of supplies through an ecommerce operator.-

- (1) Every electronic commerce operator required to collect tax at source under section 52 shall furnish a statement in FORM GSTR-8 electronically on the common portal, either directly or from a Facilitation Centre notified by the Commissioner, containing details of supplies effected through such operator and the amount of tax collected as required under sub-section (1) of section 52.
- (2) The details furnished by the operator under sub-rule (1) shall be made available electronically to each of the suppliers in Part C of FORM GSTR-2A on the common portal after the due date of filing of FORM GSTR-8.

68. Notice to non-filers of returns.-

A notice in FORM GSTR-3A shall be issued, electronically, to a registered person who fails to furnish return under section 39 or section 44 or section 45 or section 52.

69. Matching of claim of input tax credit .-

The following details relating to the claim of input tax credit on inward supplies including imports, provisionally allowed under section 41, shall be matched under section 42 after the due date for furnishing the return in FORM GSTR-3-

- (a) Goods and Services Tax Identification Number of the supplier;
- (b) Goods and Services Tax Identification Number of the recipient;
- (c) invoice or debit note number; (d) invoice or debit note date; and
- (e) tax amount:

Provided that where the time limit for furnishing FORM GSTR-1 specified under section 37 and FORM GSTR-2 specified under section 38 has been extended, the date of matching relating to claim of input tax credit shall also be extended accordingly:

Provided further that the Commissioner may, on the recommendations of the Council, by order, extend the date of matching relating to claim of input tax credit to such date as may be specified therein.

Explanation.- For the purposes of this rule, it is hereby declared that –

- (i) The claim of input tax credit in respect of invoices and debit notes in FORM GSTR2 that were accepted by the recipient on the basis of FORM GSTR-2A without amendment shall be treated as matched if the corresponding supplier has furnished a valid return;
- (ii) The claim of input tax credit shall be considered as matched where the amount of input tax credit claimed is equal to or less than the output tax paid on such tax invoice or debit note by the corresponding supplier.

70. Final acceptance of input tax credit and communication thereof.

- (1) The final acceptance of claim of input tax credit in respect of any tax period, specified in sub-section (2) of section 42, shall be made available electronically to the registered person making such claim in FORM GST MIS-1 through the common portal.
- (2) The claim of input tax credit in respect of any tax period which had been communicated as mismatched but is found to be matched after rectification by the supplier or recipient shall be finally accepted and made available electronically to the person making such claim in FORM GST MIS-1 through the common portal.

71. Communication and rectification of discrepancy in claim of input tax credit and reversal of claim of input tax credit.-

- (1) Any discrepancy in the claim of input tax credit in respect of any tax period, specified in sub-section (3) of section 42 and the details of output tax liable to be added under sub-section (5) of the said section on account of continuation of such discrepancy, shall be made available to the recipient making such claim electronically in FORM GST MIS-1 and to the supplier electronically in FORM GST MIS-2 through the common portal on or before the last date of the month in which the matching has been carried out.
- (2) A supplier to whom any discrepancy is made available under sub-rule (1) may make suitable rectifications in the statement of outward supplies to be furnished for the month in which the discrepancy is made available.

- (3) A recipient to whom any discrepancy is made available under sub-rule (1) may make suitable rectifications in the statement of inward supplies to be furnished for the month in which the discrepancy is made available.
- (4) Where the discrepancy is not rectified under sub-rule (2) or sub-rule (3), an amount to the extent of discrepancy shall be added to the output tax liability of the recipient in his return to be furnished in FORM GSTR-3 for the month succeeding the month in which the discrepancy is made available.

Explanation.- For the purposes of this rule, it is hereby declared that -

- (i) Rectification by a supplier means adding or correcting the details of an outward supply in his valid return so as to match the details of corresponding inward supply declared by the recipient;
- (ii) Rectification by the recipient means deleting or correcting the details of an inward supply so as to match the details of corresponding outward supply declared by the supplier.

72. Claim of input tax credit on the same invoice more than once.-Duplication of claims of input tax credit in the details of inward supplies shall be communicated to the registered person in FORM GST MIS-1electronically through the common portal.

73. **Matching of claim of reduction in the output tax liability .-**

The following details relating to the claim of reduction in output tax liability shall be matched under section 43 after the due date for furnishing the return in FORM GSTR-3, namely:-

- (a) Goods and Services Tax Identification Number of the supplier;
- (b) Goods and Services Tax Identification Number of the recipient;
- (c) credit note number;
- (d) credit note date; and
- (e) tax amount:

Provided that where the time limit for furnishing FORM GSTR-1 under section 37 and FORM GSTR-2 under section 38 has been extended, the date of matching of claim of reduction in the output tax liability shall be extended accordingly:

Provided further that the Commissioner may, on the recommendations of the Council, by order, extend the date of matching relating to claim of reduction in output tax liability to such date as may be specified therein.

Explanation.- For the purposes of this rule, it is hereby declared that –

- (i) the claim of reduction in output tax liability due to issuance of credit notes in FORM GSTR-1 that were accepted by the corresponding recipient in FORM GSTR-2 without amendment shall be treated as matched if the said recipient has furnished a valid return.
- (ii) the claim of reduction in the output tax liability shall be considered as matched where the amount of output tax liability after taking into account the reduction claimed is equal to or more than the claim of input tax credit

after taking into account the reduction admitted and discharged on such credit note by the corresponding recipient in his valid return.

74. Final acceptance of reduction in output tax liability and communication thereof.-

- (1) The final acceptance of claim of reduction in output tax liability in respect of any tax period, specified in sub-section (2) of section 43, shall be made available electronically to the person making such claim in FORM GST MIS-1 through the common portal.
- (2) The claim of reduction in output tax liability in respect of any tax period which had been communicated as mis-matched but is found to be matched after rectification by the supplier or recipient shall be finally accepted and made available electronically to the person making such claim in FORM GST MIS-1 through the common portal.

75. Communication and rectification of discrepancy in reduction in output tax liability and reversal of claim of reduction.-

- (1) Any discrepancy in claim of reduction in output tax liability, specified in sub-section (3) of section 43, and the details of output tax liability to be added under sub-section (5) of the said section on account of continuation of such discrepancy, shall be made available to the registered person making such claim electronically in FORM GST MIS- 1 and the recipient electronically in FORM GST MIS2 through the common portal on or before the last date of the month in which the matching has been carried out.

- (2) A supplier to whom any discrepancy is made available under sub-rule (1) may make suitable rectifications in the statement of outward supplies to be furnished for the month in which the discrepancy is made available.
- (3) A recipient to whom any discrepancy is made available under sub-rule (1) may make suitable rectifications in the statement of inward supplies to be furnished for the month in which the discrepancy is made available.
- (4) Where the discrepancy is not rectified under sub-rule (2) or sub-rule (3), an amount to the extent of discrepancy shall be added to the output tax liability of the supplier and debited to the electronic liability register and also shown in his return in FORM GSTR-3 for the month succeeding the month in which the discrepancy is made available.

Explanation.- For the purposes of this rule, it is hereby declared that –

- (i) rectification by a supplier means deleting or correcting the details of an outward supply in his valid return so as to match the details of corresponding inward supply declared by the recipient;
- (ii) rectification by the recipient means adding or correcting the details of an inward supply so as to match the details of corresponding outward supply declared by the supplier.

76. Claim of reduction in output tax liability more than once.-

The duplication of claims for reduction in output tax liability in the details of outward supplies shall be communicated to the registered person in FORM GST MIS-1 electronically through the common portal.

77. Refund of interest paid on reclaim of reversals.-

The interest to be refunded under sub-section (9) of section 42 or sub-section (9) of section 43 shall be claimed by the registered person in his return in FORM GSTR-3 and shall be credited to his electronic cash ledger in FORM GST PMT-05 and the amount credited shall be available for payment of any future liability towards interest or the taxable person may claim refund of the amount under section 54.

78. Matching of details furnished by the e-Commerce operator with the details furnished by the supplier.-

The following details relating to the supplies made through an e-Commerce operator, as declared in FORM GSTR-8, shall be matched with the corresponding details declared by the supplier in FORM GSTR-1, (a) State of place of supply; and (b) net taxable value:

Provided that where the time limit for furnishing FORM GSTR-1 under section 37 has been extended, the date of matching of the above mentioned details shall be extended accordingly.

Provided further that the Commissioner may, on the recommendations of the Council, by order, extend the date of matching to such date as may be specified therein.

79. Communication and rectification of discrepancy in details furnished by the ecommerce operator and the supplier.-

(1) Any discrepancy in the details furnished by the operator and those declared by the supplier shall be made available to the supplier electronically in FORM GST

MIS-3 and to the e-commerce operator electronically in FORM GST MIS-4 on the common portal on or before the last date of the month in which the matching has been carried out.

- (2) A supplier to whom any discrepancy is made available under sub-rule (1) may make suitable rectifications in the statement of outward supplies to be furnished for the month in which the discrepancy is made available.
- (3) An operator to whom any discrepancy is made available under sub-rule (1) may make suitable rectifications in the statement to be furnished for the month in which the discrepancy is made available.
- (4) Where the discrepancy is not rectified under sub-rule (2) or sub-rule (3), an amount to the extent of discrepancy shall be added to the output tax liability of the supplier in his return in FORM GSTR-3 for the month succeeding the month in which the details of discrepancy are made available and such addition to the output tax liability and interest payable thereon shall be made available to the supplier electronically on the common portal in FORM GST MIS-3.

80. Annual return.-

- (1) Every registered person, other than an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a nonresident taxable person, shall furnish an annual return as specified under sub-section (1) of section 44 electronically in FORM GSTR-9 through the common portal either directly or through a Facilitation Centre notified by the Commissioner:

Provided that a person paying tax under section 10 shall furnish the annual return in FORM GSTR-9A.

- (2) Every electronic commerce operator required to collect tax at source under section 52 shall furnish annual statement referred to in sub-section (5) of the said section in FORM GSTR -9B.
- (3) Every registered person whose aggregate turnover during a financial year exceeds two crore rupees shall get his accounts audited as specified under sub-section (5) of section 35 and he shall furnish a copy of audited annual accounts and a reconciliation statement, duly certified, in FORM GSTR-9C, electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner.

81. Final return.-

Every registered person required to furnish a final return under section 45, shall furnish such return electronically in FORM GSTR-10 through the common portal either directly or through a Facilitation Centre notified by the Commissioner.

82. Details of inward supplies of persons having Unique Identity Number.-

- (1) Every person who has been issued a Unique Identity Number and claims refund of the taxes paid on his inward supplies, shall furnish the details of such supplies of taxable goods or services or both electronically in FORM GSTR-11, along with application for such refund claim, through the common portal either directly or through a Facilitation Centre notified by the Commissioner.
- (2) Every person who has been issued a Unique Identity Number for purposes other than refund of the taxes paid shall furnish the details of inward supplies

of taxable goods or services or both as may be required by the proper officer in FORM GSTR-11.

83.Provisions relating to a goods and services tax practitioner.-

(1) An application in FORM GST PCT-01 may be made electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner for enrolment as goods and services tax practitioner by any person who,

- (i) is a citizen of India;
- (ii) is a person of sound mind;
- (iii) is not adjudicated as insolvent;
- (iv) has not been convicted by a competent court; and satisfies any of the following conditions, namely:-
 - (a) that he is a retired officer of the Commercial Tax Department of any State Government or of the Central Board of Excise and Customs, Department of Revenue, Government of India, who, during his service under the Government, had worked in a post not lower than the rank of a Group-B gazetted officer for a period of not less than two years; or
 - (b) that he has enrolled as a sales tax practitioner or tax return preparer under the existing law for a period of not less than five years;
 - (c) he has passed,

- (i) a graduate or postgraduate degree or its equivalent examination having a degree in Commerce, Law, Banking including Higher Auditing, or Business Administration or Business Management from any Indian University established by any law for the time being in force; or
 - (ii) a degree examination of any Foreign University recognised by any Indian University as equivalent to the degree examination mentioned in sub-clause (i); or
 - (iii) any other examination notified by the Government, on the recommendation of the Council, for this purpose; or
 - (iv) has passed any of the following examinations, namely:-
 - (a) final examination of the Institute of Chartered Accountants of India; or
 - (b) final examination of the Institute of Cost Accountants of India; or
 - (c) final examination of the Institute of Company Secretaries of India.
- (2) On receipt of the application referred to in sub-rule (1), the officer authorised in this behalf shall, after making such enquiry as he considers necessary, either enrol the applicant as a goods and services tax practitioner and issue a certificate to that effect in FORM GST PCT-02 or reject his application where it is found that the applicant is not qualified to be enrolled as a goods and services tax practitioner.

- (3) The enrolment made under sub-rule (2) shall be valid until it is cancelled:

Provided that no person enrolled as a goods and services tax practitioner shall be eligible to remain enrolled unless he passes such examination conducted at such periods and by such authority as may be notified by the Commissioner on the recommendations of the Council:

Provided further that no person to whom the provisions of clause (b) of sub-rule (1) apply shall be eligible to remain enrolled unless he passes the said examination within a period of [eighteen months]⁴³ from the appointed date.

- (4) If any goods and services tax practitioner is found guilty of misconduct in connection with any proceedings under the Act, the authorised officer may, after giving him a notice to show cause in FORM GST PCT-03 for such misconduct and after giving him a reasonable opportunity of being heard, by order in FORM GST PCT -04 direct that he shall henceforth be disqualified under section 48 to function as a goods and services tax practitioner.
- (5) Any person against whom an order under sub-rule (4) is made may, within thirty days from the date of issue of such order, appeal to the Commissioner against such order.
- (6) Any registered person may, at his option, authorise a goods and services tax practitioner on the common portal in FORM GST PCT-05 or, at any time, withdraw such authorisation in FORM GST PCT-05 and the goods and services tax practitioners authorised shall be allowed to undertake such

⁴³ Substituted for the word “one year”, vide notification No. 26/2018-Central Tax, dated 13.06.2018.

tasks as indicated in the said authorisation during the period of authorisation.

- (7) Where a statement required to be furnished by a registered person has been furnished by the goods and services tax practitioner authorised by him, a confirmation shall be sought from the registered person over email or SMS and the statement furnished by the goods and services tax practitioner shall be made available to the registered person on the common portal:

Provided that where the registered person fails to respond to the request for confirmation till the last date of furnishing of such statement, it shall be deemed that he has confirmed the statement furnished by the goods and services tax practitioner.

- (8) A goods and services tax practitioner can undertake any or all of the following activities on behalf of a registered person, if so authorised by him to-
- (a) furnish the details of outward and inward supplies;
 - (b) furnish monthly, quarterly, annual or final return;
 - (c) make deposit for credit into the electronic cash ledger;
 - (d) file a claim for refund; and
 - (e) file an application for amendment or cancellation of registration:

Provided that where any application relating to a claim for refund or an application for amendment or cancellation of registration has been submitted by the goods and services tax practitioner authorised by the

registered person, a confirmation shall be sought from the registered person and the application submitted by the said practitioner shall be made available to the registered person on the common portal and such application shall not be proceeded with further until the registered person gives his consent to the same.

- (9) Any registered person opting to furnish his return through a goods and services tax practitioner shall-
- (a) give his consent in FORM GST PCT-05 to any goods and services tax practitioner to prepare and furnish his return; and
 - (b) before confirming submission of any statement prepared by the goods and services tax practitioner, ensure that the facts mentioned in the return are true and correct.
- (10) The goods and services tax practitioner shall-
- (a) prepare the statements with due diligence; and
 - (b) affix his digital signature on the statements prepared by him or electronically verify using his credentials.
- (11) A goods and services tax practitioner enrolled in any other State or Union territory shall be treated as enrolled in the State or Union territory for the purposes specified in sub-rule (8).

84. Conditions for purposes of appearance.-

- (1) No person shall be eligible to attend before any authority as a goods and services tax practitioner in connection with any proceedings under the Act on behalf of any registered or un-registered person unless he has been enrolled under rule 83.

(2) A goods and services tax practitioner attending on behalf of a registered or an unregistered person in any proceedings under the Act before any authority shall produce before such authority, if required, a copy of the authorisation given by such person in FORM GST PCT-05.

CHAPTER IX

PAYMENT OF TAX

85. Electronic Liability Register.-

(1) The electronic liability register specified under subsection (7) of section 49 shall be maintained in FORM GST PMT-01 for each person liable to pay tax, interest, penalty, late fee or any other amount on the common portal and all amounts payable by him shall be debited to the said register.

(2) The electronic liability register of the person shall be debited by-

- (a) the amount payable towards tax, interest, late fee or any other amount payable as per the return furnished by the said person;
- (b) the amount of tax, interest, penalty or any other amount payable as determined by a proper officer in pursuance of any proceedings under the Act or as ascertained by the said person;
- (c) the amount of tax and interest payable as a result of mismatch under section 42 or section 43 or section 50; or
- (d) any amount of interest that may accrue from time to time.

- (3) Subject to the provisions of section 49, payment of every liability by a registered person as per his return shall be made by debiting the electronic credit ledger maintained as per rule 86 or the electronic cash ledger maintained as per rule 87 and the electronic liability register shall be credited accordingly.
- (4) The amount deducted under section 51, or the amount collected under section 52, or the amount payable on reverse charge basis, or the amount payable under section 10, any amount payable towards interest, penalty, fee or any other amount under the Act shall be paid by debiting the electronic cash ledger maintained as per rule 87 and the electronic liability register shall be credited accordingly.
- (5) Any amount of demand debited in the electronic liability register shall stand reduced to the extent of relief given by the appellate authority or Appellate Tribunal or court and the electronic tax liability register shall be credited accordingly.
- (6) The amount of penalty imposed or liable to be imposed shall stand reduced partly or fully, as the case may be, if the taxable person makes the payment of tax, interest and penalty specified in the show cause notice or demand order and the electronic liability register shall be credited accordingly.

- (7) A registered person shall, upon noticing any discrepancy in his electronic liability ledger, communicate the same to the officer exercising jurisdiction in the matter, through the common portal in FORM GST PMT-04.

86. Electronic Credit Ledger.-

- (1) The electronic credit ledger shall be maintained in FORM GST PMT-02 for each registered person eligible for input tax credit under the Act on the common portal and every claim of input tax credit under the Act shall be credited to the said ledger.
- (2) The electronic credit ledger shall be debited to the extent of discharge of any liability in accordance with the provisions of section 49.
- (3) Where a registered person has claimed refund of any unutilized amount from the electronic credit ledger in accordance with the provisions of section 54, the amount to the extent of the claim shall be debited in the said ledger.
- (4) If the refund so filed is rejected, either fully or partly, the amount debited under subrule (3), to the extent of rejection, shall be re-credited to the electronic credit ledger by the proper officer by an order made in FORM GST PMT-03.
- (5) Save as provided in the provisions of this Chapter, no entry shall be made directly in the electronic credit ledger under any circumstance.

- (6) A registered person shall, upon noticing any discrepancy in his electronic credit ledger, communicate the same to the officer exercising jurisdiction in the matter, through the common portal in FORM GST PMT-04.

Explanation.– For the purposes of this rule, it is hereby clarified that a refund shall be deemed to be rejected, if the appeal is finally rejected or if the claimant gives an undertaking to the proper officer that he shall not file an appeal.

87. Electronic Cash Ledger.-

- (1) The electronic cash ledger under sub-section (1) of section 49 shall be maintained in FORM GST PMT-05 for each person, liable to pay tax, interest, penalty, late fee or any other amount, on the common portal for crediting the amount deposited and debiting the payment therefrom towards tax, interest, penalty, fee or any other amount.

- (2) Any person, or a person on his behalf, shall generate a challan in FORM GST PMT-06 on the common portal and enter the details of the amount to be deposited by him towards tax, interest, penalty, fees or any other amount:

[Provided that the challan in FORM GST PMT-06 generated at the common portal shall be valid for a period of fifteen days.]

