

**CENTRAL BOARD OF INDIRECT TAXES &
CUSTOMS
NEW DELHI**



**FREQUENTLY ASKED QUESTIONS
(FAQs)**

ON

GOODS AND SERVICES TAX (GST)

3rd Edition: 15th December, 2018

(Note: Changes announced in GST Council meeting held on 22nd December, 2018 are being incorporated and the updated edition will be uploaded shortly)

FOREWORD

The compilation of Frequently Asked Questions (FAQs) on GST brought out by the National Academy of Customs, Indirect Taxes & Narcotics (NACIN), the apex training institution under the Central Board of Indirect Taxes and Customs (CBIC), has been extremely well received. The first edition of GST FAQs was released on 21st September, 2016 by the Hon'ble Finance Minister. The first edition, released well before the roll-out of GST on 1st July 2017, served to provide a ready reference to tax officials, tax payers as well as laymen. In order to serve a wider audience, GST FAQs have been translated in several languages and updated from time to time.

The second edition of these FAQs was released on 31.03.2017. A number of significant developments have taken place since the last edition. Accordingly, the third edition of GST FAQs, updated as on 15th December, 2018 is being brought out. It contains 25 chapters and more than 1000 questions. More than 450 questions have been added as compared to the last edition. I am sure that these FAQs will be of great help in dissemination of information and in spreading awareness on GST among the tax officials, Trade and public. I congratulate DG NACIN and her team and I am sure that more such publications will be brought out for the benefit of all stake holders.



(S. Ramesh)
Chairman CBIC

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This third Edition of FAQs on GST has been compiled by NACIN GST Team comprising of Shri Deepak Mata, Assistant Director, NACIN, Mumbai, Shri Sanjeev Nair, Examiner(VRS), Shri Deepak Gupta, Superintendent, Aurangabad, and Shri MPS Sengar, Assistant Director(Retd) under the supervision of Shri Samir Bajaj, ADG, NACIN, Mumbai.

The earlier edition has been reviewed by the GST Policy Wing. The additional questions in this edition have been reviewed by:

GST Policy Wing (Chapters 2.1, 3, 4, 6, 7, 12, 13, 13.1, 13.2, 14, 15, 16, 18 and 22);

Customs Wing, CBIC (Chapter 21.1, 21.2, 21.3 and 21.5- Exports and Imports);

DG, Export Promotion (Chapters 21.4 and 21.5- SEZ and EOU);

DG, Anti-Profiteering (Chapter 25 -Anti-Profiteering Provisions); and

GSTN (Chapter 24- GSTN and Front end business process on GST Portal).

Disclaimer:

The FAQs are based on the CGST/SGST/UTGST/IGST Act(s) and the respective rules. This FAQ is for training and academic purposes only.

The information in this booklet is intended only to provide a general overview and is not intended to be treated as legal advice or opinion. For greater details, you are requested to refer to the respective CGST/SGST/UTGST/IGST Acts.

The FAQs refer to CGST and SGST Acts as CGST/SGST as CGST Act and SGST Act are identical in most of the provisions. A few provisions may be specific to state and may not be in CGST Act.

Comments and Suggestions on FAQ may please be sent to dg.nacen-cbec@nic.in

1. Overview of Goods and Services Tax (GST)

Q 1. What is Goods and Services Tax (GST)?

Ans. It is a destination based tax on consumption of goods and services. It is proposed to be levied at all stages right from manufacture up to final consumption with credit of taxes paid at previous stages available as setoff. In a nutshell, only value addition will be taxed and burden of tax is to be borne by the final consumer.

Q 2. What exactly is the concept of destination based tax on consumption?

Ans. The tax would accrue to the taxing authority which has jurisdiction over the place of consumption which is also termed as place of supply.

Q 3. Which of the existing taxes are proposed to be subsumed under GST?

Ans. The GST would replace the following taxes:

- (i) taxes currently levied and collected by the Centre:*
 - a. Central Excise duty*
 - b. Duties of Excise (Medicinal and Toilet Preparations)*
 - c. Additional Duties of Excise (Goods of Special Importance)*
 - d. Additional Duties of Excise (Textiles and Textile Products)*

- e. *Additional Duties of Customs (commonly known as CVD)*
 - f. *Special Additional Duty of Customs (SAD)*
 - g. *Service Tax*
 - h. *Central Surcharges and Cesses so far as they relate to supply of goods and services*
- (ii) *State taxes that would be subsumed under the GST are:*
- a. *State VAT*
 - b. *Central Sales Tax*
 - c. *Luxury Tax*
 - d. *Entry Tax (all forms)*
 - e. *Entertainment and Amusement Tax (except when levied by the local bodies)*
 - f. *Taxes on advertisements*
 - g. *Purchase Tax*
 - h. *Taxes on lotteries, betting and gambling*
 - i. *State Surcharges and Cesses so far as they relate to supply of goods and services*

The GST Council shall make recommendations to the Union and States on the taxes, cesses and surcharges levied by the Centre, the States and the local bodies which may be subsumed in the GST.

Q 4. What principles were adopted for subsuming the above taxes under GST?

Ans. The various Central, State and Local levies were examined to identify their possibility of being subsumed

under GST. While identifying, the following principles were kept in mind:

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

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

(iii) The subsumation should result in free flow of tax credit in intra and inter-State levels. The taxes, levies and fees that are not specifically related to supply of goods & services should not be subsumed under GST.

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

Q 5. Which are the commodities which have been kept outside the purview of GST?

Ans. Article 366(12A) of the Constitution as amended by 101st Constitutional Amendment Act, 2016 defines the Goods and Services tax (GST) as a tax on supply of goods or services or both, except supply of alcoholic liquor for human consumption. So alcohol for human consumption is kept out of GST by way of definition of GST in constitution. Five petroleum products viz. petroleum crude, motor spirit (petrol), high speed diesel, natural gas and aviation turbine fuel have temporarily been kept out and GST Council shall decide the date from which they shall be included in GST.

Q 6. What is the status in respect of taxation of above commodities after introduction of GST?

Ans. The existing taxation system (VAT & Central Excise) will continue in respect of the above commodities.

Q 7. What is the status of Tobacco and Tobacco products under the GST regime?

Ans. Tobacco and tobacco products is leviable to GST. In addition, the Centre has the power to levy Central Excise duty on these products.

Q 8. What type of GST is proposed to be implemented?

Ans. It would be a dual GST with the Centre and States simultaneously levying it on a common tax base. The GST to be levied by the Centre on intra-State supply of goods and / or services would be called the Central GST (CGST) and that to be levied by the States/ Union territory would be called the State GST (SGST)/ UTGST. Similarly, Integrated GST (IGST) will be levied and administered by Centre on every inter-state supply of goods and services.

Q 9. Why is Dual GST required?

Ans. India is a federal country where both the Centre and the States have been assigned the powers to levy and collect taxes through appropriate legislation. Both the levels of Government have distinct responsibilities to perform according to the division of powers prescribed in the Constitution for which they need to raise resources. A dual GST will, therefore, be in keeping with the Constitutional requirement of fiscal federalism.

Q 10. Which authority will levy and administer GST?

Ans. Centre will levy and administer CGST & IGST while respective states /UTs will levy and administer SGST/UTGST.

Q 11. Why was the Constitution of India amended recently in the context of GST?

Currently, the fiscal powers between the Centre and the States are clearly demarcated in the Constitution with almost no overlap between the respective domains. The Centre has the powers to levy tax on the manufacture of goods (except alcoholic liquor for human consumption, opium, narcotics etc.) while the States have the powers to levy tax on the sale of goods. In the case of inter-State sales, the Centre has the power to levy a tax (the Central Sales Tax) but, the tax is collected and retained entirely by the States. As for services, it is the Centre alone that is empowered to levy service tax.

Introduction of the GST required amendments in the Constitution so as to simultaneously empower the Centre and the States to levy and collect this tax. The Constitution of India has been amended by the Constitution (one hundred and first amendment) Act, 2016 for this purpose. Article 246A of the Constitution empowers the Centre and the States to levy and collect the GST.

Q 12. How a particular transaction of goods and services would be taxed simultaneously under Central GST (CGST) and State GST (SGST)?

Ans. The Central GST and the State GST would be levied

simultaneously on every transaction of supply of goods and services made by registered persons except the exempted goods and services, goods and services which are outside the purview of GST. Further, both would be levied on the same price or value unlike State VAT which is levied on the value of the goods inclusive of CENVAT. While the location of the supplier and the recipient within the country is immaterial for the purpose of CGST, SGST would be chargeable only when the supplier and the recipient are both located within the State.

Illustration I: Suppose hypothetically that the rate of CGST is 10% and that of SGST is 10%. When a wholesale dealer of steel in Uttar Pradesh supplies steel bars and rods to a construction company which is also located within the same State for, say Rs. 100, the dealer would charge CGST of Rs. 10 and SGST of Rs. 10 in addition to the basic price of the goods. He would be required to deposit the CGST component into a Central Government account while the SGST portion into the account of the concerned State Government. Of course, he need not actually pay Rs. 20 (Rs. 10 + Rs. 10) in cash as he would be entitled to set-off this liability against the CGST or SGST paid on his purchases (say, inputs). But for paying CGST he would be allowed to use only the credit of CGST paid on his purchases while for SGST he can utilize the credit of SGST alone. In other words, CGST credit cannot, in general, be used for payment of SGST. Nor can SGST credit be used for payment of CGST.

Illustration II: Suppose, again hypothetically, that the rate of CGST is 10% and that of SGST is 10%. When an

advertising company located in Mumbai supplies advertising services to a company manufacturing soap also located within the State of Maharashtra for, let us say Rs. 100, the ad company would charge CGST of Rs. 10 as well as SGST of Rs. 10 to the basic value of the service. He would be required to deposit the CGST component into a Central Government account while the SGST portion into the account of the concerned State Government. Of course, he need not again actually pay Rs. 20 (Rs. 10+Rs. 10) in cash as it would be entitled to set-off this liability against the CGST or SGST paid on his purchase (say, of inputs such as stationery, office equipment, services of an artist etc.). But for paying CGST he would be allowed to use only the credit of CGST paid on its purchase while for SGST he can utilise the credit of SGST alone. In other words, CGST credit cannot, in general, be used for payment of SGST. Nor can SGST credit be used for payment of CGST.

Q 13. What are the benefits which the Country will accrue from GST?

Ans. Introduction of GST would be a very significant step in the field of indirect tax reforms in India. By amalgamating a large number of Central and State taxes into a single tax and allowing set-off of prior-stage taxes, it would mitigate the ill effects of cascading and pave the way for a common national market. For the consumers, the biggest gain would be in terms of a reduction in the overall tax burden on goods, which is currently estimated at 25%-30%. Introduction of GST would also make our products competitive in the domestic and international markets. Studies show that this

would instantly spur economic growth. There may also be revenue gain for the Centre and the States due to widening of the tax base, increase in trade volumes and improved tax compliance. Last but not the least, this tax, because of its transparent character, would be easier to administer.

Q 14. What is IGST?

Ans. Under the GST regime, an Integrated GST (IGST) would be levied and collected by the Centre on inter-State supply of goods and services. Under Article 269A of the Constitution, the GST on supplies in the course of inter-State trade or commerce shall be levied and collected by the Government of India and such tax shall be apportioned between the Union and the States in the manner as may be provided by Parliament by law on the recommendations of the Goods and Services Tax Council.

Q 15. Who will decide rates for levy of GST?

Ans. The CGST and SGST would be levied at rates to be jointly decided by the Centre and States. The rates would be notified on the recommendations of the GST Council.

Q 16. What would be the role of GST Council?

Ans. A GST Council would be constituted comprising the Union Finance Minister (who will be the Chairman of the Council), the Minister of State (Revenue) and the State Finance/Taxation Ministers to make recommendations to the Union and the States on

- (i) the taxes, cesses and surcharges levied by the Centre, the States and the local bodies which may be subsumed under GST;*

- (ii) *the goods and services that may be subjected to or exempted from the GST;*
- (iii) *the date on which the GST shall be levied on petroleum crude, high speed diesel, motor sprit (commonly known as petrol), natural gas and aviation turbine fuel;*
- (iv) *model GST laws, principles of levy, apportionment of IGST and the principles that govern the place of supply;*
- (v) *the threshold limit of turnover below which the goods and services may be exempted from GST;*
- (vi) *the rates including floor rates with bands of GST;*
- (vii) *any special rate or rates for a specified period to raise additional resources during any natural calamity or disaster;*
- (viii) *special provision with respect to the North-East States, J&K, Himachal Pradesh and Uttarakhand; and*
- (ix) *any other matter relating to the GST, as the Council may decide.*

Q 17. What is the guiding principle of GST Council?

Ans. The mechanism of GST Council would ensure harmonization on different aspects of GST between the Centre and the States as well as among States. It has been provided in the Constitution (one hundred and first amendment) Act, 2016 that the GST Council, in its discharge of various functions, shall be guided by the

need for a harmonized structure of GST and for the development of a harmonized national market for goods and services.

Q 18. How are decisions be taken by GST Council?

Ans. The Constitution (one hundred and first amendment) Act, 2016 provides that every decision of the GST Council shall be taken at a meeting by a majority of not less than 3/4th of the weighted votes of the Members present and voting. The vote of the Central Government shall have a weightage of 1/3rd of the votes cast and the votes of all the State Governments taken together shall have a weightage of 2/3rd of the total votes cast in that meeting. One half of the total number of members of the GST Council shall constitute the quorum at its meetings.

Q 19. Who is liable to pay GST under the proposed GST regime?

Ans. Under the GST regime, tax is payable by the registered taxable person on the supply of goods and/or services. Liability to pay tax arises when the taxable person crosses the turnover threshold of Rs.20 lakhs (Rs. 10 lakhs for NE & Special Category States) except in certain specified cases where the taxable person is liable to pay GST even though he has not crossed the threshold limit. The CGST / SGST is payable on all intra-State supply of goods and/or services and IGST is payable on all inter- State supply of goods and/or services. The CGST /SGST and IGST are payable at the rates specified in the Schedules to the respective Acts.

Q 20. What are the benefits available to small tax

payers under the GST regime?

Ans. Tax payers with an aggregate turnover in a financial year up to [Rs.20 lakhs & Rs.10 Lakhs for NE and special category states] would be exempt from taking registration under GST. Further, a person whose aggregate turnover in the preceding financial year is less than Rs.1 Crore (75 lakhs for 9 special category states viz 1. Arunachal Pradesh, 2. Assam, 3. Manipur, 4. Meghalaya, 5. Mizoram, 6. Nagaland, 7. Sikkim, 8. Tripura, and 9. Himachal Pradesh) can opt for a simplified composition scheme where tax will payable at a concessional rate on the turnover in a state.

[Aggregate turnover shall include the aggregate value of all taxable supplies, exempt supplies and exports of goods and/or services and exclude taxes viz. GST.] Aggregate turnover shall be computed on all India basis. For NE States and special category states, the exemption threshold shall be [Rs. 10 lakhs]. All taxpayers eligible for threshold exemption will have the option of paying tax with input tax credit (ITC) benefits. Tax payers making inter-State supplies of goods or paying tax on reverse charge basis shall not be eligible for threshold exemption.

Q 21. How will the goods and services be classified under GST regime?

Ans. HSN (Harmonised System of Nomenclature) code shall be used for classifying the goods under the GST regime. Taxpayers whose turnover is above Rs. 1.5 crores but below Rs. 5 crores shall use 2-digit code and the taxpayers whose turnover is Rs. 5 crores and above shall use 4-digit code.

Taxpayers whose turnover is below Rs. 1.5 crores are not required to mention HSN Code in their invoices.

Services will be classified as per the Annexure to Notification No. 11/2017-Central tax dated 28th June, 2017. In this regard, Central Board for Indirect Tax and Customs has also issued “Explanatory Notes to the Scheme of Classification of Services” on 12th June 2018.

Q 22. What is the scope of composition scheme under GST?

Ans. Small taxpayers with an aggregate turnover in a preceding financial year up to Rs. One Crore (75 lakhs for special category States – except Jammu & Kashmir and Uttarakhand) are eligible for composition levy. This scheme is basically for suppliers of goods and restaurant service providers only. Under the scheme, a taxpayer shall pay tax as a percentage of his turnover in a state during the year without the benefit of ITC. The rate of tax for CGST and SGST/UTGST shall not exceed [1% for manufacturer as well as traders; 5% for specific services as mentioned in para 6(b) of Schedule II viz serving of food or any other article for human consumption i.e. restaurant service providers]. A tax payer opting for composition levy shall not collect any tax from his customers.

Tax payers making inter- state supplies (except persons making inter-state supplies of certain specified handicraft goods) or making supplies through e-commerce operators

who are required to collect tax at source shall not be eligible for composition scheme. Also manufacturers of ice-cream, pan masala and tobacco products will not be eligible for composition scheme.

As per the recent amendment in the CGST Act vide the CGST (Amendment) Act, 2018 following changes have come in respect of composition scheme, however, the notification for date of implementation of the amendment Act is yet to be issued.

- (i) **Government empowered to enhance upper limit** for composition scheme to Rs.1.5 crore by notification*
- (ii) A person who opts to pay tax under composition scheme 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.***

Q 23. What is GSTN and its role in the GST regime?

Ans. GSTN stands for Goods and Service Tax Network (GSTN). A Special Purpose Vehicle called the GSTN has been set up to cater to the needs of GST. The GSTN shall provide a shared IT infrastructure and services to Central and State Governments, tax payers and other stakeholders for implementation of GST. The functions of the GSTN would, inter alia, include: (i) facilitating registration; (ii) forwarding the returns to Central and State authorities;

(iii) computation and settlement of IGST; (iv) matching of tax payment details with banking network; (v) providing various MIS reports to the Central and the State Governments based on the tax payer return information; (vi) providing analysis of tax payers' profile; and (vii) running the matching engine for matching, reversal and reclaim of input tax credit.

The GSTN is developing a common GST portal and applications for registration, payment, return and MIS/reports. The GSTN would also be integrating the common GST portal with the existing tax administration IT systems and would be building interfaces for tax payers. Further, the GSTN is developing back-end modules like assessment, audit, refund, appeal etc. for 19 States and UTs (Model II States). The CBIC and Model I States (15 States) are themselves developing their GST back-end systems. Integration of GST front-end system with back-end systems will have to be completed and tested well in advance for making the transition smooth.

Q 24. How are the disputes going to be resolved under the GST regime?

Ans. The Constitution (one hundred and first amendment) Act, 2016 provides that the Goods and Services Tax Council shall establish a mechanism to adjudicate any dispute-

(a) between the Government of India and one or more States; or

(b) between the Government of India and any State or States on one side and one or more other States on the other side; or

(c) between two or more States,

arising out of the recommendations of the Council or implementation thereof.

Q 25. What is the purpose of Compliance rating mechanism?

Ans. As per Section 149 of the CGST/SGST Act, every registered person shall be assigned a compliance rating based on the record of compliance in respect of specified parameters. Such ratings shall also be placed in the public domain. A prospective client will be able to see the compliance ratings of suppliers and take a decision as to whether to deal with a particular supplier or not. This will create healthy competition amongst taxable persons.

Q 26. Whether actionable claims liable to GST?

Ans. As per section 2(52) of the CGST/SGST Act actionable claims are to be considered as goods. Schedule III read with Section 7 of the CGST/SGST Act lists the activities or transactions which shall be treated neither as supply of goods nor supply of services. The Schedule lists actionable claims other than lottery, betting and gambling as one of such transactions. Thus only lottery, betting and gambling shall be treated as supplies under the GST regime. All the other actionable claims shall not be supplies.

Q 27. Whether transaction in securities be taxable in GST?

Ans. Securities have been specifically excluded from the

definition of goods as well as services. Thus, the transaction in securities shall not be liable to GST.

Q 28. What is the concept of Information Return?

Ans. Information return is based on the idea of verifying the compliance levels of registered persons through information procured from independent third party sources. As per section 150 of the CGST/SGST Act, many authorities who are responsible for maintaining records 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, are mandated to 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. Failure to do so may result in penalty being imposed as per Section 123.

Q 29. Different companies have different types of accounting software packages and no specific format are mandated for keeping records. How will department be able to read into these complex software?

Ans. As per Section 153 of the CGST/SGST Act, having regard to the nature and complexity of a case and in the interest of revenue, department may take assistance from an expert at any state of scrutiny, inquiry, investigation or any other proceedings.

Q 30. Is there any provision in GST for tax treatment of goods returned by the recipient?

Ans. Yes, Section 34 deals with such situations. Where the goods supplied are returned by the recipient, the registered person (supplier of goods) may issue to the recipient a credit note containing the prescribed particulars. The details of the credit note shall be declared by the supplier in the returns for the month during which such credit note was issued but not later than September following the end of the year in which such supply was made or the date of filing of the relevant annual return, whichever is earlier. The details of the credit note shall be matched with the corresponding reduction in claim for input tax credit by the recipient in his valid return for the same tax period or any subsequent tax period and the claim for reduction in output tax liability by the supplier that matches with the corresponding reduction in claim for ITC by the recipient shall be finally accepted and communicated to both parties.

Q 31. What is Anti-Profiteering measure?

Ans. As per section 171 of the CGST/SGST Act, 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. In pursuance of the powers conferred by this section, the government has constituted the National Anti-Profiteering Authority (NAA). NAA is required 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.

NAA has power to investigate cases against the registered person who has not passed on the benefits by way of commensurate reduction in prices and order reduction in prices, cancel registration, impose penalty and/or return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest.

Q 32. What tax will be levied on goods manufactured but not cleared from factory before 01.07.2017?

Ans. Goods manufactured, but not cleared from factory before 01.07.2017 have been exempted from Central Excise duty vide Tariff Notification No. 12/2017-CE dated 30.06.2017. Appropriate GST will have to be paid whenever the goods are cleared after 01.07.2017.

Q 33. Is there any provision for cross empowerment of officers of State and Central Government under GST?

Ans. Yes. As per Section 6 (1) of CGST Act, 2017, the officers appointed under the SGST / UTGST Act are authorised to be the proper officers for the purposes of CGST/IGST Act, subject to such conditions as the Government shall, on the recommendations of the Council, by notification, specify. Similar provisions in the SGST/UTGST Act empower the central government officials to be the proper officers under the SGST/UTGST Act.

Notification no. 39/2017-Central Tax dated 13/10/2017 and Notification no. 11/2017 -Integrated Tax dated 13/10/2017 as amended by notification no. 1/2018-Integrated Tax dated 23/01/2018 have been issued in order to cross-empower State Tax officers for processing and grant of refund.

2. Levy of and Exemption from Tax

Q 1. Where is the power to levy GST derived from?

Ans. Article 246A of the Constitution, which was introduced by the Constitution (101st Amendment) Act, 2016 confers concurrent powers to both, Parliament and State Legislatures to make laws with respect to GST i. e. central tax (CGST) and state tax (SGST) or union territory tax (UTGST). However, clause 2 of Article 246A read with Article 269A provides exclusive power to the Parliament to legislate with respect to inter-State trade or commerce i.e. integrated tax (IGST).

Q 2. What is the taxable event under GST?

Ans. Taxable event under GST is supply of goods or services or both. CGST and SGST/ UTGST will be levied on intra-State supplies. IGST will be levied on inter-State supplies.

Q 3. Whether supplies made without consideration will also come within the purview of supply under GST?

Ans. Yes, but only those activities which are specified in Schedule I to the CGST Act / SGST Act. The said provision has been adopted in IGST Act as well as in UTGST Act also. In cases where the inputs/ capital goods sent for job work are not returned within the specified time limit, the supplies made by the principal to job worker will also be deemed to be a supply.

Q 4. Will activities of charitable institutions be

taxable under GST?

Ans. Services of charitable activities by an entity registered under Section 12AA of the Income Tax Act, 1961 is exempt vide Notification no.12/2017-Central Tax (Rate) dated 28.06.2017.

Q 5. Who can notify a transaction to be supply of goods or services?

Ans. Central Government or State Government, on the recommendations of the GST Council, can notify an activity to be the supply of goods and not supply of services or supply of services and not supply of goods or neither a supply of goods nor a supply of services.

Q 6. What are composite supply and mixed supply? How are these two different from each other?

Ans. Composite supply is a supply consisting of two or more taxable supplies of goods or services or both or any combination thereof, which are bundled in natural course and are supplied in conjunction with each other in the ordinary course of business and where one of which is a principal supply. For example, when a consumer buys a television set and he also gets warranty and a maintenance contract with the TV, this supply is a composite supply. In this example, supply of TV is the principal supply, warranty and maintenance service are ancillary.

Mixed supply is combination of more than one individual supplies of goods or services or any combination thereof made in conjunction with each other for a single price,

which can ordinarily be supplied separately. For example, a shopkeeper selling storage water bottles along with refrigerator. Bottles and the refrigerator can easily be priced and sold separately.

Q 7. What is the treatment of composite supply and mixed supply under GST?

Ans. Composite supply shall be treated as supply of the principal supply. Mixed supply would be treated as supply of that particular goods or services which attracts the highest rate of tax.

Q 8. Are all goods and services taxable under GST?

Ans. Supplies of all goods and services are taxable except alcoholic liquor for human consumption. Supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be taxable with effect from a future date. This date would be notified by the Government on the recommendations of the GST Council.

Q 9. Does the GST Law empower the Government to exempt supplies from the levy of GST?

Ans. Yes. In the public interest, the Central or the State Government can exempt either wholly or partly, on the recommendations of the GST council, the supplies of goods or services or both from the levy of GST either absolutely or subject to conditions. Further the Government can exempt, under circumstances of an exceptional nature, by special order any goods or services or both. It has also been

provided in the SGST Act and UTGST Act that any exemption granted under CGST Act shall be deemed to be exemption under the said Act.

Q 10. When exemption from whole of tax on goods or services or both has been granted absolutely, can a person pay tax?

Ans. No. Furthermore, if the goods are partly exempted, the person supplying exempted goods or services or both shall not collect the tax in excess of the effective rate.

Q 11. What is meant by Reverse Charge?

Ans. It means the liability to pay tax is on the recipient of supply of goods and services instead of the supplier of such goods or services in respect of notified categories of supply.

Q 12. Is the reverse charge mechanism applicable only to services?

Ans. No, reverse charge applies to supplies of both goods and services, as notified by the Government on the recommendations of the GST Council. Notification no. 4/2017-Central Tax (Rate) dated 28/06/2017 as amended by notification no.43/2017-Central Tax (Rate) dated 14/11/2017 & notification no.11/2018-Central Tax (Rate) dated 28/05/2018 and 13/2017- Central Tax (Rate) dated 28/06/2017 as amended by notification no.33/2017-Central Tax (Rate) dated 13/10/2017 & notification no.03/2018-Central Tax (Rate) dated 25/01/2018 have been issued. Similar notifications have

been issued under IGST Act also.

Reverse charge also applies to supplies received by a registered person from unregistered persons. However, the provision of reverse charge liability on supplies received from unregistered persons, as provided in sections 9 (4) and 5 (4) of the CGST Act and the IGST Act respectively, have been kept in abeyance till 30.09.2019.

Further as the recent CGST (Amendment) Act, 2018, section 9(4) shall only be applicable for specified class of registered persons which shall be notified by the government. However, the notification to bring the Act into effect is yet to be issued.

Q 13. What are the supplies of goods under RCM?

Ans. Supplies of goods under reverse charge mechanism:

| <i>S/No.</i> | <i>Description of supply of Goods</i> | <i>Supplier of goods</i> | <i>Recipient of Goods</i> |
|--------------|---|--|------------------------------|
| <i>1</i> | <i>Cashew nuts, not shelled or peeled</i> | <i>Agriculturist</i> | <i>Any registered person</i> |
| <i>2</i> | <i>Bidi wrapper leaves (tendu)</i> | <i>Agriculturist</i> | <i>Any registered person</i> |
| <i>3</i> | <i>Tobacco leaves</i> | <i>Agriculturist</i> | <i>Any registered person</i> |
| <i>4</i> | <i>Silk yarn</i> | <i>Any person who manufactures silk yarn from raw silk or silk worm cocoons for supply of silk</i> | <i>Any registered person</i> |

| | | | |
|----|--|--|--------------------------------------|
| | | yarn | |
| 4A | Raw cotton | Agriculturist | Any registered person. |
| 5 | Supply of lottery | State Government, Union Territory or any local authority | Lottery distributor or selling agent |
| 6 | Used vehicles, seized and confiscated goods, old and used goods, waste and scrap | Central Government, State Government, Union territory or a local authority | Any registered person |

Q 14. What will be the implications in case of receipt of supply from unregistered persons?

Ans. In case of receipt of supply from an unregistered person, the registered person who is receiving goods or services shall be liable to pay tax under reverse charge mechanism. However, this provision (of reverse charge on supplies received from unregistered persons) have been kept in abeyance till 30.09.2019. Further as the recent CGST (Amendment) Act, 2018, section 9(4) shall only be applicable for specified class of registered persons which shall be notified by the government. However, the notification to bring the Act into effect is yet to be issued.

Q 15. Whether the amount required to be deposited as advance tax while taking registration as a casual taxable person (CTP) should be 100% of

the estimated gross tax liability or the estimated tax liability payable in cash should be calculated after deducting the due eligible ITC which might be available to CTP?

Ans. The “estimated net tax liability” only and not the gross tax liability, after considering the due eligible ITC which might be available to such taxable person needs to be paid as advance tax by a casual taxable person(CTP) while taking registration.

Q 16. Can any person other than the supplier or recipient be liable to pay tax under GST?

Ans. Yes, the Government can specify categories of services the tax on which shall be paid by the electronic commerce operator, if such services are supplied through it and all the provisions of the Act shall apply to such electronic commerce operator as if he is the person liable to pay tax in relation to supply of such services. Notification No. 17/2017-Central Tax (rate) dated 28/06/2017 as amended by notification no.23/2017-Central Tax (rate) dated 22/08/2017 and Notification No. 14/2017-Integrated Tax (Rate) dated 28/06/2017 as amended by notification no. 23/2017-Integrated Tax (rate) dated 22/08/2017 have been issued under the CGST Act and the IGST Act respectively in this regard. The following categories of services have been notified for the purpose:

- a. services by way of transportation of passengers by a radio-taxi, motorcab, maxicab and motor cycle;*
- b. services by way of providing accommodation in hotels, inns, guest houses, clubs, campsites or other*

commercial places meant for residential or lodging purposes, except where the person supplying such service through electronic commerce operator is liable for registration under section 22(1) of the CGST Act;

c. services by way of house-keeping, such as plumbing, carpentering etc., except where the person supplying such service through electronic commerce operator is liable for registration under section 22(1) of the CGST Act.

2.1 Composition Levy

Q 17. What is the composition levy under GST?

Ans. The composition levy is an alternative method of levy of tax designed for small taxpayers whose turnover is up to prescribed limit. The objective of composition scheme is to bring simplicity, ease compliance burden and reduce cost of compliance for the small taxpayers. The scheme is optional. It essentially provides for a turnover tax regime for such tax payers, with facility for filing of return on quarterly basis (instead of monthly return by the normal tax payers).

An eligible person opting to pay tax under the composition scheme shall, instead of paying tax on every invoice at the specified rate, pay tax at a prescribed percentage of his turnover every quarter.

Q 18. What is the rate of composition levy?

| S/ No. | Category of Registered person | Rate of Tax |
|-------------------|--|--------------------|
|-------------------|--|--------------------|

| | | |
|---|---|--|
| 1 | <i>Manufacturers, other than manufacturers of such goods as may be notified by the Government</i> | <i>1% (0.5% CGST plus 0.5% SGST) of the turnover in the State/UT</i> |
| 2 | <i>Restaurant Services viz 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.</i> | <i>5% (2.5% CGST plus 2.5% SGST) of the turnover in the State/UT</i> |
| 3 | <i>Any other supplier eligible for composition levy under the composition scheme and the composition rules</i> | <i>1% (0.5% CGST plus 0.5% SGST) of the turnover of taxable supplies of goods in the State/UT</i> |
| <i>Thus, in respect of traders, value of exempt supplies shall not be counted for calculating the turnover. The tax shall be levied @1% of the turnover <u>of the taxable supplies of goods</u></i> | | |

Q 19. What is the eligibility category for opting for composition levy? Which are the Special Category States in which the turnover limit for Composition Levy for CGST and SGST purpose shall be Rs. 75 lakh?

Ans. Composition scheme is a scheme for payment of GST available to small taxpayers whose turnover in the

preceding financial year did not cross Rs. One crore. In the case of following 9 states, the limit of turnover is Rs. 75 Lakhs in the preceding financial year.

- a) Arunachal Pradesh*
- b) Assam*
- c) Manipur*
- d) Meghalaya*
- e) Mizoram*
- f) Nagaland*
- g) Sikkim*
- h) Tripura and*
- i) Himachal Pradesh.*

Q 20. Who are the persons not eligible for composition scheme?

Ans. Following persons will not be allowed to opt for composition scheme:

- a) supplier of services, other than restaurant service (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). It was, however, laid down vide Removal of Difficulties Order No. 01/2017- Central Tax dated 13.10.2017 that a person would not become eligible for composition scheme if he supplies any exempt services including services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.*

*As per the recent CGST (Amendment) Act, 2018, a person who opts to pay tax under composition scheme 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**. However, the notification for date of implementation of the amendment Act is yet to be issued.*

- b) a person engaged in making any supply of goods which are not leviable to tax under the CGST Act;*
- c) a person engaged in making any inter-State outward supplies of goods;*
- d) a supplier making any supply of goods through an electronic commerce operator who is required to collect tax at source under section 52; and*
- e) a manufacturer of such goods as may be notified by the Government on the recommendations of the Council. The manufacturers of the following goods shall not be eligible for the Composition Levy:*

| S. No. | Classification (Tariff item/ Chapter) | Description |
|---------------|--|---|
| 1 | 2105 00 00 | Ice cream and other edible ice, whether or not containing cocoa |
| 2 | 2106 90 20 | Pan masala |
| 3 | 24 | All goods i.e. Tobacco and manufactured tobacco substitutes |

Q 21. Whether service providers can apply for composition scheme?

Ans. No, the Service Providers, except provider of restaurant services, cannot apply for the scheme. At present, there is no composition scheme for service providers, except for provider of restaurant services.

However, a new proviso has been added as per the recent CGST (Amendment) Act, 2018 in order to allow them to be eligible for the scheme even if they supply services of value not exceeding 10% of the turnover in the preceding financial year in a State/Union territory or Rs. 5 lakhs, whichever is higher.

*Thus, a person who opts to pay tax under composition scheme will be allowed from a date to be notified to 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.***

It is reiterated that the notification for date of implementation of the amendment Act is yet to be issued.

Q 22. When will a person opting for composition levy pay tax?

Ans. A person opting for composition levy will have to pay on quarterly basis before 18th of the month succeeding the quarter relating to supplies.

Q 23. A person availing composition scheme during a financial year crosses the turnover of Rs. 100 Lakhs/75 Lakhs during the course of the year i.e. say he crosses the turnover of Rs. 100 Lakhs/75 Lakhs in December? Will he be allowed to pay tax under composition scheme for the remainder of the year i.e. till 31st March?

Ans. No. The option availed shall lapse from the day on which his aggregate turnover during the financial year exceeds Rs. 100 Lakhs/75 Lakhs. Once he crosses the threshold, he shall file an intimation for withdrawal from the scheme in FORM GST CMP-04 within seven days of the occurrence of such event.

Every person who has furnished such an intimation, may electronically furnish at the common portal, 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, within a period of thirty days from the date from which the option is withdrawn.

Q 24. How will aggregate turnover be computed for the purpose of composition scheme?

Ans. It will be computed on the basis of turnover on all India basis. "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.

¹However, a person supplying any exempt services including services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount, not be ineligible for the composition scheme. In computing his aggregate turnover in order to determine his eligibility for composition scheme, value of supply of the exempt services including services by way of extending deposits, loans or advances shall not be taken into account.

Q 25. Can a person who has opted to pay tax under the composition scheme avail Input Tax Credit on his inward supplies?

Ans. No. A taxable person opting to pay tax under the composition scheme is out of the credit chain. He cannot take credit on his input supplies.

Q 26. Can a registered person, who purchases goods from a taxable person paying tax under the composition scheme, take credit on purchases made from the composition dealer?

Ans. No.

Q 27. Can a person paying tax under the composition scheme issue a tax invoice under GST?

Ans. No.

¹ Order No. 01/2017-Central Tax dated 13.10.2017

Q 28. Is monthly return required to be filed by the person opting to pay tax under the composition scheme?

Ans. No. Such persons need to file quarterly returns in Form GSTR-4. The GSTR-4 needs to be filed electronically on the common portal by the 18th day of the month succeeding the quarter relating to the supplies.

Q 29. What are the basic information that need to be furnished in GSTR 4?

Ans. It should contain details of turnover in the State or Union territory, inward supplies of goods or services or both and tax payable. The basic information that need to be furnished in FORM GSTR-4 includes aggregate turnover, details of inward supplies including supplies on which tax is to be paid on reverse charge, tax on outward supplies made, Statement of Advances etc.

Serial 4A of Table 4 requires the composition dealer to furnish details of inward supplies received from a registered supplier (other than supplies attracting reverse charge). It has been prescribed, vide notification No. 30/2018- Central tax dated 30.10.2018, that the information in this Table is not required to be furnished.

Q 30. How to fill the GSTR-4 form?

Ans. GSTR 4 offline utility, for preparation and filing of Return by composition dealer is also available in download section of the GST Portal.

Facility to provide details of amendment, in Form GSTR 4, is also available to composition taxpayers. They can now file

amendment details in various tables of Form GSTR 4, like in Table 5A (of supply), 5C (of debit/ credit notes), 7 (of tax on outward supply made) & 8 (II) (of advance of reverse charge or advances for which invoice is received in current period).

Q 31. How should a person who opts in or opts out of composition scheme file returns?

Ans. Composition tax payers have to file quarterly return and Normal tax payers have to file monthly returns in GST Regime. For the taxpayers who have opted in to composition scheme and taxpayers who have opted out from the composition scheme as normal tax payer, provision to file both monthly/quarterly returns (in the interim period), has been enabled on the GST Portal.

Q 32. A person opting to pay tax under the composition scheme receives inputs/input services from an unregistered person. Will the composition dealer have to pay GST under reverse charge? If yes, in what manner?

Ans. No. The requirement to pay GST on reverse charge basis under section 9(4) of the CGST Act has been removed wef 13.10.2017 till 30.09.2019.

Q 33. What is the form in which an intimation for payment of tax under composition scheme needs to be made by the taxable person?

Ans. The intimation is to be made electronically in form GST CMP 01.

Q 34. A person registered under existing law (Central Excise/Service Tax/VAT) and who has been granted registration on a provisional basis wants to opt for composition scheme. How and when can he do that?

*Ans. Such a person has to 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.*

Q 35. What if such persons granted provisional registration, gives an intimation to opt for composition levy after the appointed date?

Ans. In cases 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.

Q 36. What are the other compliances which a provisionally registered person opting to pay tax under the composition levy need to make?

Ans. Such persons have to 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, on the common portal, either directly or through a Facilitation Centre notified by the Commissioner, within a period of ninety 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.

Q 37. Can a person making application for fresh registration under GST opt for composition levy at the time of making application for registration?

Ans. Yes. Such persons 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.

Q 38. Can the option to pay tax under composition levy be exercised at any time of the year?

Ans. No. The option has to be given electronically in FORM GST CMP-02, prior to the commencement of the financial year for which the option to pay tax under the aforesaid section is exercised.

Q 39. Can a person who has already obtained registration, opt for payment under composition levy? If so, how?

Ans. Yes. Such persons need to give intimation electronically in Form GST CMP-02. But the same must be done prior to commencement of financial year.

Q 40. What are the compliances from ITC reversal point of view that need to be made by a person opting for composition levy?

Ans. The registered person has to pay an amount equal to the input tax credit in respect of stocks held on the day

immediately preceding the date of exercise of option. The ITC on inputs shall be calculated proportionately on the basis of corresponding invoices on which credit had been availed by the registered taxable person on such inputs. In respect of 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 5 years. Assume capital goods have been in use for 4 years, 6 months and 15 days. The useful remaining life in months will be 5 months ignoring the part of the month. If ITC on such capital goods is taken as Credit, ITC attributable to the remaining useful life will be C multiplied by 5/60. This would be the amount payable on capital goods, the payable amount would be calculated by reducing by a prescribed percentage point. The ITC amount shall be determined separately for integrated tax, central tax and state tax / Union territory tax. The payment can be made by debiting electronic credit ledger, if there is sufficient balance in the electronic credit ledger, or by debiting electronic cash ledger. If any balance remains in the electronic credit ledger, it would lapse.

Such persons also has to furnish the statement in FORM GST ITC-03 which is a declaration for intimation of ITC reversal/payment of tax on inputs held in stock, inputs contained in semi-finished and finished goods held in stock and capital goods under Section 18(4) of GST Act, within a period of sixty days from the commencement of the relevant financial year.

Q 41. In case a person has registration in multiple states? Can he opt for payment of tax under

composition levy only in one state and not in other state?

Ans. No. Any intimation under sub-rule (1) or sub-rule (3) of Rule 3 of the CGST Rules, 2017 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.

Q 42. What is the effective date of composition levy?

Ans. There can be three situations:

| Situation | Effective date of composition levy |
|--|---|
| <i>Persons who have been granted provisional registration and who opt for composition levy (Intimation is filed under Rule 3(1))</i> | <i>The appointed date i.e 1st July, 2017</i> |
| <i>Persons opting for composition levy at the time of making application for new registration in the same registration application itself (The intimation under Rule 3(2))</i> | <i>Effective date of registration; Intimation shall be considered only after the grant of registration and his option to pay tax under section 10 shall be effective from the effective date of registration.</i> |
| <i>Persons opting for composition after obtaining registration (The intimation is filed under Rule 3(3))</i> | <i>The beginning of the financial year</i> |

Q 43. What are the conditions and restrictions subject to which a person is allowed to avail of composition levy?

Ans. 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 (such a requirement has been removed wef 13.10.2017 as mentioned in answer to Question No. 16 above);

(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 (such a requirement has been removed wef 13.10.2017 as mentioned in answer to Question No. 16 above);

(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

(g) he shall mention the words “composition taxable person” on every notice or signboard displayed at a prominent place at his principal place of business and at every additional place or places of business.

Q 44. What is the validity of composition levy?

Ans. 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 the Composition Rules.

Q 45. Can a person paying tax under composition levy, withdraw voluntarily from the scheme? If so, how?

Ans. Yes. 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.

Every person who has filed an application for, 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, within a period of thirty days from the date from which the option is withdrawn.

Q 46. What action can be taken by the proper officer for contravention of any provisions of composition levy and how?

Ans. 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.

The registered person shall submit reply in FORM GST CMP-06. Upon receipt of the reply to the show cause notice issued, 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.

Q 47. In case the option to pay tax under composition levy is denied by the proper officer, can the person avail ITC on stock after denial?

Ans. Yes. Every person in respect of whom an order of withdrawal of option has been passed in FORM GST CMP-07, may electronically furnish at the common portal, 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 denied, within a period of thirty days from the date of the order passed in FORM GST CMP-07.

Q 48. Will withdrawal intimation in any one place be applicable to all places of business?

Ans. Any intimation or application for withdrawal 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.

3. Registration

Q 1. What is advantage of taking registration in GST?

Ans. Registration under Goods and Service Tax (GST) regime will confer following advantages to the business:

- *Legally recognized as supplier of goods or services.*
- *Proper accounting of taxes paid on the input goods or services which can be utilized for payment of GST due on supply of goods or services or both by the business.*
- *Legally authorized to collect tax from his purchasers and pass on the credit of the taxes paid on the goods or services supplied to purchasers or recipients.*
- *Getting eligible to avail various other benefits and privileges rendered under the GST laws.*

Q 2. Can a person without GST registration claim ITC and collect tax?

Ans. No, a person without GST registration can neither collect GST from his customers nor can claim any input tax credit of GST paid by him.

Q 3. What will be the effective date of registration?

Ans. Where the application for registration has been submitted within thirty days from the date on which the person becomes liable to registration, the effective date of

registration shall be the date on which he became liable for registration.

Where an application for registration has been submitted by the applicant after thirty days from the date of his becoming liable to registration, the effective date of registration shall be the date of grant of registration.

In case of a person taking registration voluntarily while being within the threshold exemption limit for paying tax, the effective date of registration shall be the date of order of registration.

Q 4. Who are the persons liable to take a Registration under the GST Law?

Ans. As per Section 22 of the CGST/SGST Act 2017, every supplier (including his agent) who makes a taxable supply i.e. supply of goods and / or services which are leviable to tax under GST law, and his aggregate turn over in a financial year exceeds the threshold limit of twenty lakh rupees shall be liable to register himself in the State or the Union territory of Delhi or Puducherry from where he makes the taxable supply.

In case of eleven special category states (as mentioned in Art.279A(4)(g) of the Constitution of India), this threshold limit for registration liability is ten lakh rupees.

Besides, Section 24 of the Act mentions certain categories of suppliers, who shall be liable to take registration even if their aggregate turnover is below the said threshold limit of 20 lakh rupees.

On the other hand, as per Section 23 of the Act, an agriculturist in respect of supply of his agricultural produce; as also any person exclusively making supply of non-taxable or wholly exempted goods and/or services under GST law will not be liable for registration.

Q 5. What is aggregate turnover?

Ans. As per section 2(6) of the CGST/SGST Act “aggregate turnover” includes the aggregate value of:

- (i) all taxable supplies,*
- (ii) all exempt supplies,*
- (iii) exports of goods and/or service, and,*
- (iv) all inter-state supplies of a person having the same PAN.*

The above shall be computed on all India basis and excludes taxes charged under the CGST Act, SGST Act, UTGST Act, and the IGST Act. Aggregate turnover shall include all supplies made by the Taxable person, whether on his own account or made on behalf of all his principals.

Aggregate turnover does not include value of supplies on which tax is levied on reverse charge basis, and value of inward supplies.

The value of goods after completion of job work is not includible in the turnover of the job-worker. It will be treated as supply of goods by the principal and will accordingly be includible in the turnover of the Principal.

Q 6. Which are the cases in which registration is compulsory?

Ans. *The following categories of persons are required to be registered compulsorily irrespective of the threshold limit:*

- 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) persons 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;*
- vii) persons who make taxable supply of goods or services on behalf of other registered taxable persons whether as an agent or otherwise;*
- viii) Input service distributor (whether or not separately registered under the Act);*
- ix) persons who supply goods, other than supplies specified under Section 9(5), through such e-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 retrieval services from a place outside India to a person in India, other than a registered person;*
and,

In addition, the Government may notify other person or class of persons who shall be required to be registered mandatorily.

The Government, however, has granted exemption from

compulsory registration vide Notification no. 56/2018-Central Tax dated 23/10/2018 (casual taxable person making taxable supplies of handicraft goods and the aggregate value of such supplies, does not exceed the amount of aggregate turnover above which a supplier is liable to be registered) and Notification no. 65/2017-Central Tax (Rate) dated 15/11/2017 (supplier of services through an e-commerce platform having an aggregate turnover not exceeding an amount of twenty lakh rupees or ten lakh rupees in case of "special category States" other than the State of Jammu and Kashmir.).

Q 7. Whether a person exclusively engaged in supplies which are under reverse charge mechanism need to register in GST?

Ans. No. Such persons are exempted from registration vide Notification No. 05/2017-Central Tax dated 19th June, 2017

Q 8. What is the time limit for taking a Registration under GST?

Ans. A person should take a Registration, within thirty days from the date on which he becomes liable to registration, in such manner and subject to such conditions as is prescribed under the Registration Rules. A Casual Taxable person and a non-resident taxable person should however apply for registration at least 5 days prior to commencement of business.

Q 9. If a person is operating in different states, with the same PAN number, whether he can operate

with a single Registration?

Ans. No. Every person who is liable to take a Registration will have to get registered separately for each of the States where he has a business operation and is liable to pay GST in terms of Section 22(1) of the CGST/SGST Act.

Q 10. Can a person obtain multiple registrations in a State?

Ans. Yes. In terms of the proviso to Sub-Section (2) of Section 25, a person having multiple place of businesses in a State or UT may obtain a separate registration for each such place of business, subject to such conditions as prescribed in the registration rules.

As per the CGST(Amendment) Act, 2018, the reference to requirement of separate business vertical for separate registration is not there now. The definition of “business vertical” has been omitted. However, the notification to bring the Act into effect is yet to be issued.

Q 11. Whether a company having a SEZ unit or developer need to have separate registration?

Ans. Yes. As per the second proviso to sub-section 1 of section 25 of the CGST Act, inserted vide the CGST (Amendment) Act, 2018, a person having SEZ unit or being SEZ developer shall have to apply for a separate registration, as distinct from his place of business located outside the SEZ in the same State or Union territory. (This would be brought into force from the date law amendment is notified)

Q 12. Is there a provision for a person to get himself voluntarily registered though he may not be liable to pay GST?

Ans. Yes. In terms of Section 25(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 taxable person, shall apply to such person.

The person, once registered, will have to pay GST irrespective of his aggregate turnover.

Q 13. Is possession of a Permanent Account Number (PAN) mandatory for obtaining a Registration?

Ans. Yes. As per Section 25(6) of the CGST/SGST Act every person shall have a Permanent Account Number issued under the Income Tax Act, 1961 (43 of 1961) in order to be eligible for grant of registration.

However as per the proviso to the aforesaid section 25(6), a person required to deduct tax under Section 51, may have, in lieu of a PAN, a Tax Deduction and Collection Account Number issued under the said Income Tax Act, in order to be eligible for grant of registration.

Also, as per Section 25(7) PAN is not mandatory for a non-resident taxable person who may be granted registration on the basis of self-attested copy of valid passport.

Q 14. Whether the Department through the proper officer, can suo-moto proceed to register a Person under this Act?

Ans. *Yes. In terms of Section 25(8), where a person who is liable to be registered under the CGST 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 the manner prescribed in the rule 16 of the CGST Rules, 2017.*

Q 15. What is the procedure for suo-moto registration?

Ans. *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**.*

Q 16. What is the effective date of such suo moto registrations?

Ans. *It shall be effective from the date of order granting registration.*

Q 17. Will such suo moto registrations be final registrations?

Ans. *No. Every person to whom a suo-moto (temporary) registration has been granted under rule 16(1) of the CGST Rules, 2017, shall, within 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 (normal taxable persons) or rule 12 (TDS/TCS deductors)*

unless the said person has filed an appeal against the grant of temporary registration, in that case the application for registration shall be submitted within thirty days from the date of issuance of order upholding the liability to registration by the Appellate Authority.

Q 18. Whether the proper officer can reject an Application for Registration?

Ans. Yes. In terms of section 25(10) of the CGST Act, the proper officer can reject an application for registration after due verification.

Where the application submitted under rule 8 is found to be deficient, the proper officer 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.

Where no reply is furnished by the applicant 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.

Q 19. Whether the Registration granted to any person is permanent?

Ans. Yes, the registration Certificate once granted is permanent unless surrendered, cancelled, suspended or

revoked.

Q 20. Will the address of business premises mentioned in the application for registration be verified physically by the department?

*Ans. Only in cases where the proper officer feels the need for such verification but after the grant of registration. Wherever the proper officer feels so, he may get such verification done and the verification report along with other documents, including photographs, shall be uploaded in **FORM GST REG-30** on the Common Portal within fifteen working days following the date of such verification.*

Q 21. Is it necessary for the UN bodies to get registration under GST?

Ans. Yes. In terms of Section 25(9) of the CGST/SGST Act, all notified UN bodies, Consulate or Embassy of foreign countries and any other class of persons so notified would be required to obtain a unique identification number (UIN) from the GST portal. The structure of the said ID would be uniform across the States in conformity with GSTIN structure and the same will be common for the Centre and the States. This UIN will be needed for claiming refund of taxes paid on notified supplies of goods and services received by them, and for any other purpose as may be notified.

Q 22. Certain entities are required to obtain Unique Identity Numbers (UIN). How will such UIN's be issued?

Ans. Every person required to be granted a Unique Identity Number(UIN) under section 25(9) may submit an application, electronically in **FORM GST REG-13**, duly signed, in the manner specified in rule 8 at the Common Portal, either directly or through a Facilitation Centre, notified by the Board or Commissioner.

The proper officer may, upon submission of an application in **FORM GST REG-13** or after filling up the said form, assign a Unique Identity Number to the said person and issue a certificate in **FORM GST REG-06** within three working days from the date of submission of application.

Q 23. What is the responsibility of the taxable person supplying to UN bodies?

Ans. The taxable supplier supplying to these organizations is expected to mention the UIN on the invoices and treat such supplies as supplies to another registered person (B2B) and the invoices of the same will be uploaded by the supplier.

Q 24. Who is a Casual Taxable Person?

Ans. Casual Taxable Person has been defined in Section 2 (20) of the CGST/SGST Act meaning a person who occasionally undertakes transactions involving supply of goods and/or services in the course or furtherance of business, whether as principal, or agent or in any other capacity, in a State or a Union territory where he has no fixed place of business.

Q 25. Who is a Non-resident Taxable Person?

Ans. In terms of Section 2(77) of the CGST/SGST Act, a non-resident taxable person means any person who occasionally undertakes transactions involving supply of goods and/or services whether as principal or agent or in any other capacity, but who has no fixed place of business or residence in India.

Q 26. What is the validity period of the Registration certificate issued to a Casual Taxable Person and non- Resident Taxable person?

Ans. In terms of Section 27(1) read with proviso thereto, the certificate of registration issued to a “casual taxable person” or a “non-resident taxable person” shall be valid for a period specified in the application for registration or ninety days from the effective date of registration, whichever is earlier. However, the proper officer, at the request of the said taxable person, may extend the validity of the aforesaid period of ninety days by a further period not exceeding ninety days.

Q 27. Is there any Advance tax to be paid by a Casual Taxable Person and Non-resident Taxable Person at the time of obtaining registration under this Special Category?

Ans. Yes. While a normal taxable person does not have to make any advance deposit of tax to obtain registration, a casual taxable person or a non-resident taxable person shall, at the time of submission of application for registration is required, in terms of Section 27(2) read with proviso thereto, to 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. If registration is to be extended beyond the initial period of ninety days, an advance additional amount of tax equivalent to the estimated tax liability is to be deposited for the period for which the extension beyond ninety days is being sought.

Q 28. A casual taxable person/non-resident taxable person has to make advance deposit of tax. Will such persons have to wait till grant of registration to deposit Advance Tax?

Ans. No. A person applying for registration as a casual taxable person/non-resident 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 rule 8 (5), for submission of registration application, shall be issued electronically only after the said deposit in the electronic cash ledger.

Q 29. What is the difference between casual and non-resident taxable persons?

Ans. Casual and Non-resident taxable persons are separately defined in the CGST/SGST Act in Sections 2(20) and 2(77) respectively. Some of the differences are outlined below:

| <i>Casual Taxable Person</i> | <i>Non-resident Taxable Person</i> |
|-------------------------------------|---|
| <i>Occasional undertakes</i> | <i>Occasional undertakes</i> |

| | |
|---|---|
| <i>transactions involving supply of goods or services in a state or UT where he has no fixed place of business.</i> | <i>transactions involving supply of goods or services but has no fixed place of business residence in India.</i> |
| <i>Has a PAN Number</i> | <i>Do not have a PAN Number; A non-resident person, if having PAN number may take registration as a casual taxable person</i> |
| <i>Same application form for registration as for normal taxable persons viz GST REG-01</i> | <i>Separate application form for registration by non-resident taxable person viz GST REG-9</i> |
| <i>Has to undertake transactions in the course or furtherance of business</i> | <i>Business test absent in the definition</i> |
| <i>Has to file normal GSTR-1, GSTR-2 and GSTR-3 returns</i> | <i>Has to file a separate simplified return in the format GSTR-5</i> |
| <i>Can claim ITC of all inward supplies</i> | <i>Can get ITC only in respect of import of goods and /or services.</i> |

Q 30. Who is an ISD?

Ans. ISD stands for Input Service Distributor and has been defined under Section 2(61) of the CGST/SGST Act. It is basically an office meant to receive tax invoices towards receipt of input services and further distribute the credit to supplier units (having the same PAN) proportionately.

Q 31. Will ISD be required to be separately registered other than the existing tax payer registration?

Ans. Yes, the ISD registration is for one office of the taxpayer which will be different from the normal registration.

Q 32. Can a tax payer have multiple ISDs?

Ans. Yes. Different offices of a tax payer can apply for ISD registration.

Q 33. What could be the liabilities (in so far as registration is concerned) on transfer of a business?

Ans. The transferee or the successor shall be liable to be registered with effect from such transfer or succession and he will have to obtain a fresh registration with effect from the date of such transfer or succession. (Section 22(3)).

Q 34. Whether all assesses / dealers who are already registered under existing central excise/service tax/ vat laws will have to obtain fresh registration?

Ans. No, GSTN shall migrate all such assessee/dealers to the GSTN network and shall issue a provisional registration certificate with GSTIN number on the appointed day, which after due verification by the departmental officers within six months, will be converted into final registration certificate. For converting the provisional registration to final registration the registrants will be asked to submit all requisite documents and information required for registration in a prescribed period of time. Failure to do so will result in cancellation of the provisional GSTIN number.

The service tax assesses having centralized registration will

have to apply afresh in the respective states wherever they have their businesses.

Q 35. Whether the job worker will have to be compulsorily registered?

Ans. No, a Job worker is a supplier of services and will be obliged to take registration only when his turnover crosses the prescribed threshold of 20/10 Lakhs.

Q 36. Whether the goods will be permitted to be supplied from the place of business of a job worker?

Ans. Yes. But only in cases where the job worker is registered, or if not, the principal declares the place of business of the job worker as his additional place of business.

Q 37. At the time of registration will the assessee have to declare all his places of business?

Ans. Yes. The principal place of business and place of business have been separately defined under section 2(89) & 2(85) of the CGST/SGST Act respectively. The taxpayer will have to declare the principal place of business as well as the details of additional places of business in the registration form.

Q 38. Is there any system to facilitate smaller dealers or dealers having no IT infrastructure?

Ans. In order to cater to the needs of tax payers who are not IT savvy, following facilities shall be made available: -

GST Practitioners: A taxable person may prepare his registration application /returns himself or can approach the GST Practitioner for assistance. GST Practitioner will prepare the said registration document / return in prescribed format on the basis of the information furnished to him by the taxable person. The legal responsibility of the correctness of information contained in the forms prepared by the GST Practitioner will rest with the registered person only and the GST Practitioner shall not be liable for any errors or incorrect information.

Facilitation Centre (FC): shall be responsible for the digitization and/or uploading of the forms and documents including summary sheet duly signed by the Authorized Signatory and given to it by the taxable person. After uploading the data on common portal using the ID and Password of FC, a print-out of acknowledgement will be taken and signed by the FC and handed over to the taxable person for his records. The FC will scan and upload the summary sheet duly signed by the Authorized Signatory.

Q 39. Is there any facility for digital signature in the GSTN registration?

Ans. Tax payers would have the option to sign the submitted application using valid digital signatures. There will be two options for electronically signing the application or other submissions- by e-signing through Aadhar number, or through DSC i.e. by registering the tax payer's digital signature certificate with GST portal. However, companies or limited liability partnership entities will have to sign mandatorily through DSC only. Only level 2 and level 3 DSC

certificates will be acceptable for signature purpose.

Q 40. How will a person desirous of becoming a GST Practitioner apply?

Ans. A person desirous of becoming GST Practitioner has to submit an application in the form GST PCT-1. The application shall be scrutinized and, if found eligible, the GST practitioner certificate shall be granted in the form GST PCT-2.

Q 41. Whether a GST Practitioner need to register separately under GST?

Ans. If his aggregate turnover crosses the prescribed threshold limit, he will need to register as a normal taxpayer.

Q 42. What will be the time limit for the decision on the on line registration application?

Ans. If the information and the uploaded documents are found in order, the State and the Central authorities shall have to respond to the application within three common working days. If they communicate any deficiency or discrepancy in the application within such time, then the applicant will have to remove the discrepancy / deficiency within 7 days of such communication. Thereafter, for either approving the application or rejecting it, the State and the Central authorities will have 7 days from the date when the taxable person communicates removal of deficiencies. In case no response is given by the departmental authorities within the said time line, the portal shall automatically

generate the registration.

Q 43. What will be the time of response by the applicant if any query is raised in the online application?

Ans. If during the process of verification, one of the tax authorities raises some query or notices some error, the same shall be communicated to the applicant and to the other tax authority through the GST Common Portal within 3 common working days. The applicant will reply to the query/rectify the error/ answer the query within a period of seven days from the date of receipt of deficiency intimation.

On receipt of additional document or clarification, the relevant tax authority will respond within seven common working days from the date of receipt of clarification.

Q 44. What is the process of refusal of registration?

Ans. In case registration is refused, the applicant will be informed about the reasons for such refusal through a speaking order. The applicant shall have the right to appeal against the decision of the Authority. As per sub-section (2) of section 26 of the CGST Act, any rejection of application for registration by one authority (i.e. under the CGST Act / SGST Act) shall be deemed to be a rejection of application for registration by the other tax authority (i.e. under the SGST Act / UTGST Act/ CGST Act).

Q 45. Will there be any communication related to the application disposal?

Ans. The applicant shall be informed of the fact of grant or rejection of his registration application through an e-mail and SMS by the GST common portal. Jurisdictional details would be intimated to the applicant at this stage.

Q 46. Can the registration certificate be downloaded from the GSTN portal?

Ans. In case registration is granted; applicant can download the Registration Certificate from the GST common portal.

3.1 Amendment of Registration

Q 47. Whether Amendments to the Registration Certificate is permissible?

Ans. Yes. In terms of Section 28, the proper officer may, on the basis of such information furnished either by the registrant or as ascertained by him, approve or reject amendments in the registration particulars within a period of 15 common working days from the date of receipt of application for amendment.

It is to be noted that permission of the proper officer for making amendments will be required for only certain core fields of information, whereas for the other fields, the certificate of registration shall stand amended upon submission of application in the GST common portal.

Q 48. How can an application for amendment of registration be made?

*Ans. 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 UIN in **FORM GST-REG-13**, as the case may be, either at the time of obtaining registration or as amended from time to time, the registered person shall, within fifteen days of such change, submit an application, duly signed, electronically in **FORM GST REG-14**, along with documents relating to such change at the Common Portal either directly or through a Facilitation Centre notified by the Commissioner.

Q 49. Is the approval of proper officer mandatory for making amendments in registration?

Ans. Once an application in **FORM GST REG-14** is submitted on the Common Portal, all amendments, except the following, shall stand amended. Permission of proper officer is required only if the amendment relates to

(i) legal name of business;

(ii) address of the principal place of business or any additional place 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,-

Q 50. Is there any time limit for approving amendment by the proper officer?

Ans. Yes. 15 days. The proper officer shall approve the amendment within fifteen working days from the date of receipt of application in **FORM GST REG-14** after due verification and issue an order in **FORM GST REG-15**

electronically and such amendment shall take effect from the date of occurrence of the event warranting amendment.

Q 51. What is the procedure to be followed by the proper officer for approving/rejecting such requests for amendment?

*Ans. Where the proper officer is of the opinion that the amendment sought under Rule 19 (1) is either not warranted or the documents furnished therewith are incomplete or incorrect, he may, within fifteen working days from the date of 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 seven working days of the service of the said notice, as to why the application submitted under sub-rule (1) shall not be rejected.*

*The taxable person shall furnish a reply to the notice to show cause in **FORM GST REG-04** within seven working days from the date of the service of the said notice.*

*Where the reply furnished is found to be not satisfactory or where no reply is furnished in response to the notice issued within seven days, the proper officer shall reject the application and pass an order in **FORM GST REG -05**.*

Q 52. What happens if the proper officer fails to take any action on the application for amendment?

Ans. If the proper officer fails to take any action-

(a) within fifteen working days from the date of submission of application, or

(b) with in seven working days from the date of receipt of reply to the notice to show cause,

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.

3.2 Cancellation of Registration

Q 53. Whether Cancellation of Registration Certificate is permissible?

Ans. Yes. Section 29 of the CGST Act, read with rule 20 of the CGST Rules provides that a taxpayer can apply for cancellation of registration in FORM GST REG-16 in the following circumstances:

- Discontinuance of business or closure of business;*
- Transfer of business on account of amalgamation, merger, de-merger, sale, lease or otherwise;*
- Change in constitution of business leading to change in PAN;*
- Taxable person (including those who have taken voluntary registration) is no longer liable to be registered under GST;*
- Death of sole proprietor;*
- Any other reason (to be specified in the application)*

Application in FORM GST REG-16 has to be submitted within a period of 30 days of the “occurrence of the event warranting the cancellation”.

Q 54. What if the period of 30 days of the occurrence of the event warranting the cancellation is over?

Ans. CBIC vide Circular No. 69/43/2018-GST dated 26th October, 2018 has advised that the 30-day deadline may be liberally interpreted and the taxpayers’ application for cancellation of registration may not be rejected because of the possible violation of the deadline as it may be difficult to pinpoint the date on which event occurs in all cases.

Q 55. Whether cancellation of Registration under CGST Act means cancellation under SGST Act also?

Ans. Yes, the cancellation of registration under one Act (say SGST Act) shall be deemed to be a cancellation of registration under the other Act (i.e. CGST Act). (Section 29 (4))

Q 56. Whether cancellation of registration has any impact on the liabilities of the taxpayers?

Ans. The cancellation of registration has no effect on the liability of the taxpayer for any acts of commission/omission committed before or after the date of cancellation. As per section 29(3) of the CGST Act, the cancellation of registration shall not affect the liability of the person to pay tax and other dues 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.

Q 57. What are the obligation of a registered person applying for cancellation?

Ans. As per Section 29(5) of the CGST Act, read with rule 20 of the CGST Rules, the taxpayer seeking cancellation of registration shall have to pay, by way of debiting either the electronic credit or cash ledger, the input tax contained in the stock of inputs, semi-finished goods, finished goods and capital goods or the output tax payable on such goods, whichever is higher. As per section 45 of the CGST Act, every registered person whose registration is cancelled needs to file a final return in GSTR-10 with in three months of cancellation.

The requirement to debit the electronic credit and/or cash ledger by suitable amounts should not be a prerequisite for applying for cancellation of registration. This can also be done at the time of submission of final return in FORM GSTR-10.

Q 58. Can the proper Officer Cancel the Registration on his own?

Ans. Yes, in certain circumstances specified under section 29(2) of the CGST/SGST Act, the proper officer can cancel the registration on his own. Such circumstances include contravention of any of the prescribed provisions of the CGST Act or the rules made there under, not filing return by a composition dealer for three consecutive tax periods or non-furnishing of returns by a regular taxpayer for a

continuous period of six months, and not commencing business within six months from the date of voluntary registration. However, before cancelling the registration, the proper officer has to follow the principles of natural justice. (Proviso to Section 29(2))

Q 59. What happens when the registration is obtained by means of willful mis-statement, fraud or suppression of facts?

Ans. In such cases, the registration may be cancelled with retrospective effect by the proper officer. (Section 29(2) (e))

Q 60. What is suspension of registration?

Ans. Section 29 of the CGST Act has been amended by the CGST (Amendment) Act, 2018 to provide for "Suspension" of registration. The intent of the said amendment is to ensure that a taxpayer is freed from the routine compliances, including filing returns, under GST Act during the pendency of the proceedings related to cancellation. (This would be brought into force from the date law amendment is notified)

Q 61. Can cancellation of registration order be revoked?

Ans. Yes, but only in cases where the initial cancellation has been done by the proper officer suo moto, and not on the request of the taxable person or his legal heirs. A person whose registration has been cancelled suo moto can apply to the proper officer for revocation of cancellation of registration within 30 days from the date of communication

of the cancellation order. The proper officer may within a period of 30 days from the date of receipt of application for revocation of cancellation or receipt of information/clarification, either revoke the cancellation or reject the application for revocation of cancellation of registration.

Such application has to be filed electronically in FORM GST REG 21. But there is a rider also. No application for revocation shall be filed if the registration has been cancelled for the failure of the taxable person to furnish returns, unless such returns are filed and any amount due as tax, in terms of such returns has been paid along with any amount payable towards interest, penalties and late fee payable in respect of the said returns.

Q 62. Can a person who has been migrated provisionally to the GST apply for cancellation of provisional registration on the ground that he is not liable to be registered under GST?

Ans. *Yes. Every person registered under any of the existing laws, who is not liable to be registered under the Act may, on or before the appointed day, at his option, submit an application electronically in **FORM GST REG-29** at the Common Portal for cancellation of the registration granted to him and the proper officer shall, after conducting such enquiry as deemed fit, cancel the said registration.*

4. Meaning and Scope of Supply

Q 1. What is the taxable event under GST?

Ans. The taxable event under GST shall be the supply of goods or services or both made for consideration in the course or furtherance of business. The taxable events under the existing indirect tax laws such as manufacture, sale, or provision of services shall stand subsumed in the taxable event known as 'supply'.

Q 2. What is the scope of 'supply' under the GST law?

Ans. The term 'supply' is wide in its import covers all forms of supply of goods or services or both that includes sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business. It also includes import of service. The GST law also provides for including certain transactions made without consideration within the scope of supply.

Q 3. What is a taxable supply?

Ans. A 'taxable supply' means a supply of goods or services or both which is chargeable to goods and services tax under the GST Act.

Q 4. What are the necessary elements that constitute supply under CGST/SGST Act?

Ans. In order to constitute a 'supply', the following elements are required to be satisfied, i.e.-

(i) the activity involves supply of goods or services or both;

(ii) the supply is for a consideration unless otherwise specifically provided for;

(iii) the supply is made in the course or furtherance of business;

(iv) the supply is a taxable supply; and

(v) the supply is made by a taxable person.

Q 5. Can a transaction in which any one or more of the above criteria is not fulfilled, be still considered as supply under GST?

Ans. Yes. Under certain circumstances such as import of services for a consideration whether or not in the course or furtherance of business (Section 7(1) (b)) or supplies made without consideration, specified under Schedule-I of CGST /SGST Act, where one or more ingredients specified in answer to question no.4 are not satisfied, it shall still be treated as supply for levy of GST.

Q 6. Import of Goods is conspicuous by its absence in Section 7. Why?

Ans. Import of goods is dealt separately under the Customs Act, 1962, wherein IGST and compensation cess (wherever applicable) shall be levied under the Customs Tariff Act, 1975 in addition to basic customs duty. Proviso to section 5(1) of IGST Act, 2017 may be referred to.

Q 7. Are self-supplies taxable under GST?

Ans. Inter-state self-supplies such as stock transfers,

branch transfers or consignment sales shall be taxable under IGST even though such transactions may not involve payment of consideration. Every supplier is liable to register under the GST law in the State or Union territory from where he makes a taxable supply of goods or services or both in terms of Section 22 of the CGST Act. However, intra-state self-supplies are not taxable subject to not opting for registration as business vertical.

Q 8. Whether transfer of title and/or possession is necessary for a transaction to constitute supply of goods?

Ans. Title as well as possession both have to be transferred for a transaction to be considered as a supply of goods. In case title is not transferred, the transaction would be treated as supply of service in terms of Schedule II (1) (b). In some cases, possession may be transferred immediately but title may be transferred at a future date like in case of sale on approval basis or hire purchase arrangement. Such transactions will also be termed as supply of goods.

Q 9. What do you mean by “supply made in the course or furtherance of business”?

Ans. “Business” is defined under Section 2(17) include any trade, commerce, manufacture, profession, vocation, adventure or wager etc. whether or not undertaken for a pecuniary benefit. Business also includes any activity or transaction which is incidental or ancillary to the aforementioned listed activities. In addition, any activity undertaken by the Central Govt. or a State Govt. or any local authority in which they are engaged as public

authority shall also be construed as business. From the above, it may be noted that any activity undertaken included in the definition for furtherance or promoting of a business could constitute a supply under GST law.

Q 10. An individual buys a car for personal use and after a year sells it to a car dealer. Will the transaction be a supply in terms of CGST/SGST Act? Give reasons for the answer.

Ans. No, because the sale of old and used car by an individual is not in the course or furtherance of business and hence does not constitute supply.

Q 11. A dealer of air-conditioners permanently transfers an air conditioner from his stock in trade, for personal use at his residence. Will the transaction constitute a supply?

Ans. Yes. As per Sl. No.1 of Schedule-I, permanent transfer or disposal of business assets where input tax credit has been availed on such assets shall constitute a supply under GST even where no consideration is involved.

Q 12. Whether provision of service or goods by a club or association or society to its members will be treated as supply or not?

Ans. Yes. Provision of facilities by a club, association, society or any such body to its members shall be treated as supply. This is included in the definition of 'business' in section 2(17) of CGST/SGST Act.

Q 13. What are the different types of supplies under

the GST law?

Ans. (i) Taxable and exempt supplies. (ii) Inter-State and Intra-State supplies, (iii) Composite and mixed supplies and (iv) Zero rated supplies.

Q 14. What are inter-state supplies and intra-state supplies?

Ans. Inter-state and intra-state supplies have specifically been defined in Section 7(1), 7(2) and 8(1), 8(2) of the IGST Act respectively. Broadly, where the location of the supplier and the place of supply are in same state it will be intra-state and where it is in different states it will be inter-state supplies.

Q 15. Whether transfer of right to use goods will be treated as supply of goods or supply of service? Why?

Ans. Transfer of right to use goods shall be treated as supply of service because there is no transfer of title in such supplies. Such transactions are specifically treated as supply of service in Schedule-II of CGST/SGST Act.

Q 16. Whether Works contracts and Catering services will be treated as supply of goods or supply of services? Why?

Ans. Works contracts and catering services shall be treated as supply of services as both are specified under Sl. No. 6 (a) and (b) in Schedule-II of the GST law.

Q 17. Whether supply of software would be

treated as supply of goods or supply of services under GST law?

Ans. Development, design, programming, customization, adaptation, upgradation, enhancement, implementation of information technology software shall be treated as supply of services as listed in Sl. No. 5 (2)(d) of Schedule –II of the GST law.

Q 18. Whether goods supplied on hire purchase basis will be treated as supply of goods or supply of services? Why?

Ans. Supply of goods on hire purchase shall be treated as supply of goods as there is transfer of title, albeit at a future date.

Q 19. Are there any activities which are treated as neither a supply of goods nor a supply of services?

*Ans. Yes. As per Section 7(2) of CGST Act, 2017,
(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.

Schedule-III of the GST law lists certain activities such as (i) services by an employee to the employer in the course of or in relation to his employment, (ii) services by any Court or

Tribunal established under any law, (iii) functions performed by members of Parliament, State Legislatures, members of the local authorities, Constitutional functionaries (iv) services of funeral, burial, crematorium or mortuary and (v) sale of land and (vi), actionable claims other than lottery, betting and gambling shall be treated neither a supply of goods or supply of services.

Vide the CGST (Amendment), 2018, following transactions have also been inserted in the schedule-III:

(vii) Merchant Trading or Out and Out transactions:

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.

(viii). (a) Supply of goods while the same are still in

Customs Bonded warehouse: Supply of warehoused goods to any person before clearance for home consumption;

(viii) (b) High Seas Sales: 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."

Q 20. What is meant by zero rated supply under GST?

Ans. Zero rated supply means export of goods and/or services or supply of goods and/or services to a SEZ developer or a SEZ Unit.

Q 21. Will import of services without consideration be taxable under GST?

Ans. As a general principle, import of services without consideration will not be considered as supply under GST in terms of Section 7. However, import 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, even without consideration will be treated as supply in terms of Sl. No.4 of Schedule I.

Q 22. What is a Composite Supply under CGST/SGST/UTGST Act?

Ans. Composite Supply means a supply made by a taxable person to a recipient comprising two or more taxable supplies of goods or services, 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.

Principal supply has been defined in Section 2(90) of the CGST Act as 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.

For example, 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 the principal supply.

Q 23. How will tax liability on a composite supply be determined under GST?

Ans. A composite supply comprising two or more taxable

supplies, one of which is a principal supply, shall be treated as a supply of such principal supply. (Section 8(a) of CGST Act, 2017)

Q 24. What is a mixed supply?

Ans. 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. For example, a supply of package consisting of canned foods, sweets, chocolates, cakes, dry fruits, aerated drink and fruit juice when supplied for a single price is a mixed supply. Each of these items can be supplied separately and it is not dependent on any other. It shall not be a mixed supply if these items are supplied separately.

Q 25. How will tax liability on a mixed supply be determined under GST?

Ans. A mixed supply comprising two or more supplies shall be treated as supply of that particular supply which attracts the highest rate of tax.

Q 26. Whether retreading of tyres is a supply of goods or services?

Ans. In retreading of tyres, which is a composite supply, the pre-dominant element is the process of retreading which is a supply of service. Rubber used for retreading is an ancillary supply. Therefore, it is a supply of service.

On the other hand, supply of retreaded tyres, where the old tyres belong to the supplier of retreaded tyres, is a supply of goods (retreaded tyres under heading 4012 of the Customs Tariff)

(CBIC Circular No. 34/8/2018-GST dated 1st March, 2018)

Q 27. Whether activity of bus body building, is a supply of goods or services?

Ans. The classification would depend on which supply is the principal supply. In case, a bus body building company builds on the chassis owned by it and sells the completely built buses, it would be supply of goods. On the other hand, if the company builds the body on the chassis belonging to some else, it would be supply of services.

Q 28. Whether foods supplied to the patients as part of the healthcare services in hospitals taxable?

Ans. Health care services provided by the clinical establishments will include food supplied to the patients. Therefore, food supplied to the in-patients as advised by the doctor/nutritionists is a part of composite supply of healthcare and not separately taxable.

However, other supplies of food by a hospital to patients (not admitted) or their attendants or visitors are taxable.

(CBIC Circular No. 32/06/2018-GST dated 12th February, 2018)

Q 29. Is the reverse charge mechanism applicable only to services?

Ans. No, reverse charge applies to supplies of both goods

and services, as notified by the Government on the recommendations of the GST Council. Notification no. 4/2017-Central Tax (Rate) dated 28/06/2017 as amended by notification no.43/2017-Central Tax (Rate) dated 14/11/2017 & notification no.11/2018-Central Tax (Rate) dated 28/05/2018 and 13/2017- Central Tax (Rate) dated 28/06/2017 as amended by notification no.33/2017-Central Tax (Rate) dated 13/10/2017 & notification no.03/2018-Central Tax (Rate) dated 25/01/2018 have been issued. Similar notifications have been issued under IGST Act also.

Reverse charge also applies to supplies received by a registered person from unregistered persons. However, the provision of reverse charge liability on supplies received from unregistered persons, as provided in sections 9 (4) and 5 (4) of the CGST Act and the IGST Act respectively, have been kept in abeyance till 30.09.2019.

Further as the recent CGST (Amendment) Act, 2018, section 9(4) shall only be applicable for specified class of registered persons which shall be notified by the government. However, the notification to bring the Act into effect is yet to be issued.

Q 30. What are the supplies of goods under RCM?

Ans. Supplies of goods under reverse charge mechanism:

| <i>S/No.</i> | <i>Description of supply of Goods</i> | <i>Supplier of goods</i> | <i>Recipient of Goods</i> |
|--------------|---|--------------------------|------------------------------|
| <i>1</i> | <i>Cashew nuts, not shelled or peeled</i> | <i>Agriculturist</i> | <i>Any registered person</i> |
| <i>2</i> | <i>Bidi wrapper</i> | <i>Agriculturist</i> | <i>Any</i> |

| | | | |
|----|---|---|---|
| | <i>leaves (tendu)</i> | | <i>registered person</i> |
| 3 | <i>Tobacco leaves</i> | <i>Agriculturist</i> | <i>Any registered person</i> |
| 4 | <i>Silk yarn</i> | <i>Any person who manufactures silk yarn from raw silk or silk worm cocoons for supply of silk yarn</i> | <i>Any registered person</i> |
| 4A | <i>Raw cotton</i> | <i>Agriculturist</i> | <i>Any registered person.</i> |
| 5 | <i>Supply of lottery</i> | <i>State Government, Union Territory or any local authority</i> | <i>Lottery distributor or selling agent</i> |
| 6 | <i>Used vehicles, seized and confiscated goods, old and used goods, waste and scrap</i> | <i>Central Government, State Government, Union territory or a local authority</i> | <i>Any registered person</i> |
| 7 | <i>Priority Sector Lending Certificate (Notf. 11/2018 Central Tax (Rate) dt. 28.05.2018</i> | <i>Any registered person</i> | <i>Any registered person</i> |

Q 31. Whether insurance service is under reverse charge?

Ans. Service supplied by an “insurance agent” to any person carrying on insurance business, located in taxable territory is under the reverse charge mechanism. The Notification No. 3/2018- Central Tax (Rate) dated 25th January, 2018 defines “insurance agent” and takes the meaning from section 2(10) of the Insurance Act, 1938.

The insurance agent and corporate agent have different meaning and connotation in the insurance industry as well as under the insurance Act, 1938. The corporate agents along with insurance brokers, re-insurance brokers, insurance consultants, third party administrator, surveyors and loss assessors etc. are categorized as “insurance intermediary” and get excluded from reverse charge mechanism. They can pay GST under forward charge and claim input tax credit thereby avoiding cascading. Only individuals are covered under the reverse charge mechanism as “insurance agent”.

5. Time of Supply

Q 1. What is time of supply?

Ans. The time of supply fixes the point when the liability to charge GST arises. It also indicates when a supply is deemed to have been made. The CGST/SGST Act provides separate time of supply for goods and services.

Q 2. When does the liability to pay GST arise in respect of supply of goods?

Ans. Section 12 of the CGST/SGST Act provides for time of supply of goods. The time of supply of goods shall be the earlier of the following namely,

(i) the date of issue of invoice by the supplier or the last date on which he is required under Section 31, to issue the invoice with respect to the supply; or

(ii) the date on which the supplier receives the payment with respect to the supply.

However, vide Notification No. 66/2017-Central Tax dated 15.11.2017, liability to pay tax at the time of receipt of advance has been relaxed in case of goods.

Q 3. When does the liability to pay GST arise in respect of supply of services?

Ans. Section 13 of the CGST/SGST Act provides for time of supply of services. The time of supply of services shall be the earlier of the following namely,

(a) the date of issue of invoice by the supplier if the invoice is issued within the period prescribed under 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 section 31 or the date of receipt of payment whichever is earlier.

(c) the date on which the recipient shows the receipt of services in his books of account, in case where the provisions of clause (a) and (b) do not apply.

Q 4. What is time of supply in case of supply of vouchers in respect of goods and services?

Ans. The time of supply of voucher in respect of goods and services 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.*

Q 5. Where it is not possible to determine the time of supply in terms of sub-section 2, 3, 4 of Section 12 or that of Section 13 of CGST/SGST Act, how will time of supply be determined?

Ans. There is a residual entry in Section 12(5) as well as 13 (5) which says that if periodical return has to be filed, then the due date of filing of such periodical return shall be the time of supply. In other cases, it will be the date on which the CGST/SGST/IGST is actually paid.

Q 6. What does “date of receipt of payment” mean?

Ans. It is the earliest of the date on which the payment is entered in the books of accounts of the supplier or the date on which the payment is credited to his bank account.

Q 7. Suppose, part advance payment is made or invoice issued is for part payment, whether the time of supply will cover the full supply?

Ans. No. The supply of services shall be deemed to have been made to the extent it is covered by the invoice or the part payment. However, for goods payment of tax will need to be made upon date of issue of invoice, irrespective of the fact whether or not advance or part payment is received.

Q 8. What is the time of supply of goods in case of tax payable under reverse charge?

Ans. The time of supply will be the earliest of the following dates:

- a) date of receipt of goods; or*
- b) date on which payment is made; or*
- c) the date immediately following 30 days from the date of issue of invoice by the supplier.*

Where it is not possible to determine the time of supply under the above three clauses, the time of supply shall be the date of entry in the books of account of the recipient of supply.

Q 9. What is the time of supply of service in case of tax payable under reverse charge?

Ans. The time of supply will be the earlier of the following dates:

- a) date on which payment is made; or*
- b) the date immediately following sixty days from the date of issue of invoice by the*

supplier.

Q 10. What is the time of supply applicable with regard to addition in the value by way of interest, late fee or penalty or any delayed payment of consideration?

Ans. The time of supply with regard to an addition in value on account of interest, late fee or penalty or delayed consideration shall be the date on which the supplier received such additional consideration.

Q 11. Is there any change in time of supply, where supply is completed prior to or after change in rate of tax?

Ans. Yes. In such cases provisions of Section 14 will apply.

Q 12. What is the time of supply, where supply is completed prior to change in rate of tax?

Ans. In such cases time of supply will be

- (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; (However, for supply of goods payment of tax need to be made only at the time of issue of invoice in terms of notification 66/2017-Central Tax dated 15.11.2017) or*

- (ii) *where the invoice has been issued prior to change in rate of tax but the 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 is received before the change in rate of tax, but the invoice for the same has been issued after the change in rate of tax, the time of supply shall be the date of receipt of payment; (However for supply of goods payment of tax need to be made only at the time of issue of invoice in terms of notification 66/2017-Central Tax dated 15.11.2017)*

Q 13. What is the time of supply, where supply is completed after the change in rate of tax?

Ans. In such cases time of supply will be

- (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; (However for supply of goods payment of tax need to be made only at the time of issue of invoice in terms of notification 66/2017-Central Tax dated 15.11.2017) or*
- (ii) *where the invoice has been issued and the 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; (However for supply of goods payment of tax need to be made only at the time of issue of invoice in*

terms of notification 66/2017-Central Tax dated 15.11.2017)

- (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*

Q 14. Let's say there was increase in tax rate from 18% to 20% w.e.f.1.9.2017. What is the tax rate applicable when services provided and invoice issued before change in rate in July, 2017, but payment received after change in rate in September, 2017?

Ans. The old rate of 18% shall be applicable as services are provided prior to 1.9.2017.

Q 15. Let's say there was increase in tax rate from 18% to 20% w.e.f. 1.9.2017. What is the tax rate applicable when goods are supplied and invoice issued after change in rate in September, 2017, but full advance payment was already received in July, 2017?

Ans. The new rate of 20% shall be applicable as goods are supplied and invoice issued after 1.9.2017

Q 16. What is the time period within which invoice has to be issued for supply of Goods?

Ans. As per Section 31 of CGST/SGST Act a registered taxable person shall issue a tax invoice showing description, quantity and value of goods, tax charged thereon and other prescribed particulars, before or at the

time of

(a) removal of goods for supply to the recipient, where supply involves movement of goods or

(b) delivery of goods or making available thereof to the recipient in other cases.

Q 17. What is the time period within which invoice has to be issued for supply of Services?

Ans. As per Section 31 of CGST/SGST Act a registered person shall, before or after the provision of service, but within a period of 30 days from the date of supply of service, issue a tax invoice showing description, value of goods, tax payable thereon and other prescribed particulars. For Banking and Insurance companies, this period is 45 days. For inter-state self-supplies made by bank, insurance and telecom companies, invoices can be issued 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. Further a registered person liable to pay tax on reverse charge basis is also required to issue invoice on the date of receipt of goods or services or both.

Q 18. What is the time period within which invoice has to be issued in a case involving continuous supply of goods?

Ans. 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.

Q 19. What is the time period within which invoice has to be issued in a case involving continuous supply of services?

Ans. 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 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.*

Q 20. What is the time period within which invoice has to be issued where the goods being sent or taken on approval for sale?

Ans. The invoice in respect of goods sent or taken on approval for sale or return shall be issued before or at the time of supply or six months from the date of removal, whichever is earlier.

Q 21. What is the time of supply in respect of supply by an associate enterprise, located outside India?

Ans. An associated enterprise is defined in section 2(12) of the CGST Act, 2017 as having same meaning as assigned in section 92A of the Income-tax Act, 1961. An enterprise which participates, either directly or indirectly, through one or more intermediaries, in the management, or control or

capital of the other enterprise is an associated enterprise.

In the context of GST, associated enterprise is particularly relevant in the case of supply of services, where the supplier is located outside India. In such cases, the time of supply will be the earlier of date of entry in the books of account of the recipient of supply or the date of payment – thus, the levy under GST is attracted once such book entries are made even if no actual payment takes place or no invoice is issued. (Second proviso to section 13(3) of CGST Act, 2017)

Q 22. What is the time of supply in case of continuous supply of services?

Ans. There is no separate provision for time of supply in respect of continuous supply of services. The time of supply will be the date by which the invoice is actually issued or is required to be issued under section 31 of the CGST Act, 2017 or the date of receipt of payment (earlier of entry in books of account / credit in bank account), whichever is earlier.

6. Valuation in GST

Q 1. What is the value of taxable supply to be adopted for the levy of GST?

Ans. The value of taxable supply of goods and services shall ordinarily be 'the transaction value' which is the price paid or payable, when the parties are not related and price is the sole consideration. Section 15 of the CGST/SGST Act further elaborates various inclusions and exclusions from the ambit of transaction value. For example, the transaction value shall not include refundable deposit, discount allowed subject to certain conditions before or at the time of supply.

Q 2. What is transaction value?

Ans. Transaction value refers to the price actually paid or payable for the supply of goods and or services where the supplier and the recipient are not related and price is the sole consideration for the supply. It includes any amount which the supplier is liable to pay but which has been incurred by the recipient of the supply.

Q 3. Are there separate valuation provisions for CGST, SGST and IGST and for Goods and Services?

Ans. No, section 15 is common for all three taxes and also common for goods and services.

Q 4. Is contract price not sufficient to determine valuation of supply?

Ans. Contract price is more specifically referred to as 'transaction value' and that is the basis for computing tax.

However, when the price is influenced by factors like relationship of parties or where certain transactions are deemed to be supply, which do not have a price, the value has to be determined in accordance with the GST Valuation Rules.

Q 5. Is reference to GST Valuation Rules required in all cases?

Ans. No. Reference to GST Valuation Rules is required only in cases where value cannot be determined under sub-section (1) of Section 15.

Q 6. Can the transaction value declared under section 15(1) be accepted?

Ans. Yes, if all the conditions specified therein have been fulfilled.

Q 7. Whether post-supply discounts or incentives are to be included in the transaction value?

Ans. Yes. However, where the post-supply discount is established as per the agreement which is known at or before the time of supply and where such discount specifically linked to the relevant invoice and the recipient has reversed input tax credit attributable to such discount, the discount is allowed as admissible deduction under Section 15 of the CGST Act.

Q 8. Whether pre-supply discounts allowed before or at the time of supply are includible in the transaction value?

Ans. No, provided it is allowed in the course of normal trade practice and has been duly recorded in the invoice.

Q 9. When are the provisions of the Valuation Rules applicable?

Ans. Valuation Rules are applicable when (i) consideration either wholly or in part not in money terms; (ii) parties are related or supply by any specified category of supplier; and (iii) transaction value declared is not reliable.

Q 10. What are the inclusions specified in Section 15(2) which could be added to Transaction Value?

Ans. The inclusions specified in Section 15 (2) which could be added to transaction value are as follows:

- a) Any taxes, duties, cesses, fees and charges levied under any statute, other than the SGST/CGST Act and the Goods and Services Tax (Compensation to the States for Loss of Revenue) Act, 2016, if charged separately by the supplier to the recipient;*
- 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 and/or services;*
- c) Incidental expenses, such as commission and packing, charged by the supplier to the recipient of a supply, including any amount charged for anything done by the supplier in respect of the supply of goods and/or services at the time of, or before delivery of the goods or as the case may be supply of the 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 and State Government.*

Q 11. How will value be determined where supply is made by a dealer dealing in second hand goods?

Ans. As per Rule 32(5) of the CGST Rules, 2017, 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

Q 12. How will goods re-possessed from defaulting borrowers be valued?

Ans. The proviso to Rule 32(5) of the CGST Rules provides that in case of the purchase value of goods repossessed from an unregistered defaulting borrower, 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.

Q 13. How will works contract service provided by a builder/developer to a prospective flat buyer be valued under GST?

Ans. In case of supply of construction service (works contract), involving transfer of property in land or undivided share of land, as the case may be, the value of supply of service and goods portion in such supply shall be equivalent to the total amount charged for such supply less the value of land or undivided share of land, as the case may be, and the value of land or undivided share of land, as the case may be, in such supply shall be deemed to be one third of the total amount charged for such supply.

“Total amount” means the sum total of, -

(a) consideration charged for aforesaid service; and

(b) amount charged for transfer of land or undivided share of land, as the case may be

Q 14. How will supply of lottery tickets be valued under GST?

Ans. Lotteries are sold as goods and can be of following two types:

(a) “lottery run by State Governments” means a lottery not allowed to be sold in any State other than the organizing State. The rate of GST on these is 12% and the face value of the lottery is inclusive of taxes. Therefore, value of supply of lottery shall be 100/112 of the face value or the price notified in the Official Gazette by the organising State, whichever is higher.

(b) “lottery authorised by State Governments” means a lottery which is authorised to be sold in State(s) other than the organising State also. The rate of these is 28% and the face value of the lottery is inclusive of taxes. Therefore,

value of supply of lottery shall be 100/128 of the face value or the price notified in the Official Gazette by the organising State, whichever is higher. (Rule 31A (2) of the CGST Rules, 2017).

Q 15. How will betting and gambling be valued?

Ans. As per rule 31A (3) of the CGST Rules, 2017, 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 totalizator. The prize money shall not be deducted for the purposes of valuation.

Q 16. How will imports be valued?

Ans. As per proviso to Sec. 5(1) of IGST Act, Customs Law will be applicable for valuation of imported goods. However, for valuation of import of services, section 15 of the CGST Act read with Chapter IV of the CGST Rules, 2017 will apply.

Q 17. What is an open market value for the purpose of GST?

Ans. "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

price is the sole consideration, to obtain such supply at the same time when the supply being valued is made.

Q 18. When will open market value become relevant under GST?

Ans. *Open market value will be relevant in cases where consideration for the supply is not wholly in money. The open market value will be particularly relevant in cases where supply is between related persons, or between distinct persons (entities having same PAN but different GSTIN) and between principal and agent.*

Q 19. How will value be determined in cases where the consideration for supply is not wholly in money?

Ans. *Value of supply where the consideration is not wholly in money will be: -*

- a) Open market value of such supply*
- b) if open market value is not available, value shall 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 value cannot be determined as above, it shall be the value of supply of goods or services or both of like kind and quality.*
- d) if value is not determinable under clause (a) or clause (b) or clause (c), value shall 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 application of rule 30 or rule 31 of Valuation Rules in that order.

Q 20. What is meant by supply of goods or services of like kind and quality?

Ans. *“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 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.*

Q 21. What does the valuation based on cost mean?

Ans. *Where the value of a supply of goods or services or both is not determinable by any of the provisions prescribed in Rule 27, 28 and 29 of the CGST Rules, 2017, then, cost based valuation is applied to determine value of supply. In other words, when a supply does not have money as sole consideration and neither open market value nor consideration involved can be ascertained, then, cost based rule as prescribed in Rule 30 of CGST Rules, 2017 is applied. In such cases, the value shall be one hundred and ten percent of the cost of production or manufacture or cost of*

acquisition of such goods or cost of provision of such services.

Q 22. What does residual method mean in valuation of supply?

Ans. *Rule 31 of CGST Rules, 2017 is also known as the residual method of Valuation. Where the value of supply of goods or services or both cannot be determined under Rule 27 to 30, then, the value of supply shall be determined using reasonable means consistent with the principles and general provisions of section 15 and these rules.*

Q 23. Does the Supplier of service must use the cost method if Rule 27 to 29 are not applicable?

Ans. *No, supplier of service can directly opt for residual method as prescribed in Rule 31 instead of cost based method as specified in Rule 30.*

Q 24. Who is a related person for the purpose of valuation rules?

Ans. *As per Explanation below Section 15 of the CGST Act, Persons shall be deemed to be “related persons” if--*

(i) such persons are officers or directors of one another’s businesses;

(ii) such persons are legally recognised partners in business;

- (iii) such persons are employer and employee;*
- (iv) any person directly or indirectly owns, controls or holds twenty-five per cent or more of the outstanding voting stock or shares of both of them;*
- (v) one of them directly or indirectly controls the other;*
- (vi) both of them are directly or indirectly controlled by a third person;*
- (vii) together they directly or indirectly control a third person; or*
- (viii) they are members of the same family;*
- (ix) 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.*

It may be noted that the term "person" also includes legal persons.

Q 25. How will value be arrived at when supply is between related persons or distinct persons as specified in sub-section (4) and (5) of section 25 (other than an agent)?

Ans. *The value of the supply of goods or services or both in such cases shall, -*

- (a) be the open market value of such supply;*

*(b) if open market value is not available, be the value of supply of goods or services of like kind and quality;
(c) if value is not determinable under clause (a) or (b), be the value as determined by application of rule 30 or rule 31, in that order:*

In case 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

Further, in case 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 goods or services.

Q 26. Who is an agent for the purposes of GST?

Ans. *“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. The meaning of the term and the relationship with principal and agent has been clarified vide circular no. 57/31/2018-GST dated 04th September, 2018.*

Q 27. How will supplies between principal and agent and vice versa be valued under GST?

Ans. *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: Where 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 Rs.5000 per quintal on the day of supply. Another independent supplier is supplying groundnuts of like kind and quality to the said agent at the price of Rs.4550 per quintal. The value of the supply made by the principal shall be Rs.4550 per quintal or where he exercises the option the value shall be 90% of the Rs.5000 i.e. is Rs.4500 per quintal.

(b) where the value of a supply is not determinable under clause (a), the same shall be determined by application of cost based method as prescribed in Rule 30 or residual method as prescribed in Rule 31 in that order.

Q 28. What is a del-credere agent?

Ans. A del-credere agent is a selling agent who is engaged by a principal to assist in supply of goods or services by contacting potential buyers on behalf of the principal. The factor that differentiates a DCA from other agents is that the DCA guarantees the payment to the supplier.