Provided further that a person supplying online information and database access or retrieval services from a place outside India to a non-taxable online recipient referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) may also do so through the Board's payment system namely, Electronic Accounting System in Excise and Service Tax from the date to be notified by the Board.]⁴⁴

(3) The deposit under sub-rule (2) shall be made through any of the following modes, namely:-

- (i) Internet Banking through authorised banks;
- (ii) Credit card or Debit card through the authorised bank;
- (iii) National Electronic Fund Transfer or Real Time Gross Settlement from any bank; or
- (iv) Over the Counter payment through authorised banks for deposits up to ten thousand rupees per challan per tax period, by cash, cheque or demand draft:

Provided that the restriction for deposit up to ten thousand rupees per challan in case of an Over the Counter payment shall not apply to deposit to be made by – (a) Government Departments or any other deposit to be made by persons as may be notified by the Commissioner in this behalf;

(b) Proper officer or any other officer authorised to recover outstanding dues from any person, whether registered or not, including recovery made through attachment or sale of movable or immovable properties;

⁴⁴ Inserted vide Notf no. 22/2017 – CT dt 17.08.2017

(c) Proper officer or any other officer authorised for the amounts collected by way of cash, cheque or demand draft during any investigation or enforcement activity or any ad hoc deposit:

[Provided further that a person supplying online information and database access or retrieval services from a place outside India to a non-taxable online recipient referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) may also make the deposit under sub-rule (2) through international money transfer through Society for Worldwide Interbank Financial Telecommunication payment network, from the date to be notified by the Board.]⁴⁵

Explanation.– For the purposes of this sub-rule, it is hereby clarified that for making payment of any amount indicated in the challan, the commission, if any, payable in respect of such payment shall be borne by the person making such payment.

(4) Any payment required to be made by a person who is not registered under the Act, shall be made on the basis of a temporary identification number generated through the common portal.

(5) Where the payment is made by way of National Electronic Fund Transfer or Real Time Gross Settlement mode from any bank, the mandate form shall be

⁴⁵ Inserted vide Notf no. 22/2017-CT dt 17.08.2017

generated along with the challan on the common portal and the same shall be submitted to the bank from where the payment is to be made:

Provided that the mandate form shall be valid for a period of fifteen days from the date of generation of challan.

(6) On successful credit of the amount to the concerned government account maintained in the authorised bank, a Challan Identification Number shall be generated by the collecting bank and the same shall be indicated in the challan.

(7) On receipt of the Challan Identification Number from the collecting bank, the said amount shall be credited to the electronic cash ledger of the person on whose behalf the deposit has been made and the common portal shall make available a receipt to this effect.

(8) Where the bank account of the person concerned, or the person making the deposit on his behalf, is debited but no Challan Identification Number is generated or generated but not communicated to the common portal, the said person may represent electronically in FORM GST PMT-07 through the common portal to the bank or electronic gateway through which the deposit was initiated.

(9) Any amount deducted under section 51 or collected under section 52 and claimed in FORM GSTR-02 by the registered taxable person from whom the said amount was deducted or, as the case may be, collected shall be credited to his electronic cash ledger in accordance with the provisions of rule 87.

(10) Where a person has claimed refund of any amount from the electronic cash ledger, the said amount shall be debited to the electronic cash ledger.

(11) If the refund so claimed is rejected, either fully or partly, the amount debited under sub-rule (10), to the extent of rejection, shall be credited to the electronic cash ledger by the proper officer by an order made in FORM GST PMT-03.

(12) A registered person shall, upon noticing any discrepancy in his electronic cash ledger, communicate the same to the officer exercising jurisdiction in the matter, through the common portal in FORM GST PMT-04.

Explanation 1.- The refund shall be deemed to be rejected if the appeal is finally rejected.

Explanation 2.- For the purposes of this rule, it is hereby clarified that a refund shall be deemed to be rejected, if the appeal is finally rejected or if the claimant gives an undertaking to the proper officer that he shall not file an appeal.

88. Identification number for each transaction.-

(1) A unique identification number shall be generated at the common portal for each debit or credit to the electronic cash or credit ledger, as the case may be.

- (2) The unique identification number relating to discharge of any liability shall be indicated in the corresponding entry in the electronic liability register.

- (3) A unique identification number shall be generated at the common portal for each credit in the electronic liability register for reasons other than those covered under sub-rule
(2).

CHAPTER X

REFUND

89. Application for refund of tax, interest, penalty, fees or any other amount.-

(1) Any person, except the persons covered under notification issued under section 55, claiming refund of any tax, interest, penalty, fees or any other amount paid by him, other than refund of integrated tax paid on goods exported out of India, may file an application electronically in FORM GST RFD-01 through the common portal, either directly or through a Facilitation Centre notified by the Commissioner:

Provided that any claim for refund relating to balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49 may be made through the return furnished for the relevant tax period in FORM GSTR-3 or FORM GSTR-4 or FORM GSTR-7, as the case may be:

Provided further that in respect of supplies to a Special Economic Zone unit or a Special Economic Zone developer, the application for refund shall be filed by the –

- (a) supplier of goods after such goods have been admitted in full in the Special Economic Zone for authorised operations, as endorsed by the specified officer of the Zone;
- (b) supplier of services along with such evidence regarding receipt of services for authorised operations as endorsed by the specified officer of the Zone:

[Provided also that in respect of supplies regarded as deemed exports, the application may be filed by, -

- (a) the recipient of deemed export supplies; or
- (b) the supplier of deemed export supplies in cases where the recipient does not avail of input tax credit on such supplies and furnishes an undertaking to the effect that the supplier may claim the refund]⁴⁶

Provided also that refund of any amount, after adjusting the tax payable by the applicant out of the advance tax deposited by him under section 27 at the time of registration, shall be claimed in the last return required to be furnished by him.

(2) The application under sub-rule (1) shall be accompanied by any of the following documentary evidences in Annexure 1 in Form GST RFD-01, as applicable, to establish that a refund is due to the applicant, namely:-

- (a) the reference number of the order and a copy of the order passed by the proper officer or an appellate authority or Appellate Tribunal or court resulting in such refund or reference number of the payment of the amount specified in subsection (6) of section 107 and sub-section (8) of section 112 claimed as refund;
- (b) a statement containing the number and date of shipping bills or bills of export and the number and the date of the relevant export invoices, in a case where the refund is on account of export of goods;

⁴⁶ Substituted vide Notf o. 47/2017-CT dt 18.10.2017 for "Provided also that in respect of supplies regarded as deemed exports, the application shall be filed by the recipient of deemed export supplies"

- (c) a statement containing the number and date of invoices and the relevant Bank Realisation Certificates or Foreign Inward Remittance Certificates, as the case may be, in a case where the refund is on account of the export of services;
- (d) a statement containing the number and date of invoices as provided in rule 46 along with the evidence regarding the endorsement specified in the second proviso to sub-rule (1) in the case of the supply of goods made to a Special Economic Zone unit or a Special Economic Zone developer;
- (e) a statement containing the number and date of invoices, the evidence regarding the endorsement specified in the second proviso to sub-rule (1) and the details of payment, along with the proof thereof, made by the recipient to the supplier for authorised operations as defined under the Special Economic Zone Act, 2005, in a case where the refund is on account of supply of services made to a Special Economic Zone unit or a Special Economic Zone developer;
- (f) a declaration to the effect that the Special Economic Zone unit or the Special Economic Zone developer has not availed the input tax credit of the tax paid by the supplier of goods or services or both, in a case where the refund is on account of supply of goods or services made to a Special Economic Zone unit or a Special Economic Zone developer;
- (g) a statement containing the number and date of invoices along with such other evidence as may be notified in this behalf, in a case where the refund is on account of deemed exports;

- (h) a statement containing the number and the date of the invoices received and issued during a tax period in a case where the claim pertains to refund of any unutilised input tax credit under sub-section (3) of section 54 where the credit has accumulated on account of the rate of tax on the inputs being higher than the rate of tax on output supplies, other than nil-rated or fully exempt supplies;
- (i) the reference number of the final assessment order and a copy of the said order in a case where the refund arises on account of the finalisation of provisional assessment;
- (j) a statement showing the details of transactions considered as intra-State supply but which is subsequently held to be inter-State supply;
- (k) a statement showing the details of the amount of claim on account of excess payment of tax;
- (l) a declaration to the effect that the incidence of tax, interest or any other amount claimed as refund has not been passed on to any other person, in a case where the amount of refund claimed does not exceed two lakh rupees:

Provided that a declaration is not required to be furnished in respect of the cases covered under clause (a) or clause (b) or clause (c) or clause (d) or clause (f) of sub-section (8) of section 54;

- (m) a Certificate in Annexure 2 of FORM GST RFD-01 issued by a chartered accountant or a cost accountant to the effect that the incidence of tax, interest or any other amount claimed as refund has not been passed on to

any other person, in a case where the amount of refund claimed exceeds two lakh rupees:

Provided that a certificate is not required to be furnished in respect of cases covered under clause (a) or clause (b) or clause (c) or clause (d) or clause (f) of subsection (8) of section 54;

Explanation.– For the purposes of this rule-

- (i) in case of refunds referred to in clause (c) of sub-section (8) of section 54, the expression "invoice" means invoice conforming to the provisions contained in section 31;
- (ii) where the amount of tax has been recovered from the recipient, it shall be deemed that the incidence of tax has been passed on to the ultimate consumer.

(3) Where the application relates to refund of input tax credit, the electronic credit ledger shall be debited by the applicant by an amount equal to the refund so claimed.

(4) In the case of zero-rated supply of goods or services or both without payment of tax under bond or letter of undertaking in accordance with the provisions of sub-section (3) of section 16 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), refund of input tax credit shall be granted as per the following formula –

$$\text{Refund Amount} = (\text{Turnover of zero-rated supply of goods} + \text{Turnover of zero-rated supply of services}) \times \text{Net ITC} \div \text{Adjusted Total Turnover}$$

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;
- (C) "Turnover of zero-rated supply of goods" means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking, other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both;
- (D) "Turnover of zero-rated supply of services" means the value of zero-rated supply of services made without payment of tax under bond or letter of undertaking, calculated in the following manner, namely:-
- Zero-rated supply of services is the aggregate of the payments received during the relevant period for zero-rated supply of services and zero-rated supply of services where supply has been completed for which payment had been received in advance in any period prior to the relevant period reduced by advances received for zero-rated supply of services for which the supply of services has not been completed during the relevant period;
- (E) "Adjusted Total Turnover"⁴⁷ means the sum total of the value of-

⁴⁷ Amended via Notification No. 39/2018-Central Tax

- (A) "Adjusted Total turnover" means the turnover in a State or a Union territory, as defined under clause (112) of section 2, excluding –
- (a) the value of exempt supplies other than zero-rated supplies and
 - (b) the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both, if any, during the relevant period;

(a) the turnover in a State or a Union territory, as defined under clause (112) of section 2, excluding the turnover of services; and the turnover of zero-rated supply of services determined in terms of clause (D) above and non-zero-rated supply of services, excluding-

(i) the value of exempt supplies other than zero-rated supplies; and

(ii) the turnover of supplies in respect of which refund is claimed under sub-rule (4A) or sub-rule (4B) or both, if any, during the relevant period.'.

(b) the turnover of zero-rated supply of services determined in terms of clause (D) above and non-zero-rated supply of services, excluding- (i) the value of exempt supplies other than zero-rated supplies; and (ii) the turnover of supplies in respect of which refund is claimed under sub-rule (4A) or sub-rule (4B) or both, if any, during the relevant period.'.

(F) "Relevant period" means the period for which the claim has been filed.

[(4A) In the case of supplies received on which the supplier has availed the benefit of the Government of India, Ministry of Finance, notification No. 48/2017-Central Tax dated the 18th October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Subsection (i), vide number G.S.R 1305 (E) dated the 18th October, 2017, refund of input tax credit, availed in respect of other inputs or input services used in making zero-rated supply of goods or services or both, shall be granted.

(4B) In the case of supplies received on which the supplier has availed the benefit of the Government of India, Ministry of Finance, notification No. 40/2017-Central Tax (Rate) dated the 23rd October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1320 (E) dated the 23rd October, 2017 or notification No. 41/2017-Integrated Tax (Rate) dated the 23rd October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1321(E) dated the 23rd October, 2017 or notification No. 78/2017-Customs dated the 13th October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Subsection (i), vide number G.S.R 1272(E) dated the 13th October, 2017 or notification No. 79/2017-Customs dated the 13th October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1299(E) dated the 13th October, 2017, or all of them, refund of input tax credit, availed in respect of inputs received under the said notifications for export of goods and the input tax credit availed in respect of other inputs or input services to the extent used in making such export of goods, shall be granted]⁴⁸

⁴⁸ Substituted wef 23.10.2017 vide Notf no. 75/2017-CT dt 29.12.2017 for – "(4) In the case of zero-rated supply of goods or services or both without payment of tax under bond or letter of undertaking in accordance with the provisions of sub-section (3) of section 16 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), refund of input tax credit shall be granted as per the following formula -

Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) x Net

ITC ÷ 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;
- (C) "Turnover of zero-rated supply of goods" means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking;
- (D) "Turnover of zero-rated supply of services" means the value of zero-rated supply of services made without payment of tax under bond or letter of undertaking, calculated in the following manner, namely:-

Zero-rated supply of services is the aggregate of the payments received during the relevant period for zero-rated supply of services and zero-rated supply of services where supply has been completed for which payment had been received in advance in any period prior to the

[(5) In the case of refund on account of inverted duty structure, refund of input tax credit shall be granted as per the following formula:-

Maximum Refund Amount = {(Turnover of inverted rated supply of goods and services) x Net ITC ÷ Adjusted Total Turnover} - tax payable on such inverted rated supply of goods and services.

Explanation:- For the purposes of this sub-rule, the expressions –

- (a) "Net ITC" shall mean input tax credit availed on inputs during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both; and

90. Acknowledgement.-

(1) Where the application relates to a claim for refund from the electronic cash ledger, an acknowledgement in FORM GST RFD-02 shall be made available to the applicant through the common portal electronically, clearly indicating the date of filing of the claim for refund and the time period specified in sub-section (7) of section 54 shall be counted from such date of filing.

(2) The application for refund, other than claim for refund from electronic cash ledger, shall be forwarded to the proper officer who shall, within a period of fifteen days of filing of relevant period reduced by advances received for zero-rated supply of services for which the supply of services has not been completed during the relevant period;

(E) "Adjusted Total turnover" means the turnover in a State or a Union territory, as defined under clause (112) of section 2, excluding the value of exempt supplies other than zero-rated supplies, during the relevant period;

(F) "Relevant period" means the period for which the claim has been filed."

(b) "Adjusted Total turnover" shall have the same meaning as assigned to it in sub-rule (4).]⁴⁷

- (3) Where any deficiencies are noticed, the proper officer shall communicate the deficiencies to the applicant in FORM GST RFD-03 through the common portal electronically, requiring him to file a fresh refund application after rectification of such deficiencies.
- (4) Where deficiencies have been communicated in FORM GST RFD-03 under the State Goods and Service Tax Rules, 2017, the same shall also deemed to have been communicated under this rule along with the deficiencies communicated under sub-rule (3).

91. Grant of provisional refund.-

- (1) The provisional refund in accordance with the provisions of sub-section (6) of section 54 shall be granted subject to the condition that the person claiming refund has, during any period of five years immediately preceding the tax period to which the claim for refund relates, not been prosecuted for any offence under the Act or under an existing law where the amount of tax evaded exceeds two hundred and fifty lakh rupees.
- (2) The proper officer, after scrutiny of the claim and the evidence submitted in support thereof and on being prima facie satisfied that the amount claimed as refund under sub-rule (1) is due to the applicant in accordance with the provisions of sub-section (6) of section 54, shall make an order in FORM GST RFD-04, sanctioning the amount of refund due to the said applicant on a provisional basis within a period not exceeding seven days from the date of the acknowledgement under sub-rule (1) or sub-rule (2) of rule 90.

- (3) The proper officer shall issue a payment advice in FORM GST RFD-05 for the amount sanctioned under sub-rule (2) and the same shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund.

92. Order sanctioning refund.-

- (1) Where, upon examination of the application, the proper officer is satisfied that a refund under sub-section (5) of section 54 is due and payable to the applicant, he shall make an order in FORM GST RFD-06 sanctioning the amount of refund to which the applicant is entitled, mentioning therein the amount, if any, refunded to him on a provisional basis under sub-section (6) of section 54, amount adjusted against any outstanding demand under the Act or under any existing law and the balance amount refundable: Provided that in cases where the amount of refund is completely adjusted against any outstanding demand under the Act or under any existing law, an order giving details of the adjustment shall be issued in Part A of FORM GST RFD-07.
- (2) Where the proper officer or the Commissioner is of the opinion that the amount of refund is liable to be withheld under the provisions of sub-section (10) or, as the case may be, sub-section (11) of section 54, he shall pass an order in Part B of FORM GST RFD-07 informing him the reasons for withholding of such refund.
- (3) Where the proper officer is satisfied, for reasons to be recorded in writing, that the whole or any part of the amount claimed as refund is not admissible or is not payable to the applicant, he shall issue a notice in FORM GST RFD-08 to the applicant, requiring him to furnish a reply in FORM GST RFD-09 within a period of fifteen days of the receipt of such notice and after considering the reply, make

an order in FORM GST RFD-06 sanctioning the amount of refund in whole or part, or rejecting the said refund claim and the said order shall be made available to the applicant electronically and the provisions of sub-rule (1) shall, mutatis mutandis, apply to the extent refund is allowed:

Provided that no application for refund shall be rejected without giving the applicant an opportunity of being heard.

- (4) Where the proper officer is satisfied that the amount refundable under sub-rule (1) or sub-rule (2) is payable to the applicant under sub-section (8) of section 54, he shall make an order in FORM GST RFD-06 and issue a payment advice in FORM GST RFD-05 for the amount of refund and the same shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund.
- (5) Where the proper officer is satisfied that the amount refundable under sub-rule (1) or sub-rule (2) is not payable to the applicant under sub-section (8) of section 54, he shall make an order in FORM GST RFD-06 and issue an advice in FORM GST RFD-05, for the amount of refund to be credited to the Consumer Welfare Fund.

93. Credit of the amount of rejected refund claim.-

- (1) Where any deficiencies have been communicated under sub-rule (3) of rule 90, the amount debited under sub-rule (3) of rule 89 shall be re-credited to the electronic credit ledger.
- (2) Where any amount claimed as refund is rejected under rule 92, either fully or partly, the amount debited, to the extent of rejection, shall be re-credited to the electronic credit ledger by an order made in FORM GST PMT-03.

Explanation.– For the purposes of this rule, a refund shall be deemed to be rejected, if the appeal is finally rejected or if the claimant gives an undertaking in writing to the proper officer that he shall not file an appeal.

94. Order sanctioning interest on delayed refunds.-

Where any interest is due and payable to the applicant under section 56, the proper officer shall make an order along with a payment advice in FORM GST RFD-05, specifying therein the amount of refund which is delayed, the period of delay for which interest is payable and the amount of interest payable, and such amount of interest shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund.

95. Refund of tax to certain persons.-

(1) Any person eligible to claim refund of tax paid by him on his inward supplies as per notification issued section 55 shall apply for refund in FORM GST RFD-10 once in every quarter, electronically on the common portal [or otherwise]⁴⁹, either directly or through a Facilitation Centre notified by the Commissioner, along with a statement of the inward supplies of goods or services or both in FORM GSTR-11. [~~prepared on the basis of the statement of the outward supplies furnished by the corresponding suppliers in FORM GSTR-1.~~]⁵⁰

(2) An acknowledgement for the receipt of the application for refund shall be issued in FORM GST RFD-02.

(3) The refund of tax paid by the applicant shall be available if-

⁴⁹ Inserted vide Notf no. 75/2017-CT dt 29.12.2017

⁵⁰ Omitted vide Notf no. 75/2017-CT dt 29.12.2017

- (a) the inward supplies of goods or services or both were received from a registered person against a tax invoice [~~and the price of the supply covered under a single tax invoice exceeds five thousand rupees, excluding tax paid, if any~~]⁵¹;
- (b) name and Goods and Services Tax Identification Number or Unique Identity Number of the applicant is mentioned in the tax invoice; and
- (c) such other restrictions or conditions as may be specified in the notification are satisfied.
- (4) The provisions of rule 92 shall, mutatis mutandis, apply for the sanction and payment of refund under this rule.
- (5) Where an express provision in a treaty or other international agreement, to which the President or the Government of India is a party, is inconsistent with the provisions of this Chapter, such treaty or international agreement shall prevail.

96. Refund of integrated tax paid on goods [or services]⁵² exported out of India.-

- (1) The shipping bill filed by [an exporter of goods]⁵³ shall be deemed to be an application for refund of integrated tax paid on the goods exported out of India and such application shall be deemed to have been filed only when:-

⁵¹ Omitted vide Notf no. 75/2017-CT dt 29.12.2017. Amendment made effective with effect from 01.07.2017 vide Notification No. 26/2018-CT dated 13.06.2017.