In such scenarios where the buyer fails to make payment to the principal by the due date, DCA makes the payment to the principal on behalf of the buyer (effectively providing an insurance against default by the buyer), and for this reason the commission paid to the DCA may be relatively higher than that paid to a normal agent. In order to guarantee timely payment to the supplier, the DCA can resort to various methods including extending short-term transaction-based loans to the buyer or paying the supplier himself and recovering the amount from the buyer with some interest at a later date.

Q 29. Whether the temporary short-term transaction based loan extended by the DCA to the recipient (buyer), for which interest is charged by the DCA, is to be included in the value of goods being supplied by the supplier (principal) where DCA is not an agent under Para 3 of Schedule I of the CGST Act?

Ans. If the DCA being not an agent under Para 3 of Schedule I of the CGST Act, the temporary short-term transaction based loan being provided by DCA to the buyer is a supply of service by the DCA to the recipient on Principal to Principal basis and is an independent supply. Therefore, the interest being charged by the DCA would not form part of the value of supply of goods supplied (to the buyer) by the supplier. (CBIC Circular No. 73/47/2018-GST dated 5th November, 2018)

Q 30. Where DCA is an agent under Para 3 of Schedule I of the CGST Act and makes payment to the principal on behalf of the buyer and charges interest to the buyer for delayed payment along with the value of goods being supplied, whether the interest will form a part of the value of supply of goods also or not?

Ans. If the DCA being an agent under Para 3 of Schedule I of the CGST Act, the temporary short-term transaction based credit being provided by DCA to the buyer no longer retains its character of an independent supply and is subsumed in the supply of the goods by the DCA to the recipient. The activity of extension of credit by the DCA to the recipient would not be considered as a separate supply as it is in the context of the supply of goods made by the DCA to the recipient. Therefore, the value of the interest charged for such credit would be required to be included in the value of supply of goods by DCA to the recipient as per section

15(2)(d) of the CGST Act. (CBIC Circular No. 73/47/2018-GST dated 5th November, 2018)

Q 31. How will supply of services in relation to purchase or sale of foreign currency, including money changing, be determined under the Valuation Rules?

Ans. The value of supply of services in relation to purchase or sale of foreign currency, including money changing, shall be determined by the supplier of service in the following manner:-

(a) For a currency, when exchanged from, or to, Indian Rupees (INR), 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 (RBI) reference rate for that currency at that time, multiplied by the total units of currency.

In case where the RBI reference rate for a currency is not available, the value shall be 1% of the gross amount of Indian Rupees provided or received by the person changing the money.

In cases where neither of the currencies exchanged is Indian Rupee, the value shall be equal to 1% 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 RBI.

(b) The person supplying the services can also exercise below mentioned option instead of valuation method mentioned as (a) to ascertain the value: -

At the option of supplier of services, the value in relation to 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 rupees and one tenth of a per cent. of the gross amount of currency exchanged for an amount exceeding ten lakh rupees, subject to maximum amount of sixty thousand rupees.

If the above option is given, such option shall not be withdrawn during the remaining part of that financial year.

Q 32. What would be the value of supply of services provided by an Air Travel Agent?

Ans. *The value of 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 5% of the basic fare in the case of domestic bookings, and at the rate of 10% of the basic fare in the case of international bookings of passage for travel by air.

The expression "basic fare" means that part of the air fare on which commission is normally paid to the air travel agent by the airline.

Q 33. How will services in relation to Life Insurance business be valued?

Ans. *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 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 policy holder in subsequent years:

It is to be noted that the above rule will not apply where the entire premium paid by the policy holder is only towards the

risk cover in life insurance. That means if the policy is a pure life insurance policy with only life being covered and no part of the premium being allocated towards some investment by the provider of service, the above rules will not apply.

Q 34. How will supplies being made by a person dealing in second hand goods be valued under GST?

Ans. 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 purchase of such goods, the value of supply shall be the difference between the selling price and purchase price and where the value of such supply is negative it shall be ignored.

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.

Q 35. How will supply of vouchers be valued under GST?

Ans. *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.*

Q 36. Who is a pure agent for the purpose of GST Valuation?

Ans. *“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 provided 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.

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 Registrar of the Companies. The fees

charged by the Registrar of the companies 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.

Q 37. Will expenditure and costs incurred by a supplier as a pure agent of the recipient be included in the value of supply made by such supplier to recipient?

Ans. *No. The expenditure or costs incurred by the supplier as a pure agent of the recipient of supply of services 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.

7. GST Payment of Tax

Q 1. What are the Payments to be made in GST regime?

Ans. In the GST regime, for any intra-state supply, taxes to be paid are the Central GST (CGST), going into the account of the Central Government) and the State/UT GST (SGST, going into the account of the concerned State Government). For any inter-state supply, tax to be paid is Integrated GST (IGST) which will have components of both CGST and SGST. In addition, certain categories of registered persons will be required to pay to the government account Tax Deducted at Source (TDS) and Tax Collected at Source (TCS). In addition, wherever applicable, Interest, Penalty, Fees and any other payment will also be required to be made.

Q 2. Who is liable to pay GST?

Ans. In general, the supplier of goods or services is liable to pay GST. However, in specified cases like imports and other notified supplies, the liability may be cast on the recipient under the reverse charge mechanism. Further, in some notified cases of intra-state supply of services, the liability to pay GST may be cast on e-commerce operators through which such services are supplied. Also Government Departments making payments to vendors above a specified limit [2.5 lakh under one contract as per S.51(1)(d)] are required to deduct tax (TDS) and E-commerce operators are required to collect tax (TCS) on the net value [i.e. aggregate value of taxable supplies of goods and/or services but excluding such value of services on which the operator is

made liable to pay GST under Section 9(5) of the CGST Act, 2017] of supplies made through them and deposit it with the Government.

Q 3. When does liability to pay GST arises?

Ans. Liability to pay arises at the time of supply of Goods as explained in Section 12 and at the time of supply of services as explained in Section 13.

The time is generally the earliest of one of the three events, namely receiving payment, issuance of invoice or completion of supply. Different situations envisaged and different tax points have been explained in the aforesaid sections.

Q 4. What are the main features of GST payment process?

Ans. The payment processes under GST Act(s) have the following features:

- Electronically generated challan from GSTN Common Portal in all modes of payment and no use of manually prepared challan;*
- Facilitation for the tax payer by providing hassle free, anytime, anywhere mode of payment of tax;*
- Convenience of making payment online;*
- Logical tax collection data in electronic format;*
- Faster remittance of tax revenue to the Government Account;*
- Paperless transactions;*

- *Speedy Accounting and reporting;*
- *Electronic reconciliation of all receipts;*
- *Simplified procedure for banks*
- *Warehousing of Digital Challan.*

Q 5. How can payment be done?

Ans. Payment can be done by the following methods:

(i) Through debit of Credit Ledger of the tax payer maintained on the Common Portal – ONLY Tax can be paid. Interest, Penalty and Fees cannot be paid by debit in the credit ledger. Tax payers shall be allowed to take credit of taxes paid on inputs (input tax credit) and utilize the same for payment of output tax. However, no input tax credit on account of CGST shall be utilized towards payment of SGST and vice versa. The credit of IGST would be permitted to be utilized for payment of IGST, CGST and SGST in that order.

(ii) In cash by debit in the Cash Ledger of the tax payer maintained on the Common Portal. Money can be deposited in the Cash Ledger by different modes, namely, E-Payment (Internet Banking, Credit Card, Debit Card); Real Time Gross Settlement (RTGS)/ National Electronic Fund Transfer (NEFT); Over the Counter Payment in branches of Banks Authorized to accept deposit of GST.

Q 6. When is payment of taxes to be made by the Supplier?

Ans. Payment of taxes by the normal tax payer is to be done on monthly basis by the 20th of the succeeding month. Cash

payments will be first deposited in the Cash Ledger and the tax payer shall debit the ledger while making payment in the monthly returns and shall reflect the relevant debit entry number in his return. As mentioned earlier, payment can also be debited from the Credit Ledger. Payment of taxes for the month of March shall be paid by the 20th of April. Composition tax payers will need to pay tax on quarterly basis.

Q 7. Whether time limit for payment of tax can be extended or paid in monthly installments?

Ans. No, this is not permitted in case of self-assessed liability. In other cases, competent authority has been empowered to extend the time period or allow payment in instalments. (Section 80 of the CGST/SGST Act).

Q 8. What happens if the taxable person files the return but does not make payment of tax?

Ans. In such cases, the return is not considered as a valid return. Section 2(117) defines a valid return to mean a return furnished under sub-section (1) of section 39 on which self-assessed tax has been paid in full. It is only the valid return that would be used for allowing input tax credit (ITC) to the recipient. In other words, unless the supplier has paid the entire self-assessed tax and filed his return and the recipient has filed his return, the ITC of the recipient would not be confirmed.

Q 9. Which date is considered as date of deposit of the tax dues – Date of presentation of cheque or Date of payment or Date of credit of amount in the

account of government?

Ans. It is the date of credit to the Government account.

Q 10. What are E-Ledgers?

Ans. Electronic Ledgers or E-Ledgers are statements of cash and input tax credit in respect of each registered taxpayer. In addition, each taxpayer shall also have an electronic tax liability register. Once a taxpayer is registered on Common Portal (GSTN), two e-ledgers (Cash & Input Tax Credit ledger) and an electronic tax liability register will be automatically opened and displayed on his dash board at all times.

Q 11. What is a tax liability register?

Ans. Tax Liability Register will reflect the total tax liability of a taxpayer (after netting) for the particular month.

Q 12. What is a Cash Ledger?

Ans. The cash ledger will reflect all deposits made in cash, and TDS/TCS made on account of the taxpayer. The information will be reflected on real time basis. This ledger can be used for making any payment on account of GST.

Q 13. What is an ITC Ledger?

Ans. Input Tax Credit as self-assessed in monthly returns will be reflected in the ITC Ledger. The credit in this ledger can be used to make payment of TAX ONLY and no other amounts such as interest, penalty, fees etc.

Q 14. What is the linkage between GSTN and the

authorized Banks?

Ans. There will be real time two-way linkage between the GSTN and the Core Banking Solution (CBS) of the Bank. CPIN is automatically routed to the Bank via electronic string for verification and receiving payment and a challan identification number (CIN) is automatically sent by the Bank to the Common Portal confirming payment receipt. No manual intervention will be involved in the process by any one including bank cashier or teller or the tax payer.

Q 15. Can a tax payer generate challan in multiple sittings?

Ans. Yes, a taxpayer can partially fill in the challan form and temporarily “save” the challan for completion at a later stage. A saved challan can be “edited” before finalization. After the tax payer has finalized the challan, he will generate the challan, for use of payment of taxes. The remitter will have option of printing the challan for his record.

Q 16. Can a challan generated online be modified?

Ans. No. After logging into GSTN portal for generation of challan, payment particulars have to be fed in by the tax payer or his authorized person. He can save the challan midway for future updation. However once the challan is finalized and CPIN generated, no further changes can be made to it by the taxpayer.

Q 17. Is there a validity period of challan?

Ans. Yes, a challan will be valid for fifteen days after its generation and thereafter it will be purged from the System. However, the tax payer can generate another challan at his convenience.

Q 18. What is a CPIN?

Ans. CPIN stands for Common Portal Identification Number (CPIN) given at the time of generation of challan. It is a 14-digit unique number to identify the challan. As stated above, the CPIN remains valid for a period of 15 days.

Q 19. What is a CIN and what is its relevance?

Ans. CIN stands for Challan Identification Number. It is a 17-digit number that is 14-digit CPIN plus 3-digit Bank Code. CIN is generated by the authorized banks/ Reserve Bank of India (RBI) when payment is actually received by such authorized banks or RBI and credited in the relevant government account held with them. It is an indication that the payment has been realized and credited to the appropriate government account. CIN is communicated by the authorized bank to taxpayer as well as to GSTN.

Q 20. What is the sequence of payment of tax where that taxpayer has liabilities for previous months also?

Ans. Section 49(8) prescribes an order of payment where the taxpayer has tax liability beyond the current return period. In such a situation, the order of payment to be followed is: First self-assessed tax and other dues for the previous period; thereafter self-assessed tax and other

dues for the current period; and thereafter any other amounts payable including any confirmed demands under section 73 or 74. This sequence has to be mandatorily followed.

Q 21. What does the expression “Other dues” referred to above mean?

Ans. The expression “other dues” means interest, penalty, fee or any other amount payable under the Act or the rules made thereunder.

Q 22. What is an E-FPB?

Ans. E-FPB stands for Electronic Focal Point Branch. These are branches of authorized banks which are authorized to collect payment of GST. Each authorized bank will nominate only one branch as its E-FPB for pan India Transactions. The E-FPB will have to open accounts under each major head for all governments. Total 38 accounts (one each for CGST, IGST and one each for SGST for each State/UT Govt.) will have to be opened. Any amount received by such E-FPB towards GST will be credited to the appropriate account held by such E-FPB.

For NEFT/RTGS Transactions, RBI will act as E-FPB.

Q 23. What is TDS?

Ans. TDS stands for Tax Deducted at Source (TDS). As per section 51, this provision is meant for Government and Government undertakings and other notified

entities making contractual payments where total value of such supply under a contract exceeds Rs. 2.5 Lakhs to suppliers. While making any payments under such contracts, the concerned Government/authority shall deduct 2% of the total payment made (1% under each Act and 2% in case of IGST) and remit it into the appropriate GST account.

Q 24. How will the Supplier account for this TDS? while filing his return?

Ans. Any amount shown as TDS will be reflected in the electronic cash ledger of the concerned supplier. He can utilize this amount towards discharging his liability towards tax, interest fees and any other amount.

Q 25. How will the TDS Deductor account for such TDS?

Ans. TDS Deductor will account for such TDS in the following ways:

- 1. Such deductors needs to get compulsorily registered under section 24 of the CGST/SGST Act.*
- 2. They need to remit such TDS collected by the 10th day of the month succeeding the month in which TDS was collected and reported in GSTR 7.*
- 3. The amount deposited as TDS will be reflected in the electronic cash ledger of the supplier.*
- 4. They need to issue certificate of such TDS to the deductee within 5 days of crediting the TDS to the govt a/c, failing which fees of Rs. 100 per day subject*

to maximum of Rs. 5000/- will be payable by such deductor.

Q 26. What is Tax Collected at Source (TCS)?

*Ans. This provision is applicable only for E-Commerce Operator under section 52 of CGST/SGST Act. Every E-Commerce Operator, not being an agent, needs to withhold an amount calculated at the rate of one percent of the “**net value of taxable supplies**” made through it where the consideration with respect to such supplies is to be collected by the operator. Such withheld amount is to be deposited by such E-Commerce Operator to the appropriate GST account by the 10th of the next month. The amount deposited as TCS will be reflected in the electronic cash ledger of the supplier.*

Q 27. What does the expression “Net value of taxable supplies” mean?

Ans. The expression “net value of taxable supplies” means the aggregate value of taxable supplies of goods or services, other than services notified under Section 9(5), made during any month by all registered taxable persons through the operator reduced by the aggregate value of taxable supplies returned to the suppliers during the said month.

Q 28. Is the pre-registration of credit card necessary in the GSTN portal for the GST payment?

Ans. Yes. The taxpayer would be required to pre-register his credit card, from which the tax payment is intended,

with the Common Portal maintained on GSTN. GSTN may also attempt to put in a system with banks in getting the credit card verified by taking a confirmation from the credit card service provider. The payments using credit cards can therefore be allowed without any monetary limit to facilitate ease of doing business.

Q 29. In what manner the liabilities of the registered person are recorded and maintained in the Electronic Liability Register?

Ans. The electronic liability register is 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 are debited to the said register.

Q 30. What are the debits made to the Electronic Liability Register?

Ans. The electronic liability register of the person is 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.

Q 31. What are the Credits made to the Electronic Liability Register?

Ans. *The Electronic Liability Register is credited with the following amounts:*

- (a) Payment of every liability made by the registered person by way of debit from electronic credit ledger or electronic cash ledger;*
- (b) the amount of TDS deducted by the Deductor in terms of Section 51 and paid by way of debit from electronic cash ledger;*
- (c) the amount of TCS collected by the E-Commerce operator in terms of Section 52 and paid by way of debit from electronic cash ledger;*
- (d) the amount of tax payable on reverse charge basis and paid by way of debit from electronic cash ledger;*
- (e) 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.*

Q 32. In what manner is the electronic cash ledger be maintained?

Ans. *The electronic cash ledger is 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.

Q 33. How Credits are made to the Electronic Cash Ledger?

Ans. *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.*

The deposit shall be made through any of the following modes:

(i) Internet Banking through authorized banks;

(ii) Credit card or Debit card through the authorised bank;

(iii) National Electronic Fund Transfer (NeFT) or Real Time Gross Settlement(RTGS) from any bank;

(iv) Over the Counter payment (OTC) through authorized banks for deposits up to ten thousand rupees per challan per tax period, by cash, cheque or demand draft.

On successful credit of the amount to the concerned government account maintained in the authorised bank, a Challan Identification Number (CIN) will be generated by the collecting Bank and the same shall

be indicated in the challan.

On receipt of CIN 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.

Further amount deducted or collected in accordance with section 51 or section 52 of the CGST Act, 2017 respectively would also be credited to electronic cash ledger on filing of Form GSTR-7 or Form GSTR-8 by the deductor or collector respectively.

Q 34. What would happen in case after making a deposit the bank account of the registered person is debited but Challan Identification Number (CIN) is not generated?

Ans. Where the bank account of the person concerned, or the person making the deposit on his behalf, is debited but no Challan Identification Number (CIN) 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.

Q 35. Is there any relaxation to the Over the Counter (OTC) payment limit of Rs.10,000/- and if so to whom does the relaxation apply?

Ans. The restriction for deposit up to ten thousand rupees per challan in case of an Over the Counter (OTC)

payment does 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;

(c) Proper officer or any other officer authorized for the amounts collected by way of cash, cheque or demand draft during any investigation or enforcement activity or any ad hoc deposit.

It may be noted that other registered persons may also deposit the amount of more than ten thousand rupees through challan via OTC mode but they would be liable for penalty for violation of Rule 87(3) of the CGST Rules, 2017.

Q 36. What is the validity period of the challan generated for the purpose of making deposit in the Electronic Credit Ledger at the GST common portal?

Ans. *The challan in FORM GST PMT-06 generated at the Common Portal shall be valid for a period of fifteen days.*

Q 37. How can an un-registered person required to make a payment under the provisions of the Act, make a payment?

Ans. 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.

Q 38. What should be done in case the registered person notices some discrepancies in his electronic cash ledger?

Ans. 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.

Q 39. In case a registered person claims refund of any amount in the electronic cash ledger, how will the process be recorded in the Electronic Cash Ledger?

Ans. 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. If the refund so claimed is rejected, either fully or partly, the amount debited, 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.

Q 40. What is an Electronic Credit Ledger?

Ans. Electronic Credit ledger is for maintaining an account of input tax credit of the registered person. The input tax credit as self-assessed in the return of a registered person shall be credited to his electronic credit ledger, in accordance with section 41, to be maintained in the prescribed manner.

Q 41. In what manner will the Electronic Credit Ledger be maintained?

Ans. 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.

Q 42. What will be the debits in the Electronic Credit Ledger?

Ans. The credit in the Electronic Credit Ledger can be used for discharging liability towards Output Tax only. Further, whenever any refund of ITC is claimed, the amount claimed as refund should be debited at the time of filing refund claim.

Q 43. Can the Credit Ledger be re-credited if the refund claim of ITC is rejected?

Ans. Yes. If the refund so filed is rejected, either fully or partly, the amount debited, 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. For the time being it is being credited by the officer through Form RFD-01B.

Q 44. Are there any rules for utilization of ITC from the Electronic Credit Ledger?

Ans. Yes. 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.

But, 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

But, 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) the central tax shall not be utilised towards payment of State tax or Union territory tax; and

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

Notwithstanding anything contained above, 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.

(NOTE - The highlighted part in the above answer would be brought into force when the CGST (Amendment) Act, 2018 is enforced.)

Q 45. Are there rules for discharge of tax liability in any particular order?

Ans. *Yes. 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.

Q 46. Will all credits and debits made in the ledgers and register be identified and if so how?

Ans. *Yes. 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.*

The unique identification number relating to discharge of any liability shall be indicated in the corresponding entry in the electronic liability register.

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 above.

7.1 TDS Scheme

(The Questions adopted from the Standard Operating Procedure on TDS under GST released by Law Committee, GST Council on 28th September, 2018)

Q 47. When tax deduction is required to be made in GST?

Ans. Tax is required to be deducted from the payment made / credited to a supplier, if the total value of supply under a contract in respect of supply of taxable goods or services or both, exceeds Rs. 2,50,000/- (Rupees two lakh and fifty thousand). This value shall exclude the taxes

leviable under GST (i.e. 'Central tax', 'State tax', 'UT tax', 'Integrated tax' & Cess).

Q 48. As a DDO I am deducting TDS from salary and also while making payment of other bills under Income Tax Act. Then why should I need to deduct TDS again?

Ans. TDS under Income Tax is different from TDS under GST. There was a provision of TDS under VAT Act also. TDS under the GST Law is different from the above. Deductions of tax under the GST Laws is required to be made wherever applicable while making payments to the suppliers/ vendors of goods or services or both under GST for taxable supply of goods or services or both.

Q 49. Who are liable to deduct TDS?

Ans. All the DDOs of the (a) a department or establishment of the Central Government or State Government; (b) local authority; (c) Governmental agencies; (d) an authority or a board or any other body, - (i) set up by an Act of Parliament or a State Legislature; or (ii) established by any Government, with fifty-one percent or more participation by way of equity or control, to carry out any function; (e) a society established by the Central Government or the State Government or a Local Authority under the Societies Registration Act, 1860 (21 of 1860); (f) public sector undertakings.

Q 50. Describe the responsibilities of DDO in TDS under GST to get his/her office registered under GST?

- Ans. A. To know the GSTIN of his office
B. To be aware of the contract value
C. To know when to deduct TDS under GST
D. To know the nature of TDS (IGST or CGST & SGST/UTGST) to be deducted & the rate of tax
E. To know the GSTIN of his/her vendors/suppliers
F. To deduct TDS while making/crediting payment
G. To generate CPIN while depositing the deducted tax
H. To pay the deducted amount of TDS to the appropriate Govt. A/c
I. To submit GSTR-7(Return) J. To generate GSTR-7A (TDS certificate for suppliers)*

Q 51. Does every Government office require to be registered under GST laws?

Ans. Yes, every Government office shall get itself mandatorily registered under GST. Here the role of DDO is very important as he is responsible for deducting tax while making/crediting payment under GST in applicable cases and, unless & until the process of registration is completed, the DDO will not be able to deduct any tax.

Q 52. I am a DDO of a small Government Office. My office has not entered into any contract with any vendor whose taxable value of supply is more than Rs 2.5 Lakh in the recent past. Do I have to take GST registration for my office?

Ans. No. You are liable to register only when you make a payment on which tax is required to be deducted.

Q 53. Do I have to pay any Fees for obtaining a GST

registration?

Ans. No fee is required to be paid for obtaining a GST Registration on the common portal.

Q 54. Is there any printed form for registration which I require to fill up?

Ans. No. The process of getting registration under GST is a fully online process. Registration should be done in the common portal www.gst.gov.in. There is no need to submit any hardcopy of any form or any document for Registration.

Q 55. Is there any need to upload any document to complete the registration process?

Ans. Yes, (i) a proof of address of the concerned office & (ii) a scanned photo of concerned DDO is required to be uploaded. A valid TAN is also needed.

Q 56. What types of documents are needed to be uploaded for address proof?

Ans. Scanned copy of either of the following will have to be uploaded: valid electricity bill or Municipality khata copy or property tax receipt or any legal ownership documents etc.

Q 57. To submit my registration application do I always need a DSC?

Ans. One can use Electronic Verification Code for submission of the registration form in the common portal apart from DSC.

Q 58. How do I know that I have submitted the application form correctly? What is an ARN?

Ans. A pop-up message will appear that the form has been successfully submitted & an Acknowledgement Reference Number (ARN) will be sent to the registered mobile no & registered email address of the applicant after successful submission of Registration Application (FORM GST REG-07) online..

Q 59. Is this ARN called the GST registration No?

Ans. No. This ARN is generated only for a temporary period. Once FORM GST REG-07 is processed by the proper officer, the 15-digit GSTIN of the Tax Deductor will be generated. This GSTIN is the GST Registration No. of the applicant office.

Q 60. How do I know that GSTIN has been generated for my office or not?

Ans. Information will be given to the DDO in his registered email id as well as registered mobile no.

Q 61. After getting GSTIN what should I do?

Ans. DDO should update his DDO master details with the GSTIN in their respective DDO login in E-bill module of PFMS.

Q 62. As a DDO, I have to enter some personal information to get TDS registration. What will happen if I get transferred? Will I still be

responsible for any lapse committed by the DDO who succeeds me?

Ans. It is true that the DDO is personally liable for any lapses regarding TDS deduction. But at the same time, the personal details of the DDO as entered in the Registration Form can always be amended; it is suggested that, the new DDO upon assuming of office should immediately amend such details. However the GSTIN of the deductor will remain un-altered.

Q 63. If the new DDO does not amend the details of his predecessor in office whether the ex-DDO would be liable for any lapse done by this new DDO?

Ans. No, the ex-DDO will not be liable for any lapse by his successor in office. A DDO is required to perform any responsibility in respect of TDS in GST either through a valid DSC (which is person specific) or through an EVC which would be sent to the registered mobile no as well as registered email id of the DDO only.

Q 64. Is there any threshold exceeding which tax is required to be deducted?

Ans. Yes. Tax is required to be deducted from the payment made/credited to a supplier, if the value of supply under a contract in respect of supply of taxable goods or services or both, exceeds Rs. 2,50,000/- (Rupees two lakh and fifty thousand). This value shall exclude the taxes leviable under GST (i.e. 'Central tax', 'State tax', 'UT tax', 'Integrated tax' & 'Cess').

Q 65. Mr B, a DDO of ABC Office of the Government West Bengal needs to buy stationeries for his office from supplier Mr C. Should Mr B deduct tax under GST while making payment to Mr C?

Ans. Yes, Mr B is required to deduct tax while making / crediting payment to Mr C if value of taxable supply under a contract exceeds Rs 2.5 lakh.

Q 66. Is there any threshold up to which GST needs not to be deducted?

Ans. Yes, GST need not to be deducted where the value of taxable supply under a contract does not exceed Rs 2.5 lakh.

Q 67. As a deductor am I supposed to deduct GST where the taxable value of the contract entered with supplier Mr A is Rs 2.5 Lakh?

Ans. No. As the total value of taxable supply under the contract does not exceed Rs 2.5 Lakh the deductor is not liable to deduct tax under GST.

Q 68. I have entered into a contract worth Rs. 10 lakh with a supplier XYZ prior to 01.10.2018. Now, I am making a payment of Rs.1.5 Lakh in respect of an invoice dated 25.10.2018 submitted by the supplier. Should I deduct tax while making payment of Rs.1.5 Lakh?

Ans. Yes. Tax is required to be deducted since the payment is being made after the effective date.

Q 69. I have entered into a contract worth Rs. 10 Lakh with a supplier XYZ prior to 01.10.2018. I have made a payment of Rs.3 Lakhs to him prior to 01.10.2018. Now, I am making payment of the balance amount of Rs.7 Lakh after 01.10.2018. Should I deduct tax on Rs.10 Lakh?

Ans. No. Tax cannot be deducted for any payment made prior to 01.10.2018. So deduction will be made only in respect of Rs.7 Lakh.

Q 70. I enter into a contract with a supplier ABC where the value of taxable supply is Rs.2 Lakh and payment of Rs.1 Lakh has been made on 15.10.2018. Now, on 20.10.2018 the contract value is revised from Rs.2 Lakh to Rs.6 Lakh. Am I liable to deduct any tax and if so, on which amount?

Ans. Yes, TDS shall have to be deducted on entire amount i.e. Rs. 6 lakhs while making remaining payment of Rs.5 Lakh. In other words, 12,000/- would be deducted when remaining payment of Rs.5 Lakh is made.

Q 71. Mr A. Roy, a DDO has purchased goods during May, 2018. He could not make payment for such purchase due to shortage of allotment. He is expected to receive allotment only in October, 2018. Is he liable to deduct TDS while making payment in the month of October considering that the purchase was made before October?

Ans. The tax payer is required to adjust the TDS amount to his liability relating to such invoices in the month in which

goods are supplied. Therefore, TDS cannot be made for the amount paid in October but goods or services supplied before 30.09.2018.

Q 72. When should I not deduct tax under GST?

Ans. No deduction is required in respect of payment against–

- all services which are exempted as per principal notification No.12/2017 – Central Tax (Rate) as amended from time to time;*
- all goods which are exempted as per principal notification No.2/2017 – Central Tax (Rate) as amended from time to time;*

Q 73. Mr Z, a supplier in West Bengal has issued a Tax Invoice of Rs. 11,800/- for supply of goods/services or both worth Rs. 10,000/- and GST of Rs. 1,800/- to Mr A of ABC office in West Bengal. What is the value of payment on which Mr A should deduct TDS during making payment to Mr Z? Calculate the amount payable to Mr Z?

Ans. For purpose of deducting of TDS, the value of supply is to be taken as the amount excluding the tax indicated on the invoice. This means TDS shall not be deducted on the CGST, SGST or IGST component of invoice. In this case, TDS is to be deducted on Rs. 10,000/- and not on the full amount of Rs. 11,800/-. Mr Z has issued a Tax Invoice of Rs. 11,800/- which comprises a GST component of Rs. 1,800/-. TDS in this case is to be deducted @ 2% (1% of CGST & 1% of SGST) on

Rs. 10,000/-. Mr A will deduct Rs. 200/- which he will deposit in the proper Govt. A/c head. Mr A will pay Rs. 11600/- (11800/ - 200/-) = (i.e. Full Invoice Value - TDS amount) to Mr Z.

Q 74. What is the different nature of supply & what is the rate of deduction?

Ans.

| <i>Nature of Supply</i> | <i>Name of TDS</i> | <i>Rate of Tax</i> |
|--|----------------------------|--------------------|
| <i>Location of the Supplier & Place of supply is in the same State /UT without any legislature</i> | <i>CGST SGST/UTGST</i> | <i>1% 1%</i> |
| <i>Location of the Supplier & Place of supply are in the different States</i> | <i>IGST</i> | <i>2%</i> |

Q 75. If Supplier A of Maharashtra supplies goods to ABC office in West Bengal, then tax is required to be deducted under which Act?

Ans. The concerned DDO needs to deduct IGST @2%.

Q 76. Health Department of WB receives a taxable service from MNO company of WB. What would be the nature of TDS to be deducted here & what would be the rate of deduction?

Ans. The DDO of the Health Department is liable to deduct TDS (1% CGST+1% SGST) while making payment to MNO Company as in this case the supplier or the vendor & the DDOs office (the place of supply) both are in West Bengal.

Q 77. How can I discharge my TDS liability?

Ans. TDS liability can be discharged by debiting of Electronic Cash Ledger only at the time of filing return in FORM GSTR 7.

Q 78. Payment is made in respect of a single contract whose value of taxable supply is Rs.3.5 Lakh. Two bills amounting to Rs 1.5 lakh &Rs. 2 lakh respectively are passed for such payment. Since in respect of both the bills the amount paid does not exceed Rs. 2.5 lakh, I think that no tax is required to be deducted. Am I right?

Ans. No. Here the payments are being made against a single contract value of taxable supply exceeding Rs.2.5 Lakh. Here, the value of taxable supply in the contract is Rs. 3.5 lakh. So, the deductor should deduct TDS on each payment to the supplier in respect of the aforesaid contract.

Q 79. When will a DDO know that his liability for payment has been completed??

Ans. Electronic cash Ledger of the DDO will be credited when tax deducted at source is deposited in Government account. Payment of such liability (which is the tax deducted at source) shall have to be done by debiting of

the electronic cash Ledger and such debit can be done while submitting FORM GSTR 7. So, unless the return in FORM GSTR 7 is submitted the payment liability of the DDO will not be completed.

Q 80. Can the deductee take action on the TDS credit declared by me?

Ans. Yes. After filing of return by deductors (DDOs) in FORM GSTR-7, the amount so deducted will be auto-populated in 'TDS/TCS credit receipt' table of respective suppliers. The supplier (deductee) has to accept or reject the amount so auto-populated in the table after logging on the portal. The accepted amount will be credited to Electronic cash ledger while rejected amount will be auto-populated in Amendment table of next month's FORM GSTR-7 of the deductor.

Q 81. What will happen if the TDS credit entry is rejected by the deductee?

Ans. The rejected transactions in 'TDS/TCS credit receipt' table will be communicated back to the deductor who will download the auto-populated transactions and make necessary amendments in GSTIN or amount etc. in table 4 of FORM GSTR-7. The amended details will again be auto-populated in 'TDS/TCS credit receipt' table. Supplier will take action comprising Accept/Reject the transactions. As usual, amount of accepted invoices will be credited to electronic cash ledger of the supplier.

Q 82. Is there any provision of refund to the deductor or the deductee arising on a/c of excess or

erroneous deduction made under GST?

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

Q 83. Who are liable to file return (GSTR-7)?

Ans. Post 01.10.2018, DDOs deducting tax will be liable to file return in FORM GSTR-7 for the month in which such deductions are made.

Q 84. What is the need for filing a return when deposit of TDS has already been made?

Ans. Electronic cash Ledger of the DDO will be credited when tax deducted at source is deposited in Government account. Payment of such liability (which is the tax deducted at source) shall have to be done by debiting of the electronic cash Ledger and that can be done only while submitting FORM GSTR 7. So, unless the return in FORM GSTR 7 is submitted the payment liability of the DDO will not be treated as discharged.

Q 85. Mr S has deducted GST amounting to Rs 50,000/- in the month of Nov'18. He filed return on 16.12.2018. Is he liable to pay a late fee?

Ans. Yes he is liable to pay a late of Rs. 600/- at the rate of Rs 100/- per day for delay of 6 days (11.12.2018 – 16.12.2018). Maximum amount of late fee payable is

capped at Rs. 5,000/- Similar late fees is applicable under SGST Act / UTGST Act.

Q 86. During October, 2018, I have not deducted any amount of GST. Do I need to file return for the month of October?

Ans. The Deductor i.e. DDO is required to furnish a return in FORM GSTR-7 electronically for the month in which such deductions have been made in accordance with the provision of section 39(3) of the CGST/SGST Acts, 2017. Hence, submission of FORM GSTR-7 is not required for a month in which no deduction is made.

Q 87. How can a deductor file FORM GSTR-7?

Ans. FORM GSTR-7 can be filed on the GST Portal, by logging in the Returns Dashboard by the deductor. The path is Services > Returns > Returns Dashboard.

Q 88. Is there any Offline Tool for filing Form GSTR-7?

Ans. Yes. FORM GSTR 7 return can be filed through offline mode also.

Q 89. Can the date of filing of FORM GSTR-7 be extended?

Ans. Yes, date of filing of FORM GSTR-7 can be extended by the Commissioner of State/Central tax through notification.

Q 90. What are the pre-conditions for filing FORM GSTR-7?

Ans. Pre-conditions for filing of FORM GSTR-7 are:

- *Tax Deductor should be registered and should have a valid/active GSTIN.*
- *Tax Deductor should have a valid User ID and password.*
- *Tax Deductor should have an active & non-expired/ non-revoked digital signature (DSC) in case return is to be filed through DSC.*
- *Tax Deductor has made payment or credited the amount to the supplier's account.*

Q 91. What are the modes of signing FORM GSTR-7?

Ans. FORM GSTR-7 can be filed using DSC or EVC

Q 92. Can I preview the FORM GSTR-7 before filing?

Ans. Yes, the preview of FORM GSTR-7 can be seen by clicking on 'Preview Draft GSTR-7' before filing on the GST Portal.

Q 93. What happens after FORM GSTR-7 is filed?

Ans. After FORM GSTR-7 is filed: • ARN is generated on successful filing of the return in FORM GSTR-7. • An SMS and an email are sent to the applicant on his registered mobile and email id.

Q 94. Can I file the complete FORM GSTR-7 using Offline Utility?

Ans. No. Filing can take place only online on the GST Portal. The details of Table 3 and Table 4 can be prepared

offline but remaining activities like payment and filing has to be completed on the portal only. Once the json file is uploaded on the GST Portal, one may continue to proceed to file. Liabilities will then be computed and after making payment, return can be filed.

Q 95. What are the features of FORM GSTR-7 Offline Utility?

Ans. The key features of FORM GSTR-7 Offline Utility are: • The FORM GSTR-7 details of Table 3 and 4 can be prepared offline, with no connection to Internet. • Most of the data entry and business validations are in built in the offline utility, reducing errors upon upload to GST Portal.

Q 96. From where can I download and use the FORM GSTR-7 Offline Utility in my system?

Ans. Following steps are required to be performed to download and open the FORM GSTR-7 Offline Utility in your system from the GST Portal:

- 1. Access the GST Portal: www.gst.gov.in*
- 2. Go to Downloads > Offline Tools > GSTR7 Offline Utility option and click on it*
- 3. Unzip the downloaded Zip file which contain GSTR7_Offline_Utility.xls excel sheet.*
- 4. Open the GSTR7_Offline_Utility.xls excel sheet by double clicking on it.*
- 5. Read the 'Read Me' instructions on excel sheet and then fill the worksheet accordingly.*

Q 97. Do I need to login to GST Portal to download the FORM GSTR-7 Offline Utility?

Ans. No. One can download the FORM GSTR-7 Offline Utility under 'Download' section without logging in to the GST Portal.

Q 98. Do I need to login to GST Portal to upload the generated JSON file using FORM GSTR-7 Offline Utility?

Ans. Yes. You must login in to the GST Portal to upload the generated JSON file using FORM GSTR- 7 Offline Utility.

Q 99. What are the basic system requirements/configurations required to use FORM GSTR-7 Offline Tool?

Ans. The offline functions work best on Windows 7 and above and MS EXCEL 2007 and above.

Q 100. Is Offline utility mobile compatible?

Ans. As of now FORM GSTR-7 Offline utility cannot be used on mobile. It can only be used on desktop/laptops.

Q 101. How many TDS details of the suppliers can I enter in the offline utility?

Ans. One can enter maximum 10,000 rows of TDS details of the suppliers in the offline utility.

Q 102. I am a tax deductor. I've made payment for four different products to one of my suppliers. Shall I report each payment in four different rows of the

offline utility?

Ans. No. Row with a duplicate GSTIN is not allowed in the utility. One should report the whole amount in one row only. All the payments are required to be added and one single consolidated amount has to be entered in the “Amount paid to deductee on which tax is deducted” column

Q 103. I have mistakenly entered rows with the same GSTIN. Should I use the “Delete” option from the dropdown of “Action” column to delete these rows?

Ans. No, the incorrect data has to be deleted in the utility manually using the “Delete” button of the keyboard. Add and Delete options of the “Action” column are meant for adding or deleting data in the GST portal. Delete option is required to be ignored while preparing FORM GSTR-7 for first- time upload, and for the subsequent uploads it can be used only to delete those particular rows from the already-uploaded data on the portal.

Q 104. Can I enter negative or decimal amounts in the offline utility?

Ans. No, any negative value cannot be entered in the utility. However, decimal values can be entered. All decimal values would be rounded off to two decimal places. But, total liability will be rounded off to whole number.

Q 105. I’ve uploaded GSTR-7 JSON File and it was processed without error. Do I need to download the generated file?

Ans. No, it is not necessary to download the GSTR-7 JSON File processed without error. One can download it only if he wants to update, add or delete the details added previously. One can download the uploaded file for record if so required.

Q 106. Mr A, a DDO has submitted return for the month of November upon payment of liability as shown in such return on 11.12.2018. Is he liable to pay interest?

Ans. Mr. A has to pay interest for one day as return is to be filed by 10th December, 2018.

Q 107. As a DDO I have deducted tax while making payment to various Vendors. I have deposited the amount in the appropriate Government A/c & also filed return within stipulated time. Have I discharged all my liabilities relating to TDS?

Ans. No. A system generated TDS certificate in FORM GSTR-7A mentioning therein the value on which tax is deducted, and amount of tax deducted and other related particulars shall be available for download from the portal by deductee.

Q 108. How can a supplier download the TDS certificate in FORM GSTR 7A?

Ans. TDS certificate can be downloaded by access the www.gst.gov.in URL and using the following path: Login to the GST Portal with valid credentials. Navigate to Services > User Services > View/Download Certificates option.

Q 109. How many TDS Certificates are issued per GSTIN?

Ans. A single TDS certificate is issued per GSTIN per FORM GSTR-7 return filed by deductor.

Q 110. Is the signature of Tax Deductor required in TDS Certificate?

Ans. FORM GSTR-7A is system generated TDS certificate; signature of Tax Deductor is not required

Q 111. Do I as a taxpayer have to file FORM GSTR-7A?

Ans. No, a tax payer (deductee) is not required to file FORM GSTR-7A.

Q 112. Can I as a taxpayer (Deductor or Deductee) download and keep a copy of my TDS Certificate for future reference?

Ans. Yes, TDS Certificate can be viewed and/or downloaded in post-login mode on the GST portal.

Q 113. Being a deductor do I have to fill any form to generate FORM GSTR 7A? How can I view Form GSTR-7A?

Ans. No, a deductor is not required to fill up any separate form for generation of FORM GSTR-7A. FORM GSTR 7A shall be generated if return in FORM GSTR 7 is filed. To view Form GSTR-7A, perform following steps: 1. Access the www.gst.gov.in URL. The GST Home page is displayed. 2. Login to the GST Portal with valid credentials. 3. Click the Services > User Services > View/Download Certificates

command

8. Electronic Commerce and Tax Collected at Source

(The Questions adopted from the Frequently Asked Questions on TCS under GST released by Law Committee, GST Council on 28th September, 2018)

Q 1. What is Electronic Commerce?

Ans. As per Section 2(44) of the CGST Act, 2017, electronic Commerce means the supply of goods or services or both, including digital products over digital or electronic network.

Q 2. Who is an e-commerce operator?

Ans. As per Section 2(45) of the CGST Act, 2017, electronic Commerce operator means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce.

Q 3. What is Tax Collection at Source (TCS)?

Ans. As per Section 52 of the CGST Act, 2017 the e-commerce operator, not being an agent, is required to collect an amount calculated at the rate not exceeding one per cent., as notified by the Government on the recommendations of the Council, of the net value of taxable supplies made through it, where the consideration with respect to such supplies is to be collected by such operator. The amount so collected is called as Tax Collection at Source (TCS).

Q 4. What is the rate of TCS notified by Government?

Ans. Rate of TCS is 0.5% under each Act (i.e. the CGST Act, 2017 and the respective SGST Act / UTGST Act respectively) and the same is 1% under the IGST Act, 2017. Notifications No. 52/2018 – Central Tax and 02/2018-Integrated Tax both dated 20th September, 2018 have been issued in this regard. Similar notifications have been issued by the respective State Governments also.

Q 5. Is it mandatory for e-commerce operator to obtain registration?

Ans. Yes. As per section 24(x) of the CGST Act, 2017, every electronic commerce operator has to obtain compulsory registration irrespective of the value of supply made by him. The benefit of threshold exemption is not available to e-commerce operators.

Q 6. Whether a supplier of goods or services supplying through e-commerce operator would be entitled to threshold exemption?

Ans. As per Section 24(ix) of the CGST Act, 2017, every person supplying goods through an e-commerce operator shall be mandatorily required to register irrespective of the value of supply made by him. However, a person supplying services, other than supplier of services under section 9 (5) of the CGST Act, 2017, through an e-commerce platform are exempted from obtaining compulsory registration provided their aggregate turnover does not exceed INR 20 lakhs (or INR 10 lakhs in case of specified special category States) in a financial

year. Government has issued the notification No. 65/2017 – Central Tax dated 15th November, 2017 in this regard.

Q 7. Whether TCS is required to be collected by e-commerce operators on supply of services by unregistered suppliers through their portal?

Ans. As per Section 24(ix) of the CGST Act, 2017, every person supplying goods or services through an ecommerce operator is mandatorily required to register. However, vide Notification 65/2017-Central Tax dated 15th November, 2017 a person supplying services, other than supplier of services under section 9 (5) of the CGST Act, 2017, through an e-commerce platform were exempted from obtaining compulsory registration provided their aggregate turnover does not exceed INR 20 lakhs (or INR 10 lakhs in case of specified special category States) in a financial year. Since such suppliers are not liable for registration, e-commerce operators are not required to collect TCS on supply of services being made by such suppliers through their portal.

Q 8. Whether e-Commerce operator is required to obtain registration in every State/UT in which suppliers listed on their e-commerce platform are located to undertake the necessary compliance as mandated under the law?

Ans. As per the extant law, registration for TCS would be required in each State / UT as the obligation for collecting TCS would be there for every intra-State or inter-State supply. In order to facilitate the obtaining of registration

in each State / UT, the e-commerce operator may declare the Head Office as its place of business for obtaining registration in that State / UT where it does not have physical presence. It may be noted that each State/UT has indicated one administrative jurisdiction where all e-commerce operators having business (but not having physical presence) in that State/UT shall register. The proper officer for the purpose of registration of ECOs has also been notified by each State/UT.

Q 9. Foreign e-commerce operator do not have place of business in India since they operate from outside. But their supplier and customers are located in India. So, in this scenario will the TCS provision be applicable to such e-commerce operator and if yes, how will foreign e-commerce operator obtain registration?

Ans. Where registered supplier is supplying goods or services through a foreign e-commerce operator to a customer in India, such foreign e-commerce operator would be liable to collect TCS on such supply and would be required to obtain registration in each State / UT. It may be noted that each State/UT has indicated one administrative jurisdiction where all e-commerce operators having business (but not having physical presence) in that State/UT shall register. The proper officer for the purpose of registration of ECOs has also been notified by each State/UT. If the foreign e-commerce operator does not have physical presence in a particular State / UT, he may appoint an agent on his behalf.

Q 10. Is it necessary for e-Commerce operators who are already registered under GST and have GSTIN, to have separate registration for TCS as well?

Ans. E-Commerce operator has to obtain separate registration for TCS irrespective of the fact whether e-Commerce operator is already registered under GST as a supplier or otherwise and has GSTIN.

Q 11. What is meant by “net value of taxable supplies”?

Ans. The “net value of taxable supplies” means the aggregate value of taxable supplies of goods or services or both, other than the services on which entire tax is payable by the e-commerce operator, made during any month by a registered supplier through such operator reduced by the aggregate value of taxable supplies returned to such supplier during the said month.

Q 12. Whether value of net taxable supplies to be calculated at gross level or at GSTIN level?

Ans. The value of net taxable supplies is calculated at GSTIN level.

Q 13. Is every e-commerce operator required to collect tax on behalf of actual supplier?

Ans. Yes, every e-commerce operator is required to collect tax where the supplier is supplying goods or services through e-commerce operator and consideration with respect to the supply is to be collected by the said e-commerce operator.

Q 14. At what time should the e-commerce operator collect TCS?

Ans. TCS is to be collected once supply has been made through the e-commerce operator and where the business model is that the consideration is to be collected by the e-commerce operator irrespective of the actual collection of the consideration. For example, if the supply has taken place through the e-commerce operator on 30th October, 2018 but the consideration for the same has been collected in the month of November, 2018, then TCS for such supply has to be collected and reported in the statement for the month of October, 2018.

Q 15. Whether TCS to be collected on exempt supplies?

Ans. No, TCS is not required to be collected on exempt supplies.

Q 16. Whether TCS to be collected on supplies on which the recipient is required to pay tax on reverse charge basis?

Ans. No, TCS is not required to be collected on supplies on which the recipient is required to pay tax on reverse charge basis.

Q 17. Whether TCS is to be collected in respect of supplies made by the composition taxpayer?

Ans. As per section 10(2)(d) of the CGST Act, 2017, a composition taxpayer cannot make supplies through e-

commerce operator. Thus, question of collecting TCS in respect of supplies made by the composition taxpayer does not arise.

Q 18. Whether TCS is to be collected on import of goods or services or both?

Ans. TCS is not liable to be collected on any supplies on which the recipient is required to pay tax on reverse charge basis. As far as import of goods is concerned since same would fall within the domain of Customs Act, 1962, it would be outside the purview of TCS. Thus, TCS is not liable to be collected on import of goods or services.

Q 19. Is there any exemption on Gold, owing to the fact that rate of GST is only 3% and TCS on it would erode the margin for the seller?

Ans. No such exemption from TCS has been granted.

Q 20. Whether payment of TCS through Input Tax Credit of operator for depositing TCS as per Section 52 (3) of the CGST Act, 2017 is allowed?

Ans. No, payment of TCS is not allowed through Input Tax Credit of e-Commerce operator.

Q 21. It is very common that customers of e-commerce companies return goods. How these sales returns are going to be adjusted?

Ans. An e-commerce company is required to collect tax only on the net value of taxable supplies made through it. In other words, value of the supplies which are returned

(supply return) may be adjusted from the aggregate value of taxable supplies made by each supplier (i.e. on GSTIN basis). In other words, if two suppliers "A" and "B" are making supplies through an e-commerce operator, the "net value of taxable supplies" would be calculated separately in respect of "A" and "B". If the value of returned supplies is more than supplies made on behalf of any of such supplier during any tax period, the same would be ignored in his case.

Q 22. Under Section 52, e-commerce operator collects TCS at the net of returns. Sometimes sales return is more than sales and hence can negative amount be reported?

Ans. Negative amount cannot be declared. There will be no impact in next tax period also. In other words, if returns are more than the supplies made during any tax period, the same would be ignored in current as well as future tax period(s).

Q 23. What is the time within which such TCS is to be remitted by the e-commerce operator to the Government account?

Ans. The amount collected by the operator is to be paid to appropriate government within 10 days after the end of the month in which the said amount was so collected.

Q 24. How can actual suppliers claim credit of TCS?

Ans. The amount of TCS deposited by the operator with the appropriate Government will be reflected in the electronic

cash ledger of the actual registered supplier (on whose account such collection has been made) on the basis of the statement filed by the operator in FORM GSTR-8 in terms of Rule 67 of the CGST Rules, 2017. The said credit can be used at the time of discharge of tax liability by the actual supplier.

Q 25. How is TCS to be credited in cash ledger? Whether the refund of such TCS credit lying in the ledger would be allowed at par with the refund provisions contained in section 54(1) of the CGST Act, 2017?

Ans. TCS collected is to be deposited by the e-commerce operator separately under the respective tax head (i.e. Central tax / State tax / Union territory tax / Integrated tax). Based on the statement (FORM GSTR-8) filed by the e-commerce operator, the same would be credited to the electronic cash ledger of the actual supplier in the respective tax head. If the supplier is not able to use the amount lying in the said cash ledger, the actual supplier may claim refund of the excess balance lying in his electronic cash ledger in accordance with the provisions contained in section 54(1) of the CGST Act, 2017.

Q 26. Is the e-commerce operator required to submit any statement? What are the details that are required to be submitted in the statement?

Ans. Yes, every operator is required to furnish a statement, electronically, containing the details of outward supplies of goods or services effected through it, including the supplies of goods or services returned through it, and the amount

collected by it as TCS during a month within 10 days after the end of such month in FORM GSTR-8. The operator is also required to file an annual statement by 31st day of December following the end of the financial year in which the tax was collected in FORM GSTR-9B..

Q 27. Whether interest would be applicable on non-collection of TCS?

Ans. As per section 52(6) of the CGST Act, 2017, interest is applicable on omission as well in case of incorrect particulars noticed. In such a case, interest is applicable since it is a case of omission. Further penalty under section 122(vi) of the CGST Act, 2017 would also be leviable.

Q 28. What will be the place of supply for e-commerce operator for recharge of talk time of the Telecom Operator / recharge of DTH / in relation to convenience fee charged from the customers on booking of air tickets, rail tickets supplied through its online platform?

Ans. As per section 12(11) of the IGST Act, 2017, the address on record of the customer with the supplier of services is the place of supply.

Q 29. Under multiple e-commerce model, Customer books a Hotel via ECO-1 who in turn is integrated with ECO-2 who has agreement with the hotelier. In this case, ECO-1 will not have any GST information of the hotelier. Under such circumstances, which e-commerce operator should be liable to collect TCS?

Ans. TCS is to be collected by that e-Commerce operator who is making payment to the supplier for the particular supply happening through it, which is in this case will be ECO-2.

Q 30. Are there any additional powers available to tax officers under this Act?

Ans. As per section 52(12) of the CGST Act, 2017, any authority not below the rank of Deputy Commissioner may serve a notice requiring the operator to furnish the details of their supplies of goods or services or both as well as stock of goods held by the suppliers within 15 working days of the date of service of such notice.

Q 31. Certain e-commerce operators who have been unable to obtain registration in the month of October, 2018 but have already collected TCS for the said month have expressed challenges in relation to the filing of such details in GTSR-8. It has been asked as to how these details are to be furnished on the common portal?

Ans. E-commerce operators, who have been unable to obtain registration in the month of October, 2018 but have already collected TCS for the said month, may furnish the details of TCS collected in the month of October, 2018 in the first return in FORM GTSR-8 to be filed after obtaining registration.

Q 32. We purchase goods from different vendors and are selling them on our website under our own billing. Is TCS required to be collected on such

supplies?

Ans. No. According to Section 52 of the CGST Act, 2017, TCS is required to be collected on the net value of taxable supplies made through it by other suppliers where the consideration is to be collected by the ECO. In this case, there are two transactions - where you purchase the goods from the vendors, and where you sell it through your website. For the first transaction, GST is leviable, and will need to be paid by your vendor, on which credit is available for you. The second transaction is a supply on your own account, and not by other suppliers and there is no requirement to collect tax at source. The transaction will attract GST at the prevailing rates.

Q 33. The sellers supplying goods through e-Commerce operators (ECO) may have common places of business, especially if their goods are stored in a shared facility operated by the ECO. This will result in the same additional place of business being registered by multiple suppliers. Is this allowed?

Ans. Yes, this is allowed. Any registered person can declare a premises as a place of business if he has requisite documents for use of the premises as his place of business (like ownership document, agreement with the owner etc.) and there is no restriction about use of a premises by multiple persons. The registered person shall have to comply with the requirements of maintaining records as per section 35 of the CGST Act, 2017 and Rules 56 to 58 of the CGST Rules, 2017.

Q 34. I am a supplier, supplying my own products through a website hosted by me. Do I fall under the definition of an electronic commerce operator. Am I required to collect TCS on such supplies?

*Ans. As per the definitions in Section 2 (44) & 2 (45) of the CGST Act, you will come under the definition of an electronic commerce operator. However, according to Section 52 of the Act, *ibid*, TCS is required to be collected on the net value of taxable supplies made through it by other suppliers where consideration is to be collected by the ECO. In cases where someone is selling their own products through a website, there is no requirement to collect tax at source as per the provisions of this section. These transactions will be liable to GST at the prevailing rates.*

Q 35. There are cases where the ECO does not provide invoicing solution to the seller. In such cases, invoice is generated by the seller and received by the buyer without the ECO getting to know about it. The payment flows through the ECO. In such cases, on what value is TCS to be collected? Can TCS be collected on the entire value of the transaction?

Ans. Section 52(1) of the CGST Act, 2017, mandates that TCS is to be collected on the net taxable value of such supplies in respect of which the ECO collects consideration. The amount collected should be duly reported in the GSTR-8 and remitted to the government. Any such amount collected will be available to the concerned supplier as

credit in his electronic cash ledger.

9. Job Work

Q 1. What is job work?

Ans. Job work means undertaking any treatment or process by a person on goods belonging to another registered taxable person. The person who is treating or processing the goods belonging to other person is called 'job worker' and the person to whom the goods belongs is called 'principal'.

This definition is much wider than the one given in Notification No. 214/86 – CE dated 23rd March, 1986. In the said notification, job work has been defined in such a manner so as to ensure that the activity of job work must amount to manufacture. Thus the definition of job work itself reflects the change in basic scheme of taxation relating to job work in the proposed GST regime.

Q 2. Whether goods sent by a taxable person to a job worker will be treated as supply and liable to GST? Why?

Ans. It will be treated as a supply as supply includes all forms of supply such as sale, transfer, etc. However, the registered taxable person (the principal), under intimation and subject to such conditions as may be prescribed send any inputs and/or capital goods, without payment of tax, to a job worker for job work and from there subsequently to another job worker(s) and shall either bring back such inputs/capital goods after completion of job work or

otherwise within 1 year/3years of their being sent out or supply such inputs/capital goods after completion of job work or otherwise within 1 year / 3 years 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.

Q 3. Is a job worker required to take registration?

Ans. Yes, as job work is a service, the job worker would be required to obtain registration if his aggregate turnover exceeds the prescribed threshold.

Q 4. Whether the goods of principal directly supplied from the job worker's premises will be included in the aggregate turnover of the job worker?

Ans. No. It will be included in the aggregate turnover of the principal. However, the value of goods or services used by the job worker for carrying out the job work will be included in the value of services supplied by the job worker.

Q 5. Can a principal send inputs and capital goods directly to the premises of job worker without bringing it to his premises?

Ans. Yes, the principal is allowed to do so. The input tax credit of tax paid on inputs or capital goods can also be availed by the principal in such a scenario. The inputs or capital goods must be received back within one year or three years respectively failing which the original transaction would be treated as supply and the principal would be liable to pay tax accordingly.

Q 6. Can the principal supply the goods directly from the premises of the job worker without bringing it back to his own premises?

Ans. Yes. But the principal should have declared the premises of an unregistered job worker as his additional place of business. If the job worker is a registered person then goods can be supplied directly from the premises of the job worker. The Commissioner may also notify goods in which case goods sent for job work can be directly supplied from the premises of the job worker.

Q 7. Under what circumstances can the principal directly supply goods from the premises of job worker without declaring the premises of job worker as his additional place of business?

Ans. The goods can be supplied directly from the place of business of job worker without declaring it as additional place of business in two circumstances namely where the job worker is a registered taxable person or where the principal is engaged in supply of such goods as may be notified by the Commissioner.

Q 8. What are the provisions concerning taking of ITC in respect of inputs/capital goods sent to a job worker?

Ans. Principal shall be entitled to take credit of taxes paid on inputs or capital goods sent to a job worker whether sent after receiving them at his place of business or even when such the inputs or capital goods are directly sent to a job worker without their being first brought to his place of business. However, the inputs or capital goods, after completion of job work, are required to be received back

or supplied from job worker's premises, as the case may be, within a period of one year or three years of their being sent out.

Q 9. What happens when the inputs or capital goods are not received back or supplied from the place of business of job worker within prescribed time period?

Ans. If the inputs or capital goods are not received back by the principal or are not supplied from the place of business of job worker within the prescribed time limit, it would 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 by the principal (or on the date of receipt by the job worker where the inputs or capital goods were sent directly to the place of business of job worker). Thus the principal would be liable to pay tax accordingly.

Q 10. Some capital goods like jigs and fixtures are non-usable after their use and normally sold as scrap. What is the treatment of such items in job work provisions?

Ans. The condition of bringing back capital goods within three years is not applicable to moulds, dies, jigs and fixtures or tools.

Q 11. What would be treatment of the waste and scrap generated during the job work?

Ans. The waste and scrap generated during the job work can be supplied by the job worker directly from his place of business, on payment of tax, if he is registered. If he is not registered, the same would be supplied by the principal on payment of tax.

Q 12. Whether intermediate goods can also be sent for job work?

Ans. Yes. The term inputs, for the purpose of job work, includes intermediate goods arising from any treatment or process carried out on the inputs by the principal or job worker.

Q 13. Who is responsible for the maintenance of proper accounts related to job work?

Ans. It is completely the responsibility of the principal to maintain proper accounts of job work related inputs and capital goods.

Q 14. Are the provisions of job work applicable to all categories of goods?

Ans. No. The provisions relating to job work are applicable only when registered taxable person intends to send taxable goods. In other words, these provisions are not applicable to exempted or non-taxable goods or when the sender is a person other than registered taxable person.

Q 15. Is it compulsory that job work provisions should be followed by the principal?

Ans. No. The principal can send the inputs or capital goods after payment of GST without following the special

procedure. In such a case, the job-worker would take the input tax credit and supply back the processed goods (after completion of job-work) on payment of GST.

Q 16. Should job worker and principal be located in same State or Union territory?

Ans. No this is not necessary as provisions relating to job work have been adopted in the IGST Act as well as in UTGST Act and therefore job-worker and principal can be located either in same State or in same Union Territory or in different States or Union Territories.

Q 17. What is the scope of job work. Whether any inputs, other than goods provided by the principal can be used by the job worker for providing job work services?

Ans. The definition of job work, as contained in section 2(68) of the CGST Act, entails that the job work is a treatment or process undertaken by a person on goods belonging to another registered person. Thus, the job worker is expected to work on the goods sent by the principal and whether the activity is covered within the scope of job work or not would have to be determined on the basis of facts and circumstances of each case. Further, it is clarified that the job worker, in addition to the goods received from the principal, can use his own goods for providing the services of job work.

Q 18. Can a person other than registered person follow the job work procedure under the Act?

Ans. No. It is important to note that the provisions of section 143 of the CGST Act are applicable to a registered person. Thus, it is only a registered person who can send the goods for job work under the said provisions.

Q 19. In case the principal and job worker are located in different states, is it necessary for the job worker to obtain compulsory registration?

Ans. No. Where the principal and the job worker are located in different States, the requirement for registration flows from section 24(i) of the CGST Act which provides for compulsory registration of suppliers making any inter-State supply of services. However, exemption from registration has been granted in case the aggregate turnover of the inter-state supply of taxable services does not exceed Rs 20 lakhs or Rs. 10 lakhs in case of special category States except Jammu & Kashmir in a financial year vide notification No. 10/2017 - Integrated Tax dated 13.10.2017. Therefore, a job worker is required to obtain registration only in cases where his aggregate turnover, to be computed on all India.

Q 20. In case of inter-state movement of goods for job work, is generation of e-way bill necessary? If so by whom?

*Ans. Yes. The third proviso to rule 138(1) of the CGST Rules provides that the e-way bill shall be generated either by the principal or by the registered job worker **irrespective of the value of the consignment**, where goods are sent by a principal located in one State/Union territory to a job worker located in any other State/Union territory.*

Q 21. What are the legal/documentary requirements where goods are sent by the principal to only one job worker?

Ans. The principal shall prepare in triplicate, the challan in terms of rules 45 and 55 of the CGST Rules, for sending the goods to a job worker. Two copies of the challan may be sent to the job worker along with the goods. The job worker should send one copy of the said challan along with the goods, while returning them to the principal. The FORM GST ITC-04 will serve as the intimation as envisaged under section 143 of the CGST Act,2017.

Q 22. What are the legal/documentary requirements where goods are sent by one job worker to another job worker?

Ans. In such cases, the goods may move under the cover of a challan issued either by the principal or the job worker. In the alternative, the challan issued by the principal may be endorsed by the job worker sending the goods to another job worker, indicating therein the quantity and description of goods being sent. The same process may be repeated for subsequent movement of the goods to other job workers.

Q 23. What are the legal/documentary requirements where goods are returned to the principal by the job worker?

Ans. The job worker should send one copy of the challan received by him from the principal while returning the goods to the principal after carrying out the job work.

Q 24. What are the legal/documentary requirements where goods are sent directly by the supplier to the job worker?

Ans. In this case, the goods may move from the place of business of the supplier to the place of business/premises of the job worker with a copy of the invoice issued by the supplier in the name of the buyer (i.e. the principal) wherein the job worker's name and address should also be mentioned as the consignee, in terms of rule 46(o) of the CGST Rules. The buyer (i.e., the principal) shall issue the challan under rule 45 of the CGST Rules and send the same to the job worker directly in terms of para (i) above. In case of import of goods by the principal which are then supplied directly from the customs station of import, the goods may move from the customs station of import to the place of business/premises of the job worker with a copy of the Bill of Entry and the principal shall issue the challan under rule 45 of the CGST Rules and send the same to the job worker directly.

Q 25. What are the legal/documentary requirements where goods are returned in piecemeal by the job worker?

Ans. In case the goods after carrying out the job work, are sent in piecemeal quantities by a job worker to another job worker or to the principal, the challan issued originally by the principal cannot be endorsed and a fresh challan is required to be issued by the job worker.

Q 26. What is the mode and manner in which the principal is required to intimate the details of

goods sent for job work?

*Ans. Rule 45(3) of the CGST Rules provides that the principal is required to furnish the details of challans in respect of goods sent to a job worker or received from a job worker or sent from one job worker to another job worker during a quarter in FORM GST ITC-04 by the 25th day of the month succeeding the quarter or within such period as may be extended by the Commissioner. It is the responsibility of the principal to include the details of all the challans relating to goods sent by him to one or more job worker or from one job worker to another and its return therefrom. **The FORM GST ITC-04 will serve as the intimation as envisaged under section 143 of the CGST Act.***

Q 27. How will liability devolve on the Principal in case inputs or capital goods are neither returned nor supplied from the job workers premises within the stipulated period?

Ans. If the inputs or capital goods are neither returned nor supplied from the job worker's place of business / premises within the specified time period, the principal would issue an invoice for the same and declare such supplies in his return for that particular month in which the time period of one year / three years has expired. The date of supply shall be the date on which such inputs or capital goods were initially sent to the job worker and interest for the intervening period shall also be payable on the tax.

Q 28. What would be the GST implications in case the goods are returned by the job worker after the

stipulated period?

Ans. If such goods are returned by the job worker after the stipulated time period, the same would be treated as a supply by the job worker to the principal and the job worker would be liable to pay GST if he is liable for registration in accordance with the provisions contained in the CGST.

Q 29. Whether the value of moulds and dies, jigs and fixtures or tools which have been provided by the principal to the job worker and have been used by the latter for providing job work services would be included in the value of job work services?

Ans. Section 15 of the CGST Act lays down the principles for determining the value of any supply under GST. Importantly, clause (b) of sub-section (2) of section 15 of the CGST Act provides that any amount that the supplier is liable to pay in relation to the supply but which has been incurred by the recipient will form part of the valuation for that particular supply, provided it has not been included in the price for such supply. Accordingly, the value of such moulds and dies, jigs and fixtures or tools may not be included in the value of job work services provided its value has been factored in the price for the supply of such services by the job worker.

Q 30. How would be the time and place of supply be determined, where the supply is made by the principal from the premises of the job worker?

Ans. Since the supply is being made by the principal, the time, value and place of supply would have to be

determined in the hands of the principal irrespective of the location of the job worker's place of business/premises. Further, the invoice would have to be issued by the principal.

Q 31. Whether independent fabric processors (job workers) in the textile sector supplying job work services are eligible for refund of unutilized input tax credit on account of inverted duty structure under section 54(3) of the CGST Act, 2017, even if the goods (fabrics) supplied are covered under notification No. 5/2017-Central Tax (Rate) dated 28.06.2017?

Ans. Notification No. 5/2017-Central Tax (Rate) dated 28.06.2017 specifies the goods in respect of which refund of unutilized input tax credit (ITC) on account of inverted duty structure under section 54(3) of the CGST Act shall not be allowed where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies of such goods. However, in case of fabric processors, the output supply is the supply of job work services and not of goods (fabrics). Hence, the fabric processors shall be eligible for refund of unutilized ITC on account of inverted duty structure under section 54(3) of the CGST Act even if the goods (fabrics) supplied to them are covered under notification No.5/2017-Central Tax (Rate) dated 28.06.2017

10. Input Tax Credit

Q 1. What is input tax?

Ans. Input tax means the central tax (CGST), State tax (SGST), integrated tax (IGST) or Union territory tax (UTGST) charged on supply of goods or services or both made to a registered person. It also includes tax paid on reverse charge basis and integrated tax charged on import of goods. It does not include tax paid under composition levy.

Q 2. What is Input Tax Credit?

Ans. Input Tax Credit means the credit of input tax on the supplies of goods or services or both received by a registered person.

Q 3. Can GST paid on reverse charge basis be considered as input tax?

Ans. Yes. The definition of input tax includes the tax payable under the reverse charge.

Q 4. Does input tax includes tax (CGST/IGST/SGST) paid on input goods, input services and capital goods?

Ans. Yes, it includes taxes paid on input goods, input services and capital goods. Credit of tax paid on capital goods is permitted to be availed in one instalment.

Q 5. Is credit of all input tax charged on supply of goods or services allowed under GST?

Ans. A registered person is entitled to take credit of input tax charged on supply of goods or services or both to him

which are used or intended to be used in the course or furtherance of business, subject to other conditions and restrictions.

Q 6. What are the conditions necessary for obtaining ITC?

Ans. Following four conditions are to be satisfied by the registered taxable person for obtaining ITC:

- (a) he is in possession of tax invoice or debit note or such other tax paying documents (such as bill of entry or any other document prescribed under the Customs Act, ISD invoice as prescribed in Rule 36(1) of the CGST Rules).*
- (b) he has received the goods or services or both;*
- (c) the supplier has actually paid the tax charged in respect of the supply to the government; and*
- (d) he has furnished the return under section 39.*

Q 7. Whether all particulars necessary in the documents- tax invoice or debit note or such other tax paying documents for claiming ITC?

Ans. 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. (Proviso to Rule 36(2) of CGST Rules, 2018 inserted vide Notfn no.39/2018-Central Tax issued dated 04.09.18)

Q 8. Where the goods against an invoice are received in lots or instalments, how will a registered person be entitled to ITC?

Ans. The registered person shall be entitled to the credit only upon receipt of the last lot or installment.

Q 9. Can a person take input tax credit without payment of consideration for the supply along with tax to the supplier?

Ans. Yes, the recipient can take ITC. But he is required to pay the consideration along with tax within 180 days from the date of issue of invoice. This condition is not applicable where tax is payable on reverse charge basis.

Q 10. What would happen of the ITC taken by the registered person if he has not paid the consideration along with tax within 180 days from the date of issue of invoice?

Ans. The amount of ITC would be added to output tax liability of the person. He would also be required to pay interest. However, he can take ITC again on payment of consideration and tax.

Q 11. Can the recipient reclaim the credit; in case he makes the payment any time after 180 days?

Ans. Yes. 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.

Q 12. Is there any time limit for re-claiming the credit where payment is made after 180 days from the date of issue of invoice?

Ans. No. The time limit specified in section 16(4) shall not apply to a claim for re-availing of any credit, in accordance with the provisions of the Act or these rules, that had been reversed earlier.

Q 13. Certain supplies mentioned in Schedule I of the Act are deemed to be supplies even if made without consideration. Will the payment within 180 days' rule for credit apply even to such cases?

Ans. No. The value of supplies made without consideration as specified in Schedule I shall be deemed to have been paid for the purposes of the second proviso to section 16(2). (Proviso to Rule 37 of the CGST Rules, 2017)

Q 14. As per section 15(2)(b) of the CGST Act, 2017, 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 are added in the value of a supply. In such cases, no consideration is to be paid to the supplier. Whether ITC is available in such cases?

Ans. Value of supplies on account of any amount added in accordance with the provisions of section 15(2)(b) is deemed to have been paid for the purposes of the second proviso to section 16(2). Therefore, ITC is admissible. (Second Proviso to Rule 37 of CGST Rules, 2017)

Q 15. Who will get the ITC where goods have been delivered to a person other than taxable person ('bill to'- 'ship to' scenarios)?

Ans. It would be deemed that the registered person has received the goods when the goods have been delivered to a third party on the direction of such taxable person. So ITC will be available to the person on whose order the goods are delivered to third person.

Q 16. Who will get the ITC where services are provided by the supplier to a person on the direction of and on account of such registered person?

Ans. It would be deemed that the registered person has received the services where the services are provided by the supplier to any person on the direction of and on account of such registered person. [Explanation clause to Section 16(2)(b) inserted vide CGST(Amendment) Act, 2018]

Q 17. What is the time limit for taking ITC and reasons therefor?

Ans. A registered person cannot take ITC in respect of any invoice or debit note for supply of goods or services after the due date for furnishing the return under section 39 for the month of September following the end of financial year to which such invoice/invoice relating to debit note pertains or furnishing of the relevant annual return, whichever is earlier. So, the upper time limit for taking ITC is 20th October of the next FY or the date of filing of annual return whichever is earlier.

The underlying reasoning for this restriction is that no change in return is permitted after September of next FY. If annual return is filed before the month of September, then no change can be made after filing of annual return.

However, in cases of new registration or where a person shifts from composition scheme to regular tax payment or where an exempt supply become taxable, the time limit for taking ITC is one year from the date of invoice of inward supplies. [Section 18(2) of CGST Act]

Q 18. Where the registered taxable person has claimed depreciation on the tax component of the cost of capital goods under the provisions of the Income Tax Act, 1961, will ITC be allowed in such cases?

Ans. The input tax credit shall not be allowed on the said tax component in respect of which depreciation has been claimed.

Q 19. Is credit of tax paid on every input used for supply of taxable goods or services or both is allowed under GST?

Ans. Yes, except a small list of items provided in the law (under Section 17(5) of the CGST Act, 2017), the credit is admissible on all items. The list covers mainly items of personal consumption, inputs use of which results into formation of an immovable property (except plant and machinery), telecommunication towers, pipelines laid outside the factory premises, etc. and taxes paid as a result of detection of evasion of taxes.

Q 20. A taxable person is in the business of information technology. He buys a motor vehicle for use of his Executive Directors. Can he avail the ITC in respect of GST paid on purchase of such motor vehicle?

Ans. No. ITC on motor vehicles can be availed only if the taxable person is in the business of transport of passengers or goods or is providing the services of imparting training on motor vehicle or further supply of such vehicles.

Q 21. Sometimes goods are destroyed or lost due to various reasons? Can a person take ITC to the extent of such goods?

Ans. No, a person cannot take ITC with respect to goods lost, stolen, destroyed or written off. In addition, ITC with respect of goods given as gifts or free samples are also not allowed. [Section 17(5)(h) of CGST Act]

Q 22. Can a registered person get ITC with respect of goods or services used for construction of a building for business purposes?

Ans. No. ITC on goods or services by a person for construction of immovable property, other than plant and machinery, is not allowed. Plant and machinery cover only apparatus, equipment, and machinery fixed to earth by foundation or structural support, and excludes land and building, among other things.

Q 23. What is the ITC entitlement of a newly registered person?

Ans. A person applying for registration can take input tax credit 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. If the person was liable to take registration and he has applied for registration within thirty days from the date on which he became liable to registration, then input tax credit of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date on which he became liable to pay tax can be taken. This is subject to further condition that the invoices pertaining to such inward supplies should not be more than a year old.

Q 24. What is the eligibility of input tax credit on inputs in stock, input services and capital goods, lying in stock for a person who obtains voluntary registration?

Ans. The person who obtains voluntary registration is entitled to take the input tax credit of input tax on inputs in stock, inputs in semi-finished goods and finished goods in stock, held on the day immediately preceding the date of registration. This is subject to further condition that the invoices pertaining to such inward supplies should not be more than a year old.

Input service and capital goods lying in stock shall not be eligible for ITC. (Section 18(1)(b) of CGST Act, 2017)

Q 25. Where goods or services or both received by a taxable person are used for effecting both

taxable and non-taxable supplies, whether the input tax credit is available to the registered taxable person?

Ans. The input tax credit of goods or services or both attributable only to taxable supplies can be taken by registered person. The manner of calculation of eligible credit is provided in the CGST Rules.

Q 26. If input tax credit is allowed only in respect of goods or services or both for effecting taxable supplies, would it not lead to loss of input tax credit on exempt supplies when exported?

Ans. No. Zero-rated supplies have been covered within taxable supplies for the purpose of allowing input tax credit. Moreover, IGST Act specifically allows availment of input tax credit for making zero rated supplies, notwithstanding that such supply may be exempt.

Q 27. A person paying tax under composition scheme crosses the threshold limit and becomes a regular taxable person. Can he avail ITC and if so from what date?

Ans. He can avail ITC 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 prescribed percentage points) on the day immediately preceding the date from which he ceases to be eligible for composition scheme. The manner of calculation of eligible credit is provided in CGST Rules. This is subject to further condition that the invoices pertaining to such inward supplies should

not be more than a year old.

Q 28. Mr. A, a registered person was paying tax under composition scheme upto 30th July, 2017. However, w.e.f 31st July, 2017, Mr. A becomes liable to pay tax under regular scheme. Is he eligible for ITC?

Ans. Mr. A is eligible for input tax credit on inputs held in stock and inputs contained in semi-finished or finished goods held in stock and capital goods (reduced by such percentage points as has been prescribed by the ITC Rules) as on 30th July, 2017. The Input Tax Credit on capital goods 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 invoice or such other documents on which the capital goods were received by him. This is subject to further condition that the invoices pertaining to such inward supplies should not be more than a year old.

Q 29. Mr. B applies for voluntary registration on 5th July, 2017 and obtained registration on 22nd July, 2017. Mr. B is eligible for input tax credit on inputs in stock as on.....

Ans. Mr. B is eligible for input tax credit on inputs held in stock and inputs contained in semi-finished or finished goods held in stock as on 21st July, 2017. This is subject to further condition that the invoices pertaining to such inputs should not be more than a year old. Mr. B cannot take input tax credit in respect of capital goods and input services.

Q 30. What would happen to the input tax credit availed by a registered person who opts for composition scheme or where the goods or services or both supplied by him become wholly exempt?

Ans. The registered person has to pay an amount equal to the input tax credit in respect of stocks held and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date of exercise of option or date of exemption. The ITC on inputs shall be calculated proportionately on the basis of corresponding invoices on which credit had been availed by the registered person on such input. In respect of 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 5 years. Assume capital goods have been in use for 4 years, 6 months and 15 days. The useful remaining life in months will be 5 months ignoring the part of the month. If ITC on such capital goods is taken as C, ITC attributable to the remaining useful life will be C multiplied by 5/60. This would be the amount payable on capital goods. The ITC amount shall be determined separately for integrated tax, central tax and state tax. The payment can be made by debiting electronic credit ledger, if there is sufficient balance in the said ledger, or by debiting electronic cash ledger. If any balance remains in the electronic credit ledger, it would lapse.

Q 31. Is there any restriction on period for availment of ITC?

Ans. In cases of new registration, change from composition to normal scheme, from exempt to taxable supplies, the concerned person cannot avail ITC after the expiry of one year from the date of issue of tax invoice relating to such supply.

Q 32. What happens where the details of inward supplies furnished by the recipient do not match with the outward supply details furnished by the supplier in his valid return?

Ans. In case of mismatch, the communication would be made to the both parties. If the mismatch is not rectified, then the amount will be added to the output liability of recipient in the return for the month succeeding the month in which discrepancy is communicated.

Q 33. What will be the tax impact when capital goods on which ITC has been taken are supplied by taxable person?

Ans. 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, as reduced in the manner prescribed under sub-rule 6 of rule 44 of the CGST Rules, 2017, or the tax on the transaction value of such capital goods or plant and machinery, whichever is higher. But in case of refractory bricks, molds and dies, jigs and fixtures when these are supplied as scrap, the person can pay tax on the transaction value.

Q 34. Whether input tax credit can be taken on payment of tax after adjudication?

Ans. Input tax credit cannot 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 in cases of evasion by reason of any fraud, willful misstatement or suppression of facts. (Rule 36(3) of the CGST Rules, 2017)

Q 35. How can Input Tax Credit be utilized?

Ans. The ITC available in the electronic credit ledger can be used for payment towards output tax under the CGST/SGST/IGST Act(s).

The CENVAT credit of central excise duty or service tax wrongly carried forward as transitional credit or the arrears of central excise duty, service tax can be recovered as central tax liability through the utilization of amounts available in the electronic credit ledger.

Any other amount be it interest, penalty, fees or tax on input supplies (supplies under RCM) etc has to be paid in cash only through the utilization of the amount available in electronic cash ledger (Section 49(3) of the CGST Act, 2017)

The different amounts of input tax credits available in the electronic credit ledger of the registered person shall be utilized as under:

(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, UT tax, in that order;
(b) *the central/ State/ UT tax shall first be utilised towards payment of central/ State/ UT tax and the amount remaining, if any, may be utilised towards the payment of integrated tax;*

The input tax credit on account of State/UT 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; (The CGST (Amendment) Act, 2018)

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. (Section 49A of CGST Act, 2017 inserted vide the CGST(Amendment) Act, 2018)

(c) *the central/ State tax shall not be utilised towards payment of State/ Central tax.*

Q 36. What are the supplies included in exempt supplies?

Ans. 'Exempt Supplies' for the purpose means all supplies other than taxable and zero-rated supplies and specifically include the following:

- *Supplies liable to tax under reverse charge mechanism;*
- *Transactions in securities;*
- *Sale of land; and*
- *Subject to Para 5(b) of Schedule II, sale of building.*

However, the “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 (Sale of Land / building). [The CGST (Amendment) Act, 2018]

Q 37. Where goods or services received by a registered person are used partly for the purpose of business and partly for other purposes, whether the input tax credit is available to the person?

Ans. The input tax credit of goods or services or both attributable only to the purpose of business can be taken by registered person. The manner of calculation of eligible credit is provided in rule 42 of the CGST rules.

Q 38. Are there any special provisions in respect of banking companies?

Ans. A banking company or a financial institution including a non-banking financial company engaged in supply of specified services would either avail proportionate credit or avail 50% of the eligible input tax credit.

The option once exercised cannot be withdrawn in the same year. The restriction of 50% will not apply to the tax paid on supplies made by one registered person to another registered person having the same PAN.

Q 39. A banking company or a financial institution including a non-banking financial company engaged in supply of specified services supplies

**non-business supplies and exempted supplies.
How should it avail credit in case it chooses the
50% option?**

Ans. 50% of the eligible credit only can be taken. Thus, the credit of tax paid on inputs and input services used for non-business purposes should not be availed. Besides, ITC that are not eligible in terms of Section 17(5) should also not be availed. 50% of the remaining credit is admissible and can be availed.

**Q 40. Whether input tax credit on motor vehicles
admissible?**

*Ans. **Motor Vehicles for transportation of Goods:** Input tax credit is admissible for motor vehicles meant for transport of goods*

***Motor Vehicles for transportation of persons:** Input tax credit on motor vehicles for transportation of persons having approved seating capacity of not more than 13 persons is not allowed except when they are used for making the following taxable supplies, namely: -*

- *further supply of such motor vehicles;*
- *transportation of passengers; or*
- *imparting training on driving such motor vehicles*

**Q 41. Whether tax paid on repairs, maintenance and
insurance of Motor Vehicles used for the purpose
of business is eligible for ITC?**

Ans. The ITC on repairs, maintenance and general

insurance of those motor vehicles is blocked if the ITC is blocked under Section 17(5)(a) of the CGST Act 2017.

Motor Vehicles for transportation of Goods: *ITC on repairing, maintenance and insurance of motor vehicles for transportation of goods is admissible with no restrictions.*

Motor Vehicles for transportation of persons: *Thus, ITC on repairing, maintenance and insurance of motor vehicles for transportation of persons carrying more than 13 persons will be admissible. However, for motor vehicles for transportation of persons carrying up to 13 persons will be admissible only if it is used for transportation of passengers, further supply of such motor vehicles and imparting training on driving. [Section 17(5) (ab) as substituted vide the CGST (Amendment) Act, 2018]*

Q 42. What would be input tax eligibility in cases where there is a change in the constitution of a registered person?

Ans. The registered person shall be allowed to transfer the input tax credit that remains unutilized in its electronic credit ledger to the new entity, provided that there is a specific provision for transfer of liabilities. (Section 18(3) of the CGST Act, 2017)

Q 43. What are the conditions to be fulfilled for transfer of ITC in respect of sale, merger or amalgamation etc.?

Ans. The conditions to be fulfilled in case of transfer of

credit on account of sale, merger, amalgamation, de-merger, lease, transfer of business are as under:

- (a) Form GST ITC-02 containing the details of the sale, merger, amalgamation, de-merger, lease, transfer of business be furnished*
- (b) A certificate issued by a practicing Chartered/ Cost Accountant certifying that the sale, merger, amalgamation, de-merger, lease, transfer of business has been done along with a provision for transfer of liabilities*
- (c) Transferee to accept the details submitted in GST ITC-02. Post acceptance, the credit specified in Form GSTR ITC-02 will be credited to the electronic credit ledger of transferee.*
- (d) The inputs and capital goods so transferred are to be accounted in the transferee's books*
- (e) In case of demerger, the ITC shall be apportioned in the ratio of the value of assets of the new units as specified in the demerger scheme.*

Q 44. How to determine the credit attributable to exempt supplies in cases where the inputs/ input services are used for effecting exempt as well as taxable supplies?

Ans. The credit attributable to exempt supplies is to be determined as under:

$$D1 = (E/F) \times C2$$

Where D1 = Credit attributable to exempt supplies

E = aggregate value of exempt supplies (all supplies other than taxable and zero-rated supplies)

F = total turnover of the person during the tax period

C2 = Common Credit i.e. Total input tax in a period reduced by:

T1 - Tax attributable exclusively for non-business purpose

T2- Tax attributable exclusively for exempt supplies

T3- Ineligible credits as per Section 17(5)

T4- Tax attributable exclusively for other than exempted supplies but including zero rated supplies

(Section 17(2) & (3) read with Rule 42 of the CGST Rules, 2017)

Q 45. Whether Schedule III activities (Activities considered as neither supply of goods nor supply of services) be considered as exempt supplies in terms of section 17(2) of the CGST Act, 2017?

Ans. No. An explanation clause has been inserted in section 17(3) of the CGST Act, 2017 explaining that 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. (The CGST (Amendment) Act, 2017; Notn for implementation date is yet to be issued)

Q 46. How to determine the credit attributable to non-business purposes where the common

inputs/ input services are used for non-business as well as business purposes?

Ans. The credit attributable to non-business purpose will be equal to 5% of Common Credit. (Rule 42(j) of the CGST Rules, 2017).

Q 47. Whether input tax credit of tax paid on ‘works contract service’ or on goods or services used for construction of immovable property (other than plant and machinery)? If yes, to what extent?

Ans. Yes, subject to the condition that such construction of immovable property is not capitalised. [Explanation to section 17(5)(d) of CGST Act]

Q 48. Whether a non-resident taxable person can take input tax credit of tax paid on goods and services, procured by him locally?

Ans. No. He can take input tax credit of tax paid only on goods and services imported by him.

Q 49. Whether the principal can take input tax credit of tax paid on input goods or capital goods, which are not received by him but sent directly to his Job-worker?

Ans. Yes, subject to some conditions and restrictions. In such cases the condition of receipt of goods, prescribed under Section 16(2)(b) of CGST ACT, shall not apply.

Q 50. What are the conditions/restrictions in cases

where the inputs or capital goods are sent directly to Job-worker?

Ans. When the Principal sent the inputs or capital goods directly to Job-worker and take input tax credit in respect of the same, then the inputs (after completion of Job-work or otherwise) are required to be brought back or supplied from the place of business of Job-worker, within a period of one year from the date of receipt by the Job-worker. If he fails to comply with this condition, then it shall be deemed that these inputs had been supplied by the principal to job worker on the day when the said inputs were sent out. In case of capital goods, the period, for bringing the same back, shall be three years and if the same are not brought back within three years then such capital goods shall be deemed to have been supplied by principal to job-worker on the day when the said capital goods were sent out.

11. Concept of Input Service Distributor in GST

Q 1. What is Input Service Distributor (ISD)?

Ans. ISD means an office of the supplier of goods or services or both which receives tax invoices towards receipt of input services and issues a prescribed document for the purposes of distributing the credit of central tax (CGST), State tax (SGST)/ Union territory tax (UTGST) or integrated tax (IGST) paid on the said services to a supplier of taxable goods or services or both having same PAN as that of the ISD.

Q 2. What are the requirements for registration as ISD?

Ans. An ISD is required to obtain a separate registration even though it may be separately registered. The threshold limit of registration is not applicable to ISD. The registration of ISD under the existing regime (i.e. under Service Tax) would not be migrated in GST regime. All the existing ISDs will be required to obtain fresh registration under new regime in case they want to operate as an ISD.

Q 3. Whether the distributor and the recipient situated in different states can have different PAN number?

Ans. No. It is mandatory that the Input Service Distributor and the recipient of credit are persons having the same PAN, whether or not they are located in the same State.

Q 4. What are the documents for distribution of

credit by ISD?

Ans. The distribution of credit would be done through 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 rule 54(1) of the CGST Rules, 2017. The said document would contain the amount of input tax credit being distributed.

Q 5. Can an ISD distribute the input tax credit to all suppliers?

Ans. No. The input tax credit of input services shall be distributed only amongst those registered persons who have used the input services in the course or furtherance of business.

Q 6. It is not possible many a times to establish a one-to-one link between quantum of input services used in the course or furtherance of business by a supplier. In such situations, how distribution of ITC by the ISD is to be done?

Ans. In such situations, distribution would be based on a formula. Firstly, distribution would be done only amongst those recipients of input tax credit to whom the input service being distributed are attributable. Secondly, distribution would be done amongst the operational units only. Thirdly, distribution would be done in the ratio of turnover in a State or Union territory of the recipient during the period to the aggregate of all recipients to

whom input service being distributed is attributable. Lastly, the credit distributed should not exceed the credit available for distribution.

Q 7. What does the turnover used for ISD cover?

Ans. The turnover for the purpose of ISD does not include any duty or tax levied under entry 84 and 92A² of List I and entry 51 and 54 of List II of the Seventh Schedule to the Constitution. (The entry 92A Inserted vide CGST (Amendment) Act, 2018; Notn for implementation is yet to be issued)

Q 8. Is the ISD required to file return?

Ans. Yes, ISD is required to file monthly return by 13th of the following month in form GSTR-6.

Q 9. Can a company have multiple ISD?

Ans. Yes, different offices like marketing division, security division etc. may apply for separate ISD.

Q 10. What are the provisions for recovery of excess/wrongly distributed credit by ISD?

Ans. The excess/wrongly distributed credit can be recovered from the recipients of credit along with interest by initiating action under section 73 or 74. (Section 21 of the CGST Act, 2017)

Q 11. Whether CGST and IGST credit can be distributed by ISD as IGST credit to recipients located in different States?

Ans. Yes, CGST credit can be distributed as IGST and IGST credit can be distributed as CGST by an ISD for the recipients located in different States.

Q 12. Whether SGST / UTGST credit can be distributed as IGST credit by an ISD to recipients located in different States?

Ans. Yes, an ISD can distribute SGST /UTGST credit as IGST for the recipients located in different States.

Q 13. How are integrated tax, central tax and state tax to be distributed?

Ans. The distribution is to be made by an ISD as per following criteria:

(a) Integrated tax as integrated tax.

(b) Central tax as central tax (if the recipient and ISD are located in the same State) and as integrated tax (if the recipient and ISD are not located in the same State).

(c) State tax as state tax (if the recipient and ISD are located in the same State) and as integrated tax (if the recipient and ISD are not located in the same State). In case of distribution of central/ state tax as integrated tax, it should be ensured that the amount distributed equals the amount of credit of central and state tax put together

(Section 20 of CGST Act, 2017 read with Rule 39(1)

(f) of the CGST Rules, 2017)

Q 14. Whether CGST and SGST can be distributed

as SGST and CGST respectively within the states and between the states?

Ans. No. The credit of CGST cannot be distributed as SGST and vice versa. Similarly, one State SGST cannot be distributed as another state SGST.

Q 15. How to distribute common credit among all the recipients of an ISD?

Ans. The common credit used by all the recipients can be distributed by ISD on pro rata basis i.e. based on the turnover of each recipient to the aggregate turnover of all the recipients to which credit is distributed. (Rule 54(1A) of the CGST Rules, 2017)

Q 16. What are the conditions applicable to Input service distributor to distribute the credit?

Ans. An Input Service Distributor can distribute the credit subject to the following conditions:

- (a) The credit can be distributed to recipient against a document containing such details as prescribed in Rule 54(1) of the CGST Rules, 2017;*
- (b) The amount of credit distributed shall not exceed the amount of credit available for distribution;*
- (c) The credit of tax paid on input service attributable to a recipient of credit shall be distributed only to that recipient;*
- (d) If credit is attributable to more than one recipient, then it shall be distributed among such recipient(s) to whom the input service is attributable on pro rata basis of the turnover in a State of such recipient during*

the relevant period, to the aggregate of the turnover of all such recipients to whom such input service is attributable.

(e) If credit is attributable to all recipients, the above method of allocation on pro rata may be applied with reference to all recipients, which are operational in current year

(Section 20(2) of the CGST Act, 2017)

Q 17. Whether ineligible credit should be distributed by an ISD?

Ans. The Input Service Distributor has to separately distribute the amount of ineligible input tax credit, under the provisions of section 17(5) or otherwise and the amount of eligible input tax credit. (Rule 39(1)(b) of the CGST Rules, 2017)

Q 18. Whether ISD can distribute ITC received in one month in subsequent months?

Ans. No. The ITC available for distribution by an ISD should be distributed to the recipients in the same month itself. (Rule 39(1) (a) of the CGST Rules, 2017).

Q 19. How to determine the amount to be distributed to a recipient by an ISD?

Ans. The eligible amount to be distributed in relation to a recipient is to be calculated in the following way:

$$C1 = (t1/T) \times C$$

Where C1 = Amount distributed to a recipient

C = Amount of credit to be distributed

t1 = Turnover of the recipient during the relevant period

T = Aggregate of the turnover of all the recipients during

the relevant period (d)

Q 20. How will the input tax credit having already distributed be reversed on issuance of an ISD credit note?

Ans. The credit reduced by issuance of an ISD credit note is to be apportioned to each recipient in the same ratio in which the credit of the original invoice was distributed. The amount mentioned in the credit note should be reduced from the amount to be distributed in the month in which credit note is issued. If the amount of credit being distributed is less, the amount to be apportioned needs to be added to the output tax liability.

(Rule 39(1) (j) of the CGST Rules, 2017)

Q 21. Whether the excess credit distributed could be recovered from ISD by the department?

Ans. No. Excess credit distributed can be recovered along with interest only from the recipient and not ISD. The provisions of section 73 or 74 would be applicable for the recovery of credit.

Q 22. What are the consequences of credit distributed in contravention of the provisions of the Act?

Ans. The credit distributed in contravention of provisions of Act could be recovered from the recipient to which it is distributed along with interest.

12. Returns Process

Q 1. What is the purpose of returns?

Ans.

- a) Mode for transfer of information to tax administration;*
- b) Compliance verification program of tax administration;*
- c) Finalization of the tax liabilities of the taxpayer within stipulated period of limitation; to declare tax liability for a given period;*
- d) Providing necessary inputs for taking policy decision;*
- e) Management of audit and anti-evasion programs of tax administration.*

Q 2. Who needs to file Return in GST regime?

*Ans. Every person registered under GST will have to file returns in some form or other. A registered person will have to file returns either monthly (normal supplier) or quarterly basis (Supplier opting for composition scheme). An ISD will have to file monthly returns showing details of credit distributed during the particular month. A person required to deduct tax (TDS) and persons required to collect tax (TCS) will also have to file monthly returns showing the amount deducted/collected **and other specified details**. A non-resident taxable person will also have to file returns for the period of activity undertaken.*

Q 3. What type of outward supply details are to be filed in the return?

Ans. A normal registered taxpayer having aggregate turnover in the preceding or current financial year more than Rs.1.5 Crore has to file the outward supply details in GSTR-1 in relation to various types of supplies made in a month, namely outward supplies to registered persons, outward supplies to unregistered persons (consumers), details of Credit/Debit Notes, zero rated, exempted and non-GST supplies, exports, and advances received in relation to future supply.

Q 4. Do taxpayers with an aggregate turnover less than Rs.1.5 Crores also need to file GSTR-1 on a monthly basis?

Ans. No. A special procedure has been prescribed for such taxpayers vide notification no. 57/2017-Central Tax dated 15.11.2017. Such taxpayers need to file GSTR-1 on a quarterly basis. The last date for filing GSTR-1 for such taxpayers for the period Oct-Dec 18 is 31.01.2018. It is also clarified that the registered person may opt to file FORM GSTR-1 on monthly basis if he so wishes even though his aggregate turnover is up to Rs. 1.5 Crore.

Q 5. Is the scanned copy of invoices to be uploaded along with GSTR-1?

Ans. No scanned copy of invoices is to be uploaded. Only certain prescribed fields of information from invoices need to be uploaded.

Q 6. Whether all invoices have to be uploaded in the returns?

Ans. No. It depends on whether the invoice is B2B or B2C plus whether Intra-state or Inter-state supplies.

For B2B supplies, all invoices, whether Intra-state or Inter-state supplies, will have to be uploaded. Why So? Because ITC will be taken by the recipients.

In B2C supplies, uploading in general may not be required as the buyer will not be taking ITC. However still in order to implement the destination based principle, invoices of value more than Rs.2.5 lacs in inter-state B2C supplies will have to be uploaded. For inter-state invoices below Rs. 2.5 lacs and all intra-state invoices, state wise summary will be sufficient.

Q 7. Whether description of each item in the invoice will have to be uploaded?

Ans. No. In fact, description will not have to be uploaded. Only HSN code in respect of supply of goods and classification code in respect of supply of services will have to be fed. The minimum number of digits that the filer will have to upload would depend on his turnover in the previous year.

Q 8. Whether value for each transaction has to be fed in GSTR-1? What if no consideration?

Ans. Yes. Not only value but taxable value has to be fed. In some cases, both may be different.

In case there is no consideration, but it is supply by virtue of schedule 1, the taxable value will have to be worked out as prescribed and uploaded.

Q 9. What is the status of GSTR-2 and GSTR-3?

Ans. GSTR-2 and GSTR-3 have been indefinitely postponed and GSTR-3B is being filed since July, 2017. The matching as envisaged is not being done. Section 43A has been inserted in the CGST Act, 2017 vide the CGST(Amendment) Act, 2018 for new procedure for furnishing returns and availing input tax credit. The work on the same is being done and this will be implemented at a later date.

However, GSTR-2A is being auto-populated by GST Portal. The taxpayers can view the details of supplies made to them wherever their suppliers have uploaded the details of their outward supplies in their GSTR-1. The GSTR-2A is helping the taxpayers in reconciling the ITC being taken by them on self-declaration basis in Form GSTR-3B with the taxes declared by their suppliers in their respective GSTR-1s.