⁵² Inserted wef 23.10.2017 vide Notf no. 75/2017-CT dt 29.12.2017

⁵³ Substituted for the words "an exporter" w.e.f 23.10.2017 vide Notf no. 03/2018-CT dt 23.01.2018

- (a) the person in charge of the conveyance carrying the export goods duly files an export manifest or an export report covering the number and the date of shipping bills or bills of export; and
 - (b) the applicant has furnished a valid return in FORM GSTR-3or FORM GSTR3B, as the case may be;
- (2) The details of the [relevant export invoices in respect of export of goods]⁵⁴⁵⁵ contained in FORM GSTR-1 shall be transmitted electronically by the common portal to the system designated by the Customs and the said system shall electronically transmit to the common portal, a confirmation that the goods covered by the said invoices have been exported out of India.

[Provided that where the date for furnishing the details of outward supplies in FORM GSTR-1 for a tax period has been extended in exercise of the powers conferred under section 37 of the Act, the supplier shall furnish the information relating to exports as specified in Table 6A of FORM GSTR-1 after the return in FORM GSTR-3B has been furnished and the same shall be transmitted electronically by the common portal to the system designated by the Customs:

Provided further that the information in Table 6A furnished under the first proviso shall be auto-drafted in FORM GSTR-1 for the said tax period.]⁵⁶

- (3) Upon the receipt of the information regarding the furnishing of a valid return in FORM GSTR-3or FORM GSTR-3B, as the case may be from the common portal, [the system designated by the Customs or the proper officer of

⁵⁴ Substituted for the words " relevant export invoices" w.e.f.23.10.2017 vide Notf no. 03/2018-CT dt

⁵⁵ .01.2018

⁵⁶ Inserted vide Notf no. 51/2017 – CT dt 28.10.2017

Customs, as the case may be, shall process the claim of refund in respect of export of goods]⁵⁷ and an amount equal to the integrated tax paid in respect of each shipping bill or bill of export shall be electronically credited to the bank account of the applicant mentioned in his registration particulars and as intimated to the Customs authorities.

- (4) The claim for refund shall be withheld where,-
- (a) a request has been received from the jurisdictional Commissioner of central tax, State tax or Union territory tax to withhold the payment of refund due to the person claiming refund in accordance with the provisions of sub-section (10) or sub-section (11) of section 54; or
 - (b) the proper officer of Customs determines that the goods were exported in violation of the provisions of the Customs Act, 1962.
- (5) Where refund is withheld in accordance with the provisions of clause (a) of sub-rule (4), the proper officer of integrated tax at the Customs station shall intimate the applicant and the jurisdictional Commissioner of central tax, State tax or Union territory tax, as the case may be, and a copy of such intimation shall be transmitted to the common portal.
- (6) Upon transmission of the intimation under sub-rule (5), the proper officer of central tax or State tax or Union territory tax, as the case may be, shall pass an order in Part B of FORM GST RFD-07.
- (7) Where the applicant becomes entitled to refund of the amount withheld under clause (a) of sub-rule (4), the concerned jurisdictional officer of central tax,

⁵⁷ Substituted for the words "the system designated by the Customs shall process the claim for refund" w.e.f 23.10.2017 vide Notf no.03/2018-CT dt 23.01.2018

State tax or Union territory tax, as the case may be, shall proceed to refund the amount after passing an order in FORM GST RFD-06.

(8) The Central Government may pay refund of the integrated tax to the Government of Bhutan on the exports to Bhutan for such class of goods as may be notified in this behalf and where such refund is paid to the Government of Bhutan, the exporter shall not be paid any refund of the integrated tax.

[[9) The application for refund of integrated tax paid on the services exported out of India shall be filed in FORM GST RFD-01 and shall be dealt with in accordance with the provisions of rule 89]⁵⁸

(10) The persons claiming refund of integrated tax paid on exports of goods or services should not have -

(a) received supplies on which the benefit of the Government of India, Ministry of Finance notification No. 48/2017-Central Tax, dated the 18th October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1305 (E), dated the 18th October, 2017 or notification No. 40/2017-Central Tax (Rate), dated the 23rd October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1320 (E), dated the 23rd October, 2017 or notification No. 41/2017-Integrated Tax (Rate), dated the 23rd October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1321 (E), dated the 23rd October, 2017 has been availed; or

⁵⁸ Inserted wef 23.10.2017 vide Notf no. 75/2017-CT dt 29.12.2017

(b) availed the benefit under notification No. 78/2017-Customs, dated the 13th October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1272(E), dated the 13th October, 2017 or notification No. 79/2017-Customs, dated the 13th October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1299 (E), dated the 13th October, 2017.”⁵⁹

96A. Refund of integrated tax paid on export of goods or services under bond or Letter of Undertaking.-

- (1) Any registered person availing the option to supply goods or services for export without payment of integrated tax shall furnish, prior to export, a bond or a Letter of Undertaking in FORM GST RFD-11 to the jurisdictional Commissioner, binding himself to pay the tax due along with the interest specified under sub-section (1) of section 50 within a period of —
- (a) fifteen days after the expiry of three months^{[60}, or such further period as may be allowed by the Commissioner,] from the date of

⁵⁹ Inserted w.e f 4th sept 2018 vide Noti 39/2018 before that,

The persons claiming refund of integrated tax paid on exports of goods or services should not have received supplies on which the supplier has availed the benefit of the Government of India, Ministry of Finance, notification No. 48/2017-Central Tax dated the 18th October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Subsection (i), vide number G.S.R 1305 (E) dated the 18th October, 2017 or notification No. 40/2017-Central Tax (Rate) 23rd October, 2017 published in the Gazette of India,

Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1320 (E) dated the 23rd October, 2017 or notification No. 41/2017-Integrated Tax (Rate) dated the 23rd October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1321 (E) dated the 23rd October, 2017 or notification No. 78/2017-Customs dated the 13th October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1272(E) dated the 13th October, 2017 or notification No. 79/2017-Customs dated the 13th October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1299 (E) dated the 13th October, 2017.]⁵⁹

⁶⁰ Inserted vide Notf no. 47/2017-CT dt 18.10.2017

issue of the invoice for export, if the goods are not exported out of India; or

- (b) fifteen days after the expiry of one year, or such further period as may be allowed by the Commissioner, from the date of issue of the invoice for export, if the payment of such services is not received by the exporter in convertible foreign exchange.

- (2) The details of the export invoices contained in FORM GSTR-1 furnished on the common portal shall be electronically transmitted to the system designated by Customs and a confirmation that the goods covered by the said invoices have been exported out of India shall be electronically transmitted to the common portal from the said system.

[Provided that where the date for furnishing the details of outward supplies in FORM GSTR-1 for a tax period has been extended in exercise of the powers conferred under section 37 of the Act, the supplier shall furnish the information relating to exports as specified in Table 6A of FORM GSTR-1 after the return in FORM GSTR-3B has been furnished and the same shall be transmitted electronically by the common portal to the system designated by the Customs:

Provided further that the information in Table 6A furnished under the first proviso shall be auto-drafted in FORM GSTR-1 for the said tax period.]⁶¹

- (3) Where the goods are not exported within the time specified in sub-rule (1) and the registered person fails to pay the amount mentioned in the said sub-rule, the export as allowed under bond or Letter of Undertaking shall be withdrawn

⁶¹ Inserted vide Notf no. 51/2017-CT dt 28.10.2017

forthwith and the said amount shall be recovered from the registered person in accordance with the provisions of section 79.

- (4) The export as allowed under bond or Letter of Undertaking withdrawn in terms of sub-rule (3) shall be restored immediately when the registered person pays the amount due.
- (5) The Board, by way of notification, may specify the conditions and safeguards under which a Letter of Undertaking may be furnished in place of a bond.
- (6) The provisions of sub rule (1) shall apply, mutatis mutandis, in respect of zero-rated supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit without payment of integrated tax.”;

[97. Consumer Welfare Fund.-

- (1) All amounts of duty/central tax/ integrated tax /Union territory tax/cess and income from investment along with other monies specified in subsection (2) of section 12C of the Central Excise Act, 1944 (1 of 1944), section 57 of the Central Goods and Services Tax Act, 2017 (12 of 2017) read with section 20 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), section 21 of the Union Territory Goods and Services Tax Act, 2017 (14 of 2017) and section 12 of the Goods and Services Tax (Compensation to States) Act, 2017 (15 of 2017) shall be credited to the Fund:

Provided that an amount equivalent to fifty per cent. of the amount of integrated tax determined under sub-section (5) of section 54 of the Central Goods and Services Tax Act, 2017, read with section 20 of the Integrated Goods and Services Tax Act, 2017, shall be deposited in the Fund:

[Provided further that an amount equivalent to fifty per cent. of the amount of cess determined under sub-section (5) of section 54 read with section 11 of the Goods and Services Tax (Compensation to States) Act, 2017 (15 of 2017), shall be deposited in the Fund.]⁶²

- (2) Where any amount, having been credited to the Fund, is ordered or directed to be paid to any claimant by the proper officer, appellate authority or court, the same shall be paid from the Fund.
- (3) Accounts of the Fund maintained by the Central Government shall be subject to audit by the Comptroller and Auditor General of India.
- (4) The Government shall, by an order, constitute a Standing Committee (hereinafter referred to as the 'Committee') with a Chairman, a Vice-Chairman, a Member Secretary and such other members as it may deem fit and the Committee shall make recommendations for proper utilisation of the money credited to the Fund for welfare of the consumers.
- (5)
 - (a) The Committee shall meet as and when necessary, generally four times in a year;
 - (b) the Committee shall meet at such time and place as the Chairman, or in his absence, the Vice-Chairman of the Committee may deem fit;
 - (c) the meeting of the Committee shall be presided over by the Chairman, or in his absence, by the Vice-Chairman;
 - (d) the meeting of the Committee shall be called, after giving at least ten days' notice in writing to every member;

⁶² Inserted vide notification No. 26/2018-Central Tax, dated 13.06.2018.

(e) the notice of the meeting of the Committee shall specify the place, date and hour of the meeting and shall contain statement of business to be transacted thereat;

(f) no proceeding of the Committee shall be valid, unless it is presided over by the Chairman or Vice-Chairman and attended by a minimum of three other members.

(6) The Committee shall have powers -

(a) to require any applicant to get registered with any authority as the Central Government may specify;

(b) to require any applicant to produce before it, or before a duly authorised officer of the Central Government or the State Government, as the case may be, such books, accounts, documents, instruments, or commodities in custody and control of the applicant, as may be necessary for proper evaluation of the application;

(c) to require any applicant to allow entry and inspection of any premises, from which activities claimed to be for the welfare of consumers are stated to be carried on, to a duly authorised officer of the Central Government or the State Government, as the case may be;

(d) to get the accounts of the applicants audited, for ensuring proper utilisation of the grant;

(e) to require any applicant, in case of any default, or suppression of material information on his part, to refund in lump-sum along with accrued interest, the sanctioned grant to the Committee, and to be subject to prosecution under the Act;

- (f) to recover any sum due from any applicant in accordance with the provisions of the Act;
 - (g) to require any applicant, or class of applicants to submit a periodical report, indicating proper utilisation of the grant;
 - (h) to reject an application placed before it on account of factual inconsistency, or inaccuracy in material particulars;
 - (i) to recommend minimum financial assistance, by way of grant to an applicant, having regard to his financial status, and importance and utility of the nature of activity under pursuit, after ensuring that the financial assistance provided shall not be misutilised;
 - (j) to identify beneficial and safe sectors, where investments out of Fund may be made, and make recommendations, accordingly;
 - (k) to relax the conditions required for the period of engagement in consumer welfare activities of an applicant;
 - (l) to make guidelines for the management, and administration of the Fund.
- (7) The Committee shall not consider an application, unless it has been inquired into, in material details and recommended for consideration accordingly, by the Member Secretary.
- (8) The Committee shall make recommendations:-
- (a) for making available grants to any applicant;
 - (b) for investment of the money available in the Fund;
 - (c) for making available grants (on selective basis) for reimbursing legal expenses incurred by a complainant, or class of complainants in a consumer dispute, after its final adjudication;

(d) for making available grants for any other purpose recommended by the Central Consumer Protection Council (as may be considered appropriate by the Committee);

(e) for making available up to 50% of the funds credited to the Fund each year, for publicity/ consumer awareness on GST, provided the availability of funds for consumer welfare activities of the Department of Consumer Affairs is not less than twenty five crore rupees per annum.

Explanation.- For the purposes of this rule,

(a) 'Act' means the Central Goods and Services Tax Act, 2017 (12 of 2017), or the Central

Excise Act, 1944 (1 of 1944) as the case may be;

(b) 'applicant' means,

(i) the Central Government or State Government;

(ii) regulatory authorities or autonomous bodies constituted under an Act of Parliament or the Legislature of a State or Union Territory;

(iii) any agency or organization engaged in consumer welfare activities for a minimum period of three years, registered under the Companies Act, 2013 (18 of 2013) or under any other law for the time being in force;

(iv) village or mandal or samiti or samiti level co-operatives of consumers especially Women, Scheduled Castes and Scheduled Tribes;

(v) an educational or research institution incorporated by an Act of Parliament or the Legislature of a State or Union Territory in India or other educational institutions established by an Act of Parliament or

declared to be deemed as a University under section 3 of the University Grants Commission Act, 1956 (3 of 1956) and which has consumers studies as part of its curriculum for a minimum period of three years; and

- (vi) a complainant as defined under clause (b) of sub-section (1) of section 2 of the Consumer Protection Act, 1986 (68 of 1986), who applies for reimbursement of legal expenses incurred by him in a case instituted by him in a consumer dispute redressal agency.
- (c) 'application' means an application in the form as specified by the Standing Committee from time to time;
- (d) 'Central Consumer Protection Council' means the Central Consumer Protection Council, established under sub-section (1) of section 4 of the Consumer Protection Act, 1986 (68 of 1986), for promotion and protection of rights of consumers;
- (e) 'Committee' means the Committee constituted under sub-rule (4);
- (f) 'consumer' has the same meaning as assigned to it in clause (d) of sub-section (1) of section 2 of the Consumer Protection Act, 1986 (68 of 1986), and includes consumer of goods on which central tax has been paid;
- (g) 'duty' means the duty paid under the Central Excise Act, 1944 (1 of 1944) or the Customs Act, 1962 (52 of 1962);
- (h) 'Fund' means the Consumer Welfare Fund established by the Central Government under sub-section (1) of section 12C of the Central Excise Act,

1944 (1 of 1944) and section 57 of the Central Goods and Services Tax Act, 2017 (12 of 2017);

- (i) 'proper officer' means the officer having the power under the Act to make an order that the whole or any part of the central tax is refundable]⁶³

[97A. Manual filing and processing.

Notwithstanding anything contained in this Chapter, in respect of any process or procedure prescribed herein, any reference to electronic filing of an application, intimation, reply, declaration, statement or electronic issuance of a notice, order or certificate on the common portal shall, in respect of that process or procedure, include manual filing of the said application, intimation,

⁶³ Substituted vide Notf no. 21/2018-CT dt 18.04.2018 for Consumer Welfare Fund.-(1)All credits to the Consumer Welfare Fund shall be made under sub-rule (5) of rule 92.

(2) Any amount, having been credited to the Fund, ordered or directed as payable to any claimant by orders of the proper officer, appellate authority or Appellate Tribunal or court, shall be paid from the Fund.

(3) Any utilisation of amount from the Consumer Welfare Fund under sub-section (1) of section 58 shall be made by debiting the Consumer Welfare Fund account and crediting the account to which the amount is transferred for utilisation.

(4) The Government shall, by an order, constitute a Standing Committee with a Chairman, a Vice-Chairman, a Member Secretary and such other Members as it may deem fit and the Committee shall make recommendations for proper utilisation of the money credited to the Consumer Welfare Fund for welfare of the consumers.

(5) The Committee shall meet as and when necessary, but not less than once in three months.

(6) Any agency or organisation engaged in consumer welfare activities for a period of three years registered under the provisions of the Companies Act, 2013 (18 of 2013) or under any other law for the time being in force, including village or mandal or samiti level co-operatives of consumers especially Women, Scheduled Castes and Scheduled Tribes, or any industry as defined in the Industrial Disputes Act, 1947 (14 of 1947) recommended by the Bureau of Indian Standards to be engaged for a period of five years in viable and useful research activity which has made, or is likely to make, significant contribution in formulation of standard mark of the products of mass consumption, the Central Government or the State Government may make an application for a grant from the Consumer Welfare Fund:

Provided that a consumer may make application for reimbursement of legal expenses incurred by him as a complainant in a consumer dispute, after its final adjudication.

reply, declaration, statement or issuance of the said notice, order or certificate in such Forms as appended to these rules.]⁶²

(7) All applications for grant from the Consumer Welfare Fund shall be made by the applicant Member Secretary, but the Committee shall not consider an application, unless it has been inquired into in material details and recommended for consideration accordingly, by the Member Secretary.

(8) The Committee shall have powers -

- a. to require any applicant to produce before it, or before a duly authorised Officer of the Government such books, accounts, documents, instruments, or commodities in custody and control of the applicant, as may be necessary for proper evaluation of the application;
- b. to require any applicant to allow entry and inspection of any premises, from which activities claimed to be for the welfare of consumers are stated to be carried on, to a duly authorised officer of the Central Government or, as the case may be, State Government;
- c. to get the accounts of the applicants audited, for ensuring proper utilisation of the grant;
- d. to require any applicant, in case of any default, or suppression of material information on his part, to refund in lump-sum, the sanctioned grant to the Committee, and to be subject to prosecution under the Act; e. to recover any sum due from any applicant in accordance with the provisions of the Act;
- f. to require any applicant, or class of applicants to submit a periodical report, indicating proper utilisation of the grant;

- g. to reject an application placed before it on account of factual inconsistency, or inaccuracy in material particulars;
- h. to recommend minimum financial assistance, by way of grant to an applicant, having regard to his financial status, and importance and utility of nature of activity under pursuit, after ensuring that the financial assistance provided shall not be mis-utilised;
- i. to identify beneficial and safe sectors, where investments out of Consumer Welfare Fund may be made and make recommendations, accordingly;
- j. to relax the conditions required for the period of engagement in consumer welfare activities of an applicant;
- k. to make guidelines for the management, administration and audit of the Consumer Welfare Fund. The Central Consumer Protection Council and the Bureau of Indian Standards shall recommend to the Goods and Services Tax Council, the broad guidelines for considering the projects or proposals for the purpose of incurring expenditure from the Consumer Welfare Fund.

CHAPTER XI

ASSESSMENT AND AUDIT

98. Provisional Assessment.-

- (1) Every registered person requesting for payment of tax on a provisional basis in accordance with the provisions of sub-section (1) of section 60 shall furnish an application along with the documents in support of his request,

electronically in FORM GST ASMT-01 on the common portal, either directly or through a Facilitation Centre notified by the Commissioner.

- (2) The proper officer may, on receipt of the application under sub-rule (1), issue a notice in FORM GST ASMT-02 requiring the registered person to furnish additional information or documents in support of his request and the applicant shall file a reply to the notice in FORM GST ASMT – 03, and may appear in person before the said officer if he so desires.
- (3) The proper officer shall issue an order in FORM GST ASMT-04 allowing the payment of tax on a provisional basis indicating the value or the rate or both on the basis of which the assessment is to be allowed on a provisional basis and the amount for which the bond is to be executed and security to be furnished not exceeding twenty-five per cent. of the amount covered under the bond.
- (4) The registered person shall execute a bond in accordance with the provisions of subsection (2) of section 60 in FORM GST ASMT-05 along with a security in the form of a bank guarantee for an amount as determined under sub-rule (3):

Provided that a bond furnished to the proper officer under the State Goods and Services Tax Act or Integrated Goods and Services Tax Act shall be deemed to be a bond furnished under the provisions of the Act and the rules made thereunder.

Explanation.- For the purposes of this rule, the expression "amount" shall include the amount of integrated tax, central tax, State tax or Union territory tax and cess payable in respect of the transaction.

- (5) The proper officer shall issue a notice in FORM GST ASMT-06, calling for information and records required for finalization of assessment under sub-section (3) of section 60 and shall issue a final assessment order, specifying the amount payable by the registered person or the amount refundable, if any, in FORM GST ASMT-07.
- (6) The applicant may file an application in FORM GST ASMT-08 for the release of the security furnished under sub-rule (4) after issue of the order under sub-rule (5).
- (7) The proper officer shall release the security furnished under sub-rule (4), after ensuring that the applicant has paid the amount specified in sub-rule (5) and issue an order in FORM GST ASMT-09 within a period of seven working days from the date of the receipt of the application under sub-rule (6).

99. Scrutiny of returns.-

- (1) Where any return furnished by a registered person is selected for scrutiny, the proper officer shall scrutinize the same in accordance with the provisions of section 61 with reference to the information available with him, and in case of

any discrepancy, he shall issue a notice to the said person in FORM GST ASMT-10, informing him of such discrepancy and seeking his explanation thereto within such time, not exceeding thirty days from the date of service of the notice or such further period as may be permitted by him and also, where possible, quantifying the amount of tax, interest and any other amount payable in relation to such discrepancy.

- (2) The registered person may accept the discrepancy mentioned in the notice issued under sub-rule (1), and pay the tax, interest and any other amount arising from such discrepancy and inform the same or furnish an explanation for the discrepancy in FORM GST ASMT11 to the proper officer.
- (3) Where the explanation furnished by the registered person or the information submitted under sub-rule (2) is found to be acceptable, the proper officer shall inform him accordingly in FORM GST ASMT-12.

100. Assessment in certain cases.

- (1) The order of assessment made under sub-section (1) of section 62 shall be issued in FORM GST ASMT-13.
- (2) The proper officer shall issue a notice to a taxable person in accordance with the provisions of section 63 in FORM GST ASMT-14 containing the grounds on which the assessment is proposed to be made on best judgment basis and after allowing a time of fifteen days to such person to furnish his reply, if any, pass an order in FORM GST ASMT-15.

- (3) The order of summary assessment under sub-section (1) of section 64 shall be issued in FORM GST ASMT-16.
- (4) The person referred to in sub-section (2) of section 64 may file an application for withdrawal of the summary assessment order in FORM GST ASMT-17.
- (5) The order of withdrawal or, as the case may be, rejection of the application under subsection (2) of section 64 shall be issued in FORM GST ASMT-18.

101. Audit.

- (1) The period of audit to be conducted under sub-section (1) of section 65 shall be a financial year or multiples thereof.
- (2) Where it is decided to undertake the audit of a registered person in accordance with the provisions of section 65, the proper officer shall issue a notice in FORM GST ADT-01 in accordance with the provisions of sub-section (3) of the said section.
- (3) The proper officer authorised to conduct audit of the records and the books of account of the registered person shall, with the assistance of the team of officers and officials accompanying him, verify the documents on the basis of which the books of account are maintained and the returns and statements furnished under the provisions of the Act and the rules made thereunder, the correctness of the turnover, exemptions and deductions claimed, the rate of tax applied in respect of the supply of goods or services or both, the input tax credit availed and utilised,

refund claimed, and other relevant issues and record the observations in his audit notes.

- (4) The proper officer may inform the registered person of the discrepancies noticed, if any, as observed in the audit and the said person may file his reply and the proper officer shall finalise the findings of the audit after due consideration of the reply furnished.
- (5) On conclusion of the audit, the proper officer shall inform the findings of audit to the registered person in accordance with the provisions of sub-section (6) of section 65 in FORM GST ADT-02.

102. Special Audit. –

(1) Where special audit is required to be conducted in accordance with the provisions of section 66, the officer referred to in the said section shall issue a direction in FORM GST ADT-03 to the registered person to get his records audited by a chartered accountant or a cost accountant specified in the said direction.

(2) On conclusion of the special audit, the registered person shall be informed of the findings of the special audit in FORM GST ADT-04.

ADVANCE RULING

103. Qualification and appointment of members of the Authority for Advance Ruling.[The Government shall appoint officers not below the rank of Joint Commissioner as member of the Authority for Advance Ruling.]⁶⁴

104. Form and manner of application to the Authority for Advance Ruling.

(1) An application for obtaining an advance ruling under sub-section (1) of section 97 shall be made on the common portal in FORM GST ARA-01 and shall be accompanied by a fee of five thousand rupees, to be deposited in the manner specified in section 49.

(2) The application referred to in sub-rule (1), the verification contained therein and all the relevant documents accompanying such application shall be signed in the manner specified in rule 26.

105. Certification of copies of advance rulings pronounced by the Authority.-

A copy of the advance ruling shall be certified to be a true copy of its original by any member of the Authority for Advance Ruling.

106. Form and manner of appeal to the Appellate Authority for Advance Ruling.

(1) An appeal against the advance ruling issued under sub-section (6) of section 98 shall be made by an applicant on the common portal in FORM GST ARA-02 and shall

⁶⁴ Substituted wef 01.07.2017 vide Notf no. 22/2017 – CT dt 17.08.2017

be accompanied by a fee of ten thousand rupees to be deposited in the manner specified in section 49.

- (2) An appeal against the advance ruling issued under sub-section (6) of section 98 shall be made by the concerned officer or the jurisdictional officer referred to in section 100 on the common portal in FORM GST ARA-03 and no fee shall be payable by the said officer for filing the appeal.
- (3) The appeal referred to in sub-rule (1) or sub-rule (2), the verification contained therein and all the relevant documents accompanying such appeal shall be signed,-
 - (a) in the case of the concerned officer or jurisdictional officer, by an officer authorised in writing by such officer; and
 - (b) in the case of an applicant, in the manner specified in rule 26.

107. Certification of copies of the advance rulings pronounced by the Appellate Authority.

(1) A copy of the advance ruling pronounced by the Appellate Authority for Advance Ruling and duly signed by the Members shall be sent to-

- (a) the applicant and the appellant;
- (b) the concerned officer of central tax and State or Union territory tax;
- (c) the jurisdictional officer of central tax and State or Union territory tax;
and
- (d) the Authority, in accordance with the provisions of sub-section (4) of section 101 of the Act. [107A. Manual filing and processing. – Notwithstanding anything contained in this Chapter, in respect of any

[CGST Act](#) | [IGST Act](#) | [UTGST Act](#) | [CGST Rules](#) | [Compensation Act](#)

process or procedure prescribed herein, any reference to electronic filing of an application, intimation, reply, declaration, statement or electronic issuance of a notice, order or certificate on the common portal shall, in respect of that process or procedure, include manual filing of the said application, intimation, reply, declaration, statement or issuance of the said notice, order or certificate in such Forms as appended to these rules.]⁶⁵

⁶⁵ Inserted vide Notf no. 55/2017-CT dt 15.11.2017

CHAPTER – XIII

APPEALS AND REVISION

108. **Appeal to the Appellate Authority.-**

- (1) An appeal to the Appellate Authority under sub-section (1) of section 107 shall be filed in FORM GST APL-01, along with the relevant documents, either electronically or otherwise as may be notified by the Commissioner, and a provisional acknowledgement shall be issued to the appellant immediately.
- (2) The grounds of appeal and the form of verification as contained in FORM GST APL01 shall be signed in the manner specified in rule 26.
- (3) A certified copy of the decision or order appealed against shall be submitted within seven days of filing the appeal under sub-rule (1) and a final acknowledgement, indicating appeal number shall be issued thereafter in FORM GST APL-02 by the Appellate Authority or an officer authorised by him in this behalf:

Provided that where the certified copy of the decision or order is submitted within seven days from the date of filing the FORM GST APL-01, the date of filing of the appeal shall be the date of the issue of the provisional acknowledgement and where the said copy is submitted after seven days, the date of filing of the appeal shall be the date of the submission of such copy.

Explanation.– For the provisions of this rule, the appeal shall be treated as filed only when the final acknowledgement, indicating the appeal number, is issued.

109. Application to the Appellate Authority.-

(1) An application to the Appellate Authority under sub-section (2) of section 107 shall be made in FORM GST APL-03, along with the relevant documents, either electronically or otherwise as may be notified by the Commissioner.

(2) A certified copy of the decision or order appealed against shall be submitted within seven days of the filing the application under sub-rule (1) and an appeal number shall be generated by the Appellate Authority or an officer authorised by him in this behalf.

[109A. Appointment of Appellate Authority-

(1) Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act may appeal to -

(a) the Commissioner (Appeals) where such decision or order is passed by the Additional or Joint Commissioner;

(b) the Additional Commissioner (Appeals) where such decision or order is passed by the Deputy or Assistant Commissioner or Superintendent,

within three months from the date on which the said decision or order is communicated to such person.

(2) An officer directed under sub-section (2) of section 107 to appeal against any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act may appeal to –

- (a) the Commissioner (Appeals) where such decision or order is passed by the Additional or Joint Commissioner;
- (b) the Additional Commissioner (Appeals) where such decision or order is passed by the Deputy or Assistant Commissioner or the Superintendent, within six months from the date of communication of the said decision or order.]⁶⁶

110. Appeal to the Appellate Tribunal.

- (1) An appeal to the Appellate Tribunal under subsection (1) of section 112 shall be filed along with the relevant documents either electronically or otherwise as may be notified by the Registrar, in FORM GST APL-05, on the common portal and a provisional acknowledgement shall be issued to the appellant immediately.
- (2) A memorandum of cross-objections to the Appellate Tribunal under sub-section (5) of section 112 shall be filed either electronically or otherwise as may be notified by the Registrar, in FORM GST APL-06.
- (3) The appeal and the memorandum of cross objections shall be signed in the manner specified in rule 26.
- (4) A certified copy of the decision or order appealed against along with fees as specified in sub-rule (5) shall be submitted to the Registrar within seven days of

⁶⁶ Inserted vide Notf no.55/2017-CT dt 15.11.2017

the filing of the appeal under sub-rule (1) and a final acknowledgement, indicating the appeal number shall be issued thereafter in FORM GST APL-02 by the Registrar:

Provided that where the certified copy of the decision or order is submitted within seven days from the date of filing the FORM GST APL-05, the date of filing of the appeal shall be the date of the issue of the provisional acknowledgement and where the said copy is submitted after seven days, the date of filing of the appeal shall be the date of the submission of such copy.

Explanation.– For the purposes of this rule, the appeal shall be treated as filed only when the final acknowledgement indicating the appeal number is issued.

- (5) The fees for filing of appeal or restoration of appeal shall be one thousand rupees for every one lakh rupees of tax or input tax credit involved or the difference in tax or input tax credit involved or the amount of fine, fee or penalty determined in the order appealed against, subject to a maximum of twenty-five thousand rupees.
- (6) There shall be no fee for application made before the Appellate Tribunal for rectification of errors referred to in sub-section (10) of section 112.

111. Application to the Appellate Tribunal.-

(1) An application to the Appellate Tribunal under sub-section (3) of section 112 shall be made electronically or otherwise, in FORM GST APL-07, along with the relevant documents on the common portal.

(2) A certified copy of the decision or order appealed against shall be submitted within seven days of filing the application under sub-rule (1) and an appeal number shall be generated by the Registrar.

112. Production of additional evidence before the Appellate Authority or the Appellate Tribunal.

(1) The appellant shall not be allowed to produce before the Appellate Authority or the Appellate Tribunal any evidence, whether oral or documentary, other than the evidence produced by him during the course of the proceedings before the adjudicating authority or, as the case may be, the Appellate Authority except in the following circumstances, namely:-

- (a) where the adjudicating authority or, as the case may be, the Appellate Authority has refused to admit evidence which ought to have been admitted;
or
- (b) where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the adjudicating authority or, as the case may be, the Appellate Authority; or
- (c) where the appellant was prevented by sufficient cause from producing before the adjudicating authority or, as the case may be, the Appellate Authority any evidence which is relevant to any ground of appeal; or
- (d) where the adjudicating authority or, as the case may be, the Appellate Authority has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

- (2) No evidence shall be admitted under sub-rule (1) unless the Appellate Authority or the Appellate Tribunal records in writing the reasons for its admission.
- (3) The Appellate Authority or the Appellate Tribunal shall not take any evidence produced under sub-rule (1) unless the adjudicating authority or an officer authorised in this behalf by the said authority has been allowed a reasonable opportunity -
 - (a) to examine the evidence or document or to cross-examine any witness produced by the appellant; or
 - (b) to produce any evidence or any witness in rebuttal of the evidence produced by the appellant under sub-rule (1).
- (4) Nothing contained in this rule shall affect the power of the Appellate Authority or the Appellate Tribunal to direct the production of any document, or the examination of any witness, to enable it to dispose of the appeal.

113. Order of Appellate Authority or Appellate Tribunal.-

- (1) The Appellate Authority shall, along with its order under sub-section (11) of section 107, issue a summary of the order in FORM GST APL-04 clearly indicating the final amount of demand confirmed.
- (2) The jurisdictional officer shall issue a statement in FORM GST APL-04 clearly indicating the final amount of demand confirmed by the Appellate Tribunal.

114. Appeal to the High Court.-

(1) An appeal to the High Court under sub-section (1) of section 117 shall be filed in FORM GST APL-08.

(2) The grounds of appeal and the form of verification as contained in FORM GST APL-08 shall be signed in the manner specified in rule 26.

115. Demand confirmed by the Court.-

The jurisdictional officer shall issue a statement in FORM GST APL-04 clearly indicating the final amount of demand confirmed by the High Court or, as the case may be, the Supreme Court.

116. Disqualification for misconduct of an authorised representative.-

Where an authorised representative, other than those referred to in clause (b) or clause (c) of subsection (2) of section 116 is found, upon an enquiry into the matter, guilty of misconduct in connection with any proceedings under the Act, the Commissioner may, after providing him an opportunity of being heard, disqualify him from appearing as an authorised representative.

CHAPTER XIV

TRANSITIONAL PROVISIONS

117. Tax or duty credit carried forward under any existing law or on goods held in stock on the appointed day.-

(1) Every registered person entitled to take credit of input tax under section 140 shall, within ninety days of the appointed day, submit a declaration electronically in FORM GST TRAN-1, duly signed, on the common portal specifying therein, separately, the amount of input tax credit of eligible duties and taxes, as defined in Explanation 2 to section 140, to which he is entitled under the provisions of the said section:

Provided that the Commissioner may, on the recommendations of the Council, extend the period of ninety days by a further period not exceeding ninety days.

Provided further that where the inputs have been received from an Export Oriented Unit or a unit located in Electronic Hardware Technology Park, the credit shall be allowed to the extent as provided in sub-rule (7) of rule 3 of the CENVAT Credit Rules, 2004.

(2) Every declaration under sub-rule (1) shall-

- (a) in the case of a claim under sub-section (2) of section 140, specify separately the following particulars in respect of every item of capital goods as on the appointed day-

- (i) the amount of tax or duty availed or utilized by way of input tax credit under each of the existing laws till the appointed day; and
 - (ii) the amount of tax or duty yet to be availed or utilized by way of input tax credit under each of the existing laws till the appointed day;
- (b) in the case of a claim under sub-section (3) or clause (b) of sub-section (4) or sub-section (6) or sub-section (8) of section 140, specify separately the details of stock held on the appointed day;
- (c) in the case of a claim under sub-section (5) of section 140, furnish the following details, namely:—
- (i) the name of the supplier, serial number and date of issue of the invoice by the supplier or any document on the basis of which credit of input tax was admissible under the existing law;
 - (ii) the description and value of the goods or services;
 - (iii) the quantity in case of goods and the unit or unit quantity code thereof;
 - (iv) the amount of eligible taxes and duties or, as the case may be, the value added tax [or entry tax] charged by the supplier in respect of the goods or services; and
 - (v) the date on which the receipt of goods or services is entered in the books of account of the recipient.
- (3) The amount of credit specified in the application in FORM GST TRAN-1 shall be credited to the electronic credit ledger of the applicant maintained in FORM GST PMT-2 on the common portal.

(4) (a)

(i) A registered person who was not registered under the existing law shall, in accordance with the proviso to sub-section (3) of section 140, be allowed to avail of input tax credit on goods (on which the duty of central excise or, as the case may be, additional duties of customs under sub-section (1) of section 3 of the Customs Tariff Act, 1975, is leviable) held in stock on the appointed day in respect of which he is not in possession of any document evidencing payment of central excise duty.

(ii) The input tax credit referred to in sub-clause (i) shall be allowed at the rate of sixty per cent. on such goods which attract central tax at the rate of nine per cent. or more and forty per cent. for other goods of the central tax applicable on supply of such goods after the appointed date and shall be credited after the central tax payable on such supply has been paid:

Provided that where integrated tax is paid on such goods, the amount of credit shall be allowed at the rate of thirty per cent. and twenty per cent. respectively of the said tax;

(iii) The scheme shall be available for six tax periods from the appointed date.

(b) The credit of central tax shall be availed subject to satisfying the following conditions, namely: -

(i) such goods were not unconditionally exempt from the whole of the duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985 or were not nil rated in the said Schedule;

(ii) the document for procurement of such goods is available with the registered person;

(iii) The registered person availing of this scheme and having furnished the details of stock held by him in accordance with the provisions of clause (b) of sub-rule (2), submits a statement in FORM GST TRAN 2 by 31st March 2018, or within such period as extended by the Commissioner, on the recommendations of the Council, for each of the six tax periods during which the scheme is in operation indicating therein, the details of supplies of such goods effected during the tax period;]⁶⁷

(iv) the amount of credit allowed shall be credited to the electronic credit ledger of the applicant maintained in FORM GST PMT-2 on the common portal; and

(v) the stock of goods on which the credit is availed is so stored that it can be easily identified by the registered person.

118. Declaration to be made under clause (c) of sub-section (11) of section 142.-Every person to whom the provision of clause (c) of sub-section (11) of section 142 applies, shall within [the period specified in rule 117 or such further period as extended by the Commissioner]⁶⁸, submit a declaration electronically in FORM GST TRAN-1 furnishing the proportion of supply on which Value Added Tax or service tax has been paid before the appointed day but the supply is made after the appointed day, and the Input Tax Credit admissible thereon.

119. Declaration of stock held by a principal and job-worker.

⁶⁷ Substituted vide Notf No. 12/2018-Central Tax, dated 07.03.2018, for “the registered person availing of this scheme and having furnished the details of stock held by him in accordance with the provisions of clause (b) of sub-rule (2), submits a statement in FORM GST TRAN 2 at the end of each of the six tax periods during which the scheme is in operation indicating therein, the details of supplies of such goods effected during the tax period;”

⁶⁸ Substituted vide Notf no. 36/2017-CT dt 29.09.2017 for “a period of ninety days of the appointed day”

Every person to whom the provisions of section 141 apply shall, within [the period specified in rule 117 or such further period as extended by the Commissioner]⁶⁹, submit a declaration electronically in FORM GST TRAN-1, specifying therein, the stock of the inputs, semi-finished goods or finished goods, as applicable, held by him on the appointed day.

120. **Details of goods sent on approval basis.**

Every person having sent goods on approval under the existing law and to whom sub-section (12) of section 142 applies shall, within [the period specified in rule 117 or such further period as extended by the Commissioner]⁷⁰, submit details of such goods sent on approval in FORM GST TRAN-1.

[120A.[Revision of declaration in FORM GST TRAN-1]⁷¹

Every registered person who has submitted a declaration electronically in FORM GST TRAN-1 within the time period specified in rule 117, rule 118, rule 119 and rule 120 may revise such declaration once and submit the revised declaration in FORM GST TRAN-1 electronically on the common portal within the time period specified in the said rules or such further period as may be extended by the Commissioner in this behalf.]⁷²

⁶⁹ Substituted vide Notf no. 36/2017-CT dt 29.09.2017 for “ninety days of the appointed day”

⁷⁰ Substituted vide Notf no. 36/2017-CT dt 29.09.2017 for “ninety days of the appointed day”

⁷¹ Inserted vide Notf no. 36/2017-CT dt 29.09.2017

⁷² Inserted vide Notf no. 34/2017 – CT dt 15.09.2017

121. Recovery of credit wrongly availed.-

The amount credited under sub-rule (3) of rule 117 may be verified and proceedings under section 73 or, as the case may be, section 74 shall be initiated in respect of any credit wrongly availed, whether wholly or partly.

CHAPTER XV

ANTI-PROFITEERING

122. Constitution of the Authority.

The Authority shall consist of,-

- a a Chairman who holds or has held a post equivalent in rank to a Secretary to the Government of India; and
- b four Technical Members who are or have been Commissioners of State tax or central tax [for at least one year]⁷³ or have held an equivalent post under the existing law, to be nominated by the Council.

123. Constitution of the Standing Committee and Screening Committees.

(1) The Council may constitute a Standing Committee on Anti-profiteering which shall consist of such officers of the State Government and Central Government as may be nominated by it.

⁷³ Inserted vide Notf no. 34/2017 – CT dt 15.09.2017

(2) State level Screening Committee shall be constituted in each State by the State Governments which shall consist of-

(a) one officer of the State Government, to be nominated by the Commissioner, and

(b) one officer of the Central Government, to be nominated by the Chief Commissioner.