Q 10. Do tax payers under the composition scheme also need to file GSTR-1 and GSTR-2?

Ans. No. Composition tax payers do not need to file any statement of outward or inward supplies. They have to file a quarterly return in Form GSTR-4 by the 18th of the month after the end of the quarter. Since they are not eligible for any input tax credit, there is no relevance of GSTR-2 for them and since the credit of tax paid under Composition Levy is not eligible, there is no relevance of GSTR-1 for them. In their return, they have to declare summary details of their outward supplies along with the details of tax payment. They also have to give

details of their purchases in their quarterly return itself, most of which will be auto populated.

Q 11. Do Input Service Distributors (ISDs) need to file separate statement of outward and inward supplies with their return?

Ans. No, the ISDs need to file only a return in Form GSTR-6 and the return has the details of credit received by them from the service provider and the credit distributed by them to the recipient units. Since their return itself covers these aspects, there is no requirement to file separate statement of inward and outward supplies.

Q 12. How does a taxpayer get the credit of the tax deducted at source on his behalf? Does he need to produce TDS certificate from the deductee to get the credit?

Ans. Under GST, the deductor will be submitting the deductee wise details of all the deductions made by him in his return in Form GSTR-7 to be filed by 10th of the month next to the month in which deductions were made.

TDS amount deducted from the payment due to the deductee, would be reflected in electronic cash ledger of deductee after furnishing of return and payment of tax to the Government account by the deductor. The amount credited to electronic cash ledger of the deductee may be utilized by the deductee towards payment of his GST liability as a regular tax payer.

Q 13. How can taxpayers file their returns?

Ans. Taxpayers will have various modes to file the

statements and returns. Firstly, they can file their statement and returns directly on the Common Portal online. However, this may be tedious and time consuming for taxpayers with large number of invoices. For such taxpayers, an offline utility will be provided that can be used for preparing the statements offline after downloading the auto populated details and uploading them on the Common Portal. GSTN has also developed an ecosystem of GST Suvidha Providers (GSP) that will integrate with the Common Portal.

Q 14. Is it compulsory for a taxpayer to file return by himself?

Ans. No. A registered taxpayer can also get his return filed through a GST Practitioner, duly approved by the Central or the State tax administration.

Q 15. What is the consequence of not filing the return within the prescribed date?

Ans. A registered person who files return beyond the prescribed date will have to pay late fees of rupees one hundred for every day of delay subject to a maximum of rupees five thousand. For failure to furnish Annual returns by due date, late fee of Rs. One hundred for every day during which such failure continues subject to a maximum of an amount calculated at a quarter percent [0.25%] of his turnover in a state, will be levied.

Q 16. What happens if ITC is taken on the basis of a document more than once?

Ans. In case the system detects ITC being taken on the

same document more than once (duplication of claim), the amount of such credit would be added to the output tax liability of the recipient in the return for the month in which duplication is communicated. [Section 42(6)]. In other words, the same would be recovered along with interest.

Q 17. What is GSTR-3B?

Ans. GSTR-3B is a simplified monthly return that all taxpayers need to file on monthly basis.. It is a summarized return form which every taxpayer is required to file on self-declaration basis. The same needs to be filed by 20th day of subsequent month. i.e. for the month of December,2018 GSTR-3B needs to be filed by 20th January, 2019 after paying appropriate taxes.

Q 18. Is there any late fees for late filing of GSTR-3B?

Ans. The late fees for filing GSTR-3B for the months of July to September 2017 has been waived by the Government. Where such late fee was paid, it will be re-credited to taxpayer's Electronic Cash Ledger under "Tax" head instead of "Fee" head so as to enable them to use that amount for discharge of their future tax liabilities. For subsequent months, i.e. October 2017 onwards, the amount of late fee payable by a taxpayer whose tax liability for that month was 'NIL' will be Rs. 20/- per day (Rs. 10/- per day each under CGST & SGST Acts) and will be Rs. 50/- per day (Rs. 25/- per day each under CGST & SGST Acts) for all other taxpayers.

Q 19. How does the taxpayer need to account for Advances in his GSTR-1?

Ans. Where against an advance the invoice is issued in the same tax period, the advance need not be shown separately

in Form GSTR-1 but the specified details of invoice itself can be directly uploaded on the system. Details of all advances against which the invoices have not been issued till the end of the tax period shall have to be reported on a consolidated basis in Table 11 of Form GSTR-1. As and when the invoices against these advances are issued, they have to be declared in Form GSTR-1 and the adjustment of the tax paid on advances against the tax payable on the invoices uploaded in Form GSTR-1 shall have to be done in Table 11 of Form GSTR-1. It may be noted that in terms of notification 66/2017-Central Tax dated 15.11.2017, there is no liability to pay tax at the time of receipt of advance in case of supply of goods.

Q 20. What is an annual return?

Ans. Section 44(1) of CGST Act read with Rule 80(1) of CGST Rules, 2017 requires that every registered person other than ISD's, casual/non-resident taxpayers and TDS/TCS deductors are required to file an annual return in form GSTR-9. for every financial year.

The composition taxpayers are required to file Annual return in Form GSTR-9A.

Every registered person whose aggregate turnover during a financial year exceeds two crore rupees shall get his accounts audited as specified under section 35(5) and he shall furnish a copy of audited annual accounts and a reconciliation statement is duly certified in FORM GSTR-9C.

There is no threshold limit for annual return. Every registered person is required to file it on or before the thirty-first day of December following the end of such

financial year.

Q 21. What is the time period for the annual return for which transactions are to be taken?

Ans. The time period for the annual return is one financial year. This being the first year and GST introduced w.e.f 1st July, 2017, the details for the period between July 2017 to March 2018 are to be provided in this return. The dates for the annual return for this financial year has been extended to 31st March, 2019.

Q 22. Whether annual return is to be filed GSTIN wise or entity wise?

Ans. As per section 44(1) of CGST Act, every registered person is required to file annual return. Thus, each GSTIN will have to file separate annual return.

Q 23. What is final return? What is the need for it?

Ans. Every registered person whose registration is cancelled needs to file a final return in GSTR-10 within three months of the date of cancellation or date of order of cancellation, whichever is later. The purpose of the final return is to ensure that the taxpayer discharges any liability that he/she may have incurred under section 29(5) of the CGST Act.

As per section 29(5) of the CGST Act, read with rule 20 of the CGST Rules a taxpayer seeking cancellation of registration has to pay, by way of debiting either the electronic credit or cash ledger, the input tax contained in

the stock of inputs, semi-finished goods, finished goods and capital goods or the output tax payable on such goods, whichever is higher. This requirement to debit the electronic credit and/or cash ledger by suitable amounts should not be a prerequisite for applying for cancellation of registration. This can also be done at the time of submission of final return in FORM GSTR-10.

The cancellation of registration does not, in any way, affect the liability of the taxpayer to pay any dues under the GST law, irrespective of whether such dues have been determined before or after the date of cancellation

(Section 45 read with rule 81)

Q 24. What if the final return is not filed within 90 days of cancellation of registration?

Ans. In case the final return in FORM GSTR-10 is not filed within the stipulated date, then notice in FORM GSTR-3A has to be issued to the taxpayer.

If the taxpayer still fails to file the final return within 15 days of the receipt of notice in FORM GSTR-3A, then an assessment order (BEST JUDGMENT BASIS) in FORM GST ASMT-13 under section 62 of the CGST Act read with rule 100 of the CGST Rules shall have to be issued to determine the liability of the taxpayer under section 29(5) on the basis of information available with the proper officer

If the taxpayer files the final return within 30 days of the date of service of the order in FORM GST ASMT-13, then the said order shall be deemed to have been withdrawn.

However, the liability for payment of interest and late fee shall continue.

13. Assessment and Audit

Q 1. Who is the person responsible to make assessment of taxes payable under the Act?

Ans. Every person registered under the Act shall himself assess the tax payable by him for a tax period and after such assessment he shall file the return required under section 39. Self-assessment will be the norm under GST.

Q 2. Under what circumstances can provisional assessment be done?

Ans. As a taxpayer has to pay tax on self-assessment basis, a request for paying tax on provisional basis has to come from the taxpayer which will then have to be permitted by the proper officer. This is governed by section 60 of CGST Act and rule 98 of the CGST Rules. Tax can be paid on a provisional basis only after the proper officer has permitted it through an order passed by him. For this purpose, the taxable person has to make a written request to the proper officer, giving reasons for payment of tax on a provisional basis. Such a request can be made by the taxable person only in such cases where he is unable to determine:

- a) the value of goods or services to be supplied by him, or*
- b) determine the tax rate applicable to the goods or services to be supplied by him.*

In such cases the taxable person has to execute a bond in the prescribed form, and with such surety or security as

the proper officer may deem fit.

Q 3. In what form and manner should the taxable person make a request for provisional assessment?

*Ans. Every registered person requesting for payment of tax on a provisional basis in accordance with the provisions of section 60(1) shall furnish an application along with the documents in support of his request, electronically, in **FORM GST ASMT-01** on the common portal. The taxpayer need to specify reasons for seeking provisional assessment.*

Q 4. Can the proper officer ask for additional documents/clarification upon receipt of request for provisional assessment? If so how? Whether he has to issue any order for allowing provisional assessment?

Ans. In case the proper officer requires further information or documents, the proper officer, on receipt of the application should issue a notice in FORM GST ASMT-02 requiring the registered person to furnish additional information or documents in support of his request.

The applicant has to file a reply to the notice in FORM GST ASMT – 03

The order for provisional assessment has to be issued within ninety days of the application. The order for provisional assessment has to specify the rate and/or value, as the case may be, to be applied for by the taxpayer.

Q 5. Is it mandatory for the applicant to appear before the proper officer in such cases?

Ans. No. However, if the applicant desires, he can appear before the proper officer in person.

Q 6. In what form and manner will the proper officer issue an order of provisional assessment?

*Ans. The proper officer shall issue an order in FORM GST ASMT-04, allowing 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.***

Q 7. Is there any time limit within which the order for provisional assessment has to be issued by the proper officer?

Ans. Yes. The order needs to be issued by the proper officer 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.

Q 8. How should the applicant execute the Bond as per directions given in the order of provisional assessment?

Ans. The applicant should execute a bond in accordance with the provisions of sub-section (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) (i.e. amount determined in the order of provisional

assessment)

Q 9. While executing the bond, is it necessary for the applicant to execute separate bonds for Central Tax and State Tax?

Ans. No. The 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 CGST Act and the rules made thereunder.

Q 10. What is the time limit within which the proper officer has to finalize the provisional assessment?

Ans. Finalisation has to be done by the proper officer within a period of six months from the date of communication of the order of provisional assessment to the taxable person. The period of six months can be extended by a further period of six months by the Joint/Additional Commissioner and by the Commissioner for such further period not exceeding four years. However, such extension can be given only on sufficient cause being shown and for reasons to be recorded in writing.

Q 11. What procedure will the proper officer follow for finalizing the provisional assessment?

Ans. The proper officer shall issue a notice in FORM GST ASMT-06, calling for information and records required for finalization of assessment 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.

Q 12. In case the amount of tax determined at the time of final assessment is higher than the tax paid at the time of provisional assessment, should the taxable person pay interest on the entire amount of tax (as finalised) from the initial due date of payment?

Ans. Yes. 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.

Q 13. In case, the tax payable on finalisation is less than the tax actually paid at the time of provisional assessment, how can the taxable person claim refund?

Ans. Where the registered person is entitled to a refund consequent to the order of final assessment, such person will have to make an application for refund electronically at the common portal under Section 54 of the Act. The refund claim has to be filed within 2 years from the date of order of final assessment. The claim for refund (if it is not a zero rated supply) will have to pass the test of unjust enrichment. If the refund is not given within 60 days from the date of receipt of refund claim, interest (@ not exceeding 6%) shall be paid on such refund as provided in section 56.

Q 14. After finalization of assessment, how can the taxable person seek release of the security furnished at the time of provisional assessment?

Ans. The applicant has to file an application in FORM GST ASMT- 08 for release of security furnished.

Q 15. In what manner and within what time will the security be released in favour of the applicant?

*Ans. The proper officer shall release the security furnished, 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 receipt of the application in FORM GST ASMT- 08.*

Q 16. In what manner will returns be scrutinized under GST?

Ans 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. Also, where possible, the proper officer should quantify the amount of tax, interest and any other amount payable in relation to such discrepancy.

Q 17. What is the time limit for the taxable person to respond to such notice?

Ans. The Taxable person has to respond within 30 days

from the date of service of the notice or such further period as may be permitted by the proper officer.

Q 18. In case the taxable person accepts the discrepancies, how should he comply?

*Ans. The registered person may either 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 ASMT-11 to the proper officer.*

Q 19. How will the proper officer deal with reply given in FORM GST ASMT-11 by the taxable person?

Ans. Where the explanation furnished by the registered person or the information furnished in FORM GST ASMT-11 is found to be acceptable, the proper officer shall inform him accordingly in FORM GST ASMT-12.

Q 20. In case the taxable person does not agree with the discrepancies communicated nor does he pay tax/interest etc arising out of such discrepancy, what course of action can the proper officer take?

Ans. 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.

Q 21. How will assessment of non-filers of returns take place under GST?

Ans. Where a registered person fails to furnish a return under section 39 or section 44 or section 45 or Section 52, a notice in FORM GSTR-3A shall be issued, electronically requiring him to furnish such return within fifteen days.

*If within 15 days the returns are not furnished, the proper officer will make an order of assessment and it shall be issued electronically in FORM GST ASMT-13. This order of assessment shall be made by the proper officer to the best of his judgement taking into account all the relevant material which is available or which he has gathered and issue an assessment order **within a period of five years** from the date specified under section 44 for furnishing of the annual return for the financial year to which the tax not paid relates.*

If the registered person furnishes a valid return within thirty days of the service of FORM GST ASMT-13, the said assessment order shall be deemed to have been withdrawn but the liability for payment of interest under sub-section (1) of section 50 or for payment of late fee under section 47 shall continue.

Q 22. How will assessment of un-registered persons take place under GST?

Ans. 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:

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.

Q 23. Under what circumstances can a tax officer initiate Summary Assessment?

Ans. As per section 64 of CGST/SGST Act, Summary Assessments can be initiated to protect the interest of revenue when:

- a) the proper officer has evidence that a taxable person has incurred a liability to pay tax under the Act, and*
- b) the proper officer believes that delay in passing an assessment order will adversely affect the interest of revenue.*

Such order can be passed after seeking permission from the Additional Commissioner / Joint Commissioner.

Q 24. In what manner will a summary assessment order be issued?

Ans. The order of summary assessment under sub-section (1) of section 64 shall be issued in FORM GST ASMT-16.

Q 25. Is summary assessment order to be necessarily passed against the taxable person?

Ans. No. In certain cases, like when goods are under transportation or are stored in a warehouse, and the taxable person in respect of such goods cannot be ascertained, the person in charge of such goods shall be deemed to be the taxable person and will be assessed to tax (proviso to Section 64 of CGST/SGST Act).

Q 26. Other than appellate remedy, is there any other recourse available to the taxpayer against a summary assessment order?

Ans. A taxable person against whom a summary assessment order has been passed can apply for its withdrawal to the jurisdictional Additional/Joint Commissioner within thirty days of the date of receipt of the order. If the said officer finds the order erroneous, he can withdraw it and direct the proper officer to carry out determination of tax liability in terms of section 73 or 74 of CGST/SGST Act. The Additional/Joint Commissioner can follow a similar course of action on his own motion if he finds the summary assessment order to be erroneous (section 64 of CGST/SGST Act).

Q 27. How can the taxable person make an application for withdrawal of summary assessment order?

Ans. The taxable person may file an application for withdrawal of the summary assessment order in FORM GST ASMT-17.

Q 28. How will the proper officer respond to the request made in FORM GST ASMT-17?

Ans. The order of withdrawal or, as the case may be, rejection of the application in FORM GST ASMT-17 shall be issued in FORM GST ASMT-18.

Q 29. Who can conduct audit of taxpayers?

Ans. There are three types of audit prescribed in the GST Act(s) as explained below:

(a) Audit by Chartered Accountant or a Cost Accountant: Every registered person whose turnover exceeds Rs. Two crore, shall get his accounts audited by a chartered accountant or a cost accountant. (Section 35(5) of the CGST/SGST Act)

(b) Audit by Department: The Commissioner or any officer of CGST or SGST or UTGST authorized by him by a general or specific order, may conduct audit of any registered person. The frequency and manner of audit will be prescribed in due course. (Section 65 of the CGST/SGST Act)

(c) Special Audit: If at any stage of scrutiny, inquiry, investigations or any other proceedings, if department is of

the opinion that the value has not been correctly declared or credit availed is not within the normal limits, department may order special audit by chartered accountant or cost accountant, nominated by department. (Section 66 of the CGST/SGST Act)

Q 30. Whether any prior intimation is required before conducting the audit?

Ans. Yes, prior intimation is required and the taxable person should be informed at least 15 working days prior to conduct of audit.

Q 31. What is the period within which the audit is to be completed?

Ans. The audit is required to be completed within 3 months from the date of commencement of audit. The period is extendable for a further period of a maximum of 6 months by the Commissioner.

Q 32. What is meant by commencement of audit?

Ans. The term 'commencement of audit' is important because audit has to be completed within a given time frame in reference to this date of commencement. Commencement of audit means the later of the following:

- a) the date on which the records/accounts called for by the audit authorities are made available to them, or*
- b) the actual institution of audit at the place of business of the taxpayer.*

Q 33. What are the obligations of the taxable person when he receives the notice of audit?

Ans. The taxable person is required to:

- a) facilitate the verification of accounts/records available or requisitioned by the authorities,*
- b) provide such information as the authorities may require for the conduct of the audit, and*
- c) render assistance for timely completion of the audit.*

Q 34. What would be the action by the proper officer upon conclusion of the audit?

Ans. The proper officer shall, on conclusion of audit, within 30 days inform the taxable person about his findings, reasons for findings and the taxable person's rights and obligations in respect of such findings.

Q 35. In what manner will an audit under Section 65(1) be conducted?

Ans. The period of audit to be conducted under sub-section (1) of section 65 shall be a financial year or multiples thereof.

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. This will be issued at least 15 days prior to the conduct of audit.

The proper officer authorised to conduct audit of the

records and 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 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.

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.

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.

Q 36. Under what circumstances can a special audit be instituted?

Ans. A special audit can be instituted in limited circumstances where at any stage of scrutiny, inquiry, investigation or any other proceedings, 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

- (i) *the value has not been correctly declared or*
- (ii) *the credit availed is not within the normal limits*

Prior approval of commissioner is necessary before ordering special audit.

The chartered accountant or a cost accountant must be nominated by the Commissioner.

Q 37. What is the time limit to submit the audit report?

Ans. The auditor will have to submit the report within 90 days or within the further extended period of 90 days. This can be done by the Commissioner when he is satisfied that the audit cannot be completed in three months. The reasons for the same must also be recorded in writing.

Q 38. Who will bear the cost of special audit?

Ans. The expenses for examination and audit including the remuneration payable to the auditor will be determined and borne by the Commissioner.

Q 39. What action the tax authorities may take after the special audit?

Ans. Based on the findings / observations of the special audit, action can be initiated under Section 73 or Section 74 of the CGST/SGST Act. The action would also depend on whether the taxpayer voluntarily pays the requisite tax, interest and penalty.

For instance, in case of fraud/suppression cases, if the taxpayer pays the requisite tax with 18% interest and 15%

penalty, no notice will be issued by department and proceedings would be concluded.

Post issue of notice, in case he pays the requisite tax, 18% interest and 25% penalty within 30 days, proceedings shall be concluded.

Post adjudication, in case he pays the requisite tax, 18% interest and 50% penalty within 30 days of order, proceedings shall be concluded

Q 40. What if Audit (Departmental / Compulsory audit by CA) is already conducted or being conducted?

Ans. This audit will be in addition to the audit already conducted under any other statute. Section 66(3) overrides provisions of any audit conducted under this act or any other law.

Q 41. In what form and manner will a special audit be ordered and how will the result of such audit be communicated to the taxable person?

Ans. 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.

On conclusion of special audit, the registered person shall be informed of the findings of special audit in FORM GST ADT-04.

Q 42. When does a taxpayer has to get audited compulsorily?

Ans. Every registered person whose turnover_during a financial year exceeds the prescribed limit of Rs. two crores has to get his accounts audited by a chartered accountant or a cost accountant and needs to submit a copy of the

- a. audited annual accounts,*
- b. the reconciliation statement under Section 44 (2)*
- c. and such other documents in such form and manner as may be prescribed*

(Section 35(5), 44(2) of CGST Act, 2018; Rule 80(3) of CGST Rules, 2018; Form GSTR-9C)

Q 43. Whether the turnover of Rs. 2 crore needs to be taken All India or State wise?

Ans. Section 35(5) of CGST Act uses the term turnover whereas the relevant Rule 80(3) of CGST Rules uses the expression aggregate turnover. Aggregate turnover is PAN based while turnover in a State / UT is similarly worded except to the extent that turnover in a State / UT is limited to a State. Therefore, the word turnover used in section 35(5) ought to be understood as aggregate turnover and all taxpayers who had their aggregate turnover exceeding Rs. 2 crore at PAN India level, should get their accounts audited from chartered engineer or cost accountant.

13.1 Invoice, Credit and Debit Note

Q 44. What is the significance of Tax Invoice under GST?

Ans. An invoice is an important document evidencing supply of goods and services. It is an important determinant of time of supply i.e. when the liability to pay GST arises. It is also a mandatory document for the purposes of availing Input Tax Credit.

Q 45. When should a supplier of goods issue a Tax invoice?

Ans. 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.

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.

Q 46. When should a supplier of services issue a Tax Invoice?

Ans. Where the supplier of services is an insurer or a banking company or a financial institution, including a non-banking financial company, or a telecom operator, the period within which the invoice or any document in lieu

thereof is to be issued shall be 45 days from the date of supply of service.

Further, if the supplier of services is 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, it 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.

In all other cases, invoice for supply of service should be issued within a period of 30 days from the date of supply of service.

Q 47. What are the particulars to be mentioned on the invoices which are prescribed by the rules?

Ans. *The tax invoice should contain the following particulars*

(a) name, address and GSTIN of the supplier;

(b) a consecutive serial number, not exceeding 16 characters, in one or multiple series, 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 GSTIN or UIN, if registered, of the recipient;

(e) 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 and where the value of taxable supply is fifty thousand rupees or more;
(f) HSN code of goods or Accounting Code of services;
(g) description of goods or services;
(h) quantity in case of goods and unit or Unique Quantity Code thereof;
(i) total value of supply of goods or services or both;
(j) taxable value of supply of goods or services or both taking into account discount or abatement, if any;
(k) rate of tax (central tax, State tax, integrated tax, Union territory tax or cess);
(l) amount of tax charged in respect of taxable goods or services (central tax, State tax, integrated tax, Union territory tax or cess);
(m) place of supply along with the name of State, in case of a supply in the course of inter-State trade or commerce;
(n) address of delivery where the same is different from the place of supply;
(o) whether the tax is payable on reverse charge basis; and
(p) signature or digital signature of the supplier or his authorized representative.

Q 48. Are any particular suppliers exempt from any of the above provisions?

Ans. *Yes. 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 shall issue a tax invoice or any other document in lieu thereof, by whatever name called, whether or not serially numbered, and whether or not containing the address of the recipient of taxable service but containing other information as prescribed under rule 46 of CGST Rules.*

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 the consignor 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, GSTIN of the person liable for paying tax whether as consignor, consignee or goods transport agency, and also containing other information as prescribed under rule 46 of CGST Rules.

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 prescribed under rule 46 of CGST Rules.

Q 49. Are there any special requirements for an invoice meant for export of goods and/or services?

Ans. *Yes. In case of exports 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) of rule 46 of CGST Rules, contain the following details:*

- (i) name and address of the recipient;

- (ii) address of delivery;
- (iii) name of the country of destination.

Q 50. When can a registered person not issue a tax invoice?

Ans. 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 the condition that

- (a) the recipient is not a registered person; and
- (b) the recipient does not require such invoice,

and he shall issue a consolidated tax invoice for such supplies at the close of each day in respect of all such supplies.

Q 51. In what manner, should an invoice be issued?

Ans. (1) The invoice shall be prepared in triplicate, in case of supply of goods, in the following manner: -

- (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 case of supply of services, in the following manner: -

- (a) the original copy being marked as ORIGINAL FOR RECIPIENT; and
- (b) the duplicate copy being marked as DUPLICATE FOR SUPPLIER.

The serial number of invoices issued during a tax period has to be furnished electronically through the Common Portal in FORM GSTR-1.

Q 52. What is a Bill of Supply?

Ans. A bill of supply is document which is issued in lieu of a tax invoices. In cases where it is not mandatory for the supplier to issue an invoice, a bill of supply can be issued.

Q 53. Who are the persons required to issue a Bill of Supply under GST?

Ans. A registered person supplying exempted goods or services or both or paying tax under the provisions of section 10 (i.e. a composition taxable person) shall issue, instead of a tax invoice, a bill of supply.

Q 54. What should be the contents of a Bill of Supply?

Ans. The bill of supply should containing the following particulars:

- (a) name, address and GSTIN of the supplier;*
- (b) a consecutive serial number, not exceeding 16 characters, in one or multiple series, 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 GSTIN or UIN, if registered, of the recipient;*
- (e) HSN Code of goods or Accounting Code for 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 authorized representative.

Q 55. Can issue of a bill of supply be dispensed with in any circumstances ?

Ans. *Yes. A 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 the condition that*

(a) the recipient is not a registered person; and
(b) the recipient does not require such bill of supply,

and he shall issue a consolidated bill of supply for such supplies at the close of each day in respect of all such supplies.

Q 56. What is a receipt voucher?

Ans. *A receipt voucher is a document evidencing receipt of advance money towards a supply of goods and/or services or both.*

Q 57. Who has to issue a receipt voucher under GST?

Ans. *A registered person, on receipt of advance payment with respect to any supply of goods or services or both, shall issue a receipt voucher or any other document, evidencing receipt of such payment.*

Q 58. What particulars should be mentioned in the receipt voucher?

Ans. A receipt voucher has to contain the following particulars:

- (a) name, address and GSTIN of the supplier;
- (b) a consecutive serial number containing not exceeding 16 characters, in one or multiple series, 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 GSTIN or UIN, 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 authorized representative.

Q 59. What should be done in case a receipt voucher is issued, but subsequently no supply takes place?

Ans. 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.

It is important to note that there is no liability to pay GST at the time of receipt of advance in case of supply of goods.

Q 60. Is a Tax Invoice supposed to be issued only by the supplier of goods/services under GST?

Ans. No. In some cases even the recipient has to issue a tax invoice. A registered person who is liable to pay tax under sub-section (3) or sub-section (4) of section 9 (i.e. where the recipient is liable to discharge GST on reverse charge basis) shall issue an invoice in respect of goods or services or both received by him from the supplier on the date of receipt of goods or services or both.

Q 61. What is a payment voucher? When is to be issued?

Ans. A payment voucher is a document evidencing payment of a certain sum of money to the supplier. Under GST, a registered person who is liable to pay tax under sub-section (3) or subsection (4) of section 9 (i.e. where the recipient is liable to discharge GST on reverse charge basis) shall issue a payment voucher at the time of making payment to the supplier.

Q 62. When should an invoice be issued in case of continuous supply of goods?

Ans. 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.

Q 63. When should an invoice be issue in case of continuous supply of services?

Ans. *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.

Q 64. In case where supply of services ceases under a contract before completion of the contract, when should an invoice be issued?

Ans. *The invoice has to 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.*

Q 65. Can an unregistered person collect GST?

Ans. *No. A person who is not a registered person shall not collect any amount by way of tax under this Act in respect of any supply of goods or services or both.*

Q 66. Does the term “invoice” include a revised invoice also?

Ans. *Yes. The expression “tax invoice” shall include any revised invoice issued by the supplier in respect of a supply of goods or services or both made earlier.*

Q 67. Is it mandatory to show tax amount on every invoice?

Ans. Yes. Where any supply is made for a consideration, every person who is liable to pay tax for such supply shall prominently indicate in all documents relating to assessment, tax invoice and other like documents, the amount of tax which shall form part of the price at which such supply is made.

Q 68. What is a Credit Note?

Ans. A Credit note is a document evidencing reduction in value of a particular supply made earlier. Every credit note has to be linked to an invoice issued earlier. A credit note enables a supplier to reduce his output tax liability in relation to the invoice issued earlier.

Q 69. When can a supplier issue a credit note?

Ans. (1). Where a tax invoice has been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to exceed the taxable value or tax payable in respect of such supply, or where the goods supplied are returned by the recipient, or where goods or services or both supplied are found to be deficient, the registered person, who has supplied such goods or services or both, may issue to the recipient a credit note containing such particulars as is prescribed under Rules.

(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 the prescribed manner.

Q 70. What is a debit note?

Ans. *A debit note is a document evidencing enhancement in value of a particular supply made earlier. Every debit note has to be linked to an invoice issued earlier. A debit note enables a recipient to take further Input Tax Credit in relation to the invoice issued earlier.*

Q 71. When can a supplier issue a debit note?

Ans. (1) *Where a tax invoice has 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 containing such particulars as is prescribed under the rules.*

(2) *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 the prescribed manner.*

Q 72. Does the term Debit Note include a supplementary invoice?

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

Q 73. What should be the contents of a revised invoice?

Ans. *A revised tax invoice, credit or debit note shall contain the following particulars*

- (a) the word "Revised Invoice", wherever applicable, indicated prominently;*
- (b) name, address and GSTIN of the supplier;*
- (c) nature of the document;*
- (d) a consecutive serial number not exceeding 16 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;*
- (e) date of issue of the document;*
- (f) name, address and GSTIN or UIN, 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 authorized representative.*

Q 74. Can an Input Service Distributor (ISD) issue a Invoice or credit note?

Ans. *Yes. An ISD can issue an invoice or credit note.*

Q 75. What should be the contents of an ISD Invoice/Credit Note issued by the ISD?

Ans. *An ISD invoice or, as the case may be, an ISD credit note issued by an Input Service Distributor shall contain the following details:-*

(a) name, address and GSTIN of the Input Service Distributor;

(b) a consecutive serial number not exceeding 16 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 GSTIN 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 authorized 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 prescribed above.

Q 76. Can a registered person having the same PAN as that of ISD issue an invoice/debit/credit note to the ISD? If so what would be the contents of such an invoice

Ans. *Yes.*

(1). 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.

(2). The taxable value in the invoice issued under clause (1) shall be the same as the value of the common services.

Q 77. When should delivery challans be issued?

Ans. *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 16 characters in lieu of invoice at the time of removal of goods for transportation.

Q 78. What should be the contents of the delivery challan?

Ans. *The delivery challan should contain the following details*

- (i) date and number of the delivery challan,*
- (ii) name, address and GSTIN of the consigner, if registered,*
- (iii) name, address and GSTIN or UIN of the consignee, if registered,*
- (iv) HSN 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.*

Q 79. What is the manner of issuing a delivery challan?

Ans. *The delivery challan shall be prepared in triplicate, in case of supply of goods, in the following manner: –*

(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.

Q 80. When can an invoice cum bill of supply be issued?

Ans. *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.*

Q 81. When should a person in charge of a conveyance be necessarily carrying a Tax Invoice or a bill of supply?

Ans. *The person-in-charge 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 CGST Rules. It may be noted that carrying a tax invoice is compulsory even where carrying e-way bill is necessary.*

13.2 Accounts and Records under GST

Q 82. Whether every registered person is required to maintain records?

Ans. Yes, every registered person is required to keep and maintain books of account at his principal place of business. 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 (Section 35 of the CGST Act, 2017).

Furthermore, the transporters, warehouse keepers are required to maintain records of consigner, consignee or any relevant details even if they are not registered in GST. They need to enrol for the purpose.

Q 83. What are the records that a registered person is mandatorily required to maintain under the GST Act?

Ans. Every registered person should maintain 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.*
- CGST Rules, 2017 prescribe maintaining records pertaining to goods or services imported or exported*

or of supplies attracting payment of tax on reverse charge along with relevant documents, including invoices, bills of supply, delivery challans, credit notes, debit notes, receipt vouchers, payment vouchers, refund vouchers and e-way bills. Every registered person shall also keep and maintain a separate account of advances received, paid and adjustments made thereto.

Detailed method of keeping records have been prescribed in rule 56 of CGST Rules, 2017.

Q 84. Where should the registered person keep the records under GST?

Ans. *The accounts and records have to be maintained at the place of business mentioned in the certificate of registration. If 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. (Section 35(1) of CGST Act).*

In case of supply of tea, coffee, rubber, etc. where the auctioneer claims ITC in respect of the supply made to him by the principal before or after the auction of such goods and the said goods are supplied only through auction, the principal and the auctioneer may maintain the books of accounts relating to the additional place(s) of business at their principal place of business instead of such additional place(s). Such principal or auctioneer shall intimate their jurisdictional proper officer in writing about the maintenance of books of accounts relating to additional

place(s) of business at their principal place of business. (CBIC Circular No. 23/23/2017-GST dated 21.12.2017 and Circular No. 47/21/2018-GST dated 08.06.2018).

Q 85. Can a registered person maintain the records in electronic form?

Ans. Yes, the records may be maintained in electronic form and the records so maintained have to be authenticated by means of a digital signature. However, proper electronic back-up of records is to 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 reasonable period of time.

Registered person, on demand, provide the details of such files, passwords of such files and explanation for codes used, where necessary, for access. (Rule 56(15) and 57 of the CGST Rules, 2017)

Q 86. For how long (period of time) should the mandatory records be maintained by the registered person?

Ans. Every registered person required to keep and maintain books of account or other records in accordance with the provisions of section 35(1) 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.

If a registered person 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, then, he 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 seventy two months as specified above, whichever is later. (Section 36 of the CGST Act, 2017)

Q 87. With respect to stock of goods, which records are required to be maintained by the registered person?

Ans. Every registered person, other than a person paying tax under section 10, shall maintain accounts of stock in respect of goods received and supplied by him, and such account shall contain particulars of opening balance, receipt, supply, goods lost, stolen, destroyed, written off or disposed of by way of gift or free sample and balance of stock including raw material, finished goods, scrap and wastage thereof. (Rule 56(2) of CGST Rules, 2017).

Q 88. Is it necessary for the registered person to keep separate record of advances received?

Ans. Yes. As per Accounts and records rules, every registered person has to keep and maintain a separate account of advances received, paid and adjustments made

thereto. (Rule 56(3) of CGST Rules, 2017).

Q 89. Is it necessary for registered persons to maintain details of tax paid and payable?

Ans. All registered persons except persons opting to pay tax under composition levy need to maintain such details. As per the rules, 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 note, debit notes, delivery challan issued or received during any tax period. (Rule 56(4) of CGST Rules, 2017)

Q 90. What are the particulars of suppliers that need to be maintained by the registered person under GST?

Ans. 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 these rules;

(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. (Rule 56(5) of CGST Rules, 2017)

Q 91. What would be the consequences if the registered person fails to account for the goods and services in accordance with the provisions of the Act?

Ans. Where the registered person fails to account for the goods or services or both in accordance with the provisions of section 35(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. This is however, subject to the provisions of section 17(5)(h). (Section 35(6) of CGST Act, 2017 read with Rule 56(6) of the CGST Rules, 2017)

Q 92. What are the production accounts, which a manufacturer need to specifically maintain under GST apart from other records?

Ans. Every registered person manufacturing goods has to 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.

Q 93. What are the accounts that a service provider need to specially maintain, in addition to other accounts and records?

Ans. Every registered person supplying services has to maintain the accounts showing quantitative details of goods used in the provision of services, details of input services utilised and the services supplied. (Rule 56(13) of CGST Rules, 2017)

Q 94. What are the accounts which a person supplying works contract need to maintain?

Ans. Every registered person executing works contract has to 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. (Rule 56(14) of the CGST Rules, 2017)

Q 95. What are the accounts and records that an Agent need to maintain?

Ans. Every agent referred to in section 2(5) shall maintain accounts depicting the –

(a) particulars of authorization 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. (Rule 56(11) of the CGST Rules, 2017)

Q 96. What are the records that an owner or operator of warehouse or godown or transporters need to maintain under GST Rules?

Ans. 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 the following manner. (Section 35 of the CGST Act, 2017)

Enrolment, if not already registered in GST: Every such person, 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 enrollment number shall be generated and communicated to the said person.

The person enrolled as aforesaid in any other State or Union territory shall be deemed to be enrolled in the State or Union territory.

Every person who is enrolled 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.

Any person engaged in the business of transporting goods shall maintain records of goods transported, delivered and goods stored in transit by him along with GSTIN of the registered consignor and consignee for each of his branches. The transporter (for the purpose of chapter XVI – E way rules) 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.

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.

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.

Q 97. What are the records which a person having custody over the goods in the capacity of a carrier or clearing and forwarding agent need to maintain?

Ans. 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 the such registered person and shall produce the details thereof as and when required by the proper officer.

Q 98. Is it necessary to show the records and accounts maintained under these rules to the proper officer?

Ans. Yes. The records need to be shown on Demand. Every

registered person shall, **on demand**, produce the books of accounts which he is required to maintain under any law in force.

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.

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 where necessary for access and any other information which is required for such access along with sample copy in print form of the information stored in such files.

Q 99. Does any competent authority have the power to relax rules in regard to maintenance of accounts and records?

Ans. Yes. Commissioner in Board (CBIC) is empowered to relax as well as prescribe additional records for certain classes of taxable persons.

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. Similarly, Commissioner may notify a class of taxable persons to maintain additional accounts or

documents for such purpose as may be specified therein. (Section 35(3) and 35(4) of CGST Act, 2017)

Q 100. How are mistakes in records to be rectified?

Ans. 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. (Rule 56(8) of the CGST Rules, 2017)

Q 101. Is it necessary for the registered person to get their accounts audited from a professional?

Ans. Yes, only cases where the turnover of the registered person exceeds Rs. 2 crores during a financial year. Every registered person whose turnover during a financial year exceeds 2 crores 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 section 44(2) (FORM GSTR-9C) and such other documents in such form and manner as may be prescribed.

Q 102. In case books of accounts are maintained manually, it is necessary to serially number the books of account?

Ans. Yes. Each volume of books of account maintained manually by the registered person shall be serially numbered.

Q 103. Who will be responsible for keeping proper for the inputs or capital goods sent to Job-worker?

Ans. The responsibility for keeping proper accounts for the inputs or capital goods shall lie with the principal.

13.3 E Way Bill

Q 104. What is an E Way Bill?

Ans. E-way bill (FORM GST EWB-01) is an electronic document (available to consignor (i.e. supplier) / consignee (i.e. recipient) / transporter) generated on the common portal evidencing movement of goods of consignment value more than Rs. 50000/-. It has two Components – (i) Part A comprising of details of GSTIN of supplier and - recipient, place of despatch (indicated by PIN code), place of delivery (indicating PIN Code also), document (Tax invoice, Bill of Supply, Delivery Challan or Bill of Entry) number and date, value of goods, HSN code, and reasons for transportation; and (ii) Part B –comprising of transport details - transport document number (Goods Receipt Number or Railway Receipt Number or Airway Bill Number or Bill of Lading Number) and Vehicle number for road.

Q 105. What is the common portal for e-way bill?

Ans. The Common Goods and Services Tax Electronic Portal for furnishing electronic way bill is www.ewaybillgst.gov.in.

Q 106. What is consignment value?

*Ans. The consignment value of goods shall be the value, determined in accordance with the provisions of section 15 of the CGST Act, 2017, 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.***

Q 107. Whether consignment value of goods shall include tax also? In case of movement other than by way of supply, value may not be available. How to value such cases?

Ans. As per Explanation 2 to Rule 138(1) of CGST Rules, 2017, the consignment value shall also include the Central tax, State or Union territory tax, integrated tax and cess charged, if any, in the document. Furthermore, in view of the valuation provisions in Section 15 of the CGST Act, 2017, Customs duty shall also be includible in the value of goods.

In case of movement of goods for reasons other than supply, the movement would be occasioned by means of a delivery challan which is a mandatory document. The delivery

challan has to necessarily contain the value of goods as per Rule 55 of the CGST Rules, 2017. The value given in the delivery challan should be adopted in the e-way bill.

Q 108. What are the benefits of e-way bill?

Ans. Following benefits are expected from e-way bill mechanism

- (i) Physical interface to pave way for digital interface resulting in elimination of state boundary check-posts.*
- (ii) It will facilitate faster movement of goods.*
- (iii) It will improve the turnaround time of trucks and help the logistics industry by increasing the average distances travelled, reducing the travel time as well as costs.*
- (iv) The consignor needs to give details of consignee also. This would ensure more transparency among all stakeholders of the system.*

Q 109. When the e-way bill provisions were implemented?

Ans. The e-way bill provisions in respect of inter-state supplies of goods were implemented w.e.f 1stApril, 2018. Whereas for all movement of goods (i.e. inter and intra state both), e-way bill provisions were made effective from 1st June 2018.

Q 110. When should an e-way bill be generated?

Ans. As per Rule 138 of the CGST Rules, 2017, an e-way bill has to be generated prior to the commencement of movement of goods.

Q 111. Whether E-way bill need to be generated for all movements of goods?

Ans. E-way bill is not required to be generated in the following cases:

- a) *Transport of goods as specified in Annexure to Rule 138 of the CGST Rules, 2017 which is reproduced below:*

| <i>S/No.</i> | <i>Description of Goods</i> |
|--------------|--|
| <i>1</i> | <i>Liquefied petroleum gas for supply to household and non-domestic exempted category (NDEC) customers</i> |
| <i>2</i> | <i>Kerosene oil sold under PDS</i> |
| <i>3</i> | <i>Postal baggage transported by Department of Posts</i> |
| <i>4</i> | <i>Natural or cultured pearls and precious or semi-precious stones; precious metals and metals clad with precious metal (Chapter 71)</i> |
| <i>5</i> | <i>Jewellery, goldsmiths' and silversmiths' wares and other articles (Chapter 71)</i> |
| <i>6</i> | <i>Currency</i> |
| <i>7</i> | <i>Used personal and household effects</i> |
| <i>8</i> | <i>Coral, unworked (0508) and worked coral (9601)</i> |

- b) *Goods being transported by a non-motorised conveyance;*
- c) *Goods 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; and

- d) In respect of movement of goods within such areas as are notified under rule 138(14) (d) of the SGST Rules, 2017 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*
- 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.*
- 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 notifications No. 7/2017-Central Tax (Rate), dated 28.06.17 and No. 26/2017-Central Tax (Rate), dated the 21.09.17;***
- 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 up to a distance of twenty kilometres from the place of the business of the consignor to a weighbridge for weighment 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.***

Q 112. Whether an e-way bill is to be issued, even when there is no supply?

Ans. Yes. Even if the movement of goods is caused due to reasons others than supply, the e-way bill is required to be issued. Reasons other than supply include movement of goods due to job-work, replacement under warranty, recipient not known, supply of liquid gas where quantity is

not known, supply returns, exhibition or fairs, for own use, Sale on approval basis and others etc.

Q 113. Who should generate e-way bill?

Ans. An e-way bill contains two parts- Part A to be furnished by the registered person who is causing movement of goods of consignment value exceeding Rs. 50,000/- and part B (transport details) is to be furnished by the person who is transporting the goods.

*Where the goods are transported by a registered person-whether as consignor or recipient, the said person shall have to generate the e-way bill (by furnishing information in part B on the common portal) Where the e-way is not generated by registered person and the goods are handed over to the transporter, for transportation of goods 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 thee-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**.*

*In a nutshell, E-way bill is to be generated by the **consignor or consignee** himself (if the transportation is being done in own/hired conveyance or by railways by air or by Vessel) or the **transporter** (if the goods are handed over to a transporter for transportation by road). In case the goods to be transported are supplied through an e-commerce operator, the information in Part A may be furnished by such ecommerce operator.*

Q 114. Who has to generate E-way bill in case of transportation of goods by rail, air or vessel?

Ans. The registered person, being the supplier or recipient, is required to generate E-way Bill by furnishing the information in part B of the E-Way bill viz. transport document number (Goods Receipt Number or Railway Receipt Number or Airway Bill Number or Bill of Lading Number).

Q 115. Who causes movement of goods?

Ans. The movement of goods can be caused by the supplier, if he is registered and he undertakes to transport the goods. In case the recipient undertakes to transport or arrange transport, the movement would be caused by him.

In case 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.

Q 116. Is there any time gap allowed between furnishing information in Part-A and updating transport details in Part-B?

Ans. On furnishing of Part-A, a unique number will be generated on the portal which shall be valid for 15 days for updating of Part B of FORM GST EWB-01.

Q 117. Is it mandatory to generate e-way bill? What if not done? What are the consequences for non-issuance of e-way bill?

Ans. It is mandatory to generate e-way bill in all cases where the value of consignment of goods being transported

is more than 50,000/- and it is not otherwise exempted in terms of Rule 138(14) of CGST Rules, 2017.

Further no e-way bill is required to be generated in respect of goods being transported by a non-motorised conveyance; goods 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; and in respect of movement of goods within such areas as are notified under rule 138(14) (d) of the SGST Rules, 2017 of the concerned State.

If e-way bills, wherever required, are not issued in accordance with the provisions contained in Rule 138, the same will be considered as contravention of rules. As per Section 122(1)(xiv) of CGST Act, 2017, a taxable person who transports any taxable goods without the cover of specified documents (e-way bill is one of the specified documents) shall be liable to a penalty of Rs. 10,000/- or tax sought to be evaded (wherever applicable) whichever is greater. Moreover, as per Section 129(1) of CGST Act, 2017, 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.

Q 118. Is e-way bill required when the goods are supplied by an unregistered supplier?

Ans. 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 movement of goods. The recipient shall be liable to generate e-way bill.

There could be three possibilities as below:

| Situation | Movement caused by | Impact |
|---|--|---|
| <i>Recipient unknown is</i> | <i>Unregistered person</i> | <i>E-way bill not required; However, the supplier has an option to generate e-way bill under "citizen" option on the e-way bill portal</i> |
| <i>Recipient is known and is unregistered</i> | <i>Unregistered person</i> | <i>E-way bill not required; However, the supplier has an option to generate e-way bill under "citizen" option on the e-way bill portal</i> |
| <i>Recipient is known and is registered</i> | <i>Deemed to be caused by the Registered recipient</i> | <i>Recipient to generate e-way bill</i> |

Q 119. What are the reasons for transportation to be furnished in the part A of e-way bill?

Ans. E-way bill is to be issued for movement of goods, irrespective of the fact whether the movement of goods is caused by reasons of supply or otherwise. The format for GST EWB-01 lists ten reasons for transportation viz Supply, Export or Import, Job Work, SKD or CKD, Recipient not known, Line Sales, Sales Return, Exhibition or fairs, for own use and Others, one of which can be chosen.

Q 120. Whether an unregistered transporter need to compulsorily enroll on the e-way bill system?

Ans. Yes, in terms of Rule 58 of the CGST Rules, 2017 read with section 35(2) of the CGST Act, 2017, a transporter and operator of godown or warehouse, if not already registered, shall have to enrol on the common portal by filing GST ENR-01.

The transporter enrolled in any one State or UT shall be deemed to be enrolled in other States as well.

The unregistered transporter gets a transporter Id when he enrolls on the system.

Q 121. What is invoice reference number?

*Ans. 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.*

In the above case, the registered person will not have to

*upload the information in Part A of **FORM GST EWB-01** for generation of e-way bill and the same shall be auto-populated by the common portal on the basis of the information furnished in **FORM GST INV-1**.*

Q 122. Can the e-way bill be cancelled if the goods are not transported after generation of e-way bill?

Ans. Where an e-way bill has been generated, but goods are either not being transported or are not being 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.

However, if the e-way has been verified in transit in accordance with the provisions of rule 138B of the CGST Rules, 2017, the same cannot be cancelled.

Q 123. What happens if the conveyance is changed en-route?

Ans. 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.

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 the

conveyance in the e-way bill on the common portal in **FORM GST EWB-01**.

Q 124. Can the transporter assigned by a supplier or recipient further re-assign the e-way bill to another transporter?

ns. The consignor or the recipient, who has furnished the information in Part-A, or the transporter, may assign the e-way bill number to another registered or enrolled transporter for updating the information in Part-B for further movement of consignment.

However 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.

Q 125. How does transporter come to know that particular e-way bill has been assigned to him?

Ans. The transporter comes to know the EWBs assigned to him by the taxpayers for transportation, in one of the following ways:

- *The transporter can go to reports section and select 'EWB assigned to me for trans' and see the list.*
- *The transporter can go to 'Update Vehicle No' and select 'Generator GSTIN' option and enter taxpayer GSTIN, who has assigned or likely to assign the EWBs to him.*

- *The tax payer can contact and inform the transporter that the particular EWB is assigned to him.*

Q 126. How does the supplier or recipient come to know about the e-way bills generated on his GSTIN by other person/party?

Ans. The supplier or the recipient can view the same from either of the following options:

- *He can view on his dashboard, after logging on to the system;*
- *He can go to reject option and select date and see the e-way bills generated on his GSTIN by others.*
- *He can go to report section and see the 'EWBs by other parties'.*
- *He will get one SMS everyday indicating the total e-way bill activities on his GSTIN.*

Q 127. How does the tax payer become transporter in the e-way bill system?

Ans. To change his position from supplier or recipient to transporter, the tax payer has to select the option 'Register as Transporter' under registration and update his profile. Once it is done, the system changes tax payer as transporter.

Q 128. How many times can Part-B or Vehicle number be updated for an e-way bill?

Ans. The Part-B (Vehicle details) can be updated as many times as one wants for movement of goods to the destination. However, the updating should be done within

the validity period and at any given point of time, the vehicle number updated should be that of the one which is actually carrying the goods. The validity of e-way bill is not re-calculated for subsequent entries in Part-B.

Q 129. What is the concept of acceptance of e-way bill by the recipient?

Ans. The details of e-way bill generated 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.

In case, the person to whom the information in Part-A is 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.

Q 130. What happens if multiple consignments are transported in one conveyance?

Ans. 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 common portal prior to the movement of goods.

The various situations where multiple consignments are transported in one conveyance may be as under:

| Situation | Impact |
|---|---|
| Multiple consignments in one conveyance; all more than Rs.50000/-; and the consignor has generated e-way bill for all the consignments. | A consolidated e-way bill in FORMGST EWB-02 may be generated on the common portal prior to the movement |
| Multiple consignments in one conveyance; all more than Rs.50000/-; but the consignor has not generated e-way bill | The relevant provision 138(7) has not been brought into force as of now, so e-way bill not required to be generated by transporter |
| Multiple consignments in one conveyance; a few less than Rs.50000/- and e-way bill not generated for these consignments (less than Rs.50,000/-) | The relevant provision 138(7) has not been brought into force as of now, so e-way bill not required to be generated by transporter |

Q 131. Many distributors transport goods of multiple customers and know the details of the requirement only at the time of delivery? What to do if name of the consignee is not known?

Ans. Such movement of goods would be for reasons other than supply. The reasons for transportation will have to be

mentioned in the Part A of the e-way bill.

Q 132. What is the validity period of e-way bill?

Ans. The validity of e-way bill remains valid for a time period which is based on distance to be travelled by the goods as below:

| Distance | Validity Period |
|--|---|
| <i>Up to 100 Km</i> | One day in cases other than Over Dimensional Cargo |
| <i>For every 100 km or part thereof thereafter</i> | One additional day in cases other than Over Dimensional Cargo |
| <i>Up to 20 km</i> | One day in case of Over Dimensional Cargo |
| <i>For every 20 km. or part thereof thereafter</i> | One additional day in case of Over Dimensional Cargo: |

Q 133. What is a day for e-way bill? How to count hours/day in e-way bill?

Ans. This has been explained in Rule 138(10) of CGST Rules, 2017. The term “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.

Q 134. Can the validity period of e-way bill be extended?

Ans. In general No. However, Commissioner may extend the validity period only by way of issuance of a notification

for certain categories of goods which shall be specified later.

*Also, if 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**.*

Q 135. What is the validity period of consolidated e-way bill?

Ans. A consolidated e-way bill has no separate validity and will be governed by the underlying validity period of the individual e-way bills.

Q 136. Can a e-way bill be modified?

Ans. No. Part-A of an e-way bill once generated, cannot be modified. However, Part-B can be updated as many times as the transport vehicle is changed within the overall validity period. The validity period is not changed when the Part-B is updated.

Q 137. Is it necessary to feed information and generate e-way bill electronically in the common portal?

Ans. Yes. The facility of generation and cancellation of e-way bill is also available through SMS.

Q 138. What is EBN? Who gives it?

Ans. 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. The common portal will generate the EBN.

Q 139. Whether e-way bill generated in one state is valid in another state?

Ans. Yes, it is valid throughout the country.

Q 140. What if one consignment, is transported in CKD/SKD condition in multiple transport vehicles?

Ans. As per Rule 55(5) of the CGST Rules, 2017, in such cases, the supplier shall issue the complete invoice before dispatch of the first consignment and shall issue a delivery challan for each of the subsequent consignments, giving reference of the invoice. Each such subsequent consignment shall be accompanied by copies of the corresponding delivery challan along with a duly certified copy of the invoice; and the original copy of the invoice shall be sent along with the last consignment. Every consignment shall also be accompanied with a separate e-way bill.

Q 141. Can a transport vehicle be intercepted?

Ans. Yes, 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.

Physical verification of a specific conveyance can also be carried out by any officer, on receipt of specific information on evasion of tax, after obtaining necessary approval of the Commissioner or an officer authorised by him in this behalf.

Q 142. Are there any checks and balances on excessive use of power of interception of vehicles and inspection of goods?

*Ans. A summary report of every inspection of goods in transit shall be recorded online on the common portal 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.*

Once 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.

*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.*

Q 143. What is the responsibility of transporters, owners or operators of godown or warehouse?

Ans. As per section 35(2) of the CGST Act, 2017, 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 prescribed in rule 58 of the CGST Rules, 2017.

Q 144. What has to be done by the transporter if consignee refuses to take goods or rejects the goods?

Ans. The transporter can get one more e-way bill generated with the help of supplier or recipient by indicating supply as 'Sales Return' and with relevant document details and return the goods to supplier.

Q 145. What are the documents to be carried by the person in charge of a conveyance while transporting goods?

Ans. 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 (RFID) embedded on to the conveyance in such manner as may be notified by the Commissioner.

Q 146. What are RFIDs?

Ans. RFIDs are Radio Frequency Identification Device used for identification. The Commissioner may require RFIDs to be embedded on to the conveyance in such manner as may be notified. The Commissioner shall get RFID 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.

Q 147. Is it necessary that the e-way bill has to be mapped to a RFID device?

Ans. It is optional. However, 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.

Q 148. Are there any special situations where e-way bill needs to be issued even if the value of the consignment is less than Rs. 50,000/-?

Ans. As per the provisos to Rule 138(1) of CGST Rules, 2017, 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 have to be generated by the principal irrespective of the value of the consignment. Also, where handicraft goods are being transported from one State to another by a person who has been exempted from the requirement of obtaining registration, the e-way bill shall have to be generated by the said person irrespective of the value of the consignment.

Q 149. Can a tax payer update his business name, address, mobile number or e-mail id in the e-way bill system?

Ans. No. EWB System will not allow tax payer to update these details directly. The taxpayer has to change these details at GST Common portal, from where it will be updated in EWB system.

Q 150. What are the modes of e-way bill generation?

Ans. The e-way bill can be generated through multiple modes viz. the common portal for e-waybill or Using SMS based facility or Android App or Site-to-Site integration or GSP (Goods and Services Tax Suvidha Provider).

For using the SMS facility, a person has to register the mobile numbers through which he wants to generate the e-way bill on the e-way bill system.

For using Android App, the tax payer has to register the EMEI numbers of the mobiles through which he wants to generate the e-way bill on the e-way bill system.

For site to site integration, the APIs of the e-way bill system have to be used for integrating the system.

Q 151. What is the role of sub-users in e-way bill system? How can sub-users be activated?

Ans. A taxpayer can create sub-users in the e-way bill system and assign specific roles to them like generation of EWB or rejection or report generation activities based on requirements. This helps the large firms with multi locations/ shifts to distribute work.

Q 152. Whether information submitted for e-way bill can be used for filing GST Returns?

Ans. The information furnished in the Part-A of E-way bill shall be made available to the registered supplier on the common portal who may utilize the same for furnishing details in GSTR-1.

Q 153. Whether individuals while shifting their personal belongings will have to generate E-way bill?

Ans. No. Used personal and household effects are specifically exempted from the requirement of E-way Bill as explained in Q 8 above.

Q 154. Consider a situation where a consignor is required to move goods from City X to City Z. He appoints Transporter A for movement of his goods. Transporter A moves the goods from City X to City Y. For completing the movement of goods i.e. from City Y to City Z, Transporter A now hands over the goods to Transporter B. Thereafter, the goods are moved to the destination i.e. from City Y to City Z by Transporter B. How would the e-way bill be generated in such situations?

Ans. In such a scenario, only one e-way bill would be required. PART A of Form GST EWB-01 can be filled by the consignor and then the e-way bill will be assigned by the consignor to Transporter A.

Transporter A will fill the vehicle details, etc. in PART B of Form GST EWB01 and will move the goods from City X to City Y. On reaching City Y, Transporter A will assign the said e-way bill to the Transporter B. Thereafter, Transporter B will be able to update the details of PART B. Transporter B will fill the details of his vehicle and move the goods from City Y to City Z.

Q 155. Consider a situation where a Consignor hands over his goods for transportation on Friday

to transporter. But, the assigned transporter starts the movement of goods on Monday. How would the validity of e-way bill be calculated in such situations?

Ans. The validity period of e-way bill starts only after the details in PART B of FORM GST EWB-01 are updated by the transporter for the first time.

Q 156. Where an invoice is in respect of both goods and services, whether the consignment value should be based on the invoice value (inclusive of value of services) or only on the value of goods. Further, whether HSN wise details of service is also required to be captured in Part A of the e-way bill in such case?

Ans. Consignment value and HSN needs to be determined for goods only not for services as only the goods are in movement and e-way bill needs to be generated accordingly.

Q 157. What should be the value in e-waybill in case goods are sent on lease basis as the value of machine is much higher than leasing charges?

Ans. The value of goods needs to be mentioned as per the explanation 2 of the sub-rule (1) of rule 138.

Q 158. How to handle “Bill to” - “Ship to” invoice in e-way bill system?

Ans. In the e-way bill form, there are two portions under ‘TO’ section. In the left hand side - ‘Billing to’ GSTIN and trade name is entered and in the right hand side - ‘Ship to’

address of the destination of the movement is entered. The other details are entered as per the invoice.

In case ship to state is different from Bill to State, the tax components are entered as per the billing state party. That is, if the Bill to location is inter-state for the supplier, IGST is entered and if the Bill to Party location is intra-state for the supplier, the SGST and CGST are entered irrespective of movement of goods whether movement happened within state or outside the state.

Q 159. What form of e-way bill - original printout or softcopy need to be carried by the transporter?

Ans. An e-way bill number may be available with the person in charge of the conveyance or in the form of a printout, sms or it may be written on an invoice. All these forms of having an e-way bill are valid.

14. Refunds

Q 1. What are the situations which may give rise to refund under GST?

Ans. A claim for refund may arise on account of-

- 1. Export of Goods or services on payment of tax*
- 2. Supply of goods or services to SEZs units and developers on payment of tax*
- 3. Export of Goods or services under Bond/Letter of Undertaking, without payment of tax*
- 4. Supply of goods or services to SEZs units and developers under Bond/Letter of Undertaking, without payment of tax*
- 5. Deemed Exports (refund available to both supplier and recipient)*
- 6. Refund of taxes on purchase made by UN Agencies, Embassies etc*
- 7. Refund arising on account of judgment, decree, order or direction of the Appellate Authority, Appellate Tribunal or any court*
- 8. Refund of accumulated Input Tax Credit on account of inverted duty structure*
- 9. Finalisation of provisional assessment*
- 10. Excess balance in electronic cash ledger*
- 11. Excess payment of tax*
- 12. Refunds to International tourists of GST paid on goods in India and carried abroad at the time of*

their departure from India (not yet operationalized)

13. *Refund on account of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued (tax paid on advance payment)*
14. *Refund of CGST & SGST paid by treating the supply as intra-State supply which is subsequently held as inter-State supply and vice versa.*
15. *Refund to CSD Canteens.*

The list is only indicative and not exhaustive.

Q 2. Whether Provisional Refund is allowable for all refunds under GST?

Ans. No. Section 54(6) of CGST Act provides for grant of provisional refund of 90% of the total refund claim, in case the claim relates to refund arising on account of zero rated supplies. Thus only refund claims where refund arises on account of zero rated supply will be entitled to provisional refund.

Q 3. Which supplies would be considered as zero rated?

Ans. In terms of Section 16(1) of IGST Act, following supplies are considered as zero rated (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.

Q 4. The GST Law allows exports to be made under a LUT in all cases. Is this statement true or false?

Ans. The facility of export under LUT is available to all exporters in terms of notification No. 37/2017- Central Tax dated 4th October, 2017, except to those who have been prosecuted for any offence under the CGST Act or the IGST Act or any of the existing laws in force in a case where the amount of tax evaded exceeds two hundred and fifty lakh rupees. Para 2(d) of the Circular No. 8/8/2017-GST dated 4th October, 2017, mentions that a person intending to export under LUT is required to give a self-declaration at the time of submission of LUT that he has not been prosecuted. Persons who are not eligible to export under LUT are required to export under bond/bank guarantee

Q 5. What is the time limit within which provisional refund has to be sanctioned by the proper officer?

Ans. The provisional refund has to be sanctioned within 7 days from date of acknowledgement.

Q 6. Can refund of Transitional Credit be claimed as refund of accumulated ITC?

Ans. No. Refund of accumulated ITC is given based on a formula which uses the phrase 'Net ITC' and defines the same as "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". Since the transitional credit pertains to duties and taxes paid under the existing laws viz., under Central Excise Act, 1944 and Chapter V of the Finance Act,

1994, the same cannot be said to have been availed during the relevant period and thus, cannot be treated as part of 'Net ITC'.

Q 7. When is a deficiency memo issued in respect of a refund claim made u/s 54?

Ans. Rule 90 (3) of the CGST Rules provides for communication in FORM GST RFD-03 (deficiency memo) where deficiencies are noticed. The said sub-rule also provides that once the deficiency memo has been issued, the claimant is required to file a fresh refund application after the rectification of the deficiencies.

Q 8. Can deficiency memo be issued more than once for a refund claim?

Ans. No. Rule 90 of the CGST Rules clearly states that once an applicant has been communicated the deficiencies in respect of a particular application, the applicant shall furnish a fresh refund application after rectification of such deficiencies. Thus, there can be only one deficiency memo for one refund application and once such a memo has been issued, the applicant is required to file a fresh refund application, manually in FORM GST RFD-01A. Once an application has been submitted afresh, pursuant to a deficiency memo, the proper officer will not serve another deficiency memo with respect to the application for the same period, unless the deficiencies pointed out in the original memo remain unrectified, either wholly or partly, or any other substantive deficiency is noticed subsequently

(Para 6.1 of CBIC Circular no. 37/11/2018-GST dated 15.03.2018)

Q 9. How can fresh claims be filed pursuant to issuance of deficiency memo?

Ans. This fresh application has to be accompanied with the original ARN, debit entry number generated originally and a hard copy of the refund application filed online earlier.

Q 10. What would happen if exports have been made without submitting any Bond/LUT. Will refund be denied on account of such exports?

Ans. No. Substantive benefits of zero rating will not be denied where it has been established that exports in terms of the relevant provisions have been made. The delay in furnishing of LUT in such cases may be condoned and the facility for export under LUT will be allowed on ex post facto basis taking into account the facts and circumstances of each case. Reference may be made to Circular No.37/11/2018-GST dated 15th March 2018.

Q 11. What are the documents to be submitted along with a refund claim of accumulated ITC on account of export of goods and services without payment of tax?

Ans. The following documents will have to be submitted :

- *Copy of FORM RFD-01A filed on common portal*
- *Copy of ARN*

- Copy of Statement 3A of FORM RFD-01A generated on common portal
- Copy of Statement 3 of FORM RFD-01A
- Printout of GSTR-2A and in cases where invoice details are not reflected in the GSTR-2A, the copy of Invoices w.r.t. input and input services. (Refer Circular No. 59/33/2018-GST dated 04th September 2018)
- BRC/FIRC for export of services
- Undertaking / Declaration in FORM RFD-01A

Q 12. What are the documents to be submitted along with a refund claim of IGST paid on export of services?

Ans. The following documents will have to be submitted

- Copy of FORM RFD-01A filed on common portal
- Copy of ARN
- Copy of Statement 2 of FORM RFD-01A generated on common portal
- Printout of GSTR-2A and in cases where invoice details are not reflected in the GSTR-2A, the copy of Invoices w.r.t. input and input services and capital goods (Refer Circular No. 59/33/2018-GST dated 04th September 2018)
- BRC/FIRC for export of services.
- Undertaking / Declaration in FORM RFD-01A

Q 13. Whether the claimant will need to produce FIRC/BRC in a claim for refund of ITC on account of export of goods?

Ans. No. In case of export of goods, realization of consideration is not a pre-condition. Insistence on proof of realization of export proceeds for processing of refund claims

related to export of goods has not been envisaged in the law and will not be insisted upon.

Q 14. In case of supplies made to Merchant Exporters, will the supplies so made be treated as zero rated for the supplier?

Ans. No. Such supplies are considered as normal supplies. However, if the manufacturer makes supplies by fulfilling conditions under notification no.40/2017-Central Tax (Rate) dated 23.10.2017 (corresponding IGST notification no.41/2017-Integrated Tax (Rate) dated 23.10.2017) and paying tax @ 0.1%, he can claim refund of unutilised ITC on account of inverted duty structure.

Q 15. If such supplies are not zero rated, will it mean that the supplier will not be entitled to any refund on such supplies?

Ans. No. The supplier who supplies goods at the concessional rate is also eligible for refund on account of inverted tax structure as per the provisions of clause (ii) of the first proviso to sub-section (3) of section 54 of the CGST Act.

Q 16. What is meant by the terms “relevant period” in so far as refund claims under GST are concerned. Is it different from “tax period” defined under the law?

Ans. Section 2(107) of the CGST Act defines the term “tax period” as the period for which the return is required to be furnished. The terms ‘Net ITC’ and ‘turnover of zero rated supply of goods/services’ are used in the context of the relevant period in rule 89(4) of CGST Rules. The phrase ‘relevant period’ has been defined in the said sub-rule as ‘the period for which the claim has

been filed'. Thus, it can be seen that the two terms have different connotations under the law.

Q 17. Is refund linked to a tax period or relevant period under GST Law?

Ans. Refund is related to “relevant period” and not to “tax period”. In many scenarios, exports may not have been made in that period in which the inputs or input services were received and input tax credit has been availed. Similarly, there may be cases where exports may have been made in a period but no input tax credit has been availed in the said period. The above referred rule, taking into account such scenarios, defines relevant period in the context of the refund claim and does not link it to a tax period.

Q 18. Can the exporter file refund claims by clubbing successive calendar months/quarter or should the claim be filed on a monthly basis?

Ans. The Exporter, at his option, may file refund claim for one calendar month / quarter or by clubbing successive calendar months / quarters. The calendar month(s) / quarter(s) for which refund claim has been filed, however, cannot spread across different financial years.

Q 19. Can refund of taxes paid under existing laws (Central Excise/Service Tax) be made under GST?

Ans. No. Refund claims of taxes paid under existing laws have to be dealt with as per the provisions of existing laws only.

Q 20. How will refund claims made under existing laws be dealt with?

Ans. As per section 142(3) of the CGST Act, the amount of refund arising out of such claims shall be refunded in cash.

Further, the first proviso to the said sub-section provides that where any claim for refund of CENVAT credit is fully or partially rejected, the amount so rejected shall lapse and therefore, will not be transitioned into GST.

Q 21. For Export of goods made under LUT, what is the time period within which proof of export need to be submitted?

Ans. Rule 96A (1) of the CGST Rules provides that any registered person may export goods or services without payment of integrated tax after furnishing a LUT / bond and that he would be liable to pay the tax due along with the interest as applicable within a period of fifteen days after the expiry of three months or such further period as may be allowed by the Commissioner from the date of issue of the invoice for export, if the goods are not exported out of India.

Q 22. For Export of services made under LUT, what is the time period within which proof of export need to be submitted?

Ans. The time period in case of services is 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 or in Indian rupees wherever permitted by the Reserve Bank of India. (The underlined portion has been inserted vide CGST (Amendment) Act, 2018 and shall not into force once the same is notified).

Q 23. What are the circumstances in which manual filing of refund claims is permitted under GST?

Ans. Manual filing of refund claims is permitted, vide circular no.17/17/2017-GST dated 15th November 2017 and circular

no.24/24/2017 dated 24th November 2017 and circular no.36/10/2018-GST dated 13th March 2018, if the claim is on account of following

- (i) refund of unutilized input tax credit on account of zero rated supplies*
- (ii) refund of unutilized input tax credit 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) of goods or services or both except those supplies which are notified by the Government on the recommendations of the Council.*
- (iii) Refund on account of supplies in terms of notification Nos. 40/2017-Central Tax (Rate) and 41/2017-Integrated Tax (Rate) both dated 23.10.2017*
- (iv) refund of tax on the supply of goods regarded as deemed exports;*
- (v) refund of balance in the electronic cash ledger; and*
- (vi) Refund claim by UIN entities.*

(Other scenarios may be added after the proposal is accepted by Council in its meeting scheduled on 22/12/2018).

Q 24. What is the form in which manual claims need to be filed?

Ans. Manual claims need to be filed in Form GST RFD-01A. Form RFD-10 for UIN entities.

Q 25. What is the periodicity for filing of refund claims?

Ans. Refund claims in respect of zero-rated supplies and

on account of inverted duty structure, deemed exports and excess balance in electronic cash ledger shall be filed for a tax period on a monthly basis in FORM GST RFD-01A. However, in case registered persons having aggregate turnover of up to Rs1.5 crore in the preceding financial year or the current financial year are opting to file FORM GSTR-1 quarterly (notification No. 57/2017-Central Tax dated 15.11.2017 refers), such persons shall apply for refund on a quarterly basis.

The Exporter, at his option, may file refund claim for one calendar month / quarter or by clubbing successive calendar months / quarters. The calendar month(s) / quarter(s) for which refund claim has been filed, however, cannot spread across different financial years.

RFD-10 has to be filed by UIN entities on a quarterly basis.

Q 26. Can refund claims be filed even if GSTR-1/3B for the particular period has not been filed?

Ans. No. Refund claim for a tax period can be filed only after filing the details in FORM GSTR-1 for the said tax period. It is also to be ensured that a valid return in FORM GSTR-3B has been filed for the last tax period before the one in which the refund application is being filed.

Q 27. Will provisionally accepted ITC be allowed as refund?

Ans. Yes, it will be allowed for the time being. Since the date of furnishing of FORM GSTR 1 from July, 2017 onwards has been extended while the dates of furnishing of FORM

GSTR 2 and FORM GSTR 3 for such period are yet to be notified, it has been decided by the competent authority to sanction refund of provisionally accepted input tax credit at this juncture. However, the registered persons applying for refund must give an undertaking to the effect that the amount of refund sanctioned would be paid back to the Government with interest in case it is found subsequently that the requirements of clause (c) of sub-section (2) of section 16 read with sub-section (2) of sections 42 of the CGST Act have not been complied with in respect of the amount refunded.

Q 28. What is the format in which the undertaking referred to above needs to be filed?

Ans. The undertaking should be submitted manually along with the refund claim and the same is available in FORM RFD-01A on the common portal.

Q 29. What will happen if the refund claim of unutilised ITC is rejected?

Ans. Where any amount claimed as refund is rejected under rule 92 of the CGST Rules, 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 RFD-1B until the FORM GST PMT-03 is available on the common portal. (Para 4 of circular no. 59/33/2018-GST dated 04th September, 2018 refers).

Q 30. In respect of deemed export supplies, who can claim refund?

Ans. The third proviso to rule 89(1) of the CGST Rules allows the recipient or the supplier to apply for refund of tax paid on such deemed export supplies.

Q 31. What are the documents required to be filed where the claim is on account of deemed exports?

Ans. In case such refund is sought by the supplier of deemed export supplies, the documentary evidences as specified in notification No. 49/2017-Central Tax dated 18.10.2017 are also required to be furnished which includes an undertaking by the recipient of deemed export supplies that he shall not claim the refund in respect of such supplies and that no input tax credit on such supplies has been availed of by him. The undertaking should be submitted manually along with the refund claim.

Similarly, in case the refund is filed by the recipient of deemed export supplies, an undertaking by the supplier of deemed export supplies that he shall not claim the refund in respect of such supplies is also required to be furnished manually.

Further, as per the provisions of rule 89(2)(g) of the CGST Rules, a statement 5B of FORM GST RFD-01A (showing details of invoices of outward supplies in case refund is claimed by supplier/ Details of invoices of inward supplies in case refund is claimed by recipient) is also required to be furnished for claiming refund on supplies declared as deemed exports.

Q 32. What are deemed export supplies?

Ans. The following categories of supply of goods have been notified as deemed exports under section 147 of CGST Act, vide notification no.48/2017-Central Tax dated 18.10.2017

| Sr.No | Description of Supply |
|--------------|--|
| 1 | <i>Supply of goods by a registered person against Advance Authorisation</i> |
| 2 | <i>Supply of capital goods by a registered person against Export Promotion Capital Goods Authorisation</i> |
| 3. | <i>Supply of goods by a registered person to Export Oriented Unit</i> |
| 4. | <i>Supply of gold by a bank or Public Sector Undertaking specified in the notification No. 50/2017-Customs, dated the 30th June, 2017 (as amended) against Advance Authorisation</i> |

Q 33. What are the situations in which refund of accumulated ITC is allowed under GST?

Ans. Refund of accumulated ITC is allowed only when the credit accumulation is on account of zero rated supply or on account of inverted rate structure.

Q 34. What are the situations in which refund of accumulated ITC will not be allowed even if it's a case of zero rated supplies or inverted rate structure?

Ans. Refund of ITC will not be allowed where the goods exported out of India are subject to export duty or where the supplier claims refund of IGST paid on such supplies. The Government also has the power to notify supplies where refund of ITC will not be admissible even if such credit accumulation is on account of an inverted duty structure.

Q 35. Has the Government exercised its powers to curtail refund of ITC in respect of any product/services ?

Ans. Yes. The government has issued notification no.15/2017-Central Tax (Rate) dated 28th June 2017 wherein it has been notified that no refund of unutilised input tax credit shall be allowed under section 54(3) of the CGST Act, in case of supply of services specified in sub-item (b) of item 5 of Schedule II of the Central Goods and Services Tax Act. The supplies specified under item 5(b) of Schedule II are construction services. In respect of goods, the central government has issued notification no.5/2017- Central Tax (Rate) dated 28th June 2017 as amended by notification no.44/2017-Central Tax (Rate) dated 14.11.2017 and notification no.20/2018-Central Tax (Rate) dated 26th July 2018. The government has notified the following goods in respect of which unutilized ITC will not be admissible as refund.

| Sr.No | Tariff item, heading, | Description of Goods |
|--------------|------------------------------|-----------------------------|
|--------------|------------------------------|-----------------------------|

| | sub-heading or Chapter | |
|---|-------------------------------|---|
| 1 | 8601 | <i>Rail locomotives powered from an external source of electricity or by electric accumulators</i> |
| 2 | 8602 | <i>Other rail locomotives; locomotive tenders; such as Diesel-electric locomotives, Steam locomotives and tenders thereof</i> |
| 3 | 8603 | <i>Self-propelled railway or tramway coaches, vans and trucks, other than those of heading 8604</i> |
| 4 | 8604 | <i>Railway or tramway maintenance or service vehicles, whether or not self-propelled (for example, workshops, cranes, ballast tampers, trackliners, testing coaches and track inspection vehicles)</i> |
| 5 | 8605 | <i>Railway or tramway passenger coaches, not self-propelled; luggage vans, post office coaches and other special purpose railway or tramway coaches, not self-propelled (excluding those of heading 8604)</i> |
| 6 | 8606 | <i>Railway or tramway goods vans and wagons, not self-propelled</i> |
| 7 | 8607 | <i>Parts of railway or tramway</i> |

| | | |
|---|------|---|
| | | <i>locomotives or rolling-stock; such as Bogies, bissel-bogies, axles and wheels, and parts thereof</i> |
| 8 | 8608 | <i>Railway or tramway track fixtures and fittings; mechanical (including electro-mechanical) signalling, safety or traffic control equipment for railways, tramways, roads, inland waterways, parking facilities, port installations or airfields; parts of the foregoing</i> |

Q 36. Will the above restriction in Q 35 (applicable for inverted rate structure refund) apply for zero rated supplies?

Ans. No. It has also been clarified by the Government vide Circular No.18/18/2017-GST dated 16.11.2017, that the aforesaid notification having been issued under clause (ii) of the proviso to Section 54(3) of the CGST Act, 2017, restriction on refund of unutilised input tax credit of GST paid on inputs will not be applicable to zero rated supplies, that is (a) export of goods or services or both; or (b) supply of goods or services or both to a Special Economic Zone Developer of special Economic Zone Unit.

Q 37. How will the refund amount be calculated in case of claim of unutilised ITC on account of zero rated supplies?

Ans. The refund will be calculated based on the formula
Refund Amount = (turnover of zero rated supply of goods +

turnover of zero rated supply of services) x Net ITC / Adjusted total turnover.

Q 38. How will the refund amount be calculated in case of claim of unutilised ITC on account of inverted rate structure?

Ans. 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) x Net ITC ÷ Adjusted Total Turnover} - tax payable on such inverted rated supply of goods.

Q 39. What does "Net ITC" mean for the purpose of calculation of refund amount?

Ans. "Net ITC" for the purpose of refund on account of zero rated supply 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 of Rule 89 of CGST Rules.

"Net ITC" for the purpose of refund on account of inverted rate structure means 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 of Rule 89 of CGST Rules.

Q 40. What does Turnover of zero rated supply of goods mean for the purpose of calculation of refund amount?

Ans. "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 of Rule 89 of CGST Rules.

Q 41. What does Turnover of zero rated supply of services mean for the purpose of calculation of refund amount?

Ans. "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.

Q 42. What does Adjusted Total Turnover mean for the purpose of calculation of refund amount?

Ans. "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 rule 89(4A) or (4B) or both, if any, during the relevant period.

Q 43. For a claim of refund of IGST paid on export of goods, will the applicant need to file GST RFD-01/01A?

Ans. No. As per rule 96 of the CGST Rules, 2017, the shipping bill filed by an exporter shall be deemed to be an application for refund of integrated tax paid on the goods exported out of India.

Q 44. Will such refund claims be treated as having been filed when the shipping bill is filed?

Ans. No. Such application shall be deemed to have been filed only when: -

(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-3 or FORM GSTR-3B, as the case may be.

Q 45. Who will process/disburse refund of IGST paid on export of goods?

Ans. As per Rule 96, the refund of IGST paid on export of goods is processed and disbursed by Customs.

Q 46. What are the validations required for processing refund claim of IGST on export of goods?

Ans. For processing such refund, GST system transmits

invoice level data of Table 6A in GSTR 1 subject to the following validations: -

- 1. GSTR-3B is filed for the corresponding period, with admitted tax liability under Table 3.1(b);*
- 2. Export invoices are submitted in GSTR-1/Table 6A and have correct shipping bill number, shipping bill date and port code;*
- 3. The admitted tax liability of IGST under table 3.1(b) of GSTR-3B, is equal to, or greater than, the IGST amount claimed to have been paid under Table 6A of GSTR-1 of the corresponding period.*

Q 47. Can refund of IGST on export of goods be withheld under any circumstances?

Ans. Yes. Situations where refund of IGST on goods can be withheld are as under

(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.

Q 48. What are the modalities to be followed when refund is withheld on the request of the jurisdictional Commissioner of Central /State Tax?

Ans. Where refund is withheld in accordance with request from jurisdictional commissionerate, 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.

Thereafter, 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.

Where the applicant becomes entitled to refund of the amount withheld as above, the concerned jurisdictional officer of central tax, 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.

Further, as per Circular no.17/17/2017-GST, any order regarding withholding of such refund or its further sanction respectively in PART-B of Form GST RFD-07 or Form GST RFD-06 shall be done manually till the refund module is operational on the common portal.

Q 49. When will interest become payable in a refund claim?

Ans. As per Section 56 of CGST Act, if any tax ordered to be refunded under section 54 (5) to any applicant is not

refunded within sixty days from the date of receipt of application under section 54(1), 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.

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.

Where the claim relates to refund of pre-deposit made as per Section 107 or 112 of the GST Act, different provisions will apply for interest. As per Section 115 of the GST Act, where an amount paid by the appellant under section 107(6) or section 112(8) 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. Thus, in cases of refund of pre-deposit

amount, interest will have to be paid from the date of payment till the date of refund of the amount (and not from date of receipt of claim for such refund of pre-deposit)

Q 50. What is the rate of interest notified by the Government for delayed settlement of refund claims?

Ans. As per notification no.13/2017-Central Tax dated 28th June 2017, interest @6% will be payable under Section 56. (normal claims where payment is delayed beyond 60 days from the receipt of application). The same rate of interest @6% will be payable in cases of refund of pre-deposit. Interest @ 9% will be payable in cases of refund falling under proviso to Section 56. (cases where refund claim arises as a consequence of court order/judgement).

Q 51. How will an order for payment of interest be made under GST?

Ans. Rule 94 of the CGST Rules provide that an order for interest shall be made along with 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.

Q 52. Does interest become due if it is not paid within 60 days of receipt of application or 60 days of acknowledgement?

Ans. Normally, interest becomes payable if claim is not settled within 60 days of receipt of application. It is to be

noted that the date of acknowledgement is not the date of receipt of application. When an application for refund is submitted, it is transferred to the proper officer for scrutiny of the claim. The proper officer needs to check for deficiencies if any in the claim and this scrutiny needs to be completed within 15 days. If the documents are in order, the acknowledgement needs to be given within 15 days from the date of receipt of application and the acknowledgement will also show the date of receipt. The period of 60 days starts from such date of receipt and not from the date when acknowledgement is given which can be any date within 15 days from the date of receipt of application.

Q 53. What is the relevant date within which claim for refund is to be filed?

Ans. A claim for refund is to be filed within 2 years of a relevant date. Relevant date is different for different scenarios which is as under:

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

(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, where the supply of service had been completed prior to the receipt of such payment; or

(ii) issue of invoice, where payment for the service 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 unutilized 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 by such person; and

(h) in any other case, the date of payment of tax.

It is to be noted that for refund claim filed by UN bodies,

Embassies etc the relevant date and the time period within which refund claim is to be filed is specified in Section 54(2) itself, which is before the expiry of six months from the last day of the month in which such supply was received.

Q 54. What is the significance of relevant date for the purpose of refund?

Ans. Relevant Date assumes significance to ascertain whether the refund claim has been filed within the period of limitation envisaged under the law. Thus, every refund claim is to be filed within 2 years from the relevant date. The relevant date is different for different scenarios. Thus, different relevant date is specified for refund on account of export of goods, export of services, accumulated input tax credit, finalisation of provisional assessment etc.

Q 55. Does GST law recognize the concept of payment of tax under protest?

Ans. No

Q 56. Can Merchant Exporters or recipient of deemed export supplies claim refund of IGST paid on export of goods (exports made out of supplies received from supporting manufacturer/supplies received under advance/EPCG authorization etc)?

Ans. No. It is to be noted that Rule 96(10) has been inserted, w.e.f 23.10.2017, in CGST Rules, 2017 vide Notification no. 75/2017-Central Tax dated 29.12.2017 (this was last amended vide notification No. 54/2018-

Central tax dated 09.10.2018) so as to provide that the refund of integrated tax paid on export of goods or services is not permitted to such persons who have received supplies on which the supplier has availed the benefit of Notification no. 48/2017-Central Tax dated 18.10.2017 (supplies regarded as deemed exports) or Notification no. 40/2017-Central Tax (Rate) dated 23.10.2017 (supplies to merchant exporters at concessional rate of CGST+SGST) or notification No. 41/2017-Integrated Tax (Rate) dated 23.10.2017. (supplies to merchant exporters at concessional rate of IGST).

Thus, in respect of deemed export supplies/merchant exports, the option given under section 16(3) of IGST Act, 2017, (of either paying tax and claiming refund of IGST or exporting under Bond and claiming refund of ITC), gets restricted and the zero-rated supplier can only avail of refund of ITC, as per Rule 89, in such cases.

Q 57. Are refunds of IGST on export of goods automated under the GST Law?

Ans. Yes. The IGST refund module has an in-built mechanism to automatically grant refund after validating the Shipping Bill data as available in ICES with the GST Returns data transmitted by GSTN. The matching between the two data sources is done at Invoice level and any mismatch of the laid down parameters returns shows error code.

Q 58. How will acknowledgment of manual refund claims be given?

Ans. The refund claim will be verified for its completeness and availability of supporting documents. Once completeness in all respects is ascertained, acknowledgement in Form GST RFD-02 shall be issued within 15 days from the date of filing of application and entry shall be made in the refund register for receipt of refund applications. The date of submission of application for which acknowledgement has been given will be considered as the date for ensuring whether the refund application has been sanctioned within the stipulated time period.

Q 59. What are the conditions subject to which provisional refund will be granted?

Ans. Rule 91 of the CGST Rules deal with the grant of provisional refund. The provisional refund in accordance with the provisions of section 54(6) 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.

Q 60. How will provisional refunds be processed?

Ans. 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 section 54(6), 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 rule 90.

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.

Q 61. Will provisional refund be granted separately under each head or will it be combined?

Ans. Provisional refund shall be granted separately for each head Central Tax/State Tax/UT Tax/Integrated Tax/Cess within 7 days of acknowledgement in Form GST RFD-04. Central /Integrated Tax/Cess would be paid by the Centre Tax Authorities and State Tax/UT tax would be disbursed by the State/UT Tax Authorities.

Q 62. How will the proper officer satisfy the requirement of condition that the applicant has not been prosecuted for any offence under the Act?

Ans. Based on declaration of applicant. Before sanction of the refund a declaration shall be obtained that the applicant has not contravened Rule 91(1) (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).

Q 63. How will claims be processed finally after sanction of provisional refund?

Ans. After sanction of the provisional refund, final order is to be issued within sixty days (after due verification of the documentary evidences) of the date of receipt of the complete application form.

The proper officer has to validate the refund statement details with details in Form GSTR-1 (or Table 6A of Form GSTR-1) available on the common portal. Details of IGST paid, in case of export of services on payment of IGST, also needs to be verified from Form GSTR 3 or Form GSTR 3B as the case may be, filed by the applicant and it needs to be verified that the refund amount claimed shall be less than the tax paid on account of zero rated supplies as per Form GSTR-3 or 3B as the case may be. In case of export under bond / LUT, debit to the electronic credit ledger need to be checked up.

If the sanctionable amount is less than the applied amount or if the refund claim is proposed to be rejected, then a notice has to be issued to the applicant in Form GST RFD-08. The applicant has to reply within 15 days of receipt of notice in Form GST 09. Principles of natural justice will have to be followed before making the final decision. Final

order will be made by the proper officer in Form GST RFD-06.

Q 64. How will final refund sanction order be issued?

Ans. The proper officer shall issue the refund order manually for each head i.e. Central Tax / State Tax / UT Tax / Integrated Tax/Cess. Amount paid provisionally needs to be adjusted accordingly. Payment advice is to be made in FORM GST RFD-05. Refund, if any, will be paid by an order with payment advice in FORM GST RFD-05. The details of the refund on account of Central Tax/Integrated Tax/Cess along with taxpayer bank account details shall be manually submitted in PFMS system by the jurisdictional Division's DDO and a signed copy of the sanction order shall be sent to PAO office for release of payment.

Q 65. Will both SGST and CGST be paid by the same authority?

Ans. No. The refund application for various taxes i.e. CT/ST/UT/IT/Cess is required be filed with that tax authority to whom the taxpayer has been assigned and shall be processed and sanction order for all taxes would be issued by the said authority. (In case the taxpayer has not been assigned, he can submit his application with any tax authority). However, payment of the sanctioned refund amount shall be made only by the respective tax authority of the Centre or State Government. The payment of the sanctioned refund amount in relation to Central Tax/Integrated Tax/ /Cess shall be made by the Central Tax authority while payment of the sanctioned refund amount

in relation to ST/UT would be made by the State Tax/UT tax authority.

Q 66. How will communication between Central and State tax authorities take place?

Ans. The refund order issued either by the Central Tax authority or the State Tax/UT Tax authority shall be communicated to the concerned counterpart tax authority within seven days for the purpose of payment of the relevant sanctioned refund amount of tax or cess as the case may be. In order to facilitate sanction of refund amount of central tax and State tax by the respective tax authorities, it has been decided that both the Central and State Tax authority shall nominate nodal officer(s) for the purpose of liaisoning through a dedicated e-mail id.

Where the amount of central tax and State tax refund is ordered to be sanctioned provisionally/ finally by the Central tax authority and a sanction order is passed in accordance with the provisions of rule 91(2) of the CGST Rules, the Central tax authority shall communicate the same, through the nodal officer, to the State tax authority for making payment of the sanctioned refund amount in relation to State tax and vice versa. The aforesaid communication shall primarily be made through e-mail attaching the scanned copies of the sanction order [FORM GST RFD-04 or FORM GST RFD-06], the application for refund in FORM GST RFD-01A and the Acknowledgement Receipt Number (ARN). Accordingly, the jurisdictional proper officer of Central or State Tax, as the case may be,

shall issue FORM GST RFD-05 and send it to the DDO for onward transmission for release of payment. After release of payment by the respective PAO to the applicant's bank account, the nodal officer of Central tax and State tax authority shall inform each other. The manner of communication as referred earlier shall be followed at the time of final sanctioning of the refund also.

Q 67. Who can file claim refund on account of supply to SEZs?

Ans. The DTA supplier will have to file the refund claim in such cases.

Q 68. When can the DTA supplier file refund claims on account of supplies made to SEZ units?

Ans. The proviso to Rule 89 stipulates 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:

Thus, proof of receipt of goods or services as evidenced by the specified officer of the zone is a pre-requisite for filing of refund claim by the DTA supplier.

Q 69. What supporting documents are required to be filed by the DTA supplier in a refund claim?

Ans. The claim has to be filed along with the following documents

*1. 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;*

*2. 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;*

3. 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.

Q 70. Whether the DTA supplier would be entitled to provisional refund?

Ans. As per Section 54(6) of the CGST Act, 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.

Thus DTA suppliers making zero rated supplies to SEZ units will be entitled for provisional refund of 90%.

Q 71. How will the amount of claim (of ITC) be calculated?

Ans. The claim (of accumulated ITC) will be calculated using 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

Q 72. What are the documents to be filed along with the claim of refund on account of deemed exports, if the claim is to be filed by the supplier?

Ans. In case such refund is sought by the supplier of

deemed export supplies, the documentary evidences as specified in notification no.49/2017-Central Tax dated 18.10.2017 are required to be furnished. The notification specifies the following documents.

- 1. Acknowledgment by the jurisdictional Tax officer of the Advance Authorisation holder or Export Promotion Capital Goods Authorisation holder, as the case may be, that the said deemed export supplies have been received by the said Advance Authorisation or Export Promotion Capital Goods Authorisation holder, or a copy of the tax invoice under which such supplies have been made by the supplier, duly signed by the recipient Export Oriented Unit that said deemed export supplies have been received by it.*
- 2. An undertaking by the recipient of deemed export supplies that no input tax credit on such supplies has been availed of by him.*
- 3. An undertaking by the recipient of deemed export supplies that he shall not claim the refund in respect of such supplies and the supplier may claim the refund.*

The procedure regarding procurement of supplies of goods from DTA by Export Oriented Unit (EOU) / Electronic Hardware Technology Park (EHTP) Unit / Software Technology Park (STP) Unit / Bio-Technology Parks (BTP) Unit under deemed export as laid down in Circular No. 14/14/2017-GST dated 06.11.2017 needs to be complied

with.

Q 73. What are the documents to be filed along with the claim of refund on account of deemed exports, if the claim is to be filed by the recipient?

Ans. In case the refund is filed by the recipient of deemed export supplies, an undertaking by the supplier of deemed export supplies that he shall not claim the refund in respect of such supplies is also required to be furnished manually.

The procedure regarding procurement of supplies of goods from DTA by Export Oriented Unit (EOU) / Electronic Hardware Technology Park (EHTP) Unit / Software Technology Park (STP) Unit / Bio-Technology Parks (BTP) Unit under deemed export as laid down in Circular No. 14/14/2017-GST dated 06.11.2017 needs to be complied with.

Q 74. What will be the eligible amounts for refund in case of deemed exports?

Ans. While filing RFD-01A (recipient of deemed exports), taxpayers need to enter the amount that they want to get as refund. The lowest of the following three categories are eligible for refund.

- 1. Balance in the Electronic Credit Ledger*
- 2. ITC availed for the particular tax period*
- 3. Amount entered by taxpayer in refund claim matrix.*

Q 75. In case the supplier claims refund on account of deemed export supplies, will the recipient be eligible for refund of ITC in respect of other inputs/input services which have been used in making zero rated supply?

Ans. Yes. As per Rule 89(4A) In the case of supplies received on which the supplier has availed the benefit of notification No. 48/2017-Central Tax 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.

Q 76. What is the Procedure to be followed in case of Deemed Exports?

Ans. Rule 89 of the CGST Rules, 2017 as amended vide Notification No. 47/2017- Central Tax dated 18.10.2017 allows either the recipient or supplier of such supplies to claim refund of tax paid thereon.

For supplies to EOU / EHTP / STP / BTP units in terms of Notification No. 48/2017-Central Tax dated 18.10.2017, the following procedure and safeguards are prescribed -

(i) The recipient EOU / EHTP / STP / BTP unit shall give prior intimation in a prescribed proforma in "Form-A" (appended herewith) bearing a running serial number containing the goods to be procured, as pre-approved by the Development Commissioner and the details of the supplier before such deemed export supplies are made. The said intimation shall be given to -

(a) the registered supplier;

(b) the jurisdictional GST officer in charge of such registered supplier; and

(c) its jurisdictional GST officers.

(ii) The registered supplier thereafter will supply goods under tax invoice to the recipient EOU / EHTP / STP / BTP unit.

(iii) On receipt of such supplies, the EOU / EHTP / STP / BTP unit shall endorse the tax invoice and send a copy of the endorsed tax invoice to –

(a) the registered supplier;

(b) the jurisdictional GST officer in charge of such registered supplier; and

(c) its jurisdictional GST officers.

(iv) The endorsed tax invoice will be considered as proof of deemed export supplies by the registered person to EOU / EHTP / STP / BTP unit.

(v) The recipient EOU / EHTP / STP / BTP unit shall maintain records of such deemed export supplies in digital form, based upon data elements contained in "Form-B" (appended herewith). The software for maintenance of digital records shall incorporate the feature of audit trail. While the data elements contained in the Form-B are mandatory, the recipient units will be free to add or

continue with any additional data fields, as per their commercial requirements. All recipient units are required to enter data accurately and immediately upon the goods being received in, utilized by or removed from the said unit. The digital records should be kept updated, accurate, complete and available at the said unit at all times for verification by the proper officer, whenever required. A digital copy of Form – B containing transactions for the month, shall be provided to the jurisdictional GST officer, each month (by the 10th of month) in a CD or Pen drive, as convenient to the said unit.

3. The above procedure and safeguards are in addition to the terms and conditions to be adhered to by a EOU / EHTP / STP / BTP unit in terms of the Foreign Trade Policy, 2015-20 and the duty exemption notification being availed by such unit.

Q 77. What is the relevant date for filing of refund claim in case of deemed exports?

Ans. The relevant date is the date of on which return relating to such deemed exports is furnished. The claim needs to be filed within 2 years from this date.

Q 78. What are the conditions subject to which supply of goods (to merchant exporters) at concessional rate may be made?

Ans. Supplies at concessional rate of 0.1% can be made subject to compliance with conditions mentioned in notification no.40/2017-Centra Tax (Rate) dated

23.10.2017. (Corresponding IGST notification no. 41/2017-Integrated Tax (Rate) dated the 23rd October, 2017,) The conditions are as under

(i) the registered supplier shall supply the goods to the registered recipient on a tax invoice;

(ii) the registered recipient shall export the said goods within a period of ninety days from the date of issue of a tax invoice by the registered supplier;

(iii) the registered recipient shall indicate the Goods and Services Tax Identification Number of the registered supplier and the tax invoice number issued by the registered supplier in respect of the said goods in the shipping bill or bill of export, as the case may be;

(iv) the registered recipient shall be registered with an Export Promotion Council or a Commodity Board recognised by the Department of Commerce;

(v) the registered recipient shall place an order on registered supplier for procuring goods at concessional rate and a copy of the same shall also be provided to the jurisdictional tax officer of the registered supplier;

(vi) the registered recipient shall move the said goods from place of registered supplier –

(a) directly to the Port, Inland Container Depot, Airport or

Land Customs Station from where the said goods are to be exported; or

(b) directly to a registered warehouse from where the said goods shall be moved to the Port, Inland Container Depot, Airport or Land Customs Station from where the said goods are to be exported;

(vii) if the registered recipient intends to aggregate supplies from multiple registered suppliers and then export, the goods from each registered supplier shall move to a registered warehouse and after aggregation, the registered recipient shall move goods to the Port, Inland Container Depot, Airport or Land Customs Station from where they shall be exported;

(viii) in case of situation referred to in condition (vii), the registered recipient shall endorse receipt of goods on the tax invoice and also obtain acknowledgement of receipt of goods in the registered warehouse from the warehouse operator and the endorsed tax invoice and the acknowledgment of the warehouse operator shall be provided to the registered supplier as well as to the jurisdictional tax officer of such supplier; and

(ix) when goods have been exported, the registered recipient shall provide copy of shipping bill or bill of export containing details of Goods and Services Tax Identification Number (GSTIN) and tax invoice of the registered supplier along with proof of export general manifest or export report

having been filed to the registered supplier as well as jurisdictional tax officer of such supplier.