124. **Appointment, salary, allowances and other terms and conditions of service of the Chairman and Members of the Authority:-**

(1) The Chairman and Members of the Authority shall be appointed by the Central Government on the recommendations of a Selection Committee to be constituted for the purpose by the Council.

(2) The Chairman shall be paid a monthly salary of Rs. 2,25,000 (fixed) and other allowances and benefits as are admissible to a Central Government officer holding posts carrying the same pay:

Provided that where a retired officer is selected as a Chairman, he shall be paid a monthly salary of Rs. 2,25,000 reduced by the amount of pension.

[(3) The Technical Member shall be paid a monthly salary and other allowances and benefits as are admissible to him when holding an equivalent Group 'A' post in the Government of India: Provided that where a retired officer is selected as a Technical Member, he shall be paid a monthly salary equal to his last drawn salary reduced

by the amount of pension in accordance with the recommendations of the Seventh Pay Commission, as accepted by the Central Government.]⁷⁴

- (4) The Chairman shall hold office for a term of two years from the date on which he enters upon his office, or until he attains the age of sixty- five years, whichever is earlier and shall be eligible for reappointment:

Provided that [a]⁷⁵ person shall not be selected as the Chairman, if he has attained the age of sixty-two years.

[Provided further that the Central Government with the approval of the Chairperson of the Council may terminate the appointment of the Chairman at any time.]⁷⁶

- (5) The Technical Member of the Authority shall hold office for a term of two years from the date on which he enters upon his office, or until he attains the age of sixty-five years, whichever is earlier and shall be eligible for reappointment:

Provided that [a]⁷⁷ person shall not be selected as a Technical Member if he has attained the age of sixty-two years.

[Provided further that the Central Government with the approval of the Chairperson of the Council may terminate the appointment of the Technical Member at any time.]⁷⁸

125. **Secretary to the Authority.** -

⁷⁴ Substituted vide Notf no. 34/2017 – CT dt 15.09.2017

⁷⁵ Inserted vide Notification No. 14/2018-CT, dated 23.03.2018

⁷⁶ Substituted vide Notf no. 55/2017-CT dt 15.11.2017 for “Provided further that upon the recommendations of the Council and subject to an opportunity of being heard, the Central Government may terminate the appointment of the Chairman at any time.”

⁷⁷ Inserted vide Notification No. 14/2018-CT, dated 23.03.2018

⁷⁸ Substituted vide Notf no. 55/2017-CT dt 15.11.2017 for “Provided further that upon the recommendations of the Council and subject to an opportunity of being heard, the Central Government may terminate the appointment of the Technical Member at any time.”

An officer not below the rank of Additional Commissioner (working in the Directorate General of [Anti-profiteering]⁷⁹⁸⁰) shall be the Secretary to the Authority.]⁸¹

126. Power to determine the methodology and procedure.

The Authority may determine the methodology and procedure for determination as to whether the reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit has been passed on by the registered person to the recipient by way of commensurate reduction in prices.

127. Duties of the Authority.

It shall be the duty of the Authority,-

- (i) to determine whether any reduction in the rate of tax on any supply of goods or services or the benefit of input tax credit has been passed on to the recipient by way of commensurate reduction in prices;
- (ii) to identify the registered person who has not passed on the benefit of reduction in the rate of tax on supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices;
- (iii) to order,
 - (a) reduction in prices;

⁷⁹ Substituted for the word "Safeguards" vide notification 29/2018-Central Tax, dated 06.07.2018 [w.e.f 06.06.2018].

⁸¹ Substituted vide Notification No. 14/2018-CT, dated 23.03.2018 for "The Additional Director General of Safeguards under the Board shall be the Secretary to the Authority."

- (b) return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest at the rate of eighteen percent. from the date of collection of the higher amount till the date of the return of such amount or recovery of the amount not returned, as the case may be, in case the eligible person does not claim return of the amount or is not identifiable, and depositing the same in the Fund referred to in section 57;
- (c) imposition of penalty as specified in the Act; and (d) cancellation of registration under the Act.

(iv) to furnish a performance report to the Council by the tenth [day]⁸² of the close of each quarter.]⁸³

128. **Examination of application by the Standing Committee and Screening Committee.**

(1)The Standing Committee shall, within a period of two months from the date of the receipt of a written application, in such form and manner as may be specified by it, from an interested party or from a Commissioner or any other person, examine the accuracy and adequacy of the evidence provided in the application to determine whether there is prima-facie evidence to support the claim of the applicant that the benefit of reduction in the rate of tax on any supply of goods or

⁸² Inserted vide Notification No. 14/2018-CT, dated 23.03.2018.

⁸³ Inserted vide Notf no. 34/2017 – CT dt 15.09.2017

services or the benefit of input tax credit has not been passed on to the recipient by way of commensurate reduction in prices.

(2) All applications from interested parties on issues of local nature shall first be examined by the State level Screening Committee and the Screening Committee shall, upon being satisfied that the supplier has contravened the provisions of section 171, forward the application with its recommendations to the Standing Committee for further action.

129. Initiation and conduct of proceedings.

(1) Where the Standing Committee is satisfied that there is a prima-facie evidence to show that the supplier has not passed on the benefit of reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices, it shall refer the matter to the Director General of [Anti-profiteering]⁸⁴⁸⁵ for a detailed investigation.

(2)The Director General of [Anti-profiteering]⁸⁶ shall conduct investigation and collect evidence necessary to determine whether the benefit of reduction in the rate of tax on any supply of goods or services or the benefit of input tax credit has been passed on to the recipient by way of commensurate reduction in prices.

(3) The Director General of [Anti-profiteering]⁸⁷ shall, before initiation of the investigation, issue a notice to the interested parties containing, inter alia, information on the following, namely:-

⁸⁴ Substituted for the word "Safeguards" vide notification 29/2018-Central Tax, dated 06.07.2018[w.e.f 06.06.2018].

⁸⁶ Ibid

⁸⁷ Ibid.

- (a) the description of the goods or services in respect of which the proceedings have been initiated;
- (b) summary of the statement of facts on which the allegations are based; and
- (c) the time limit allowed to the interested parties and other persons who may have information related to the proceedings for furnishing their reply.

(4) The Director General of [Anti-profiteering]⁸⁸ may also issue notices to such other persons as deemed fit for a fair enquiry into the matter.

(5) The Director General of [Anti-profiteering]⁸⁹ shall make available the evidence presented to it by one interested party to the other interested parties, participating in the proceedings.

(6) The Director General of [Anti-profiteering]⁹⁰ shall complete the investigation within a period of three months of the receipt of the reference from the Standing Committee or within such extended period not exceeding a further period of three months for reasons to be recorded in writing [as may be allowed by the Authority]⁸⁸ and, upon completion of the investigation, furnish to the Authority, a report of its findings along with the relevant records.

130. Confidentiality of information.

⁸⁸ Ibid.

⁸⁹ Ibid.

⁹⁰ Ibid. 88 Substituted vide notification No. 14/2018-CT, dated 23.03.2018 for “as allowed by the Standing Committee”.

(1) Notwithstanding anything contained in sub-rules (3) and (5) of rule 129 and sub-rule (2) of rule 133, the provisions of section 11 of the Right to Information Act, 2005 (22 of 2005), shall apply mutatis mutandis to the disclosure of any information which is provided on a confidential basis.

(2) The Director General of [Anti-profiteering]⁹¹⁹² may require the parties providing information on confidential basis to furnish non-confidential summary thereof and if, in the opinion of the party providing such information, the said information cannot be summarised, such party may submit to the Director General of [Anti-profiteering]⁹³ a statement of reasons as to why summarisation is not possible.

131. Cooperation with other agencies or statutory authorities.

Where the Director General of [Anti-profiteering]⁹⁴ deems fit, he may seek opinion of any other agency or statutory authorities in the discharge of his duties.

132. Power to summon persons to give evidence and produce documents.

(1)The Director General of [Anti-profiteering]⁹⁵, or an officer authorised by him in this behalf, shall be deemed to be the proper officer to exercise the power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing under section 70 and shall

⁹¹ Substituted for the word "Safeguards" vide notification 29/2018-Central Tax, dated 06.07.2018[w.e.f

⁹² .06.2018].

⁹³ Ibid.

⁹⁴ Ibid.

⁹⁵ Ibid.

have power in any inquiry in the same manner, as provided in the case of a civil court under the provisions of the Code of Civil Procedure, 1908 (5 of 1908).

(2) Every such inquiry referred to in sub-rule (1) shall be deemed to be a judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860).

133. Order of the Authority.

(1) The Authority shall, within a period of three months from the date of the receipt of the report from the Director General of [Anti-profiteering]⁹⁶ determine whether a registered person has passed on the benefit of the reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices.

(2) An opportunity of hearing shall be granted to the interested parties by the Authority where any request is received in writing from such interested parties.

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

- (a) reduction in prices;
- (b) return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest at the rate of eighteen per cent. from the date of collection of the higher amount till

⁹⁶ Ibid. 94
Substituted vide Notification No. 26/2018-CT dated 13.06.2018, for:

the date of the return of such amount or recovery of the amount including interest not returned, as the case may be;

- (c) the deposit of an amount equivalent to fifty per cent. of the amount determined under the above clause in the Fund constituted under section 57 and the remaining fifty per cent. of the amount in the Fund constituted under section 57 of the Goods and Services Tax Act, 2017 of the concerned State, where the eligible person does not claim return of the amount or is not identifiable;
- (d) imposition of penalty as specified under the Act; and
- (e) cancellation of registration under the Act.

Explanation: For the purpose of this sub-rule, the expression, "concerned State" means the State in respect of which the Authority passes an order.]⁹⁷

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

- (a) reduction in prices;
- (a) return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest at the rate of eighteen percent. from the date of collection of the higher amount till the date of the return of such amount or recovery of the amount including interest not returned, as the case may be, in case the eligible person does not claim return of the amount or is not identifiable, and depositing the same in the Fund referred to in section 57;
- (b) imposition of penalty as specified under the Act; and
- (c) cancellation of registration under the Act."

⁹⁵ Substituted for the word "Safeguards" vide notification 29/2018-Central Tax, dated 06.07.2018.

**96 Ibid. 97
98**

Inserted vide Notification No. 14/2018-CT, dated 23.03.2018

Substituted vide Notification No. 14/2018-CT, dated 23.03.2018 for " 134. Decision to be taken by the majority.-If the Members of the Authority differ in opinion on any point, the point shall be decided

(4) If the report of the Director General of [Anti-profiteering]⁹⁵ referred to in sub-rule (6) of rule 129 recommends that there is contravention or even non-contravention of the provisions of section 171 or these rules, but the Authority is of the opinion that further investigation or inquiry is called for in the matter, it may, for reasons to be recorded in writing, refer the matter to the Director General of [Anti-profiteering]⁹⁶ to cause further investigation or inquiry in accordance with the provisions of the Act and these rules.]⁹⁷

134. Decision to be taken by the majority.

(1) A minimum of three members of the Authority shall constitute quorum at its meetings.

(2) If the Members of the Authority differ in their opinion on any point, the point shall be decided according to the opinion of the majority of the members present and voting, and in the event of equality of votes, the Chairman shall have the second or casting vote.⁹⁸

135. Compliance by the registered person.

Any order passed by the Authority under these rules shall be immediately complied with by the registered person failing which action shall be initiated to recover the amount in accordance with the provisions of the Integrated Goods and Services Tax Act or the Central Goods and Services Tax Act or the Union territory Goods and

according to the opinion of the majority.”

Services Tax Act or the State Goods and Services Tax Act of the respective States, as the case may be.

136. **Monitoring of the order.**

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

137. **Tenure of Authority.**

The Authority shall cease to exist after the expiry of two years from the date on which the Chairman enters upon his office unless the Council recommends otherwise.

Explanation.-For the purposes of this Chapter,

(a) "Authority" means the National Anti-profiteering Authority constituted under rule 122;

(b) "Committee" means the Standing Committee on Anti-profiteering constituted by the Council in terms of sub-rule (1) of rule 123 of these rules;

(c) "interested party" includes-

- a. suppliers of goods or services under the proceedings; and
- b. recipients of goods or services under the proceedings;

- c. [any other person alleging, under sub-rule (1) of rule 128, that a registered person has not passed on the benefit of reduction in the rate of tax on any supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices.]⁹⁸

(d) "Screening Committee" means the State level Screening Committee constituted in terms of sub-rule (2) of rule 123 of these rules.

⁹⁸ Inserted vide Notification 14/2018-CT, dated 23.03.2018

CHAPTER XVI

E-WAY RULES

138. Information to be furnished prior to commencement of movement of goods and generation of e-way bill.

(1) Every registered person who causes movement of goods of consignment value exceeding fifty thousand rupees—

- (i) in relation to a supply; or
- (ii) for reasons other than supply; or
- (iii) due to inward supply from an unregistered person,

shall, before commencement of such movement, furnish information relating to the said goods as specified in Part A of FORM GST EWB-01, electronically, on the common portal along with such other information as may be required on the common portal and a unique number will be generated on the said portal:

Provided that the transporter, on an authorization received from the registered person, may furnish information in Part A of FORM GST EWB-01, electronically, on the common portal along with such other information as may be required on the common portal and a unique number will be generated on the said portal:

Provided further that where the goods to be transported are supplied through an ecommerce operator or a courier agency, on an authorization received from the consignor, the information in Part A of FORM GST EWB-01 may be furnished by such e-commerce operator or courier agency and a unique number will be generated on the said portal:

Provided also that where goods are sent by a principal located in one State or Union territory to a job worker located in any other State or Union territory, the e-way bill shall be generated either by the principal or the job worker, if registered, irrespective of the value of the consignment:

Provided also that where handicraft goods are transported from one State or Union territory to another State or Union territory by a person who has been exempted from the requirement of obtaining registration under clauses (i) and (ii) of section 24, the e-way bill shall be generated by the said person irrespective of the value of the consignment.

Explanation 1.- For the purposes of this rule, the expression "handicraft goods" has the meaning as assigned to it in the Government of India, Ministry of Finance, notification No. 32/2017-Central Tax dated the 15th September, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1158 (E) dated the 15th September, 2017 as amended from time to time.

Explanation 2.- For the purposes of this rule, the consignment value of goods shall be the value, determined in accordance with the provisions of section 15, declared in an invoice, a bill of supply or a delivery challan, as the case may be, issued in respect of the said consignment and also includes the central tax, State or Union territory tax, integrated tax and cess charged, if any, in the document and shall exclude the value of exempt supply of goods where the invoice is issued in respect of both exempt and taxable supply of goods.

(2) Where the goods are transported by the registered person as a consignor or the recipient of supply as the consignee, whether in his own conveyance or a hired one or a public conveyance, by road, the said person shall generate the e-way bill in FORM GST EWB-01 electronically on the common portal after furnishing information in Part B of FORM GST

EWB-01.

(2A) Where the goods are transported by railways or by air or vessel, the e-way bill shall be generated by the registered person, being the supplier or the recipient, who shall, either before or after the commencement of movement, furnish, on the common portal, the information in Part B of FORM GST EWB-01:

Provided that where the goods are transported by railways, the railways shall not deliver the goods unless the e-way bill required under these rules is produced at the time of delivery.

(3) Where the e-way bill is not generated under sub-rule (2) and the goods are handed over to a transporter for transportation by road, the registered person shall furnish the information relating to the transporter on the common portal and the e-way bill shall be generated by the transporter on the said portal on the basis of the information furnished by the registered person in Part A of FORM GST EWB-01:

Provided that the registered person or, the transporter may, at his option, generate and carry the e-way bill even if the value of the consignment is less than fifty thousand rupees:

Provided further that where the movement is caused by an unregistered person either in his own conveyance or a hired one or through a transporter, he or the transporter may, at their option, generate the e-way bill in FORM GST EWB-01 on the common portal in the manner specified in this rule:

Provided also that where the goods are transported for a distance of upto fifty kilometers within the State or Union territory from the place of business of the consignor to the place of business of the transporter for further transportation, the supplier or the recipient, or as the case may be, the transporter may not furnish the details of conveyance in Part B of FORM GST EWB-01.

Explanation 1.- For the purposes of this sub-rule, where the goods are supplied by an unregistered supplier to a recipient who is registered, the movement shall be said to be caused by such recipient if the recipient is known at the time of commencement of the movement of goods.

Explanation 2.- The e-way bill shall not be valid for movement of goods by road unless the information in Part-B of FORM GST EWB-01 has been furnished except in the case of movements covered under the third proviso to sub-rule (3) and the proviso to subrule (5).

(4) Upon generation of the e-way bill on the common portal, a unique e-way bill number (EBN) shall be made available to the supplier, the recipient and the transporter on the common portal.

(5) Where the goods are transferred from one conveyance to another, the consignor or the recipient, who has provided information in Part A of the FORM GST EWB-01, or the transporter shall, before such transfer and further movement of goods, update the details of conveyance in the e-way bill on the common portal in Part B of FORM GST EWB-01:

Provided that where the goods are transported for a distance of upto fifty kilometres within the State or Union territory from the place of business of the transporter finally to the place of business of the consignee, the details of the conveyance may not be updated in the e-way bill.

(5A) The consignor or the recipient, who has furnished the information in Part A of FORM GST EWB-01, or the transporter, may assign the e-way bill number to another registered or enrolled transporter for updating the information in Part B of FORM GST EWB-01 for further movement of the consignment:

Provided that after the details of the conveyance have been updated by the transporter in Part B of FORM GST EWB-01, the consignor or recipient, as the case may be, who has furnished the information in Part A of FORM GST EWB-01 shall not be allowed to assign the e-way bill number to another transporter.

(6) After e-way bill has been generated in accordance with the provisions of sub-rule (1), where multiple consignments are intended to be transported in one conveyance, the transporter may indicate the serial number of e-way bills generated in respect of each such consignment electronically on the common portal and a consolidated e-way bill in FORM GST EWB-02 may be generated by him on the said common portal prior to the movement of goods.

(7) Where the consignor or the consignee has not generated the e-way bill in FORM GST EWB-01 and the aggregate of the consignment value of goods carried in the conveyance is more than fifty thousand rupees, the transporter, except in case of transportation of goods by railways, air and vessel, shall, in respect of inter-State supply, generate the e-way bill in FORM GST EWB-01 on the basis of invoice or bill of supply or delivery challan, as the case may be, and may also generate a consolidated e-way bill in FORM GST EWB-02 on the common portal prior to the movement of goods:

Provided that where the goods to be transported are supplied through an e-commerce operator or a courier agency, the information in Part A of FORM GST EWB-01 may be furnished by such e-commerce operator or courier agency.

(8) The information furnished in Part A of FORM GST EWB-01 shall be made available to the registered supplier on the common portal who may utilize the same for furnishing the details in FORM GSTR-1:

Provided that when the information has been furnished by an unregistered supplier or an unregistered recipient in FORM GST EWB-01, he shall be informed electronically, if the mobile number or the e-mail is available.

(9) Where an e-way bill has been generated under this rule, but goods are either not transported or are not transported as per the details furnished in the e-way bill, the e-way bill may be cancelled electronically on the common portal within twenty four hours of generation of the e-way bill:

Provided that an e-way bill cannot be cancelled if it has been verified in transit in accordance with the provisions of rule 138B:

Provided further that the unique number generated under sub-rule (1) shall be valid for a period of fifteen days for updation of Part B of FORM GST EWB-01.

(10) An e-way bill or a consolidated e-way bill generated under this rule shall be valid for the period as mentioned in column (3) of the Table below from the relevant date, for the distance, within the country, the goods have to be transported, as mentioned in column (2) of the said Table:-

Sl. No.	Distance	Validity period
(1)	(2)	(3)
1.	Upto 100 km.	One day in cases other than Over Dimensional Cargo
2.	For every 100 km. or part thereof thereafter	One additional day in cases other than Over Dimensional Cargo

3.	Upto 20 km	One day in case of Over Dimensional Cargo
4.	For every 20 km. or part thereof thereafter	One additional day in case of Over Dimensional Cargo:

Provided that the Commissioner may, on the recommendations of the Council, by notification, extend the validity period of an e-way bill for certain categories of goods as may be specified therein:

Provided further that where, under circumstances of an exceptional nature, including trans-shipment, the goods cannot be transported within the validity period of the e-way bill, the transporter may extend the validity period after updating the details in Part B of FORM GST EWB-01, if required.

Explanation 1. —For the purposes of this rule, the “relevant date” shall mean the date on which the e-way bill has been generated and the period of validity shall be counted from the time at which the e-way bill has been generated and each day shall be counted as the period expiring at midnight of the day immediately following the date of generation of e-way bill.