Q 79. What happens if the merchant exporter fails to export such goods?

Ans. The registered supplier shall not be eligible for the exemption (i.e. supply at concessional rate) if the registered recipient fails to export the said goods within a period of ninety days from the date of issue of tax invoice.

Q 80. Can the merchant exporter claim refund of ITC in respect of supplies received at concessional rate in terms of notification 40/2017-Central Tax (Rate) dated 23.10.2017. What about other inputs/input services which have gone into the subject export but which have not been procured under the said notification?

Ans. Yes. Rule 89(4B) of the CGST Rules stipulates that in the case of supplies received on which the supplier has availed the benefit of the notification No. 40/2017-Central Tax (Rate) dated the 23rd October, 2017 or notification No. 41/2017-Integrated Tax (Rate) dated the 23rd October, 2017 or notification No. 78/2017-Customs dated the 13th October, 2017 or notification No.79/2017-Customs 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.

Thus, a merchant exporter (recipient) can claim refund of ITC in respect of supplies on which the supplier has availed benefit of notification 40/2017 – Central Tax (Rate) dated 23.10.2017 (at concessional rate of 0.1%). This entire 0.1% paid (along with ITC of other supplies on which concessional rate of GST has not been availed but used in export of such goods) will be available as refund.

For other exports made by merchant exporters in respect of which concessional rate of GST has not been availed, the merchant exporters will be entitled to refund of accumulated ITC in terms of Rule 89(4) by resort to 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

It is important to note that for the purpose of above calculation, turnover of zero rated supply of goods WILL EXCLUDE turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both.

Similarly, Net ITC will also EXCLUDE input tax credit availed for which refund is claimed under sub-rules (4A) (supplies under deemed export provisions) or (4B) (supplies to merchant exporters at concessional rate of duty) or both.

Q 81. How can the supplier to merchant exporter claim refund, since such supplies will not be considered as zero rated supplies?

Ans. The supplier who supplies goods at the concessional rate is also eligible for refund on account of inverted tax structure as per the provisions of clause (ii) of the first proviso to sub-section (3) of section 54 of the CGST Act read with Rule 89(5) of the CGST Rules.

Q 82. Is the scheme of making supplies to merchant exporters at concessional rate of duty in terms of notification 40/2017-Central Tax (Rate) dated 23.10.2017 compulsory?

Ans. No. The benefit of supplies at concessional rate is subject to certain conditions and the said scheme is optional. The option may or may not be availed by the supplier and / or the recipient and the goods may be procured at the normal applicable tax rate.

Q 83. Can the merchant exporter export goods (in respect of which concessional rate of duty is availed by the supplier) on payment of IGST and claim refund of IGST?

Ans. No. The exporter of such goods can export the goods only under LUT / bond and cannot export on payment of integrated tax. In this connection, Rule 96(10) of the CGST Rules as amended from time to time may be referred.

Q 84. Will refund of Compensation Cess be also admissible under GST?

Ans. Yes. Circular No.1/1/2017-Compensation Cess issued by Board clarifies that provisions of section 16 of the

IGST Act, 2017, relating to zero rated supply will apply mutatis mutandis for the purpose of Compensation Cess (wherever applicable), that is to say that:

a) Exporter will be eligible for refund of Compensation Cess paid on goods exported by him [on similar lines as refund of IGST under section 16(3) (b) of the IGST, 2017]; or

b) No Compensation Cess will be charged on goods exported by an exporter under bond and he will be eligible for refund of input tax credit of Compensation Cess relating to goods exported [on similar lines as refund of input taxes under section 16(3) (a) of the IGST, 2017].

Thus, refund of compensation Cess (if its on account of zero rated supplies) will be admissible to the claimant. The process and procedure for claim of such refund will be same as for refund of IGST (on both goods and services) and in respect of accumulated ITC of compensation cess.

Further, in cases of unutilised ITC of compensation cess availed on inputs in cases where the final product is not subject to the levy of compensation cess, it has been clarified vide circular no. 45/19/2018-GST dated 30th May 2018, that refund of accumulated ITC can be claimed in such situations, however the rebate route i.e. payment of IGST and claiming refund of compensation cess of IGST paid will not be permissible in in such cases. In such cases they cannot utilise the compensation cess paid on inputs for payment of IGST in view of the proviso to section 11(2) of

the Cess Act, which allows the utilization of the input tax credit of cess, only for the payment of cess on the outward supplies. Accordingly, they cannot claim refund of compensation cess in case of zero-rated supply on payment of integrated tax.

Q 85. How can refunds of excess balance in the electronic cash ledger be claimed?

Ans. Excess balance in the cash ledger after making good all liabilities, would be available as refund to the registered person. Presently this refund is also available through RFD-01A procedure. Section 49(6) enables grants of refund of excess balance in the cash ledger and reads as under

Q 86. Is there any time limit within which refund of excess balance in cash ledger need to be submitted?

Ans. No. Refunds of excess balance in cash ledger can be claimed anytime. The law enables making the claim even at the time of filing monthly returns. No relevant date has been prescribed for such claims.

Q 87. A registered person pays IGST for a supply which is subsequently held to be intra-state. What is the relevant date, within which he has to file a claim for refund of IGST wrongly paid?

Ans. Section 77 of CGST Act, 2017, read with Section 19 of IGST Act, are the enabling provisions for grant of refund in such cases. These provisions use the words “.....shall be granted refund of the amount of Central/integrated tax so

paid in such manner and subject to such conditions as may be prescribed....” Thus, refunds will have to be mandatorily granted. The stipulation in Section 54(1) that claims will have to be filed within 2 years from the relevant date, will not apply for a claim under this category.

Q 88. Interest on delayed payment (if refund is not paid within 60 days from the date of receipt of application) will be paid right from the first date of receipt of claim till the date of payment. Is this statement true?

Ans. As per section 56 of CGST Act, 2017, If any tax ordered to be refunded under section 54(5) to any applicant is not refunded within sixty days from the date of receipt of application under section 54(1), 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. Thus, interest liability will start after expiry of 60 days of receipt of application.

Q 89. If refund arises on account of finalisation of provisional assessment under GST, will the registered person need to make a separate claim for refund of such amount under Section 54 or will it be granted suo-motu consequent to finalisation?

Ans. If a claim of refund arises on account of finalisation

of provisional assessment, the registered person will have to file a refund claim under Section 54, claiming the consequential refund. Such refunds will not be granted suo-motu by the officer finalizing the refund claim.

Q 90. What is the relevant date within which claim has to be filed for refunds arising as a consequence of finalisation of provisional assessment?

Ans. Such claims need to be filed within 2 years from the date of adjustment of tax after the final assessment thereof.

Q 91. What documents need to be submitted along with the claim of refund (for refunds arising as consequence to finalization of provisional assessment)?

Ans. The Refund claim needs to be filed in GST RFD-01A on the common portal accompanied by the following documents

(a) 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;

(b) 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;;

(c) a Certificate in Annexure 2 of FORM GST RFD-01A

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:

Q 92. Is manual filing of claims permitted for refunds arising as a consequence of finalisation of provisional assessment?

Ans. No.

Q 93. In case refund claim is filed as a consequence of any Court judgement, when will interest become due?

Ans. For a claim of refund of tax paid during the course of proceedings & which the Courts have held as not payable on merits, interest liability would arise under Section 56 of the CGST Act. i.e interest would be payable if the amount has not been refunded within 60 days of filing of application for refund by the claimant. That is to say, after the judgment or decree holding the tax to be not payable, the appellant will have to file a claim a claim under Section 54(1) and thereafter if the amount is not refunded within 60 days of filing of application, interest liability will arise for Revenue.

The position would be different in case of refund of pre-deposit. For refund of amounts paid as pre-deposit (in terms of Section 107(6) & 112 (8)) interest liability will arise in terms of Section 115 of the CGST Act. As per Section 115 of CGST Act, where an amount paid by the appellant

*under sub-section (6) of section 107 or sub-section (8) of section 112 is required to be refunded consequent to any order of the Appellate Authority or of the Appellate Tribunal, interest at the rate specified under section 56 shall be payable in respect of such refund from the **date of payment of the amount** till the date of refund of such amount. Thus, interest liability starts from the date of making of payment (and not the date of filing of application for refund) in the case of amounts paid as pre-deposit.*

Q 94. What are the documentary evidences that need to accompany the refund claim, in cases where the claim arises a consequence of any court order or judgement?

Ans. Such refund claims are to be filed in form GST RFD-01 on the common portal. The application has to be accompanied by the following documentary evidences in Annexure 1 in Form GST RFD-01A, 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 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;

- (c) *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:*

Q 95. What is unjust enrichment. Does the concept apply in GST?

Ans. The Hon'ble Supreme Court in the case of Sahakari Khand Udyog Mandal Ltd. v/s Commissioner of Central Excise & Customs as reported in 2005 (181) ELT 328 S.C. has defined 'unjust enrichment' as under:

(a) 'Unjust enrichment' means retention of a benefit by a person that is unjust or inequitable. 'Unjust enrichment' occurs when a person retains money or benefits which in justice, equity and good conscience, belong to someone else.

(b) That no person can be allowed to enrich inequitably at the expense of another. A right of recovery under the doctrine of 'unjust enrichment' arises where retention of a benefit is considered contrary to justice or against equity

The concept is inbuilt in Section 54(5) read with 54(8) of the CGST Act, 2017. Every claim of refund sanctioned will be credited to the Consumer Welfare Fund in terms of section

54(5) of CGST Act, 2017. It will, instead of being credited to the fund, be paid to the claimant in situations mentioned in Section 54(8). Thus, the principle will not apply to refund claims arising on account of zero rated supply, refund of accumulated ITC on account of zero rated supply and inverted rate structure, where wrong tax is paid (IGST instead of C+SGST & vice versa), where tax has been paid on advances but no supply is made and no invoice has been issued. These are cases where the principle of unjust enrichment is not applicable and the proper officer need not satisfy himself whether the incidence of tax has been passed on to any other person in such cases. In all other cases, refund will be sanctioned to the claimant only if the claimant demonstrates that the incidence of tax has not been passed on to any other person.

Q 96. What is the standard of proof required under GST to demonstrate non-passing of incidence of tax to any other person?

Ans. Rule 89(2) (l) & (m) deals with documentary evidence pertaining to passing of incidence of tax. In cases where the amount of refund claim does not exceed ₹2,00,000/- 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, Where the claim exceeds ₹2,00,000/- a Certificate in Annexure 2 of FORM GST RFD-01A 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

However, the aforesaid declaration/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 section 54 (8). That is for cases covered by clause a to d & f of Section 54, since by default the doctrine of unjust enrichment does not apply, there is no requirement of any declaration or certificate to prove non passing of the incidence of tax to any other person.

Explanation to Rule 89 expressly states that 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. Thus, if Revenue has cogent evidence to show that the amount of tax has been recovered from the recipient, then it will be presumed that the incidence of tax has been passed on the consumer and the declaration/certificate given by the applicant will not suffice to cross the bar of unjust enrichment.

14.1 Refunds by UINs

Q 97. Which are the class of persons entitled for refund of GST paid on inward supplies?

Ans. The Central Government has issued Notification No. 16/2017-Central Tax (Rate) dated 28th June 2017, whereunder the following entities have been specified for the purposes of Section 55 of the CGST Act.

*(i) United Nations or a specified international organisation;
and*

*(ii) Foreign diplomatic mission or consular post in India, or
diplomatic agents or career consular officers posted therein*

Q 98. How can UN bodies claim refund of GST paid on their inward supplies?

Ans. The procedure for filing a refund application by UN bodies has been outlined under Rule 95 of the CGST Rules. The process has been further clarified vide Circular No. 36/10/2018-GST dated 13.03.2018 and Circular No. 43/17/2018-GST dated 13.04.2018.

Q 99. Who will process the claims for refund filed by UN bodies/Embassies etc?

Ans. All the entities claiming refund have to submit the duly filled in print out of FORM RFD-10 to the jurisdictional Central Tax Commissionerate along with statement of inward invoices in FORM GSTR-11. All refund claims shall be processed and sanctioned by respective Central Tax offices. In order to facilitate processing of refund claims of UIN entities, a nodal officer has been designated in each State. Application for refund claim may be submitted before the designated Central Tax nodal officers in the State in which the UIN has been obtained.

Q 100. Are there any conditions prescribed in notification no.16/2017-Central Tax (Rate) dated 28.06.2017?

Ans. Yes. The notification prescribes the following conditions

(a) United Nations or a specified international organisation shall be entitled to claim refund of central tax paid on the supplies of goods or services or both received by them subject to a certificate from United Nations or that specified international organisation that the goods and services have been used or are intended to be used for official use of the United Nations or the specified international organisation.

(b) Foreign diplomatic mission or consular post in India, or diplomatic agents or career consular officers posted therein shall be entitled to claim refund of central tax paid on the supplies of goods or services or both received by them subject to, -

(i) that the foreign diplomatic mission or consular post in India, or diplomatic agents or career consular officers posted therein, are entitled to refund of central tax, as stipulated in the certificate issued by the Protocol Division of the Ministry of External Affairs, based on the principle of reciprocity;

(ii) that in case of supply of services, the head of the foreign diplomatic mission or consular post, or any person of such mission or post authorised by him, shall furnish an undertaking in original, signed by him or the authorised person, stating that the supply of services received are for official purpose of the said foreign diplomatic mission or consular post; or for personal use of the said diplomatic agent or

career consular officer or members of his/her family;

(iii) that in case of supply of goods, concerned diplomatic mission or consulate or an officer duly authorized by him will produce a certificate that,–

(I) the goods have been put to use, or are in the use, as the case may be, of the mission or consulate;

(II) the goods will not be supplied further or otherwise disposed of before the expiry of three years from the date of receipt of the goods; and

(III) in the event of non-compliance of clause (I), the diplomatic or consular mission will pay back the refund amount paid to them;

(iv) in case the Protocol Division of the Ministry of External Affairs, after having issued a certificate to any foreign diplomatic mission or consular post in India, decides to withdraw the same subsequently, it shall communicate the withdrawal of such certificate to the foreign diplomatic mission or consular post;

(v) the refund of the whole of the central tax granted to the foreign diplomatic mission or consular post in India for official purpose or for the personal use or use of their family members shall not be available

from the date of withdrawal of such certificate.

Q 101. What is the procedure for filing of refund applications by UIN agencies?

Ans. The procedure for filing a refund application has been outlined under Rule 95 of the CGST Rules which provides for filing of refund on quarterly basis in FORM RFD-10 along with a statement of inward invoices in FORM GSTR-11. The Board vide circular no.36/10/2018-GST dated 13.03.2018 has clarified that FORM GSTR-11 along with FORM GST RFD-10 has to be filed separately for each of those quarters for which refund claim is being filed. The Board has also clarified that all the entities claiming refund shall submit the duly filled in print out of FORM RFD-10 to the jurisdictional Central Tax Commissionerate.

Q 102. How will the refund claims of UIN agencies be processed?

Ans. All refund claims shall be processed and sanctioned by respective Central Tax offices. In order to facilitate processing of refund claims of UIN entities, a nodal officer has been designated in each State details of whom are given in Annexure A (of circular 36/10/2018-GST dated 13.03.2018). Application for refund claim may be submitted before the designated Central Tax nodal officers in the State in which the UIN has been obtained.

There may be cases where multiple UINs existed for the same entity but were later merged into one single UIN. In such cases, field formations are requested to process refund

claims for earlier unmerged UINs also. Hence, the refund application will be made with the single UIN only but invoices of old UINs may be declared in the refund claim, which may be accepted and taken into account while processing the refund claim. Other circulars on the subject are circular no. 43/17/2018-GST dated 13.04.2018, Circular No. 63/37/2018-GST dated 14.09.2018 and Circular No. 68/42/2018-GST dated 05.10.2018.

Q 103. Can UIN agencies file refund claims with the proper officer of State Tax?

Ans. No. The claims are to be filed with the jurisdictional central tax Commissionerate only. All refund claims shall be processed and sanctioned by respective Central Tax offices.

Q 104. What are the documents required to be submitted by UIN agencies along with refund claims?

Ans. The procedure for filing a refund application has been outlined under rule 95 of the Central Goods and Services Tax Rules, 2017 which provides for filing of refund on a quarterly basis in FORM RFD-10 along with a statement of inward invoices in FORM GSTR-11. However, the print version of FORM GSTR-11 generated by the system does not have invoice-wise details. Therefore, the Board vide circular no. 43/17/2018-GST dated 13.04.2018 has clarified that till the system generated FORM GSTR- 11 does not have invoice-level details, UIN agencies are requested to manually furnish a statement containing the details of all the invoices on which refund has been claimed, along with refund application.

Further all the relevant documents referred to in notification no.16/2017-Central Tax (Rate) dated 28.06.2017 need to be submitted along with the refund claim.

Q 105. Will refund be granted if the inward invoices does not bear UIN number of the recipient?

Ans. Many suppliers did not record the UINs on the invoices of supplies of goods or services to UIN agencies. The Board vide circular no.43/17/2018-GST dated 13.04.2018 has clarified that the recording of UIN on the invoice is a necessary condition under rule 46 of the CGST Rules, 2017. If suppliers / vendors are not recording the UINs, action may be initiated against them under the provisions of the CGST Act, 2017.

Further, in cases where, UIN has not been recorded on the invoices pertaining to refund claim for the quarters of July – September 2017, October – December 2017 and January – March 2018, a one-time waiver is being given by the Government, subject to the condition that copies of such invoices will be submitted to the jurisdictional officers and will be attested by the authorized representative of the UIN agency. Further waiver from the period April 2018 to March 2019 has been given vide Circular No. 63/37/2018-GST dated 14.09.2018. Field officers have been advised that the terms of Notification No. 16/2017-Central Tax (Rate) dated 28th June 2017 and corresponding notifications under the IGST Act, 2017, UTGST Act, 2017 and respective SGST Acts should be satisfied while processing such refund claims.

15. Demands and Recovery

Q 1. Which are the applicable sections for the purpose of recovery of tax short paid or not paid or amount erroneously refunded or input tax credit wrongly availed or utilized?

Ans. Section 73 deals with the cases where there is no invocation of fraud/suppression/mis-statement etc. Section 74 deals with cases where the provisions related to fraud/suppression/mis-statement etc. are invoked.

Q 2. In what form and manner will the demand notice be issued?

*Ans. Demand notices can be issued under Section 73 (cases not involving fraud/suppression), Section 74 (cases involving fraud/suppression) & Section 76 (Tax collected but not paid to the Government). In all cases, along with the notices, a summary thereof has to be served electronically to the noticee in **FORM GST DRC-01***

*Where a statement of demand is issued in terms of Section 73(3) or 74(3), along with the statement a summary thereof has to be served electronically to the noticee in **FORM GST DRC-02**.*

Q 3. What if person chargeable with tax, pays the amount along with interest before issue of show cause notice under section 73?

Ans. A person can make payment voluntarily either before

issue of notice or within thirty days of issue of notice and file an intimation of such voluntary payment in form GST DRC-03.

In such cases if paid before issue of notice, notice shall not be issued by the proper officer {sec.73 (6)} and if paid after issue of notice but within thirty days, all proceedings in respect of such notice shall be deemed to be concluded. {sec.73 (8)}

Q 4. What is the form and manner in which payment of tax/interest/penalty before issue of notice under Section 73 or 74 will be communicated by the taxable person?

*Ans. In cases falling under Section 73, the taxable person has the option to discharge tax and interest liability before issuance of notice under Section 73(1) or statement under Section 73(3). Similarly, in cases falling under Section 74, the taxable person has the option to discharge tax/interest/penalty equal to 15% of tax liability before issuance of notice under Section 74(1) or statement under Section 74(3). If he opts to make such payment before issuance of notice, he shall make the payment of tax and interest and thereafter inform the proper officer in **FORM GST DRC-03**. The proper officer has to issue an acknowledgement in **FORM GST DRC-04**.*

Q 5. What is the form and manner in which payment of tax/interest/penalty after issue of notice under

Section 73 or 74 will be communicated by the taxable person?

Ans. In cases falling under Section 73, the taxable person has the option to discharge tax and interest liability within 30 days of issuance of notice under Section 73(1) or statement under Section 73(3). Similarly, in cases falling under Section 74, the taxable person has the option to discharge tax/interest/penalty equal to 25% of tax liability within 30 days of issuance of notice under Section 74(1) or statement under Section 74(3). If he opts to make such payment within 30 days of issuance of notice, he shall make the payment of tax and interest and thereafter inform the proper officer in FORM GSTDRC-03. In such cases, the proper officer shall issue an order in FORM GST DRC-05 concluding the proceedings in respect of the said notice.

Q 6. What is the course of action, if the assessee has not paid the tax or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful mis-statement or suppression of facts?

Ans. In such circumstances, the proper officer 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.

Q 7. What is the time limit for issuance of SCN in light of the above circumstances?

Ans. In such circumstances, the proper officer shall issue the notice at least six months prior to the time limit specified in section 74(10) for issuance of the Order i.e 4 ½ years from the due date of 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 from the date of erroneous refund.

Thereafter, the proper officer is required to issue the Order under section 74 (9) within a period five years from the due date of 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 from the date of erroneous refund.

Q 8. How will the taxable person respond to the SCN issued under Section 73 or Section 74?

Ans. The taxable person shall respond to the notices issued under Section 73 or Section 74 in FORM GST DRC-06.

Q 9. What is the form and manner in which an order determining tax liability will be issued under Section 73 or Section 74?

Ans. The order will be a speaking order after following

*due process of law. A summary of the order issued under section 73(9) or section 74(9) or section 76(3) 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.*

Q 10. After issuance of order, is it necessary for the proper officer to issue a recovery notice?

Ans. No. The order itself will be treated as a recovery notice.

Q 11. Is there any time limit for adjudication the cases?

Ans:

- (i)** *In case of section 73(cases other than fraud/suppression of facts/wilful misstatement), the time limit for adjudication of cases is 3 years from the due date for filing of annual return for the financial year to which demand relates to or the date of erroneous refund/ITC wrongly availed. {sec.73(10)}*
- (ii)** *In case of section 74(cases of fraud/suppression of facts/wilful misstatement), the time limit for adjudication is 5 years from the due date for filing of annual return for the financial year to which demand relates to or the date of erroneous refund/ITC wrongly availed. {sec.74(10)}*

Q 12. If notice is issued under Section 74 and thereafter the noticee makes payment, is there any need to adjudicate the case?

Ans. Where the person to whom a notice has been issued under sub-section (1) of section 74, pays the tax along with interest with penalty equal to 25% of such tax within 30 days of issue of notice, all proceedings in respect of such notice shall be deemed to be concluded. {Sec.74 (8)}

Q 13. How will rectification of order be done by the proper officer?

*Ans. As per Section 161, mistakes apparent on record can be rectified and such rectification has to be done within 3 months of the date of issue of order. However, no such rectification will be done after 6 months from the date of the order. This period of 6 months will not be applicable to rectification of mistakes of purely clerical or arithmetic in nature arising from accidental slip or omission. 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***

Q 14. What are the remedies available to the assessee who have been issued order under section 74 of the CGST Act?

Ans. Any person served with an order issued under section 74(9) pays the tax along with interest payable thereon under section 50 and a penalty equivalent to fifty

percent 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.

Q 15. What is the time limit for initiation of recovery proceedings under CGST Act, 2017?

Ans. 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.

Q 16. What is the course of recovery in cases where the tax demand confirmed is enhanced in appeal/revision proceedings?

Ans. The notice of demand is required to be served only in respect of the enhanced dues. In so far as the amount already confirmed prior to disposal of appeal/revision, the recovery proceedings may be continued from the stage at which such proceedings stood immediately before such disposal of appeal/revision. (Sec.84(a))

Q 17. What are the provisions for recovery of the erstwhile dues in respect of default of C.Ex. duties and Service Tax in the GST regime?

Ans. As per Section (8) of Section 142 of the GST Act,

(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 or tax under this Act 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 (1 of 1944) and the amount rejected, if any, shall not be admissible as input tax credit under this Act.

*Detailed procedure for recovery of arrears under the existing law and reversal of inadmissible input tax credit has been outlined in the CBIC circular no. 42/16/2018-GST dated 13th April, 2018. It may also be noted that recovery can now be made using **FORM GST DRC-07**.*

The CENVAT credit of central excise duty or service tax wrongly carried forward as transitional credit, and the arrears of central excise duty, service tax or wrongly availed CENVAT credit thereof under the existing law shall be recovered as central tax liability to be paid through the utilization of amounts available in the electronic credit ledger or electronic cash ledger of the registered person.

The arrears of interest, penalty and late fee in relation to CENVAT credit wrongly carried forward, and in relation to arrears of central excise duty, service tax or wrongly availed CENVAT credit thereof under the existing law shall be recovered as interest, penalty and late fee of central tax to be paid through the utilization of the amount available in electronic cash ledger of the registered person.

Q 18. What are the modes of recovery of tax available to the proper officer?

Ans. The proper officer may recover the dues in following manner:

- a) Deduction of dues from the amount owned by the tax authorities payable to such person.*
- b) Recovery by way of detaining and selling any goods belonging to such person;*
- c) Recovery from 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 credit of the Central or a State Government;*
- d) Distrain any movable or immovable property belonging to such person, until the amount payable is paid. If the dues not paid within 30days, the said property is to be sold and with the proceeds of such sale the amount payable and cost of sale shall be recovered;*
- e) Through the Collector of the district in which such person*

owns any property or resides or carries on his business, as if it was an arrear of land revenue;

(f) By way of an application to the appropriate Magistrate who in turn shall proceed to recover the amount as if it were a fine imposed by him;

(g) Through enforcing the bond /instrument executed under this Act or any rules or regulations made thereunder;

(h) CGST arrears can be recovered as an arrear of SGST and vice-versa.

Q 19. In what manner will the proper officer proceed to recover dues from the amounts owed to the defaulter?

*Ans. Where any amount payable by a 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.*

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.

Q 20. What is the procedure for recovery of dues by sale of goods belonging to the defaulter, which is in the control of the proper officer?

Ans. (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.

Q 21. How will the dues owed by the defaulter be recovered by the proper officer from a third person (a bank, post office, insurer etc.) who holds money on behalf of the defaulter?

Ans. (1) The proper officer may serve upon a person

referred to in clause (c) of sub-section (1) of section 79 (referred to in question 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.

Q 22. What will be the consequences, if the third person referred to above, fails to make payment in pursuance of notice issued in FORM GST DRC-13?

Ans. 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.

Further, 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.

Q 23. How can the proper officer recover the dues from the amount payable to the defaulter as a

consequence of execution of a decree of a civil court?

Ans. 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.

Q 24. What is the manner in which the proper officer will recover dues from the defaulter by sale of movable or immovable property belonging to the defaulter? (Rule 147)

Ans. (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 DRC-12 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 Themis 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.

Q 25. In what manner will a proper officer attach 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? (Rule 151)

Ans. (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.

Q 26. In what manner, will attachment of any property in the custody of courts take place? (Rule 152)

Ans. 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.

Q 27. How will proper officer attach an interest in partnership of the defaulter? (Rule 153)

Ans. (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.

Q 28. How will the amounts recovered as proceeds of sale of goods or movable or immovable property be appropriated? (Rule 154)

Ans. 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 IGST/UTGST/SGST Act(s), 2017 and the rules made thereunder; and

(d) any balance, be paid to the defaulter.

Q 29. How will the proper officer make recovery of dues of the defaulter through land revenue authority?

Ans. 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.

Q 30. How will the amount be recovered from the defaulter, if it is to be recovered as a fine imposed under the Code of Criminal Procedure, 1973?

Ans. 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.

Q 31. Can the amount due from the defaulter be recovered from the surety?

Ans. Yes. 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. (Rule 157)

Q 32. Whether the payment of tax dues can be made in instalments?

Ans. Yes, a person can request for payment of any amount due under the Act, other than the amount due as per the liability self-assessed in any return, in monthly instalments not exceeding twenty-four, subject to payment of interest under section 50 with such limitations and conditions as may be prescribed.

However, where there is default in payment of any one instalment on its due date, the whole outstanding balance payable on such date shall become payable and recovered without any further notice. {sec.80 of CGST Act}

Q 33. In what manner, will the Commissioner deal with a request for payment of tax and other amounts in instalments? (Rule 158)

Ans. (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 shall not be allowed where-

(a) the taxable person has already defaulted on the payment of any amount under the Act or the IGST/UTGST/SGST Act(s), 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 IGST/UTGST/SGST Act(s), 2017;

(c) the amount for which instalment facility is sought is less than twenty-five thousand rupees.

Q 34. In what manner will provisional attachment of property take place? (Rule 159)

Ans. (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.

Q 35. How will notice of tax dues be given to the liquidator in terms of Section 88?

Ans. 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.

Q 36. How will the order for reduction or enhancement of any demand in terms of Section 84 be given? (Rule 161)

Ans. The order for the reduction or enhancement of any demand under section 84 shall be issued in Form GST DRC-25.

Q 37. Can recovery of arrears of a person registered in one State be effected from a distinct person located in another state?

Ans. Yes, vide the CGST (Amendment) Act, 2018, an explanation clause has been inserted in section 79 of the CGST Act, 2017 to the effect that person in section 79 includes “distinct persons” as referred to in sub-section (4) or, as the case may be, sub-section (5) of section 25. Thus, the tax dues are recoverable from all the persons having the same PAN. (This provision is yet to be notified)

16. Appeals/Revision

Q 1. Who is an adjudicating authority under GST?

*Ans. “adjudicating authority” means any authority, appointed or authorised to pass any order or decision under this Act, but does not include the Central Board of Indirect Taxes and Customs(CBIC), the Revisional Authority, the Authority for Advance Ruling, the Appellate Authority for Advance Ruling, the Appellate Authority, the Appellate Tribunal **and the Authority referred to in sub-section (2) of section 171 (National Anti-Profiteering Authority).***

Q 2. Whether any person aggrieved by any order or decision passed against him has the right to appeal?

Ans. Yes. Any person aggrieved by any order or decision passed under the GST Act(s) has the right to appeal to the Appellate Authority under Section 107. It must be an order or decision passed by an “adjudicating authority”.

However, some decisions or orders (as provided for in Section 121) are not appealable.

Q 3. Who is an appellate authority under GST?

Ans. “Appellate Authority” means an authority appointed or authorised to hear appeals as referred to in section 107.

Q 4. What is the time limit within which appeals should be filed against any order under GST?

*Ans. For an Appeal by the aggrieved person - Appeal to the prescribed Appellate Authority has to be made within **three months** from the date on which the said decision or order is communicated to such person.*

*For an appeal by the department (Revenue) - the time limit is 6 months within which review proceedings have to be completed and appeal filed before the Appellate Authority. The Commissioner of CGST/SGST may, in case he is of the opinion that the order passed by the adjudicating authority is not legal and proper, 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.*

The appellate authority can condone a delay of up to one month from the end of the prescribed period of 3/6 months for filing the appeal (3+1/6+1), provided there is "sufficient cause" as laid down in the section 107(4). A delay beyond one month cannot be condoned by the appellate authority under any circumstances.

Q 5. Who are the proper officers to whom appeals will lie under GST?

Ans. The appellate authorities under the CGST and SGST Act(s) are as under:

For an appealable order passed under the CGST Act

Any person aggrieved by any decision or order passed under this Act or the SGST / UTGST Act may appeal to -

(a) the Commissioner (Appeals) where such decision or order is passed by the Additional or Joint Commissioner;

(b) any officer not below the rank of Joint 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.

(Rule 109A of the CGST Rules, 2017)

For an appealable order passed under the respective SGST Act

Any person aggrieved by any decision or order passed under the SGST Act or the CGST Act may appeal to

(a) the Additional Commissioner where such decision or order is passed by the Joint Commissioner;

(b) the Joint Commissioner (Appeals) where such decision or order is passed by the Deputy Commissioner;

(c) the Deputy Commissioner (Appeals) where such decision or order is passed by the Assistant Commissioner or State Tax Officer, within three months from the date on which the said decision or order is communicated to such person.

Q 6. Whether appeal can be filed to CGST

appellate authority against the order passed by an officer of SGST or vice versa?

Ans. Section 6 (3) of the CGST Act specifically mandates that any proceedings for rectification, appeal and revision, wherever applicable, of any order passed by an officer appointed under CGST Act shall not lie before an officer appointed under the SGST or UTGST Act. Similar provisions exist in SGST/UTGST Act also. Thus appeal against any order passed by CGST officer lie before the Appellate Authority specified under the CGST Act. Similarly appeal against any order passed by SGST officer lie before the Appellate Authority specified under the SGST Act.

Q 7. If the proper officer of CGST passes an order under the CGST Act, can such proper officer issue an order under the corresponding State/UT GST Act?

Ans. Yes. Where any proper officer issues an order under the CGST Act, he shall also issue an order under the SGST/UTGST Act, as authorised by the SGST/UTGST Act, under intimation to the jurisdictional officer of State tax or Union territory tax. Similar provisions exist under the SGST/UTGST Act also.

Q 8. Does the appellate authority have the power to condone any delay beyond three/six months in filing of appeal. If so, what is the period of delay that can be condoned by the appellate authority?

*Ans. Yes. The Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the period of three months (for aggrieved person) or six months (for revenue), as the case may be, allow it to be presented within a further period of **one month**. A delay beyond one month cannot be condoned by the appellate authority under any circumstances.*

Q 9. Is there any requirement of any pre-deposit for filing of appeal before the Appellate Authority?

Ans. Yes. Such a requirement is there where the appeal is filed by the aggrieved person (i.e. taxable person and not departmental officer). No appeal shall be admitted 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, in relation to which the appeal has been filed.

This 10% shall be subject to a maximum limit of Rs. 50 crores (25 crore each under CGST and SGST) as per the CGST (Amendment) Act, 2018, however, the notification to bring the Act into effect is yet to be issued.

Q 10. Whether the appellate authority has any powers to allow additional grounds not specified in the appeal memo?

Ans. Yes. He has the powers to allow additional grounds

not specified in the grounds of appeal if he is satisfied that the omission was not willful or unreasonable. (Section 107(10) of the CGST Act, 2017)

Q 11. Is there any format in which appeal has to be filed before the appellate authority?

Ans. Yes. Appeal has to be filed in FORM GST APL-03 along with relevant documents. (Rule 109 of CGST Rules).

Q 12. If an appeal is filed and pre-deposit made, can the Revenue authorities still proceed and recover the balance amount?

Ans. No. In terms of Section 107(7) of CGST Act, 2017, where the appellant has paid the amount of prescribed amount of pre-deposit, the recovery proceedings for the balance amount shall be deemed to have been stayed.

Q 13. Is there any time limit within which the appellate authority has to decide the appeal?

*Ans. Yes, however, the limit is recommendatory in nature. As per section 107(13) of CGST Act, 2017, 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. This has been done to avoid deliberate acts to delay the process to get substantive benefits which is not desirable.*

Further, there is a provision of not granting more than three adjournments during an appeal so as to speed up the process.

Q 14. Does the appellate authority have the power to remand the case back to the adjudicating authority?

*Ans. No. As per the mandate of Section 107(11) of the CGST Act, 2017, 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.***

Q 15. Can the appellate authority enhance any fees/penalty/fine in lieu of confiscation or reduce any amount of refund or ITC etc from that contained in the order of the adjudicating authority?

Ans. Yes. However, 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.

Q 16. Can the appellate authority enhance any tax demand from that contained in the order of adjudicating authority?

Ans. Yes. However, 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.

Q 17. Who is the Revisional authority under GST?

Ans. "Revisional Authority" means an authority appointed or authorised for revision of decision or orders as referred to in section 108.

Q 18. What are the powers of the revisional authority?

Ans. 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 SGST /UTGST 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. Such powers are generally to be exercised within three years from passing of the decision or order sought to be revised.

Q 19. What are the circumstances in which the revisional authority shall not exercise his power?

Ans. The Revisional Authority shall not exercise any power under sub-section (1) of Section 108, if—

(a) the order has been subject to an appeal under section 107 (appellate authority) or section 112 (Tribunal) or section 117(High Court) or section 118 (Supreme Court); 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):

However, 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) above, 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) above, whichever is later.

Thus, if the impugned order is subject matter of an appeal, revision proceedings will not be taken up in respect of the said order.

Q 20. An order can be taken up for revision within a time period of three years from the date of passing

of the original order. Can this time period of 3 years be relaxed under any circumstances?

Ans. Yes. 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 of three years where proceedings for revision have been initiated by way of issue of a notice under this section.

Further, where the issuance of an order of revision 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 of three years.

Q 21. To whom will an appeal lie against the order of the appellate and revisional authority?

Ans. The appeal against the order of the appellate authority will lie before the GST Tribunal.

Q 22. What is the structure of Tribunal envisaged under GST?

Ans. A two tier Tribunal structure is envisaged under GST, which will hear and decide appeals filed against orders of appellate and revisional authority. There shall be a National Bench and Regional Benches and there shall be a

State Bench and Area Benches of the Tribunal.

Q 23. What is the jurisdiction of the National (& Regional Benches) & the State (& area benches) of the Tribunal?

Ans. 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.

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 cases where the issues involved relates to the place of supply.

Q 24. What would be the composition of National/Regional Bench?

Ans. The National Bench shall be presided over by the President and shall consist of one Technical Member (Centre) and one Technical Member (State).

The Regional Benches shall consist of a Judicial Member, one Technical Member (Centre) and one Technical Member (State).

Q 25. What would be the composition of the State/Area Benches?

Ans. 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.

Q 26. What happens in case of difference of opinion amongst the members of the Bench?

Ans. 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.

Q 27. What is the time limit within which an aggrieved person should file an appeal before the Tribunal?

*Ans. Any person aggrieved by an order passed against him under section 107 (by the appellate authority or section 108 (revisional authority) 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.***

Q 28. How can Revenue file appeals against orders of appellate/revisional authority? What is the time limit for filing such appeals by the Revenue?

*Ans. Revenue appeals before the Tribunal are filed by way of a review mechanism. 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 the CGST Act or the SGST/ UTGST 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.*

Q 29. Does the Appellate Tribunal have power to condone the delay in filing appeal/memorandum of cross objections, by the aggrieved person/Revenue. If so, to what extent?

Ans. The Appellate Tribunal may admit an appeal within three months after the expiry of the period referred to in Section 112(1) (which is three months for aggrieved person and six months for Revenue), or permit the filing of a memorandum of cross-objections within forty-five days after the expiry of the period referred to Section 112 (5) (which is 45 days from the date of receipt of appeal) if it is satisfied that there was sufficient cause for not presenting it within that period.

Thus, the Tribunal does not have unlimited powers to condone the delay of any period. A delay of only upto three months can be condoned by the Tribunal.

**Q 30. What is memorandum of cross objections?
What is the time limit for filing memorandum of cross objections before Tribunal?**

Ans. A memorandum of cross objection is a tool to file an appeal at a later stage even though a decision not to file an appeal has been earlier taken and the time limit for filing such an appeal is already over, when the other party prefers an appeal in the case. Thus, in the event of an aggrieved person filing appeal, the respondent can also file memorandum of cross objections to be treated as appeal filed by him.

As per section 112(5) of the CGST Act, 2017, the party against whom the appeal has been filed, 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 of appeal, file a memorandum of cross-objections, 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 prescribed time limit specified for filing appeal.

Q 31. Is there any prescribed form for filing an appeal before the Appellate Tribunal?

Ans. Yes. The appeal has to be filed FORM GST APL – 05 as prescribed under rule 110 of the CGST Rules, 2017.

Q 32. What are the pre-deposit requirements for an appeal to be heard by the Appellate Tribunal?

Ans. No appeal shall be filed under Section 112 (8), 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 (amount of pre-deposit paid before the appellate authority), arising from the said order, in relation to which the appeal has been filed.

This 20% shall be subject to a maximum limit of Rs. 100 crores (50 crore each under CGST and SGST) as per the CGST (Amendment) Act, 2018, however, the notification to bring the Act into effect is yet to be issued.

Q 33. If the pre-deposit amount becomes refundable to the taxable person as a consequence of the favourable decision in appeal, will any interest be paid on such amount?

Ans. Yes. As per section 115 of the CGST Act, where an amount paid by the appellant under section 107(6) (appellate authority) or section 112(8) (appellate Tribunal) 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 (not from date of order-in-appeal) till the date of

refund of such amount. The rate of interest notified is six percent.

Q 34. Does the Tribunal have any power to amend its own order?

*Ans. Yes. The Appellate Tribunal may amend any order passed by it so as to rectify any error apparent on the face of the record, if such error is noticed by it on its own accord, or is brought to its notice by the Commissioner or the Commissioner of State tax or the Commissioner of the Union territory tax or the other party to the appeal **within a period of three months from the date of the order:***

Provided that no amendment which has the effect of enhancing an assessment or reducing a refund or input tax credit or otherwise increasing the liability of the other party, shall be made under this sub-section, unless the party has been given an opportunity of being heard.

Q 35. To which authority will further appeals lie from the order of Appellate Tribunal?

*Ans. 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.*

*Against an order of the **National Bench/Regional benches**, the appeal will lie to the Hon'ble Supreme Court.*

Q 36. What is the time limit within which an appeal has to be filed before the High Court?

Ans. An appeal before the High court has to be 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:

However, the High Court can 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.

Q 37. Against which orders will appeals lie to the Hon'ble Supreme Court?

Ans. 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.

Q 38. Which are the orders against which no appeal shall lie?

Ans. 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. (Payment of tax in instalments).

Q 39. In case the aggrieved person prefers an appeal before the High Court/Supreme Court, will the sums due on account of order of Tribunal be payable?

Ans. Yes. Notwithstanding that an appeal has been preferred to the High Court or the Supreme Court, sums due to the Government as a result of an order passed by the National or Regional Benches of the Appellate Tribunal under sub-section (1) of section 113 or an order passed by the State Bench or Area Benches of the Appellate Tribunal under sub-section (1) of section 113 or an order passed by the High Court under section 117, as the case may be, shall be payable in accordance with the order so passed.

Thus, unless the Hon'ble High Court/Supreme Court stays the operation of the order of the Tribunal, the amount due will be payable by the taxable person.

Q 40. Does the Board have the powers to issue directions fixing any monetary limits for filing of appeals?

Ans. Yes. 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. No such circular has been issued so far.

Q 41. Whether the fee paid by litigants in the Consumer Disputes Redressal Commissions are leviable to GST?

Ans. Services by any court or Tribunal established under any law for the time being in force is neither a supply of goods nor services.

It has been clarified vide CBIC Circular no. 32/06/2018 dated 12th February, 2018 that fee paid by litigants in the Consumer Disputes Redressal Commissions are not leviable to GST. Any penalty imposed by or amount paid to these Commissions will also not attract GST.

Q 42. What is the concept of authorised representative in GST?

Ans. Any person who is entitled or required to appear before an officer appointed under the CGST Act, or the Appellate Authority or the Appellate Tribunal in connection with any proceedings, may, otherwise than when required under this Act to appear personally for examination on oath or affirmation, authorise a person to appear on his behalf. A person can authorise to appear on his behalf as his representative:

- 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 GST Practitioner on behalf of the concerned registered person.*

(Section 116 of the CGST Act, 2017)

Q 43. How can a taxpayer search for a GST Practitioner?

Ans. There is a functionality on the dashboard of the registered person on the GST Portal wherein he can get the contact details of all GST Practitioners in a State, district and pincode wise.

Q 44. Can a person be disqualified to act as authorised representative?

Ans. Yes, where an authorised representative, other than those referred to in clause (b) or clause (c) in above

question, 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.

(Rule 116 of the CGST Rules, 2017)

Any person who has been disqualified under the provisions of the SGST / UTGST Act shall be deemed to be disqualified under this CGST Act and vice versa.

(Section 116(4) of the CGST Act, 2017)

17. Advance Ruling

Q 1. What is the meaning of Advance Ruling?

Ans. An 'advance ruling' means a decision provided by the authority or the Appellate Authority to an applicant on matters or on questions specified in section 97(2) or 100(1) of CGST/SGST Act as the case may be, in relation to the supply of goods and/or services proposed to be undertaken or being undertaken by the applicant. (section 95 of CGST/SGST Law and section 12 of UTGST law)

Authority for Advance Rulings(AAR) are appointed under the respective SGST/UTGST Act(s) and the same are deemed to be the Authority for advance ruling under CGST Act also in respect of that State or Union territory.

Q 2. Which are the questions for which advance ruling can be sought?

Ans. Advance Ruling can be sought for the following questions:

- (a) classification of any goods or services or both;*
- (b) applicability of a notification issued under provisions of the GST Act(s);*
- (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 under the Act;*
- (f) whether applicant is required to be registered*

under the Act;

(g) whether any particular thing done by the applicant with respect to any goods or services amounts to or results in a supply of goods or services, within the meaning of that term.

Q 3. Whether questions relating to place of supply can be asked under Advance Ruling Mechanism?

Ans. No.

Q 4. What is the objective of having a mechanism of Advance Ruling?

Ans. The broad objective for setting up such an authority is to:

- (i) provide certainty in tax liability in advance in relation to an activity being undertaken or proposed to be undertaken by the applicant;*
- (ii) helps taxpayer in financial planning and making new investments*
- (iii) attract Foreign Direct Investment (FDI);*
- (iv) reduce litigation;*
- (v) pronounce ruling expeditiously in transparent and inexpensive manner.*

Q 5. What will be the composition of Authority for advance rulings (AAR) under GST?

Ans. 'Authority for advance ruling' (AAR) shall comprise one member CGST and one member SGST/UTGST. They will be appointed by the Central and State government respectively.

Q 6. Is it necessary for a person seeking advance

ruling to be registered?

Ans. No, any person registered under the GST Act(s) or desirous of obtaining registration can be an applicant. (Section 95(b))

Q 7. At what time an application for advance ruling be made?

Ans. An applicant can apply for advance ruling even before taking up a transaction (proposed supply of goods or services) or in respect of a supply which is being undertaken. The only restriction is that the question being raised is already not pending or decided in any proceedings in the case of applicant.

Q 8. What is the fees for filing an application before AAR and AAAR?

Ans. A fee of Rs. 10000/- (Five thousand each under CGST and SGST Act) has to be deposited along with every application GST ARA-01 to AAR.

A fee of Rs. 20000/- (Ten thousand each under CGST and SGST Act) has to be deposited along with every application GST ARA-02 to AAAR.

In respect of application by department in form GST ARA-03, no fee is required to be enclosed.

Q 9. In how much time will the Authority for Advance Rulings have to pronounce its ruling?

Ans. As per Section 98(6) of CGST/SGST Act, the Authority

shall pronounce its ruling in writing within ninety days from the date of receipt of application.

Q 10. What is the Appellate authority for advance ruling (AAAR)?

Ans. Appellate authority for advance ruling (AAAR), shall be constituted under the SGST Act or UTGST Act and such AAAR shall be deemed to be the Appellate Authority under the CGST Act in respect of the respective state or Union Territory. An applicant, or the jurisdictional officer, if aggrieved by any advance ruling, may appeal to the Appellate Authority.

Q 11. How many AAR and AAAR are constituted under GST?

Ans. There is one AAR and AAAR constituted for each State. Details of addresses, contact details along with emails of AAR are available at-

<http://www.gstcouncil.gov.in/sites/default/files/Details%20of%20AAR%2030-11-18.pdf>. Similarly, the details of AAAR are available at-

<http://www.gstcouncil.gov.in/sites/default/files/AAAR-as-on-14-12-2018.pdf>.

Q 12. To whom will the Advance Ruling be applicable?

Ans. The advance rulings are given in personem and not in rem, that is, not to the whole world and therefore, rulings cannot apply to other similar cases. Section 103 provides that an advance ruling pronounced by AAR or AAAR shall

be binding only on the applicant who sought it in respect of any matter referred to in 97 (2) and on the jurisdictional tax authority of the applicant. This clearly means that an advance ruling is not applicable to similarly placed taxable persons in the State. It is only limited to the person who has applied for an advance ruling.

Q 13. Whether the advance ruling have precedent value of a judgment of the High Court or the Supreme Court?

Ans. No, the advance ruling is binding only in respect of the matter referred. It has no precedent value. However, even for persons other than applicant, it does have persuasive value.

Q 14. What is the time period for applicability of Advance Ruling?

Ans. The law does not provide for a fixed time period for which the ruling shall apply. Instead, in section 103(2), it is provided that advance ruling shall be binding till the period when the law, facts or circumstances supporting the original advance ruling have changed. Thus, a ruling shall continue to be in force so long as the transaction continues and so long as there is no change in law, facts or circumstances.

Q 15. Can an advance ruling given be nullified?

Ans. Section 104(1) provides that an advance ruling shall be held to be ab initio void if the AAR or AAAR finds that

the advance ruling was obtained by the applicant by fraud or suppression of material facts or misrepresentation of facts. In such a situation, all the provisions of the GST Act(s) shall apply to the applicant as if such advance ruling had never been made (but excluding the period when advance ruling was given and up to the period when the order declaring it to be void is issued). An order declaring advance ruling to be void can be passed only after hearing the applicant.