Explanation 2.— For the purposes of this rule, the expression “Over Dimensional Cargo” shall mean a cargo carried as a single indivisible unit and which exceeds the dimensional limits prescribed in rule 93 of the Central Motor Vehicle Rules, 1989, made under the Motor Vehicles Act, 1988 (59 of 1988).

(11) The details of the e-way bill generated under this rule shall be made available to the-

(a) supplier, if registered, where the information in Part A of FORM GST EWB-01 has been furnished by the recipient or the transporter; or

(b) recipient, if registered, where the information in Part A of FORM GST EWB-01 has been furnished by the supplier or the transporter, on the common portal, and the supplier or the recipient, as the case may be, shall communicate his acceptance or rejection of the consignment covered by the e-way bill.

(12) Where the person to whom the information specified in sub-rule (11) has been made available does not communicate his acceptance or rejection within seventy two hours of the details being made available to him on the common portal, or the time of delivery of goods whichever is earlier, it shall be deemed that he has accepted the said details.

(13) The e-way bill generated under this rule or under rule 138 of the Goods and Services Tax Rules of any State or Union territory shall be valid in every State and Union territory.

(14) Notwithstanding anything contained in this rule, no e-way bill is required to be generated—

(a) where the goods being transported are specified in Annexure;

(b) where the goods are being transported by a non-motorised conveyance;

- (c) where the goods are being transported from the customs port, airport, air cargo complex and land customs station to an inland container depot or a container freight station for clearance by Customs;
- (d) in respect of movement of goods within such areas as are notified under clause (d) of sub-rule (14) of rule 138 of the State or Union territory Goods and Services Tax Rules in that particular State or Union territory;
- (e) where the goods, other than de-oiled cake, being transported, are specified in the Schedule appended to notification No. 2/2017- Central tax (Rate) dated the 28th June, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 674 (E) dated the 28th June, 2017 as amended from time to time;
- (f) where the goods being transported are alcoholic liquor for human consumption, petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas or aviation turbine fuel;
- (g) where the supply of goods being transported is treated as no supply under Schedule III of the Act;
- (h) where the goods are being transported—
 - (i) under customs bond from an inland container depot or a container freight station to a customs port, airport, air cargo complex and land customs station, or from one customs station or customs port to another customs station or customs port, or
 - (ii) under customs supervision or under customs seal;
- (i) where the goods being transported are transit cargo from or to Nepal or Bhutan;

(j) where the goods being transported are exempt from tax under notification No. 7/2017-Central Tax (Rate), dated 28th June 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 679(E) dated the 28th June, 2017 as amended from time to time and notification No. 26/2017 Central Tax (Rate), dated the 21st September, 2017 published in the Gazette of

India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1181(E) dated the 21st September, 2017 as amended from time to time;

(k) any movement of goods caused by defence formation under Ministry of defence as a consignor or consignee;

(l) where the consignor of goods is the Central Government, Government of any State or a local authority for transport of goods by rail;

(m) where empty cargo containers are being transported; and

(n) where the goods are being transported upto a distance of twenty kilometers from the place of the business of the consignor to a weighbridge for weighing or from the weighbridge back to the place of the business of the said consignor subject to the condition that the movement of goods is accompanied by a delivery challan issued in accordance with rule 55.

(o) [where empty cylinders for packing of liquefied petroleum gas are being moved for reasons other than supply.]⁹⁹

Explanation. - The facility of generation, cancellation, updation and assignment of e-way bill shall be made available through SMS to the supplier, recipient and the transporter, as the case may be.

⁹⁹ Inserted vide notification No. 26/2018-CT, dated 13.06.2018.

ANNEXURE

[(See rule 138 (14)]

S. No.	Description of Goods
(1)	(2)
1.	Liquefied petroleum gas for supply to household and non domestic exempted category (NDEC) customers
2.	Kerosene oil sold under PDS
3.	Postal baggage transported by Department of Posts
4.	Natural or cultured pearls and precious or semi-precious stones; precious metals and metals clad with precious metal (Chapter 71)
5.	Jewellery, goldsmiths' and silversmiths' wares and other articles (Chapter 71)
6.	Currency
7.	Used personal and household effects
8.	Coral, unworked (0508) and worked coral (9601)

138A. Documents and devices to be carried by a person-in-charge of a conveyance. -

(1) The person in charge of a conveyance shall carry—

- (a) the invoice or bill of supply or delivery challan, as the case may be; and
- (b) a copy of the e-way bill in physical form or the e-way bill number in electronic form or mapped to a Radio Frequency Identification Device embedded on to the conveyance in such manner as may be notified by the Commissioner:
Provided that nothing contained in clause (b) of this sub-rule shall apply in case of movement of goods by rail or by air or vessel.

(2) A registered person may obtain an Invoice Reference Number from the common portal by uploading, on the said portal, a tax invoice issued by him in FORM GST INV-1 and produce the same for verification by the proper officer in lieu of the tax invoice and such number shall be valid for a period of thirty days from the date of uploading.

(3) Where the registered person uploads the invoice under sub-rule (2), the information in Part A of FORM GST EWB-01 shall be auto-populated by the common portal on the basis of the information furnished in FORM GST INV-1.

(4) The Commissioner may, by notification, require a class of transporters to obtain a unique Radio Frequency Identification Device and get the said device embedded on to the conveyance and map the e-way bill to the Radio Frequency Identification Device prior to the movement of goods.

(5) Notwithstanding anything contained in clause (b) of sub-rule (1), where circumstances so warrant, the Commissioner may, by notification, require the

person-in-charge of the conveyance to carry the following documents instead of the e-way bill

- (a) tax invoice or bill of supply or bill of entry; or
- (b) a delivery challan, where the goods are transported for reasons other than by way of supply.”

138B. Verification of documents and conveyances.

(1) The Commissioner or an officer empowered by him in this behalf may authorize the proper officer to intercept any conveyance to verify the e-way bill in physical or electronic form for all inter-State and intra-State movement of goods.

(2) The Commissioner shall get Radio Frequency Identification Device readers installed at places where the verification of movement of goods is required to be carried out and verification of movement of vehicles shall be done through such device readers where the e-way bill has been mapped with the said device.

(3) The physical verification of conveyances shall be carried out by the proper officer as authorised by the Commissioner or an officer empowered by him in this behalf:

Provided that on receipt of specific information on evasion of tax, physical verification of a specific conveyance can also be carried out by any other officer after obtaining necessary approval of the Commissioner or an officer authorised by him in this behalf.

138C. Inspection and verification of goods.

(1) A summary report of every inspection of goods in transit shall be recorded online by the proper officer in Part A of FORM GST EWB-03 within twenty four hours of inspection and the final report in Part B of FORM GST EWB-03 shall be recorded within three days of such inspection.

[Provided that where the circumstances so warrant, the Commissioner, or any other officer authorised by him, may, on sufficient cause being shown, extend the time for recording of the final report in Part B of FORM EWB-03, for a further period not exceeding three days.

Explanation.- The period of twenty four hours or, as the case may be, three days shall be counted from the midnight of the date on which the vehicle was intercepted.]¹⁰⁰

(2) Where the physical verification of goods being transported on any conveyance has been done during transit at one place within the State or Union territory or in any other State or Union territory, no further physical verification of the said conveyance shall be carried out again in the State or Union territory, unless a specific information relating to evasion of tax is made available subsequently.

138D.Facility for uploading information regarding detention of vehicle.

¹⁰⁰ Inserted vide notification No. 28/2018-Central Tax, dated 19.06.2018.

Where a vehicle has been intercepted and detained for a period exceeding thirty minutes, the transporter may upload the said information in FORM GST EWB-04 on the common portal.]¹⁰¹

NOTE: Rules 138, 138A, 138C and 138D were originally inserted vide Notf No. 27/2017- Central Tax dated 30.08.2017, and subsequently amended vide Notf No. 3/2018 – Central Tax dated 23.01.2018. The older versions of the rules are given below:

Rule 138 (as substituted vide Notf No. 3/2018-Central Tax, dated 23.01.2018):

138. Information to be furnished prior to commencement of movement of goods and generation of away bill.

(1) Every registered person who causes movement of goods of consignment value exceeding fifty thousand rupees—

- (i) in relation to a supply; or
- (ii) for reasons other than supply; or
- (iii) due to inward supply from an unregistered person, shall, before commencement of such movement, furnish information relating to the said goods as specified in Part A of FORM GST EWB-01, electronically, on the common portal along with such other information as may be

¹⁰¹ Substituted vide Notf No. 12/2018-Central Tax, dated 07.03.2018, to be effective from the date as shall be notified.

required at the common portal and a unique number will be generated on the said portal: Provided that where goods are sent by a principal located in one State to a job worker located in any other State, the e-way bill shall be generated by the principal irrespective of the value of the consignment: Provided further that where handicraft goods are transported from one State to another by a person who has been exempted from the requirement of obtaining registration under clauses (i) and (ii) of section 24, the e-way bill shall be generated by the said person irrespective of the value of the consignment.

Explanation 1. – For the purposes of this rule, the expression “handicraft goods” has the meaning as assigned to it in the Government of India, Ministry of Finance, notification No.32/2017-Central Tax dated the 15th September, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1158 (E) dated the 15th September, 2017 as amended from time to time.

Explanation 2.- For the purposes of this rule, the consignment value of goods shall be the value, determined in accordance with the provisions of section 15, declared in an invoice, a bill of supply or a delivery challan, as the case may be, issued in respect of the said consignment and also includes the central tax, State or Union territory tax, integrated tax and cess charged, if any, in the document.

- (2) Where the goods are transported by the registered person as a consignor or the recipient of supply as the consignee, whether in his own conveyance or a hired one or by railways or by air or by vessel, the said person or the recipient may generate the e-way bill in FORM GST EWB-01 electronically on the common portal after furnishing information in Part B of FORM GST EWB-01:

Provided that where the goods are transported by railways or by air or vessel, the e-way bill shall be generated by the registered person, being the supplier or the recipient, who shall furnish, on the common portal, the-

- (a) information in Part B of FORM GST EWB-01; and
 - (b) the serial number and date of the Railway Receipt or the Air Consignment Note or Bill of Lading, as the case may be.
- (3) Where the e-way bill is not generated under sub-rule (2) and the goods are handed over to a transporter for transportation by road, the registered person shall furnish the information relating to the transporter on the common portal and the e-way bill shall be generated by the transporter on the said portal on the basis of the information furnished by the registered person in Part A of FORM GST EWB-01:

Provided that the registered person or, the transporter, as the case may be may, at his option, generate and carry the e-way bill even if the value of the consignment is less than fifty thousand rupees:

Provided further that where the movement is caused by an unregistered person either in his own conveyance or a hired one or through a transporter, he or the transporter may, at their option, generate the e-way bill in FORM GST EWB-01 on the common portal in the manner specified in this rule:

Provided also that where the goods are transported for a distance of less than ten kilometers within the State or Union territory from the place of business of the consignor to the place of business of the transporter for further transportation, the supplier or the recipient, or as the case maybe, the transporter may not furnish the details of conveyance in Part B of FORM GST EWB-01.

Explanation 1.- For the purposes of this sub-rule, where the goods are supplied by an unregistered supplier to a recipient who is registered, the movement shall be said to be caused by such recipient if the recipient is known at the time of commencement of the movement of goods.

Explanation 2.- The e-way bill shall not be valid for movement of goods by road unless the information in Part-B of FORM GST EWB-01 has been furnished except in the case of movements covered under the third proviso to sub-rule (3) and the proviso to sub-rule (5).

- (4) Upon generation of the e-way bill on the common portal, a unique e-way bill number (EBN) shall be made available to the supplier, the recipient and the transporter on the common portal.
- (5) Where the goods are transferred from one conveyance to another, the consigner or the recipient, who has provided information in Part- A of the FORM GST EWB-01, or the transporter shall, before such transfer and further movement of goods, update the details of conveyance in the e-way bill on the common portal in FORM GST EWB-01:

Provided that where the goods are transported for a distance of less than ten kilometers within the State or Union territory from the place of business of the transporter finally to the place of business of the consignee, the details of conveyance may not be updated in the e-way bill.

(5A) The consignor or the recipient, who has furnished the information in Part-A of FORM GST EWB-01, or the transporter, may assign the e-way bill number to another registered or enrolled transporter for updating the information in Part-B of FORM GST EWB-01 for further movement of consignment:

Provided that once the details of the conveyance have been updated by the transporter in Part B of FORM GST EWB-01, the consignor or recipient, as the case maybe, who has furnished the information in Part-A of FORM GST EWB-01 shall not be allowed to assign the e-way bill number to another transporter.

(6) After e-way bill has been generated in accordance with the provisions of sub-rule (1), where multiple consignments are intended to be transported in one conveyance, the transporter may indicate the serial number of e-way bills generated in respect of each such consignment electronically on the common portal and a consolidated e-way bill in FORM GST EWB-02 maybe generated by him on the said common portal prior to the movement of goods.

(7) Where the consignor or the consignee has not generated FORM GST EWB-01 in accordance with the provisions of sub-rule (1) and the value of goods carried in the conveyance is more than fifty thousand rupees, the transporter shall generate FORM GST EWB-01 on the basis of invoice or bill of supply or delivery challan, as the case maybe, and may also generate a consolidated e-way bill in FORM GST EWB-02 on the common portal prior to the movement of goods:

Provided that where the goods to be transported are supplied through an e-commerce operator, the information in Part A of FORM GST EWB-01 may be furnished by such e-commerce operator.

(8) The information furnished in Part A of FORM GST EWB-01 shall be made available to the registered supplier on the common portal who may utilize the same for furnishing details in FORM GSTR-1:

Provided that when the information has been furnished by an unregistered supplier or an unregistered recipient in FORM GST EWB-01, he shall be informed electronically, if the mobile number or the e-mail is available.

- (9) Where an e-way bill has been generated under this rule, but goods are either not transported or are not transported as per the details furnished in the e-way bill, the e-way bill may be cancelled electronically on the common portal within 24 hours of generation of the e-way bill:

Provided that an e-way bill cannot be cancelled if it has been verified in transit in accordance with the provisions of rule 138B:

Provided further the unique number generated under sub-rule (1) shall be valid for 72 hours for updation of Part B of FORM GST EWB-01.

- (10) An e-way bill or a consolidated e-way bill generated under this rule shall be valid for the period as mentioned in column (3) of the Table below from the relevant date, for the distance, within the country, the goods have to be transported, as mentioned in column (2) of the said Table:- Table

Sl. No.	Distance	Validity period
(1)	(2)	(3)
1.	Upto 100 km.	One day
2.	For every 100 km. or part thereof thereafter	One additional day:

Provided that the Commissioner may, by notification, extend the validity period of e-way bill for certain categories of goods as may be specified therein:

Provided further that where, under circumstances of an exceptional nature, the goods cannot be transported within the validity period of the e-way bill, the transporter may generate another e-way bill after updating the details in Part B of FORM GST EWB-01.

Explanation.—For the purposes of this rule, the “relevant date” shall mean the date on which the e-way bill has been generated and the period of validity shall be counted from the time at which the e-way bill has been generated and each day shall be counted as twenty-four hours.

(11) The details of e-way bill generated under sub-rule (1) shall be made available to the-

(a) supplier, if registered, where the information in Part A of FORM GST EWB-01 has been furnished by the recipient or the transporter; or

(b) recipient, if registered, where the information in Part A of FORM GST EWB-01 has been furnished by the supplier or the transporter, on the common portal, and the supplier or the recipient, as the case maybe, shall communicate his acceptance or rejection of the consignment covered by the e-way bill.

(12) Where the person to whom the information specified in sub-rule (11) has been made available does not communicate his acceptance or rejection within seventy two hours of the details being made available to him on the common portal, it shall be deemed that he has accepted the said details.

(13) The e-way bill generated under this rule or under rule 138 of the Goods and Services Tax Rules of any State shall be valid in every State and Union territory.

(14) Notwithstanding anything contained in this rule, no e-way bill is required to be generated—

(a) where the goods being transported are specified in Annexure;

(b) where the goods are being transported by a non-motorised conveyance;

- (c) where the goods are being transported from the port, airport, air cargo complex and land customs station to an inland container depot or a container freight station for clearance by Customs;
- (d) in respect of movement of goods within such areas as are notified under clause (d) of sub-rule (14) of rule 138 of the Goods and Services Tax Rules of the concerned State;
- (e) where the goods, other than de-oiled cake, being transported are specified in the Schedule appended to notification No. 2/2017- Central tax (Rate) dated the 28th June, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 674 (E) dated the 28th June, 2017 as amended from time to time;
- (f) where the goods being transported are alcoholic liquor for human consumption, petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas or aviation turbine fuel; and (g) where the goods being transported are treated as no supply under Schedule III of the Act.

Explanation. - The facility of generation and cancellation of e-way bill may also be made available through SMS.

ANNEXURE

[(See rule 138 (14)]

S. No.	Description of Goods
(1)	(2)

1.	Liquefied petroleum gas for supply to household and non domestic exempted category (NDEC) customers
2.	Kerosene oil sold under PDS
3.	Postal baggage transported by Department of Posts
4.	Natural or cultured pearls and precious or semi-precious stones; precious metals and metals clad with precious metal (Chapter 71)
5.	Jewellery, goldsmiths' and silversmiths' wares and other articles (Chapter 71)
6.	Currency
7.	Used personal and household effects
8.	Coral, unworked (0508) and worked coral (9601)

[Rule 138 \(as inserted vide Notf no. 27/2017-Central Tax, dated 30.08.2017\)](#)

138.Information to be furnished prior to commencement of movement of goods and generation of e-way bill.

(1) shall, before commencement of such movement, furnish information relating to the said goods in Part A of FORM GST EWB-01, electronically, on the common portal.

[Provided that where goods are sent by a principal located in one State to a job worker located in any other State, the e-way bill shall be generated by the principal irrespective of the value of the consignment:

Provided further that where handicraft goods are transported from one State to another by a person who has been exempted from the requirement of obtaining registration under clauses (i) and (ii) of section 24, the e-way bill shall be generated by the said person irrespective of the value of the consignment.

Explanation – For the purposes of this rule, the expression “handicraft goods” has the meaning as assigned to it in the Government of India, Ministry of Finance, notification No.32/2017-Central Tax dated 15.09.2017 published in the Gazette vide number G.S.R 1158 (E)]¹⁰²

(2) Where the goods are transported by the registered person as a consignor or the recipient of supply as the consignee, whether in his own conveyance or a hired one or by railways or by air or by vessel, the said person or the recipient may generate the e-way bill in FORM GST EWB-01 electronically on the common portal after furnishing information in Part B of FORM GST EWB-01.

(3) Where the e-way bill is not generated under sub-rule (2) and the goods are handed over to a transporter for transportation by road, the registered person shall furnish the information relating to the transporter in Part B of FORM GST EWB-01 on the common portal and the e-way bill shall be generated by the transporter on the said portal on the basis of the information furnished by the registered person in Part A of FORM GST EWB-01:

Provided that the registered person or, as the case may be, the transporter may, at his option, generate and carry the e-way bill even if the value of the consignment is less than fifty thousand rupees:

Provided further that where the movement is caused by an unregistered person either in his own conveyance or a hired one or through a transporter, he or the transporter may, at their option, generate the e-way bill in FORM GST EWB-01 on the common portal in the manner specified in this rule:

Provided also that where the goods are transported for a distance of less than ten kilometres within the State or Union territory from the place of business of the consignor to the place of business of the transporter for further transportation, the supplier or the transporter may not furnish the details of conveyance in Part B of FORM GST EWB-01.

Explanation 1.— For the purposes of this sub-rule, where the goods are supplied by an unregistered supplier to a recipient who is registered, the movement shall be said to be caused by such recipient if the recipient is known at the time of commencement of the movement of goods.

Explanation 2.-The information in Part A of FORM GST EWB-01 shall be furnished by the consignor or the recipient of the supply as consignee where the goods are transported by railways or by air or by vessel.

(4) Upon generation of the e-way bill on the common portal, a unique e-way bill number (EBN) shall be made available to the supplier, the recipient and the transporter on the common portal.

(5) Any transporter transferring goods from one conveyance to another in the course of transit shall, before such transfer and further movement of goods, update the details of conveyance in the e-way bill on the common portal in FORM GST EWB-01:

Provided that where the goods are transported for a distance of less than ten kilometres within the State or Union territory from the place of business of the transporter finally to the place of business of the consignee, the details of conveyance may not be updated in the e-way bill.

(6) After e-way bill has been generated in accordance with the provisions of sub-rule (1), where multiple consignments are intended to be transported in one conveyance, the transporter may indicate the serial number of e-way bills generated in respect of each such consignment electronically on the common portal and a consolidated e-way bill in FORM GST EWB-02 may be generated by him on the said common portal prior to the movement of goods.

(7) Where the consignor or the consignee has not generated FORM GST EWB-01 in accordance with the provisions of sub-rule (1) and the value of goods carried in the conveyance is more than fifty thousand rupees,

the transporter shall generate FORM GSTEWB-01 on the basis of invoice or bill of supply or delivery challan, as the case may be, and may also generate a consolidated e-way bill in FORM GST EWB-02 on the common portal prior to the movement of goods.

(8) The information furnished in Part A of FORM GST EWB-01 shall be made available to the registered supplier on the common portal who may utilize the same for furnishing details in FORM GSTR-1:

Provided that when the information has been furnished by an unregistered supplier in FORM GST EWB-01, he shall be informed electronically, if the mobile number or the e-mail is available.

(9) Where an e-way bill has been generated under this rule, but goods are either not transported or are not transported as per the details furnished in the e-way bill, the e-way bill may be cancelled electronically on the common portal, either directly or through a Facilitation Centre notified by the Commissioner, within 24 hours of generation of the e-way bill:

Provided that an e-way bill cannot be cancelled if it has been verified in transit in accordance with the provisions of rule 138B.

(10) An e-way bill or a consolidated e-way bill generated under this rule shall be valid for the period as mentioned in column (3) of the Table below from the relevant date, for the distance the goods have to be transported, as mentioned in column (2) of the said Table:

Table

Sr. no.	Distance	Validity period
(1)	(2)	(3)
1.	Upto 100 km	One day
2.	For every 100 km or part thereof thereafter	One additional day

Provided that the Commissioner may, by notification, extend the validity period of e-way bill for certain categories of goods as may be specified therein:

Provided further that where, under circumstances of an exceptional nature, the goods cannot be transported within the validity period of the e-way bill, the transporter may generate another e-way bill after updating the details in Part B of FORM GSTEWB-01.

Explanation.—For the purposes of this rule, the “relevant date” shall mean the date on which the e-way bill has been generated and the period of validity shall be counted from the time at which the e-way bill has been generated and each day shall be counted as twenty-four hours.

(11)The details of e-way bill generated under sub-rule (1) shall be made available to the recipient, if registered, on the common portal, who shall communicate his acceptance or rejection of the consignment covered by the e-way bill.

- (12) Where the recipient referred to in sub-rule (11) does not communicate his acceptance or rejection within seventy two hours of the details being made available to him on the common portal, it shall be deemed that he has accepted the said details.
- (13) The e-way bill generated under this rule or under rule 138 of the Goods and Services Tax Rules of any State shall be valid in every State and Union territory.
- (14) Notwithstanding anything contained in this rule, no e-way bill is required to be generated—
- (a) where the goods being transported are specified in Annexure;
 - (b) where the goods are being transported by a non-motorised conveyance;
 - (c) where the goods are being transported from the port, airport, aircargo complex and land customs station to an inland container depot or a container freight station for clearance by Customs; and
 - (d) in respect of movement of goods within such areas as are notified under clause (d) of subrule (14) of rule 138 of the Goods and Services Tax Rules of the concerned State.

Explanation. - The facility of generation and cancellation of e-way bill may also be made available through SMS.

ANNEXURE

[(See rule 138 (14)]

S. No.	Chapter or Heading or Sub-heading or Tariff item	Description of Goods
(1)	(2)	(3)
1.	0101	Live asses, mules and hinnies
2.	0102	Live bovine animals
3.	0103	Live swine
4.	0104	Live sheep and goats
5.	0105	Live poultry, that is to say, fowls of the species Gallus domesticus, ducks, geese, turkeys and guinea fowls.
6.	0106	Other live animal such as Mammals, Birds, Insects
7.	0201	Meat of bovine animals, fresh and chilled.
8.	0202	Meat of bovine animals frozen [other than frozen and put up in unit container]
9.	0203	Meat of swine, fresh, chilled or frozen [other than frozen and put up in unit container]
10.	0204	Meat of sheep or goats, fresh, chilled or frozen [other than frozen and put up in unit container]
11.	0205	Meat of horses, asses, mules or hinnies, fresh, chilled or frozen [other than frozen and put up in unit container]

12.	0206	Edible offal of bovine animals, swine, sheep, goats, horses, asses, mules or hinnies, fresh, chilled or frozen [other than frozen and put up in unit container]
13.	0207	Meat and edible offal, of the poultry of heading 0105, fresh, chilled or frozen [other than frozen and put up in unit container]
14.	0208	Other meat and edible meat offal, fresh, chilled or frozen [other than frozen and put up in unit container]
15.	0209	Pig fat, free of lean meat, and poultry fat, not rendered or otherwise extracted, fresh, chilled or frozen [other than frozen and put up in unit container]
16.	0209	Pig fat, free of lean meat, and poultry fat, not rendered or otherwise extracted, salted, in brine, dried or smoked [other than put up in unit containers]
17.	0210	Meat and edible meat offal, salted, in brine, dried or smoked; edible flours and meals of meat or meat offal, other than put up in unit containers
18.	3	Fish seeds, prawn / shrimp seeds whether or not processed, cured or in frozen state [other than goods falling under Chapter 3 and attracting 2.5%]
19.	0301	Live fish.

20.	0302	Fish, fresh or chilled, excluding fish fillets and other fish meat of heading 0304
21.	0304	Fish fillets and other fish meat (whether or not minced), fresh or chilled.
22.	0306	Crustaceans, whether in shell or not, live, fresh or chilled; crustaceans, in shell, cooked by steaming or by boiling in water live, fresh or chilled.
23.	0307	Molluscs, whether in shell or not, live, fresh, chilled; aquatic invertebrates other than crustaceans and molluscs, live, fresh or chilled.
24.	0308	Aquatic invertebrates other than crustaceans and molluscs, live, fresh or chilled.
25.	0401	Fresh milk and pasteurised milk, including separated milk, milk and cream, not concentrated nor containing added sugar or other sweetening matter, excluding Ultra High Temperature (UHT) milk
26.	0403	Curd; Lassi; Butter milk
27.	0406	Chena or paneer, other than put up in unit containers and bearing a registered brand name;
28.	0407	Birds' eggs, in shell, fresh, preserved or cooked
29.	0409	Natural honey, other than put up in unit container and bearing a registered brand name

30.	0501	Human hair, unworked, whether or not washed or scoured; waste of human hair
31.	0506	All goods i.e. Bones and horn-cores, unworked, defatted, simply prepared (but not cut to shape), treated with acid or gelatinised; powder and waste of these products
32.	0507 90	All goods i.e. Hoof meal; horn meal; hooves, claws, nails and beaks; antlers; etc.
33.	0511	Semen including frozen semen
34.	6	Live trees and other plants; bulbs, roots and the like; cut flowers and ornamental foliage
35.	0701	Potatoes, fresh or chilled.
36.	0702	Tomatoes, fresh or chilled.
37.	0703	Onions, shallots, garlic, leeks and other alliaceous vegetables, fresh or chilled.
38.	0704	Cabbages, cauliflowers, kohlrabi, kale and similar edible brassicas, fresh or chilled.
39.	0705	Lettuce (<i>Lactuca sativa</i>) and chicory (<i>Cichorium spp.</i>), fresh or chilled.
40.	0706	Carrots, turnips, salad beetroot, salsify, celeriac, radishes and similar edible roots, fresh or chilled.
41.	0707	Cucumbers and gherkins, fresh or chilled.
42.	0708	Leguminous vegetables, shelled or unshelled, fresh or chilled.

43.	0709	Other vegetables, fresh or chilled.
44.	0712	Dried vegetables, whole, cut, sliced, broken or in powder, but not further prepared.
45.	0713	Dried leguminous vegetables, shelled, whether or not skinned or split.
46.	0714	Manioc, arrowroot, salep, Jerusalem artichokes, sweet potatoes and similar roots and tubers with high starch or inulin content, fresh or chilled; sago pith.
47.	0801	Coconuts, fresh or dried, whether or not shelled or peeled
48.	0801	Brazil nuts, fresh, whether or not shelled or peeled
49.	0802	Other nuts, Other nuts, fresh such as Almonds, Hazelnuts or filberts (<i>Corylus</i> spp.), walnuts, Chestnuts (<i>Castanea</i> spp.), Pistachios, Macadamia nuts, Kola nuts (<i>Cola</i> spp.), Areca nuts, fresh, whether or not shelled or peeled
50.	0803	Bananas, including plantains, fresh or dried
51.	0804	Dates, figs, pineapples, avocados, guavas, mangoes and mangosteens, fresh.
52.	0805	Citrus fruit, such as Oranges, Mandarins (including tangerines and satsumas); clementines, wilkings and similar citrus hybrids, Grapefruit, including pomelos, Lemons (<i>Citrus limon</i> , <i>Citrus limonum</i>) and limes (<i>Citrus aurantifolia</i> , <i>Citrus latifolia</i>), fresh.
53.	0806	Grapes, fresh

54.	0807	Melons (including watermelons) and papaws (papayas), fresh.
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55.	0808	Apples, pears and quinces, fresh.
56.	0809	Apricots, cherries, peaches (including nectarines), plums and sloes, fresh.
57.	0810	Other fruit such as strawberries, raspberries, blackberries, mulberries and loganberries, black, white or red currants and gooseberries, cranberries, bilberries and other fruits of the genus vaccinium, Kiwi fruit, Durians, Persimmons, Pomegranates, Tamarind, Sapota (chico), Custard-apple (ata), Bore, Lichi, fresh.
58.	0814	Peel of citrus fruit or melons (including watermelons), fresh.
59.	9	All goods of seed quality
60.	0901	Coffee beans, not roasted
61.	0902	Unprocessed green leaves of tea
62.	0909	Seeds of anise, badian, fennel, coriander, cumin or caraway; juniper berries [of seed quality]
63.	0910 11 10	Fresh ginger, other than in processed form
64.	0910 30 10	Fresh turmeric, other than in processed form
65.	1001	Wheat and meslin [other than those put up in unit container and bearing a registered brand name]

66.	1002	Rye [other than those put up in unit container and bearing a registered brand name]
67.	1003	Barley [other than those put up in unit container and bearing a registered brand name]
68.	1004	Oats [other than those put up in unit container and bearing a registered brand name]
69.	1005	Maize (corn) [other than those put up in unit container and bearing a registered brand name]
70.	1006	Rice [other than those put up in unit container and bearing a registered brand name]
71.	1007	Grain sorghum [other than those put up in unit container and bearing a registered brand name]
72.	1008	Buckwheat, millet and canary seed; other cereals such as Jawar, Bajra, Ragi] [other than those put up in unit container and bearing a registered brand name]
73.	1101	Wheat or meslin flour [other than those put up in unit container and bearing a registered brand name].
74.	1102	Cereal flours other than of wheat or meslin, [maize (corn) flour, Rye flour, etc.] [other than those put up in unit container and bearing a registered brand name]
75.	1103	Cereal groats, meal and pellets [other than those put up in unit container and bearing a registered brand name]
76.	1104	Cereal grains hulled

77.	1105	Flour, of potatoes [other than those put up in unit container and bearing a registered brand name]
78.	1106	Flour, of the dried leguminous vegetables of heading 0713 (pulses) [other than guar meal 1106 10 10 and guar gum refined split 1106 10 90], of sago or of roots or tubers of heading 0714 or of the products of Chapter 8 i.e. of tamarind, of singoda, mango flour, etc. [other than those put up in unit container and bearing a registered brand name]
79.	12	All goods of seed quality
80.	1201	Soya beans, whether or not broken, of seed quality.
81.	1202	Ground-nuts, not roasted or otherwise cooked, whether or not shelled or broken, of seed quality.
82.	1204	Linseed, whether or not broken, of seed quality.
83.	1205	Rape or colza seeds, whether or not broken, of seed quality.
84.	1206	Sunflower seeds, whether or not broken, of seed quality.

85.	1207	Other oil seeds and oleaginous fruits (i.e. Palm nuts and kernels, cotton seeds, Castor oil seeds, Sesamum seeds, Mustard seeds, Safflower (Carthamustinctorius) seeds, Melon seeds, Poppy seeds, Ajams, Mango kernel, Niger seed, Kokam) whether or not broken, of seed quality.
86.	1209	Seeds, fruit and spores, of a kind used for sowing.

87.	1210	Hop cones, fresh.
88.	1211	Plants and parts of plants (including seeds and fruits), of a kind used primarily in perfumery, in pharmacy or for insecticidal, fungicidal or similar purpose, fresh or chilled.
89.	1212	Locust beans, seaweeds and other algae, sugar beet and sugar cane, fresh or chilled.
90.	1213	Cereal straw and husks, unprepared, whether or not chopped, ground, pressed or in the form of pellets
91.	1214	Swedes, mangolds, fodder roots, hay, lucerne (alfalfa), clover, sainfoin, forage kale, lupines, vetches and similar forage products, whether or not in the form of pellets.
92.	1301	Lac and Shellac
93.	1404 90 40	Betel leaves
94.	1701 or 1702	Jaggery of all types including Cane Jaggery (gur) and Palmyra Jaggery
95.	1904	Puffed rice, commonly known as Muri, flattened or beaten rice, commonly known as Chira, parched rice, commonly known as khoi, parched paddy or rice coated with sugar or gur, commonly known as Murki
96.	1905	Pappad
97.	1905	Bread (branded or otherwise), <u>except</u> pizza bread

98.	2201	Water [other than aerated, mineral, purified, distilled, medicinal, ionic, battery, demineralized and water sold in sealed container]
99.	2201	Non-alcoholic Toddy, Neera including date and palm neera
100.	2202 90 90	Tender coconut water other than put up in unit container and bearing a registered brand name
101.	2302, 2304, 2305, 2306, 2308, 2309	Aquatic feed including shrimp feed and prawn feed, poultry feed and cattle feed, including grass, hay and straw, supplement and husk of pulses, concentrates and additives, wheat bran and de-oiled cake
102.	2501	Salt, all types
103.	2835	Dicalcium phosphate (DCP) of animal feed grade conforming to IS specification No.5470 : 2002
104.	3002	Human Blood and its components
105.	3006	All types of contraceptives
106.	3101	All goods and organic manure [other than put up in unit containers and bearing a registered brand name]
107.	3304	Kajal [other than kajal pencil sticks], Kumkum, Bindi, Sindur, Alta

108.	3825	Municipal waste, sewage sludge, clinical waste
109.	3926	Plastic bangles
110.	4014	Condoms and contraceptives
111.	4401	Firewood or fuel wood
112.	4402	Wood charcoal (including shell or nut charcoal), whether or not agglomerated
113.	4802 / 4907	Judicial, Non-judicial stamp papers, Court fee stamps when sold by the Government Treasuries or Vendors authorised by the Government
114.	4817 / 4907	Postal items, like envelope, Post card etc., sold by Government
115.	48 / 4907	Rupee notes when sold to the Reserve Bank of India
116.	4907	Cheques, loose or in book form
117.	4901	Printed books, including Braille books

118.	4902	Newspapers, journals and periodicals, whether or not illustrated or containing advertising material
119.	4903	Children's picture, drawing or colouring books
120.	4905	Maps and hydrographic or similar charts of all kinds, including atlases, wall maps, topographical plans and globes, printed
121.	5001	Silkworm laying, cocoon
122.	5002	Raw silk

123.	5003	Silk waste
124.	5101	Wool, not carded or combed
125.	5102	Fine or coarse animal hair, not carded or combed
126.	5103	Waste of wool or of fine or coarse animal hair
127.	52	Gandhi Topi
128.	52	Khadi yarn
129.	5303	Jute fibres, raw or processed but not spun
130.	5305	Coconut, coir fibre
131.	63	Indian National Flag
132.	6703	Human hair, dressed, thinned, bleached or otherwise worked
133.	6912 00 40	Earthen pot and clay lamps
134.	7018	Glass bangles (except those made from precious metals)
135.	8201	Agricultural implements manually operated or animal driven i.e. Hand tools, such as spades, shovels, mattocks, picks, hoes, forks and rakes; axes, bill hooks and similar hewing tools; secateurs and pruners of any kind; scythes, sickles, hay knives, hedge shears, timber wedges and other tools of a kind used in agriculture, horticulture or forestry.
136.	8445	Amber charkha
137.	8446	Handloom [weaving machinery]

138.	8802 60 00	Spacecraft (including satellites) and suborbital and spacecraft launch vehicles
139.	8803	Parts of goods of heading 8801
140.	9021	Hearing aids
141.	92	Indigenous handmade musical instruments
142.	9603	Muddhas made of sarkanda and phoolbaharijhadoo
143.	9609	Slate pencils and chalk sticks
144.	9610 00 00	Slates
145.	9803	Passenger baggage
146.	Any chapter	<p>Puja samagrinely,-</p> <p>(i) Rudraksha, rudraksha mala, tulsikanthi mala, panchgavya (mixture of cowdung, desi ghee, milk and curd);</p> <p>(ii) Sacred thread (commonly known as yagnopavit);</p> <p>(iii) Wooden khadau;</p> <p>(iv) Panchamrit,</p> <p>(v) Vibhuti sold by religious institutions, (vi) Unbranded honey (vii) Wick for diya.</p> <p>(viii) Roli</p> <p>(ix) Kalava (Raksha sutra)</p> <p>(x) Chandantika</p>

147.		Liquefied petroleum gas for supply to household and non domestic exempted category (NDEC) customers
148.		Kerosene oil sold under PDS
149.		Postal baggage transported by Department of Posts
150.		Natural or cultured pearls and precious or semi-precious stones; precious metals and metals clad with precious metal (Chapter 71)

151.		Jewellery, goldsmiths' and silversmiths' wares and other articles (Chapter 71)
152.		Currency
153.		Used personal and household effects
154.		Coral, unworked (0508) and worked coral (9601);

Rules 138A to 138D, as inserted vide Notf. No. 27/2017-Central Tax, dated 30.08.2017 and amended vide Notf. No. 3/2018, dated 23.01.2018

138A. Documents and devices to be carried by a person-in-charge of a conveyance.

(1) The person in charge of a conveyance shall carry:

- (a) the invoice or bill of supply or delivery challan, as the case may be; and

(b) a copy of the e-way bill or the e-way bill number, either physically or mapped to a Radio Frequency Identification Device embedded on to the conveyance in such manner as may be notified by the Commissioner.

Provided further that in case of imported goods, the person in charge of a conveyance shall also carry a copy of the bill of entry filed by the importer of such

goods and shall indicate the number and date of the bill of entry in Part A of FORM

GST EWB-01.”

(2) A registered person may obtain an Invoice Reference Number from the common portal by uploading, on the said portal, a tax invoice issued by him in FORM GST INV-1 and produce the same for verification by the proper officer in lieu of the tax invoice and such number shall be valid for a period of thirty days from the date of uploading.

(3) Where the registered person uploads the invoice under sub-rule (2), the information in Part A of FORM GST EWB-01 shall be auto-populated by the common portal on the basis of the information furnished in FORM GST INV-1.

(4) The Commissioner may, by notification, require a class of transporters to obtain a unique Radio Frequency Identification Device and get the said device embedded on to the conveyance and map the e-way bill to the Radio Frequency Identification Device prior to the movement of goods.

(5) Notwithstanding anything contained in clause (b) of sub-rule (1), where circumstances so warrant, the Commissioner may, by notification, require the

person-in-charge of the conveyance to carry the following documents instead of the e-way bill-

- (a) tax invoice or bill of supply or bill of entry; or
- (b) a delivery challan, where the goods are transported for reasons other than by way of supply.

138B. Verification of documents and conveyances.

(1) The Commissioner or an officer empowered by him in this behalf may authorise the proper officer to intercept any conveyance to verify the e-way bill or the e-way bill number in physical form for all inter-State and intra-State movement of goods.

(2) The Commissioner shall get Radio Frequency Identification Device readers installed at places where the verification of movement of goods is required to be carried out and verification of movement of vehicles shall be done through such device readers where the e-way bill has been mapped with the said device.

(3) The physical verification of conveyances shall be carried out by the proper officer as authorised by the Commissioner or an officer empowered by him in this behalf:

Provided that on receipt of specific information on evasion of tax, physical verification of a specific conveyance can also be carried out by any other officer after obtaining necessary approval of the Commissioner or an officer authorised by him in this behalf.

138C. Inspection and verification of goods.

(1) A summary report of every inspection of goods in transit shall be recorded online by the proper officer in Part A of FORM GST EWB-03 within twenty four hours of inspection and the final report in Part B of FORM GST EWB-03 shall be recorded within three days of such inspection.

(2) Where the physical verification of goods being transported on any conveyance has been done during transit at one place within the State or in any other State, no further physical verification of the said conveyance shall be carried out again in the State, unless a specific information relating to evasion of tax is made available subsequently.

138D. Facility for uploading information regarding detention of vehicle.

Where a vehicle has been intercepted and detained for a period exceeding thirty minutes, the transporter may upload the said information in FORM GST EWB-04 on the common portal.

[Explanation. - For the purposes of this Chapter, the expressions 'transported by railways', 'transportation of goods by railways', 'transport of goods by rail' and 'movement of goods by rail' does not include cases where leasing of parcel space by Railways takes place.".]¹⁰²

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Inserted vide notification No. 14/2018-Central Tax, dated 23.03.2018 (with effect from the 1 of April, 2018)

CHAPTER – XVII

INSPECTION, SEARCH AND SEIZURE

139. Inspection, search and seizure.-

(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 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.

140. Bond and security for release of seized goods.-

(1) The seized goods may be released on a provisional basis upon execution of a bond for the value of the goods in FORM GST INS-04 and furnishing of a security in the form of a bank guarantee equivalent to the amount of applicable tax, interest and penalty payable.

Explanation.- For the purposes of the rules under the provisions of this Chapter, the "applicable tax" shall include central tax and State tax or central tax and the Union territory tax, as the case may be and the cess, if any, payable under the Goods and Services Tax (Compensation to States) Act, 2017 (15 of 2017).

(2) In case the person to whom the goods were released provisionally fails to produce the goods at the appointed date and place indicated by the proper officer, the security shall be encashed and adjusted against the tax, interest and penalty and fine, if any, payable in respect of such goods.

141. Procedure in respect of seized goods.-

(1) Where the goods or things seized are of perishable or hazardous nature, and if the taxable person pays an amount equivalent to the market price of such goods or things or the amount of tax, interest and penalty that is or may become

payable by the taxable person, whichever is lower, such goods or, as the case may be, things shall be released forthwith, by an order in FORM GST INS-05, on proof of payment.

(2) Where the taxable person fails to pay the amount referred to in sub-rule (1) in respect of the said goods or things, the Commissioner may dispose of such goods or things and the amount realized thereby shall be adjusted against the tax, interest, penalty, or any other amount payable in respect of such goods or things.

CHAPTER - XVIII
DEMANDS AND RECOVERY

142. Notice and order for demand of amounts payable under the Act.-

(1) The proper officer shall serve, along with the

(a) notice under sub-section (1) of section 73 or sub-section (1) of section 74 or subsection (2) of section 76, a summary thereof electronically in FORM GST DRC-01,

(b) statement under sub-section (3) of section 73 or sub-section (3) of section 74, a summary thereof electronically in FORM GST DRC-02, specifying therein the details of the amount payable.

(2) Where, before the service of notice or statement, the person chargeable with tax makes payment of the tax and interest in accordance with the provisions of sub-section (5) of section 73 or, as the case may be, tax, interest and penalty in accordance with the provisions of sub-section (5) of section 74, he shall inform the proper officer of such payment in FORM GST DRC-03 and the proper officer shall issue an acknowledgement, accepting the payment made by the said person in FORM GST DRC-04.

(3) Where the person chargeable with tax makes payment of tax and interest under subsection (8) of section 73 or, as the case may be, tax, interest and penalty under sub-section (8) of section 74 within thirty days of the service of a notice under sub-rule (1), he shall intimate the proper officer of such payment in FORM GST DRC-03 and the proper officer shall

issue an order in FORM GST DRC-05 concluding the proceedings in respect of the said notice.

(4) The representation referred to in sub-section (9) of section 73 or sub-section (9) of section 74 or sub-section (3) of section 76 shall be in FORM GST DRC-06.

(5) A summary of the order issued under sub-section (9) of section 73 or sub-section (9) of section 74 or sub-section (3) of section 76 [or section 129 or section 130]¹⁰³ shall be uploaded electronically in FORM GST DRC-07, specifying therein the amount of tax, interest and penalty payable by the person chargeable with tax.

(6) The order referred to in sub-rule (5) shall be treated as the notice for recovery.

(7) Any rectification of the order, in accordance with the provisions of section 161, shall be made by the proper officer in FORM GST DRC-08.

143. **Recovery by deduction from any money owed.-**

Where any amount payable by a person (hereafter referred to in this rule as "the defaulter") to the Government under any of the provisions of the Act or the rules made thereunder is not paid, the proper officer may require, in FORM GST DRC-09, a specified officer to deduct the amount from any money owing to such defaulter in accordance with the provisions of clause (a) of sub-section (1) of section 79.

¹⁰³ Inserted vide notification No. 28/2018-Central Tax, dated 19.06.2018.

Explanation. - For the purposes of this rule, "specified officer" shall mean any officer of the Central Government or a State Government or the Government of a Union territory or a local authority, or of a Board or Corporation or a company owned or controlled, wholly or partly, by the Central Government or a State Government or the Government of a Union territory or a local authority.

144. Recovery by sale of goods under the control of proper officer.-

(1) Where any amount due from a defaulter is to be recovered by selling goods belonging to such person in accordance with the provisions of clause (b) of sub-section (1) of section 79, the proper officer shall prepare an inventory and estimate the market value of such goods and proceed to sell only so much of the goods as may be required for recovering the amount payable along with the administrative expenditure incurred on the recovery process.

(2) The said goods shall be sold through a process of auction, including e-auction, for which a notice shall be issued in FORM GST DRC-10 clearly indicating the goods to be sold and the purpose of sale.

(3) The last day for submission of bid or the date of auction shall not be earlier than fifteen days from the date of issue of the notice referred to in sub-rule (2):

Provided that where the goods are of perishable or hazardous nature or where the expenses of keeping them in custody are likely to exceed their value, the proper officer may sell them forthwith.

(4) The proper officer may specify the amount of pre-bid deposit to be furnished in the manner specified by such officer, to make the bidders

eligible to participate in the auction, which may be returned to the unsuccessful bidders, forfeited in case the successful bidder fails to make the payment of the full amount, as the case may be.

(5) The proper officer shall issue a notice to the successful bidder in FORM GST DRC-11 requiring him to make the payment within a period of fifteen days from the date of auction. On payment of the full bid amount, the proper officer shall transfer the possession of the said goods to the successful bidder and issue a certificate in FORM GST DRC-12.

(6) Where the defaulter pays the amount under recovery, including any expenses incurred on the process of recovery, before the issue of the notice under sub-rule (2), the proper officer shall cancel the process of auction and release the goods.

(7) The proper officer shall cancel the process and proceed for re-auction where no bid is received or the auction is considered to be non-competitive due to lack of adequate participation or due to low bids.

145. Recovery from a third person.-

(1) The proper officer may serve upon a person referred to in clause (c) of sub-section (1) of section 79 (hereafter referred to in this rule as "the third person"), a notice in FORM GST DRC-13 directing him to deposit the amount specified in the notice.

(2) Where the third person makes the payment of the amount specified in the notice issued under sub-rule (1), the proper officer shall issue a certificate in FORM GST DRC-14 to the third person clearly indicating the details of the liability so discharged.

146. **Recovery through execution of a decree, etc.-**

Where any amount is payable to the defaulter in the execution of a decree of a civil court for the payment of money or for sale in the enforcement of a mortgage or charge, the proper officer shall send a request in FORM GST DRC- 15 to the said court and the court shall, subject to the provisions of the Code of Civil Procedure, 1908 (5 of 1908), execute the attached decree, and credit the net proceeds for settlement of the amount recoverable.

147. **Recovery by sale of movable or immovable property.-**

(1) The proper officer shall prepare a list of movable and immovable property belonging to the defaulter, estimate their value as per the prevalent market price and issue an order of attachment or distraint and a notice for sale in FORM GST DRC- 16 prohibiting any transaction with regard to such movable and immovable property as may be required for the recovery of the amount due: Provided that the attachment of any property in a debt not secured by a negotiable instrument, a share in a corporation, or other movable property not in the possession of the defaulter except for property deposited in, or in the custody of any Court, shall be attached in the manner provided in rule 151.

(2) The proper officer shall send a copy of the order of attachment or distraint to the concerned Revenue Authority or Transport Authority or any such Authority to place encumbrance on the said movable or immovable property, which shall be removed only on the written instructions from the proper officer to that effect.

(3) Where the property subject to the attachment or distraint under sub-rule

(1) is-

(a) an immovable property, the order of attachment or distraint shall be affixed on the said property and shall remain affixed till the confirmation of sale;

(b) a movable property, the proper officer shall seize the said property in accordance with the provisions of chapter XIV of the Act and the custody of the said property shall either be taken by the proper officer himself or an officer authorised by him.

(4) The property attached or distrained shall be sold through auction, including e-auction, for which a notice shall be issued in FORM GST DRC- 17 clearly indicating the property to be sold and the purpose of sale.

(5) Notwithstanding anything contained in the provision of this Chapter, where the property to be sold is a negotiable instrument or a share in a corporation, the proper officer may, instead of selling it by public auction, sell such instrument or a share through a broker and the said broker shall deposit to the Government so much of the proceeds of such sale, reduced by his commission, as may be required for the discharge of the amount under recovery and pay the amount remaining, if any, to the owner of such instrument or a share.

(6) The proper officer may specify the amount of pre-bid deposit to be furnished in the manner specified by such officer, to make the bidders eligible to participate in the auction, which may be returned to the unsuccessful bidders or, forfeited in case the successful bidder fails to make the payment of the full amount, as the case may be.

(7) The last day for the submission of the bid or the date of the auction shall not be earlier than fifteen days from the date of issue of the notice referred to in sub-rule (4):

Provided that where the goods are of perishable or hazardous nature or where the expenses of keeping them in custody are likely to exceed their value, the proper officer may sell them forthwith.

(8) Where any claim is preferred or any objection is raised with regard to the attachment or distraint of any property on the ground that such property is not liable to such attachment or distraint, the proper officer shall investigate the claim or objection and may postpone the sale for such time as he may deem fit.

(9) The person making the claim or objection must adduce evidence to show that on the date of the order issued under sub-rule (1) he had some interest in, or was in possession of, the property in question under attachment or distraint.

(10) Where, upon investigation, the proper officer is satisfied that, for the reason stated in the claim or objection, such property was not, on the said date, in the possession of the defaulter or of any other person on his behalf or that, being in the possession of the defaulter on the said date, it was in his possession, not on his own account or as his own property, but on account of or in trust for any other person, or partly on his own account and partly on account of some other person, the proper officer shall make an order releasing the property, wholly or to such extent as he thinks fit, from attachment or distraint.

(11) Where the proper officer is satisfied that the property was, on the said date, in the possession of the defaulter as his own property and not on account of any other person, or was in the possession of some other person in trust for him, or in the occupancy of a tenant or other person paying rent to him, the proper officer shall reject the claim and proceed with the process of sale through auction.

(12) The proper officer shall issue a notice to the successful bidder in FORM GST DRC-11 requiring him to make the payment within a period of fifteen days from the date of such notice and after the said payment is made, he shall issue a certificate in FORM GST DRC12 specifying the details of the property, date of transfer, the details of the bidder and the amount paid and upon issuance of such certificate, the rights, title and interest in the property shall be deemed to be transferred to such bidder:

Provided that where the highest bid is made by more than one person and one of them is a co-owner of the property, he shall be deemed to be the successful bidder.

(13) Any amount, including stamp duty, tax or fee payable in respect of the transfer of the property specified in sub-rule (12), shall be paid to the Government by the person to whom the title in such property is transferred.

(14) Where the defaulter pays the amount under recovery, including any expenses incurred on the process of recovery, before the issue of the notice under sub-rule (4), the proper officer shall cancel the process of auction and release the goods.

(15) The proper officer shall cancel the process and proceed for re-auction where no bid is received or the auction is considered to be non-competitive due to lack of adequate participation or due to low bids.

148. Prohibition against bidding or purchase by officer.-

No officer or other person having any duty to perform in connection with any sale under the provisions of this Chapter shall, either directly or indirectly, bid for, acquire or attempt to acquire any interest in the property sold.

149. Prohibition against sale on holidays.-

No sale under the rules under the provision of this chapter shall take place on a Sunday or other general holidays recognized by the Government or on any day which has been notified by the Government to be a holiday for the area in which the sale is to take place.

150. Assistance by police.-

The proper officer may seek such assistance from the officer-in-charge of the jurisdictional police station as may be necessary in the discharge of his duties and the said officer-in-charge shall depute sufficient number of police officers for providing such assistance.

151. Attachment of debts and shares, etc.-

(1) A debt not secured by a negotiable instrument, a share in a corporation, or other movable property not in the possession of the defaulter except for

property deposited in, or in the custody of any court shall be attached by a written order in FORM GST DRC-16 prohibiting.-

(a) in the case of a debt, the creditor from recovering the debt and the debtor from making payment thereof until the receipt of a further order from the proper officer;

(b) in the case of a share, the person in whose name the share may be standing from transferring the same or receiving any dividend thereon;

(c) in the case of any other movable property, the person in possession of the same from giving it to the defaulter.

(2) A copy of such order shall be affixed on some conspicuous part of the office of the proper officer, and another copy shall be sent, in the case of debt, to the debtor, and in the case of shares, to the registered address of the corporation and in the case of other movable property, to the person in possession of the same.

(3) A debtor, prohibited under clause (a) of sub-rule (1), may pay the amount of his debt to the proper officer, and such payment shall be deemed as paid to the defaulter.

152. Attachment of property in custody of courts or Public Officer.-

Where the property to be attached is in the custody of any court or Public Officer, the proper officer shall send the order of attachment to such court or officer, requesting that such property, and any interest or dividend becoming payable thereon, may be held till the recovery of the amount payable.

153. **Attachment of interest in partnership.-**

(1) Where the property to be attached consists of an interest of the defaulter, being a partner, in the partnership property, the proper officer may make an order charging the share of such partner in the partnership property and profits with payment of the amount due under the certificate, and may, by the same or subsequent order, appoint a receiver of the share of such partner in the profits, whether already declared or accruing, and of any other money which may become due to him in respect of the partnership, and direct accounts and enquiries and make an order for the sale of such interest or such other order as the circumstances of the case may require.

(2) The other partners shall be at liberty at any time to redeem the interest charged or, in the case of a sale being directed, to purchase the same.

154. **Disposal of proceeds of sale of goods and movable or immovable property.-**

The amounts so realised from the sale of goods, movable or immovable property, for the recovery of dues from a defaulter shall,-

- (a) first, be appropriated against the administrative cost of the recovery process;
- (b) next, be appropriated against the amount to be recovered;
- (c) next, be appropriated against any other amount due from the defaulter under the Act or the Integrated Goods and Services

Tax Act, 2017 or the Union Territory Goods and Services Tax Act, 2017 or any of the State Goods and Services Tax Act, 2017 and the rules made thereunder; and

(d) any balance, be paid to the defaulter.

155. Recovery through land revenue authority.-

Where an amount is to be recovered in accordance with the provisions of clause (e) of sub-section (1) of section 79, the proper officer shall send a certificate to the Collector or Deputy Commissioner of the district or any other officer authorised in this behalf in FORM GST DRC-18 to recover from the person concerned, the amount specified in the certificate as if it were an arrear of land revenue.

156. Recovery through court.-

Where an amount is to be recovered as if it were a fine imposed under the Code of Criminal Procedure, 1973, the proper officer shall make an application before the appropriate Magistrate in accordance with the provisions of clause (f) of sub-section (1) of section 79 in FORM GST DRC- 19 to recover from the person concerned, the amount specified thereunder as if it were a fine imposed by him.

157. Recovery from surety.-

Where any person has become surety for the amount due by the defaulter, he may be proceeded against under this Chapter as if he were the defaulter.

158. Payment of tax and other amounts in instalments.-

(1) On an application filed electronically by a taxable person, in FORM GST DRC-20, seeking extension of time for the payment of taxes or any amount due under the Act or for allowing payment of such taxes or amount in instalments in accordance with the provisions of section 80, the Commissioner shall call for a report from the jurisdictional officer about the financial ability of the taxable person to pay the said amount.

(2) Upon consideration of the request of the taxable person and the report of the jurisdictional officer, the Commissioner may issue an order in FORM GST DRC- 21 allowing the taxable person further time to make payment and/or to pay the amount in such monthly instalments, not exceeding twenty-four, as he may deem fit.

(3) The facility referred to in sub-rule (2) shall not be allowed where-

- (a) the taxable person has already defaulted on the payment of any amount under the Act or the Integrated Goods and Services Tax Act, 2017 or the Union Territory Goods and Services Tax Act, 2017 or any of the State Goods and Services Tax Act, 2017, for which the recovery process is on;
- (b) the taxable person has not been allowed to make payment in instalments in the preceding financial year under the Act or the Integrated Goods and Services Tax Act, 2017 or the Union Territory Goods and Services Tax Act, 2017 or any of the State Goods and Services Tax Act, 2017;
- (c) the amount for which instalment facility is sought is less than twenty-five thousand rupees.

159. Provisional attachment of property.-

(1) Where the Commissioner decides to attach any property, including bank account in accordance with the provisions of section 83, he shall pass an order in FORM GST DRC-22 to that effect mentioning therein, the details of property which is attached.

(2) The Commissioner shall send a copy of the order of attachment to the concerned Revenue Authority or Transport Authority or any such Authority to place encumbrance on the said movable or immovable property, which shall be removed only on the written instructions from the Commissioner to that effect.

(3) Where the property attached is of perishable or hazardous nature, and if the taxable person pays an amount equivalent to the market price of such property or the amount that is or may become payable by the taxable person, whichever is lower, then such property shall be released forthwith, by an order in FORM GST DRC-23, on proof of payment.

(4) Where the taxable person fails to pay the amount referred to in sub-rule (3) in respect of the said property of perishable or hazardous nature, the Commissioner may dispose of such property and the amount realized thereby shall be adjusted against the tax, interest, penalty, fee or any other amount payable by the taxable person.

(5) Any person whose property is attached may, within seven days of the attachment under sub-rule (1), file an objection to the effect that the property attached was or is not liable to attachment, and the Commissioner may, after affording an opportunity of being heard to the

person filing the objection, release the said property by an order in FORM GST DRC- 23.

(6) The Commissioner may, upon being satisfied that the property was, or is no longer liable for attachment, release such property by issuing an order in FORM GST DRC- 23.

160. **Recovery from company in liquidation.-**

Where the company is under liquidation as specified in section 88, the Commissioner shall notify the liquidator for the recovery of any amount representing tax, interest, penalty or any other amount due under the Act in FORM GST DRC -24.

161. **Continuation of certain recovery proceedings.-**

The order for the reduction or enhancement of any demand under section 84 shall be issued in FORM GST DRC- 25.

CHAPTER - XIX

OFFENCES AND PENALTIES

162. **Procedure for compounding of offences.-**

- (1) An applicant may, either before or after the institution of prosecution, make an application under sub-section (1) of section 138 in FORM GST CPD-01 to the Commissioner for compounding of an offence.
- (2) On receipt of the application, the Commissioner shall call for a report from the concerned officer with reference to the particulars furnished in the application, or any other information, which may be considered relevant for the examination of such application.
- (3) The Commissioner, after taking into account the contents of the said application, may, by order in FORM GST CPD-02, on being satisfied that the applicant has co-operated in the proceedings before him and has made full and true disclosure of facts relating to the case, allow the application indicating the compounding amount and grant him immunity from prosecution or reject such application within ninety days of the receipt of the application.
- (4) The application shall not be decided under sub-rule (3) without affording an opportunity of being heard to the applicant and recording the grounds of such rejection.

(5) The application shall not be allowed unless the tax, interest and penalty liable to be paid have been paid in the case for which the application has been made.

(6) The applicant shall, within a period of thirty days from the date of the receipt of the order under sub-rule (3), pay the compounding amount as ordered by the Commissioner and shall furnish the proof of such payment to him.

(7) In case the applicant fails to pay the compounding amount within the time specified in sub-rule (6), the order made under sub-rule (3) shall be vitiated and be void.

(8) Immunity granted to a person under sub-rule (3) may, at any time, be withdrawn by the Commissioner, if he is satisfied that such person had, in the course of the compounding proceedings, concealed any material particulars or had given false evidence. Thereupon such person may be tried for the offence with respect to which immunity was granted or for any other offence that appears to have been committed by him in connection with the compounding proceedings and the provisions the Act shall apply as if no such immunity had been granted.