Q 16. What is the procedure for obtaining Advance Ruling?

Ans. Section 97 and 98 deals with procedure for obtaining advance ruling. The applicant desirous of obtaining advance ruling should make application to AAR in form GST ARA-01. The format of the form and the detailed procedure for making application is prescribed in the CGST Rules.

Section 98 provides the procedure for dealing with the application for advance ruling. The AAR shall send a copy of application to the officer in whose jurisdiction the applicant falls and call for all relevant records. The AAR may then examine the application along with the records and may also hear the applicant. Thereafter AAR will pass an order either admitting or rejecting the application.

Q 17. Under what circumstances will the application for Advance Ruling be compulsorily rejected?

Ans. Application has to be rejected if the question raised in the application is already pending or decided in any proceedings in the case of applicant under any of the provisions of GST Act(s)

If the application is rejected, it should be by way of a speaking order giving the reasons for rejection.

Q 18. What is the procedure to be followed by AAR once the application is admitted?

Ans. If the application is admitted, the AAR shall pronounce its ruling within ninety days of receipt of application. Before giving its ruling, it shall examine the application and any further material furnished by the applicant or by the concerned departmental officer.

Before giving the ruling, AAR must hear the applicant or his authorized representative as well as the jurisdictional officers of CGST/SGST/UTGST.

Q 19. What happens if there is a difference of opinion amongst members of AAR?

Ans. If there is difference of opinion between the two members of AAR, they shall refer the point or points on which they differ to the AAAR for hearing the issue. If the members of AAAR are also unable to come to a common conclusion in regard to the point(s) referred to them by AAR, then it shall be deemed that no advance ruling can be given in respect of the question on which difference persists at the level of AAAR.

Q 20. What are the provisions for appeals against order of AAR?

Ans. The provisions of appeal before AAAR are dealt in section 100 and 101 of CGST/SGST Act or section 14 of the UTGST Act.

If the applicant is aggrieved with the finding of the AAR, he can file an appeal with AAAR. Similarly, if the concerned or jurisdictional officer of CGST/SGST/UTGST does not agree with the finding of AAR, he can also file an appeal with AAAR. The word concerned officer of CGST/SGST means an officer who has been designated by the CGST/SGST administration in regard to an application for advance ruling. In normal circumstances, the concerned officer will be the officer in whose jurisdiction the applicant is located. In such cases the concerned officer will be the jurisdictional CGST/SGST officer.

Any appeal must be filed within thirty days from the receipt of the advance ruling. The appeal has to be in Form GST ARA-02 and has to be verified in manner as prescribed in the CGST Rules, 2017

The Appellate Authority must pass an order after hearing the parties to the appeal within a period of ninety days of the filing of an appeal. If members of AAAR differ on any point referred to in appeal, it shall be deemed that no advance ruling is issued in respect of the question under appeal.

Q 21. Whether Appeal can be filed before High Court or Supreme Court against the ruling of Appellate Authority for Advance Rulings?

Ans. The CGST /SGST Act do not provide for any appeal against the ruling of Appellate Authority for Advance Rulings. Thus no further appeals lie and the ruling shall be binding on the applicant as well as the jurisdictional

officer in respect of applicant.

However, Writ Jurisdiction may lie before Hon'ble High Court or the Supreme Court.

Q 22. Can the AAR & AAAR order for rectification of mistakes in the ruling?

Ans. Yes, AAR and AAAR have power to amend their order to rectify any mistake apparent from the record within a period of six months from the date of the order. Such mistake may be noticed by the authority on its own accord or may be brought to its notice by the applicant or the concerned or the jurisdictional CGST/SGST officer. If a rectification has the effect of enhancing the tax liability or reducing the quantum of input tax credit, the applicant or the appellant must be heard before the order is passed. (Section 102)

Q 23. Where can one find the orders passed by AARs and AAARs?

Ans. The orders passed by AARs are available at <http://gstcouncil.gov.in/rulings-by-advance-authority> and those by AAARs are available at <http://gstcouncil.gov.in/orders-appellate-authority-advance-ruling> . Till October, 2018, 615 applications were filed to AARs and 286 applications have been disposed of; and 21 applications have been filed to AAARs out of which 14 have been decided.

18. Inspection, Search, Seizure and Arrest

Q 1. What is the meaning of the term “Search”?

Ans. As per law dictionary and as noted in different judicial pronouncements, the term ‘search’, in simple language, denotes an action of a government machinery to go, look through or examine carefully a place, area, person, object etc. in order to find something concealed or for the purpose of discovering evidence of a crime. The search of a person or vehicle or premises etc. can only be done under proper and valid authority of law.

Q 2. What is the meaning of the term “Inspection”?

Ans. ‘Inspection’ is a new provision under the CGST/SGST Act. It is a softer provision than search to enable officers to access any place of business of a taxable person and also any place of business of a person engaged in transporting goods or who is an owner or an operator of a warehouse or godown.

Q 3. Who can order for carrying out “Inspection” and under what circumstances?

Ans. As per Section 67 of CGST/SGST Act, Inspection can be carried out by an officer of CGST/SGST only upon a written authorization given by an officer of the rank of Joint Commissioner or above. A Joint Commissioner or an officer higher in rank can give such authorization only if he has reasons to believe that the person concerned has done one of the following:

- i. suppressed any transaction of supply;*

- ii. *suppressed stock of goods in hand;*
- iii. *claimed excess input tax credit;*
- iv. *contravened any provision of the CGST/SGST Act to evade tax;*
- v. *a transporter or warehouse owner has kept goods which have escaped payment of tax or has kept his accounts or goods in a manner that is likely to cause evasion of tax.*

Q 4. What are the powers of the proper officer during the search?

Ans. The officer authorised under to carry out inspection 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. (Section 67(4) of the Act).

Q 5. Whether the person from whose custody any documents are seized is entitled to get the copies thereof?

Ans. Yes, the person from whose custody documents are seized is entitled to make copies thereof or take extracts therefrom in the presence of an authorised officer at such place and time as such office may indicate in this behalf except where making such copies or taking such extracts may, in the opinion of the proper office, prejudicially affect the investigation. (Section 67(5) of the Act.)

Q 6. Can the proper officer authorize Inspection of any assets/premises of any person under this Section?

Ans. No. Authorization can be given to an officer of CGST/SGST to carry out inspection of any of the following:

- i. any place of business of a taxable person;*
- ii. any place of business of a person engaged in the business of transporting goods whether or not he is a registered taxable person;*
- iii. any place of business of an owner or an operator of a warehouse or godown.*

Q 7. Who can order for Search and Seizure under the provisions of CGST Act?

Ans. An officer of the rank of Joint Commissioner or above can authorize an officer in writing to carry out search and seize goods, documents, books or things. Such authorization can be given only where the Joint Commissioner has reasons to believe that any goods liable to confiscation or any documents or books or things relevant for any proceedings are hidden in any place.

Q 8. What is meant by ‘reasons to believe’?

Ans. Reason to believe is to have knowledge of facts which, although not amounting to direct knowledge, would cause a reasonable person, knowing the same facts, to reasonably conclude the same thing. As per Section 26 of the IPC, 1860, “A person is said to have ‘reason to believe’ a thing, if he has sufficient cause to believe that thing but not otherwise.” ‘Reason to believe’ contemplates an objective determination based on intelligent care and evaluation as distinguished from a purely subjective consideration. It has to be and must be that of an honest and reasonable person based on relevant material and circumstances.

Q 9. Is it mandatory that such 'reasons to believe' has to be recorded in writing by the proper officer, before issuing authorization for Inspection or Search and Seizure?

Ans. Although the officer is not required to state the reasons for such belief before issuing an authorization for search, he has to disclose the material on which his belief was formed. 'Reason to believe' need not be recorded invariably in each case. However, it would be better if the materials / information etc. are recorded before issue of search warrant or before conducting search.

Q 10. What is a Search Warrant and what are its contents?

Ans. The written authority to conduct search is generally called search warrant. The competent authority to issue search warrant is an officer of the rank of Joint Commissioner or above. A search warrant must indicate the existence of a reasonable belief leading to the search. Search Warrant should contain the following details:

- i. the violation under the Act,*
- ii. the premise to be searched,*
- iii. the name and designation of the person authorized for search,*
- iv. the name of the issuing officer with full designation along with his round seal,*
- v. date and place of issue,*
- vi. serial number of the search warrant,*
- vii. period of validity i.e. a day or two days etc.*

Q 11. When do goods become liable to confiscation under the provisions of CGST/SGST Act?

Ans. As per section 130 of SGST/SGST Act, goods become liable to confiscation when any person does the following:

- (i) supplies or receives any goods in contravention of any of the provisions of this Act or rules made thereunder leading to evasion of tax;*
- (ii) does not account for any goods on which he is liable to pay tax under this Act;*
- (iii) supplies any goods liable to tax under this Act without having applied for the registration;*
- (iv) contravenes any of the provisions of the CGST/ SGST Act or rules made thereunder with intent to evade payment of tax.*

Q 12. What powers can be exercised by an officer during valid search?

Ans. An officer carrying out a search has the power to search for and seize goods (which are liable to confiscation) and documents, books or things (relevant for any proceedings under CGST/SGST Act) from the premises searched. During search, the officer has the power to break open the door of the premises authorized to be searched if access to the same is denied. Similarly, while carrying out search within the premises, he can break open any almirah or box if access to such almirah or box is denied and in which any goods, account, registers or documents are suspected to be concealed. He can also seal the premises if access to it denied.

Q 13. What is the procedure for conducting search?

Ans. Section 67(10) of CGST/SGST Act prescribes that

searches must be carried out in accordance with the provisions of Code of Criminal Procedure, 1973. Section 100 of the Code of Criminal Procedure describes the procedure for search.

Q 14. What are the basic requirements to be observed during Search operations?

Ans. The following principles should be observed during Search:

- No search of premises should be carried out without a valid search warrant issued by the proper officer.*
- There should invariably be a lady officer accompanying the search team to residence.*
- The officers before starting the search should disclose their identity by showing their identity cards to the person in-charge of the premises.*
- The search warrant should be executed before the start of the search by showing the same to the person in-charge of the premises and his signature should be taken on the body of the search warrant in token of having seen the same. The signatures of at least two witnesses should also be taken on the body of the search warrant.*
- The search should be made in the presence of at least two independent witnesses of the locality. If no such inhabitants are available /willing, the inhabitants of any other locality should be asked to be witness to the search. The witnesses should be briefed about the purpose of the search.*
- Before the start of the search proceedings, the*

team of officers conducting the search and the accompanying witnesses should offer themselves for their personal search to the person in-charge of the premises being searched. Similarly, after the completion of search all the officers and the witnesses should again offer themselves for their personal search.

- *A Panchnama / Mahazar of the proceedings of the search should necessarily be prepared on the spot. A list of all goods, documents recovered and seized/detained should be prepared and annexed to the Panchnama/Mahazar. The Panchnama / Mahazar and the list of goods/documents seized/detained should invariably be signed by the witnesses, the in-charge/ owner of the premises before whom the search is conducted and also by the officer(s) duly authorized for conducting the search.*
- *After the search is over, the search warrant duly executed should be returned in original to the issuing officer with a report regarding the outcome of the search. The names of the officers who participated in the search may also be written on the reverse of the search warrant.*
- *The issuing authority of search warrant should maintain register of records of search warrant issued and returned and used search warrants should be kept in records.*
- *A copy of the Panchnama / Mahazar along with its annexure should be given to the person in-charge/owner of the premises being searched under acknowledgement.*

Q 15. Can a CGST/SGST officer access business premises under any other circumstances?

Ans. Yes. Access can also be obtained in terms of Section 65 of CGST/SGST Act. This provision of law is meant to allow an audit party of CGST/SGST or C&AG or a cost accountant or chartered accountant nominated under section 66 of CGST/SGST Act, access to any business premises without issuance of a search warrant for the purposes of carrying out any audit, scrutiny, verification and checks as may be necessary to safeguard the interest of revenue. However, a written authorization is to be issued by an officer of the rank of Commissioner of CGST or SGST. This provision facilitates access to a business premise which is not registered by a taxable person as a principal or additional place of business but has books of accounts, documents, computers etc. which are required for audit or verification of accounts of a taxable person.

Q 16. What is meant by the term 'Seizure'?

Ans. The term 'seizure' has not been specifically defined in the GST Law. In Law Lexicon Dictionary, 'seizure' is defined as the act of taking possession of property by an officer under legal process. It generally implies taking possession forcibly contrary to the wishes of the owner of the property or who has the possession and who was unwilling to part with the possession.

Q 17. Does GST Act(s) have any power of detention of goods and conveyances?

Ans. Yes, under Section 129 of CGST/SGST Act, an officer has power to detain goods along with the conveyance (like a truck or other types of vehicle) transporting the goods. This can be done for such goods which are being

transported or are stored in transit in violation of the provisions of CGST/SGST Act. Goods which are stored or are kept in stock but not accounted for can also be detained. Such goods and conveyance shall be released after payment of applicable tax or upon furnishing security of equivalent amount.

Q 18. What is the distinction in law between 'Seizure' and 'Detention'?

Ans. Denial of access to the owner of the property or the person who possesses the property at a particular point of time by a legal order/notice is called detention. Seizure is taking over of actual possession of the goods by the department. Detention order is issued when it is suspected that the goods are liable to confiscation. Seizure can be made only on the reasonable belief which is arrived at after inquiry/investigation that the goods are liable to confiscation.

Q 19. What are the safeguards provided in GST Act(s) in respect of Search or Seizure?

Ans. Certain safeguards are provided in section 67 of CGST/SGST Act in respect of the power of search or seizure. These are as follows:

- i. Seized goods or documents should not be retained beyond the period necessary for their examination;*
- ii. Photocopies of the documents can be taken by the person from whose custody documents are seized;*
- iii. For seized goods, if a notice is not issued within six months of its seizure, goods shall be returned to the person from whose possession it*

was seized. This period of six months can be extended on justified grounds up to a further period of maximum six months;

- iv. An inventory of seized goods shall be made by the seizing officer;*
- v. Certain categories of goods to be specified under CGST Rules (such as perishable, hazardous etc.) can be disposed of immediately after seizure;*
- vi. Provisions of Code of Criminal Procedure 1973 relating to search and seizure shall apply. However, one important modification is in relation to sub-section (5) of section 165 of Code of Criminal Procedure – instead of sending copies of any record made in course of search to the nearest Magistrate empowered to take cognizance of the offence, it has to be sent to the Principal Commissioner/ Commissioner of CGST/ Commissioner of SGST.*

Q 20. What is the time limit for issuance of SCN in respect of seized goods?

Ans. The SCN in respect of seized goods is to be issued within six months from the date of seizure of goods, otherwise the goods shall be returned to the person from whose possession they were seized. However, the period of six months, on sufficient cause being shown can be extended by the proper officer for a further period not exceeding six months. (Section 67(7) of the Act.)

Q 21. Can the goods be sold by the department after seizure?

Ans. Yes. 17 types of goods have been prescribed in the Notification No. 27/2018-Central Tax dated 13th June, 2018 which can be disposed of, after seizure, by the proper

officer, having regard to the perishable or hazardous nature, depreciation in value with the passage of time, constraints of storage space or any other relevant considerations. The list is as under:

- (i) Salt and hygroscopic substances*
- (ii) Raw (wet and salted) hides and skins*
- (iii) Newspapers and periodicals*
- (iv) Menthol, Camphor, Saffron*
- (v) Re-fills for ball-point pens*
- (vi) Lighter fuel, including lighters with gas, not having arrangement for refilling*
- (vii) Cells, batteries and rechargeable batteries*
- (viii) Petroleum Products*
- (ix) Dangerous drugs and psychotropic substances*
- (x) Bulk drugs and chemicals falling under Section VI of the First Schedule to the Customs Tariff Act, 1975*
- (xi) Pharmaceutical products falling within Chapter 30 of the First Schedule to the Customs Tariff Act, 1975*
- (xii) Fireworks*
- (xiii) Red Sander*
- (xiv) Sandalwood*
- (xv) All taxable goods falling within Chapters 1 to 24 of the First Schedule to the Customs Tariff Act, 1975*
- (xvi) All unclaimed/abandoned goods which are liable to rapid depreciation in value on account of fast change in technology or new models etc.*
- (xvii) Any goods seized by the proper officer under section 67 of the said Act, which are to be provisionally released under section 67(6) of the said Act, but provisional release has not been taken by the concerned person within a period of*

one month from the date of execution of the bond for provisional release.

(Section 68(7) of the CGST Act, 2017)

Q 22. Is there any special document required to be carried during transport of taxable goods?

Ans. Under section 68 of CGST /SGST Act, a person in charge of a conveyance carrying any consignment of goods of value exceeding a specified amount may be required to carry a prescribed document as prescribed in the E way Bill Rules. Chapter XVI of CGST Rules contains provisions relating to documents required to be carried.

Q 23. What is meant by the term “arrest”?

Ans. The term ‘arrest’ has not been defined in the CGST/SGST Act. However, as per judicial pronouncements, it denotes ‘the taking into custody of a person under some lawful command or authority’. In other words, a person is said to be arrested when he is taken and restrained of his liberty by power or colour of lawful warrant.

Q 24. When can the proper officer authorize ‘arrest’ of any person under CGST / SGST Act?

Ans. The Commissioner of CGST/SGST can authorize a CGST/SGST officer to arrest a person if he has reasons to believe that the person has committed an offence attracting a punishment prescribed under section 132(1) (a), (b), (c), (d) or Sec 132(2) of the CGST/SGST Act.

Thus, the provisions of arrest are highly restricted in GST. The power can be exercised only where combined evasion of duty is Rs. 2 crore or more and where offence is very severe (only five offences) namely where supplies have

been made without any invoice; invoice made without any supply; tax collected but not paid to the Government; tax collected in contravention of provisions of the GST Act but not paid to the Government and taking input tax credit without receiving goods and services.

Furthermore, the arrest made for duty evasion ranging from Rs. 2 crores to Rs. 5 crores are bailable and those beyond Rs. 5 crores are non-bailable.

(Section 69 of the CGST Act, 2017)

Q 25. What are the safeguards provided under CGST /SGST Act for a person who is placed under arrest?

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

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

Q 26. What are the precautions to be taken during arrest?

Ans. The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) relating to arrest and the procedure

thereof must be adhered to. It is therefore necessary that all field officers of CGST/SGST be fully familiar with the provisions of the Code of Criminal Procedure, 1973.

One important provision to be taken note of is section 57 of Cr.P.C., 1973 which provides that a person arrested without warrant shall not be detained for a longer period than, under the circumstances of the case, is reasonable but this shall not exceed twenty-four hours (excluding the journey time from place of arrest to the Magistrate's court). Within this period, as provided under section 56 of Cr.P.C. the person making the arrest shall send the person arrested without warrant before a Magistrate having jurisdiction in the case.

In a landmark judgment in the case of D.K. Basu v. State of West Bengal reported in 1997 (1) SCC 416, the Hon'ble Supreme Court has laid down specific guidelines required to be followed while making arrests. While this is in relation to police, it needs to be followed by all departments having power of arrest. These are as under:

- i. The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.*
- ii. The police officer carrying out the arrest shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It*

shall also be counter signed by the arrestee and shall contain the time and date of arrest.

- iii. A person who has been arrested or detained and is being held in custody in a police station or interrogation center or other lock up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.*
- iv. The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organization in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.*
- v. An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.*
- vi. The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The 'Inspection Memo' must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.*
- vii. The arrestee should be subjected to medical*

examination by the trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory, Director, Health Services should prepare such a panel for all Tehsils and Districts as well.

- viii. Copies of all the documents including the memo of arrest, referred to above, should be sent to the Magistrate for his record.*
- ix. The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.*
- x. A police control room should be provided at all district and State headquarters where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board.*

Q 27. What are the broad guidelines for arrest followed in CBIC?

Ans. Decision to arrest needs to be taken on case-to-case basis considering various factors, such as, nature and gravity of offence, quantum of duty evaded or credit wrongfully availed, nature and quality of evidence, possibility of evidences being tampered with or witnesses being influenced, cooperation with the investigation, etc. Power to arrest has to be exercised after careful consideration of the facts of the case which may include:

- i. to ensure proper investigation of the offence;
- ii. to prevent such person from absconding;
- iii. cases involving organized smuggling of goods or evasion of customs duty by way of concealment;
- iv. master minds or key operators effecting proxy/benami imports/exports in the name of dummy or non-existent persons/IECs, etc.;
- v. where the intent to evade duty is evident and element of mensrea/guilty mind is palpable;
- vi. prevention of the possibility of tampering with evidence;
- vii. intimidating or influencing witnesses; and
- viii. large amounts of evasion of duty or service tax at least exceeding one crore rupees.

Q 28. What is a cognizable offence?

Ans. Generally, as per Cr. PC, cognizable offence means serious category of offences in respect of which a police officer has the authority to make an arrest without a warrant and to start an investigation with or without the permission of a court. However, GST being a special legislation, only the officers, duly empowered under the Act can act as above.

Q 29. What is a non-cognizable offence?

Ans. Non-cognizable offence means relatively less serious offences in respect of which a police officer does not have the authority to make an arrest without a warrant and an investigation cannot be initiated without a court order, except as may be authorized under special legislation.

Q 30. What are cognizable and non-cognizable

offences under CGST Act?

Ans. In section 132 of CGST Act, it is provided that the offences relating to taxable goods and /or services where the amount of tax evaded or the amount of input tax credit wrongly availed or the amount of refund wrongly taken exceeds Rs. 5 crores, shall be cognizable and non-bailable. Other offences under the act are non-cognizable and bailable.

Q 31. When can the proper officer issue summons under CGST Act?

Ans. Section 70 of CGST/SGST Act gives powers to a duly authorized CGST/SGST officer to call upon a person by issuing a summon to present himself before the officer issuing the summon to either give evidence or produce a document or any other thing in any inquiry which an officer is making. A summons to produce documents or other things may be for the production of certain specified documents or things or for the production of all documents or things of a certain description in the possession or under the control of the person summoned.

Q 32. What are the responsibilities of the person so summoned?

Ans. A person who is issued summon is legally bound to attend either in person or by an authorized representative and he is bound to state the truth before the officer who has issued the summon upon any subject which is the subject matter of examination and to produce such documents and other things as may be required.

Q 33. What can be the consequences of non-appearance to summons?

Ans. The proceeding before the official who has issued

summons is deemed to be a judicial proceeding. If a person does not appear on the date when summoned without any reasonable justification, he can be prosecuted under section 174 of the Indian Penal Code (IPC). If he absconds to avoid service of summons, he can be prosecuted under section 172 of the IPC and in case he does not produce the documents or electronic records required to be produced, he can be prosecuted under section 175 of the IPC. In case he gives false evidence, he can be prosecuted under section 193 of the IPC. In addition, if a person does not appear before a CGST/SGST officer who has issued the summons, he is liable to a penalty up to Rs 25,000/- under section 122(3) (d) of CGST/SGST Act.

Q 34. What are the guidelines for issue of summons?

Ans. The Central Board of Indirect Taxes and Customs (CBIC) in the Department of Revenue, Ministry of Finance has issued guidelines from time to time to ensure that summons provisions are not misused in the field. Some of the important highlights of these guidelines are given below:

- i. summons is to be issued as a last resort where assesses are not co-operating and this section should not be used for the top management;*
- ii. the language of the summons should not be harsh and legal which causes unnecessary mental stress and embarrassment to the receiver;*
- iii. summons by Superintendents should be issued after obtaining prior written permission from an officer not below the rank of Assistant Commissioner with the reasons for issuance of summons to be recorded in writing;*

- iv. *where for operational reasons, it is not possible to obtain such prior written permission, oral/ telephonic permission from such officer must be obtained and the same should be reduced to writing and intimated to the officer according such permission at the earliest opportunity;*
- v. *in all cases, where summons are issued, the officer issuing summons should submit a report or should record a brief of the proceedings in the case file and submit the same to the officer who had authorized the issuance of summons;*
- vi. *senior management officials such as CEO, CFO, General Managers of a large company or a Public Sector Undertaking should not generally be issued summons at the first instance. They should be summoned only when there are indications in the investigation of their involvement in the decision making process which led to loss of revenue.*

Q 35. What are the precautions to be observed while issuing summons?

Ans. The following precautions should generally be observed when summoning a person: -

- (i) A summon should not be issued for appearance where it is not justified. The power to summon can be exercised only when there is an inquiry being undertaken and the attendance of the person is considered necessary.*
- (ii) Normally, summons should not be issued repeatedly. As far as practicable, the statement of the accused or witness should be recorded in*

minimum number of appearances.

(iii) Respect the time of appearance given in the summons. No person should be made to wait for long hours before his statement is recorded except when it has been decided very consciously as a matter of strategy.

(iv) Preferably, statements should be recorded during office hours; however, an exception could be made regarding time and place of recording statement having regard to the facts in the case.

Q 36. Are there any class of officers who are required to assist CGST/SGST officers?

Ans. Under section 72 of CGST/SGST Act, the following officers have been empowered and are required to assist CGST/SGST officers in the execution of CGST/SGST Act. The categories specified are as follows:

- i. Police;*
- ii. Railways*
- iii. Customs;*
- iv. Officers of State/UT/ Central Government engaged in collection of GST;*
- v. Officers of State/UT/ Central Government engaged in collection of land revenue;*
- vi. All village officers;*
- vii. Any other class of officers as may be notified by the Central/State Government.*

Q 37. Is there any prescribed format for arrest memo under the CGST Act, 2017?

Ans. There is no prescribed format for arrest memo but an arrest memo must be in compliance with the directions in the judgments of the Hon'ble Supreme Court in the case of

D.K. Basu v/s. State of West Bengal reported in 1997 (1) SCC 416. The arrest memo should include: -

- *Brief Facts of the case;*
- *Details of the person arrested;*
- *Gist of evidence against the person;*
- *Relevant section(s) of the CGST/SGST Law or other laws attracted to the case and to the arrested person;*
- *The grounds of the arrest must be explained to the arrested person and this fact should be recorded in the arrest memo;*
- *A nominated person (as per the detailed provided by arrested person) of the arrested person should be informed immediately and this fact also may be mentioned in the arrest memo;*
- *The date and time of arrest may be mentioned in the arrest memo should be given to the person arrested under proper acknowledgement;*
- *A separate arrest memo has to be made and provided to each individual/arrested person. This should particularly be kept in mind in the event that there are several arrests in a single case.*

Q 38. What are the post arrest procedure?

Ans. The following procedures are required to be followed after arrest: -

- *Medical examination of an arrested person should be conducted by a medical office in the service of Central or State Government and in case the medical officer is not available, by a registered medical practitioner, soon after the*

arrest is made.

- *If an arrested person is a female then such an examination shall be made only by, or under supervision of a female medical officer, and in case the female medical officer is not available, by a female registered medical practitioner.*

19. Offences, Penalties, Prosecution and Compounding

Q 1. What are the prescribed offences under CGST/SGST Act?

Ans. The CGST/SGST Act codifies the offences and penalties in Chapter XVI. The Act lists 21 offences in section 122, apart from the penalty prescribed under section 10 for availing compounding by a taxable person who is not eligible for it. The said offences are as follows: -

- 1) *Making a supply without invoice or with false/incorrect invoice;*
- 2) *Issuing an invoice without making supply;*
- 3) *Not paying tax collected for a period exceeding three months;*
- 4) *Not paying tax collected in contravention of the CGST/SGST Act for a period exceeding 3 months;*
- 5) *Non deduction or lower deduction of tax deducted at source or not depositing tax deducted at source under section 51;*
- 6) *Non collection or lower collection of or non-payment of tax collectible at source under section 52;*
- 7) *Availing/utilizing input tax credit without actual receipt of goods and/or services;*
- 8) *Fraudulently obtaining any refund;*
- 9) *Availing/distributing input tax credit by an Input Service Distributor in violation of Section 20;*
- 10) *Furnishing false information or falsification of financial records or furnishing of fake accounts/*

- documents with intent to evade payment of tax;*
- 11) *Failure to register despite being liable to pay tax;*
 - 12) *Furnishing false information regarding registration particulars either at the time of applying for registration or subsequently;*
 - 13) *Obstructing or preventing any official in discharge of his duty;*
 - 14) *Transporting goods without prescribed documents;*
 - 15) *Suppressing turnover leading to tax evasion;*
 - 16) *Failure to maintain accounts/documents in the manner specified in the Act or failure to retain accounts/documents for the period specified in the Act;*
 - 17) *Failure to furnish information/documents required by an officer in terms of the Act/Rules or furnishing false information/documents during the course of any proceeding;*
 - 18) *Supplying/transporting/storing any goods liable to confiscation;*
 - 19) *Issuing invoice or document using GSTIN of another person;*
 - 20) *Tampering/destroying any material evidence;*
 - 21) *Disposing of /tampering with goods detained/ seized/attached under the Act.*

Q 2. What is meant by the term penalty?

Ans. The word “penalty” has not been defined in the CGST/SGST Act but judicial pronouncements and principles of jurisprudence have laid down the nature of a

penalty as:

- *a temporary punishment or a sum of money imposed by statute, to be paid as punishment for the commission of a certain offence;*
- *a punishment imposed by law or contract for doing or failing to do something that was the duty of a party to do.*

Q 3. What are the general disciplines to be followed while imposing penalties?

Ans. The levy of penalty is subject to a certain disciplinary regime which is based on jurisprudence, principles of natural justice and principles governing international trade and agreements. Such general discipline is enshrined in section 126 of the Act. Accordingly—

- *no penalty is to be imposed without issuance of a show cause notice and proper hearing in the matter, affording an opportunity to the person proceeded against to rebut the allegations levelled against him,*
- *the penalty is to depend on the totality of the facts and circumstances of the case,*
- *the penalty imposed is to be commensurate with the degree and severity of breach of the provisions of the law or the rules alleged,*
- *the nature of the breach is to be specified clearly in the order imposing the penalty,*
- *the provisions of the law under which the penalty has been imposed is to be specified.*

Section 126 further specifies that, in particular, no

substantial penalty is to be imposed for —

- *any minor breach (minor breach has been defined as a violation of the provisions in a case where the tax involved is less than Rs.5000), or*
- *a procedural requirement of the law, or*
- *an easily rectifiable mistake/omission in documents (explained in the law as an error apparent on record) that has been made without fraudulent intent or gross negligence.*

Further, wherever penalty of a fixed amount or a fixed percentage has been provided in the CGST/SGST Act, the same shall apply.

Q 4. What is the quantum of penalty provided for in the CGST /SGST Act?

Ans. Section 122(1) provides that any taxable person who has committed any of the offences mentioned in section 122 shall be punished with a penalty that shall be higher of the following amounts:

- *The amount of tax evaded, fraudulently obtained as refund, availed as credit, or not deducted or collected or short deducted or short collected, or*
- *A sum of Rs. 10,000/-.*

Further Section 122(2) provides that any registered person who has not paid tax or makes a short payment of tax on supplies shall be liable to penalty which will be the higher of:

- *10% of the tax not paid or short paid, or*

- Rs. 10,000/-

Q 5. Is any penalty prescribed for any person other than the taxable person?

Ans. Yes. Section 122(3) provides for levy of penalty extending to Rs. 25,000/- for any person who-

- *aids or abets any of the 21 offences,*
- *deals in any way (whether receiving, supplying, storing or transporting) with goods that are liable to confiscation,*
- *receives or deals with supply of services in contravention of the Act,*
- *fails to appear before an authority who has issued a summon,*
- *fails to issue any invoice for a supply or account for any invoice in his books of accounts.*

Q 6. What is the penalty provided for any contravention for which no separate penalty has been prescribed under CGST/SGST Act?

Ans. Section 125 of the CGST/SGST Act provides that any person who contravenes any provision of the Act or the rules made under this Act for which no separate penalty has been prescribed shall be punishable with a penalty that may extend to Rs. 25,000/-

Q 7. What action can be taken for transportation of goods without valid documents or attempted to be removed without proper record in books?

Ans. If any person transports any goods or stores any such goods while in transit without the documents

prescribed under the Act (i.e. invoice and a declaration) or supplies or stores any goods that have not been recorded in the books or accounts maintained by him, then such goods shall be liable for detention along with any vehicle on which they are being transported.

Where owner comes forward: - *Such goods shall be released on payment of the applicable tax and penalty equal to 100% tax or upon furnishing of security equivalent to the said amount.*

In case of exempted goods, penalty is 2% of value of goods or Rs 25,000/- whichever is lesser.

Where owner does not come forward: - *Such goods shall be released on payment of the applicable tax and penalty equal to 50% of value of goods or upon furnishing of security equivalent to the said amount.*

In case of exempted goods, penalty is 5% of value of goods or Rs 25,000/- whichever is lesser.

Q 8. What is the penalty prescribed for a person who opts for composition scheme despite being ineligible for the said scheme?

Ans. Section 10(5) provides that if a person who has paid under composition levy is found as not being eligible for compounding then such person shall be liable to penalty to an amount equivalent to the tax payable by him under the provisions of the Act i.e. as a normal taxable person and that this penalty shall be in addition to the tax payable by him.

Q 9. What is meant by confiscation?

Ans. The word 'confiscation' has not been defined in the

Act. The concept is derived from Roman law wherein it meant seizing or taking into the hands of emperor, and transferring to Imperial “fiscus” or Treasury. The word “confiscate” has been defined in Aiyar’s Law Lexicon as to “appropriate (private property) to the public treasury by way of penalty; to deprive of property as forfeited to the State.”

In short it means transfer of the title to the goods to the Government.

Q 10. Under which circumstances can goods be confiscated under CGST/SGST Act?

Ans. Under Section 130 of the CGST Act, goods shall be liable to confiscation if any person:

- supplies or receives any goods in contravention of any provision of this Act and such contravention results in evasion of tax payable under the Act, or*
- does not account for any goods in the manner required under the Act, or*
- supplies goods that are liable to tax under the Act without applying for registration, or*
- uses any conveyance as a means of transport for carriage of goods in contravention of the provisions of CGST/SGST Act (unless used without knowledge of owner)*
- contravenes any provision of the Act/Rules with the intention of evading payment of tax.*

Q 11. What happens to the goods upon confiscation of goods by the proper officer?

Ans. Upon confiscation, the title in the confiscated goods

shall vest in the Government and every Police officer to whom the proper officer makes a request in this behalf, shall assist in taking possession of the goods.

Q 12. After confiscation, is it required to give option to the person to redeem the goods?

Ans. Yes. In terms of section 130(2), the Owner or the person in-charge of the goods liable to confiscation is to be given the option for fine (not exceeding market price of confiscated goods) in lieu of confiscation. This fine shall be in addition to the tax and other charges payable in respect of such goods.

Q 13. Can any conveyance carrying goods without cover of prescribed documents be subject to confiscation?

Ans. Yes. Section 130 provides that any conveyance carrying goods without the cover of any documents or declaration prescribed under the Act shall be liable to confiscation. However, if the owner of the conveyance proves that the goods were being transported without cover of the required documents/declarations without his knowledge or connivance or without the knowledge or connivance of his agent then the conveyance shall not be liable to confiscation as aforesaid.

Q 14. What is Prosecution?

Ans. Prosecution is the institution or commencement of legal proceeding; the process of exhibiting formal charges against the offender. Section 198 of the Criminal Procedure Code defines "prosecution" as the institution and carrying on of the legal proceedings against a person.

Q 15. Which are the offences which warrant

prosecution under the CGST/SGST Act?

Ans. Section 132 of the CGST/SGST Act codifies the major offences under the Act which warrant institution of criminal proceedings and prosecution. 12 such major offences have been listed as follows:

- a) Making a supply without issuing an invoice or upon issuance of a false/incorrect invoice;*
- b) Issuing an invoice without making supply;*
- c) Not paying any amount collected as tax for a period exceeding 3 months;*
- d) Availing or utilizing credit of input tax without actual receipt of goods and/or services;*
- e) Obtaining any fraudulent refund)*
- f) evades tax, fraudulently avails ITC or obtains refund by an offence not covered under clause (a) to (e);*
- g) Furnishing false information or falsification of financial records or furnishing of fake accounts/ documents with intent to evade payment of tax;*
- h) Obstructing or preventing any official in the discharge of his duty;*
- i) Dealing with goods liable to confiscation i.e. receipt, supply, storage or transportation of goods liable to confiscation;*
- j) Receiving/dealing with supply of services in contravention of the Act;*
- k) tampers with or destroys any material evidence or documents*
- l) Failing to supply any information required of him under the Act/Rules or supplying false information;*
- m) Attempting to commit or abetting the commission of any of the offences at (a) to (l) above.*

Q 16. What is the punishment prescribed on

conviction of any offence under the CGST/SGST Act?

Ans. The scheme of punishment provided in section 132(1) is as follows:

| <i>Offence involving--</i> | <i>Punishment (Imprisonment extending to--)</i> |
|--|--|
| <i>Tax evaded exceeding Rs. 5 crore or repeat offender 250 lakh</i> | <i>5 years and fine</i> |
| <i>Tax evaded between Rs. 2 crore and Rs.5 crore</i> | <i>3 years and fine</i> |
| <i>Tax evaded between Rs.1 crore and Rs.2 crore</i> | <i>1 years and fine</i> |
| <ul style="list-style-type: none">• False records• Obstructing officer• Tamper records | <i>6 months</i> |

Q 17. What are cognizable and non-cognizable offences under CGST/SGST Act?

Ans. In terms of Section 132(4) and 132(5) of CGST/SGST Act

- *all offences where the evasion of tax is less than Rs.5 crores shall be non-cognizable and bailable,*
- *all offences where the evasion of tax exceeds Rs.5 crores shall be cognizable and non- bailable.*

Q 18. Is prior sanction of competent authority mandatory for initiating prosecution?

Ans. Yes. No person shall be prosecuted for any offence

without the prior sanction of the designated authority.

Q 19. Is 'mensrea' or culpable mental state necessary for prosecution under CGST/SGST Act?

Ans. Yes. However, Section 135 presumes the existence of a state of mind (i.e. "culpable mental state" or mensrea) required to commit an offence if it cannot be committed without such a state of mind

Q 20. What is a culpable state of mind?

Ans. While committing an act, a "culpable mental state" is a state of mind wherein-

- *the act is intentional;*
- *the act and its implications are understood and controllable;*
- *the person committing the act was not coerced and even overcomes hurdles to the act committed;*
- *the person believes or has reasons to believe that the act is contrary to law.*

Q 21. Can a company be proceeded against or prosecuted for any offence under the CGST/SGST Act?

Ans. Yes. Section 137 of the CGST/SGST ACT provides that every person who was in-charge of or responsible to a company for the conduct of its business shall, along-with the company itself, be liable to be proceeded against and punished for an offence committed by the company while such person was in-charge of the affairs of the company. If any offence committed by the company—

- *has been committed with the consent/*

connivance of, or

- *is attributable to negligence of—*

any officer of the company then such officer shall be deemed to be guilty of the said offence and liable to be proceeded against and punished accordingly.

Q 22. What is meant by compounding of offences?

Ans. Section 320 of the Code of Criminal Procedure defines “compounding” as to forbear from prosecution for consideration or any private motive.

Q 23. Can offences under CGST/SGST Act be compounded?

Ans. Yes. As per section 138 of the CGST/SGST Act, any offence, other than the following, may upon payment of the prescribed (compounding) amount be compounded and such compounding is permissible either before or after the institution of prosecution:

- *Offences numbered 1 to 6 of the 12 major offences (outlined in Q. 16 above), if the person charged with the offence had compounded earlier in respect of any of the said offences;*
- *Aiding/abetting offences numbered 1 to 6 of the 12 major offences, if the person charged with the offence had compounded earlier in respect of any of the said offences;*
- *Any offence (other than the above offences) under any SGST Act/IGST Act in respect of a supply with value exceeding Rs.1 crore, if the person charged with the offence had compounded earlier in respect of any of the said*

offences;

- *Any offence which is also an offence under NDPSA or FEMA or any other Act other than CGST/SGST;*

Compounding is to be permitted only after payment of tax, interest and penalty and compounding shall not affect any proceeding already instituted under any other law.

Q 24. Are there any monetary limits prescribed for compounding of offence?

Ans. Yes. The lower limit for compounding amount is to be the greater of the following amounts: -

- *50% of tax involved, or*
- *Rs. 10,000.*

The upper limit for compounding amount is to be greater of the following amounts: -

- *150% of tax involved or*
- *Rs. 30,000.*

Q 25. What is the procedure for compounding of offences?

Ans. The applicant has to make an application in form GST CPD-01 to the Commissioner for compounding of an offence. The application is not allowed unless the tax, interest and penalty liable to be paid have been paid in the case for which the application has been made

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.

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 cooperated 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.

The application shall not be decided without affording an opportunity of being heard to the applicant and recording the grounds of such rejection.

Q 26. What is the consequence of compounding of an offence under CGST/SGST Act?

Ans. Sub-section (3) of section 138 provides that on payment of compounding amount no further proceeding to be initiated under this Act and criminal proceeding already initiated shall stand abated.

20. Overview of the IGST Act

Q 1. What is IGST?

Ans. "Integrated Goods and Services Tax" (IGST) means tax levied under the IGST Act on the supply of any goods and/ or services in the course of inter-State trade or commerce.

Q 2. What are inter-state supplies?

Ans. A supply of goods and/or services in the course of inter-State trade or commerce means any supply where the location of the supplier and the place of supply are in different States, two different union territory or in a state and union territory Further import of goods and services, supplies to SEZ units or developer, or any supply that is not an intra state supply. (Section 7 of the IGST Act).

Q 3. How will the Inter-State supplies of Goods and Services be taxed under GST?

Ans. IGST shall be levied and collected by Centre on inter-state supplies. IGST would be broadly CGST plus SGST and shall be levied on all inter-State taxable supplies of goods and services. The inter-State seller will pay IGST on value addition after adjusting available credit of IGST, CGST, and SGST on his purchases. The Exporting State will transfer to the Centre the credit of SGST used in payment of IGST. The Importing dealer will claim credit of IGST while discharging his output tax liability in his own State. The Centre will transfer to the importing State the credit of IGST used in payment of SGST. The relevant information is also submitted to the Central Agency which will act as a clearing house mechanism, verify the claims and inform the respective governments to transfer the funds.

Q 4. What are the salient features of the draft IGST Law?

Ans. The draft IGST law contains 25 sections divided into 9 Chapters. The law, inter alia, sets out the rules for determination of the place of supply of goods. Where the supply involves movement of goods, the place of supply shall be the location of goods at the time at which the movement of goods terminates for delivery to the recipient. Where the supply does not involve movement of goods, the place of supply shall be the location of such goods at the time of delivery to the recipient. In the case of goods assembled or installed at site, the place of supply shall be the place of such installation or assembly. Finally, where the goods are supplied on board a conveyance, the place of supply shall be the location at which such goods are taken on board.

The law also provides for determination of place of supply of service where both supplier and recipient are located in India (domestic supplies) or where supplier or recipient is located outside India (international supplies). This is discussed in details in the next Chapter.

It also provides for certain other specific provisions like payment of tax by online information and database access service provider located outside India to an unregistered person in India, upon taking registration in India, under the IGST Act, following a simplified provision (section 14 of the IGST Act),

Q 5. What are the advantages of IGST Model?

Ans. The major advantages of IGST Model are:

a. Maintenance of uninterrupted ITC chain on inter-State transactions;

- b. No upfront payment of tax or substantial blockage of funds for the inter-State seller or buyer;*
- c. No refund claim in exporting State, as ITC is used up while paying the tax;*
- d. Self-monitoring model;*
- e. Ensures tax neutrality while keeping the tax regime simple;*
- f. Simple accounting with no additional compliance burden on the taxpayer;*
- g. Would facilitate in ensuring high level of compliance and thus higher collection efficiency. Model can handle 'Business to Business' as well as 'Business to Consumer' transactions.*

Q 6. How will imports/exports be taxed under GST?

Ans. All imports/exports will be deemed as inter-state supplies for the purposes of levy of GST (IGST). The incidence of tax will follow the destination principle and the tax revenue in case of SGST will accrue to the State where the imported goods and services are consumed. Full and complete set-off will be available as ITC of the IGST paid on import on goods and services. Exports of goods and services will be zero rated. The exporter has the option either to export under bond without payment of duty and claim refund of ITC or pay IGST at the time of export and claim refund of IGST. The IGST on imports is leviable under the provisions of the Customs Tariff Act and shall be levied at the time of imports along with the levy of the Customs Act (Section 5 of the IGST Act)

Q 7. How will the IGST be paid?

Ans. The IGST payment can be done utilizing ITC or by cash. However, the use of ITC for payment of IGST will be done using the following hierarchy, -

- *First available ITC of IGST shall be used for payment of IGST;*
- *Once ITC of IGST is exhausted, the ITC of CGST shall be used for payment of IGST;*
- *If both ITC of IGST and ITC of CGST are exhausted, then only the dealer would be permitted to use ITC of SGST for payment of IGST.*

Remaining IGST liability, if any, shall be discharged using payment in cash. GST System will ensure maintenance of this hierarchy for payment of IGST using the credit.

Q 8. How will the settlement between Centre, exporting state and importing state be done?

Ans. There would be settlement of account between the Centre and the states on two counts, which are as follows-

- *Centre and the exporting state: The exporting state shall pay the amount equal to the ITC of SGST used by the supplier in the exporting state to the Centre.*
- *Centre and the importing state: The Centre shall pay the amount equal to the ITC of IGST used by a dealer for payment of SGST on intra- state supplies.*

The settlement would be on cumulative basis for a state taking into account the details furnished by all the dealer in the settlement period. Similar settlement of amount would

also be undertaken between CGST and IGST account.

Q 9. What treatment is given to supplies made to SEZ units or developer?

Ans. Supplies to SEZ units or developer shall be zero rated in the same manner as done for the physical exports. Supplier shall have option to make supplies to SEZ without payment of taxes and claim refunds of input taxes on such supplies (section 16 of the IGST Act).

Q 10. Are business processes and compliance requirement same in the IGST and CGST Acts?

Ans. The procedure and compliance requirement are same for processes likes registration, return filing and payment of tax. Further, the IGST act borrows the provisions from the CGST Act as relating to assessment, audit, valuation, time of supply, invoice, accounts, records, adjudication, appeal etc. (Section 20 of the IGST Act)

21. Exports and Imports

21.1 Exports

Q 1. How are exports be treated under GST?

Ans. All exports are deemed as inter-State supplies. Exports of goods and services are treated as zero rated supplies. The exporter has the option either to export under bond/Letter of Undertaking without payment of tax and claim refund of ITC or pay IGST by utilizing ITC or in cash at the time of export and claim refund of IGST paid.

Q 2. What is Zero Rating?

Ans. By zero rating it is meant that the entire value chain of the supply is exempt from tax. This means that in case of zero rating, not only is the output exempt from payment of tax, there is no bar on taking/availing credit of taxes paid on the input side for making/providing the output supply. The concept of zero rating of supplies requires the supplies as well as the inputs or input services used in supplying the supplies to be free of GST. This is done by employing the following means:

- a) The taxes paid on the supplies which are zero rated are refunded;*
- b) The credit of inputs/ input services is allowed;*
- c) Wherever the supplies are exempted, or the supplies are made without payment of tax, the taxes paid on the inputs or input services i.e. the unutilised input tax credit is refunded.*

Q 3. How is zero rated supply different from exempted supply?

Ans. The difference between zero rated supplies and

exempted supplies is tabulated as below:

| <i>Exempted Supplies</i> | <i>Zero rated Supplies</i> |
|--|--|
| <i>“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 of CGST Act, 2017 or under section 6 of the IGST Act, 2017 and includes non-taxable supply</i> | <i>“zero-rated supply” means export of goods or services or both or supply of goods or services or both to a SEZ developer or a SEZ unit as per section 16 of IGST Act, 2017</i> |
| <i>No tax on the outward exempted supplies, however, the input supplies used for making exempt supplies to be taxed</i> | <i>No tax on the outward supplies; Input supplies also to be tax free</i> |
| <i>Credit of input tax needs to be reversed, if taken; No ITC on the exempted supplies</i> | <i>Credit of input tax may be availed for making zero-rated supplies, even if such supply is an exempt supply ITC allowed on zero-rated supplies</i> |
| <i>Value of exempt supplies, for apportionment of ITC, shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land</i> | <i>Value of zero rated supplies shall be added along with the taxable supplies for apportionment of ITC</i> |

| | |
|--|--|
| <i>and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.</i> | |
| <i>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 the CGST or IGST Act shall not be liable to registration</i> | <i>A person exclusively making zero rated supplies may have to register as refunds of unutilised ITC or integrated tax paid shall have to be claimed</i> |
| <i>A registered person supplying exempted goods or services or both shall issue, instead of a tax invoice, a bill of supply</i> | <i>Normal tax invoice shall be issued</i> |

Q 4. Can a person claim input tax credit in case of export of exempted goods?

Ans. Yes, any zero rated supply is eligible for input tax credit paid by such supplier. As per section 16(2) of the IGST Act, credit of input tax may be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply.

Q 5. What is the impact on importer-exporter code(IEC)?

Ans. All IECs issued with effect from 1.07.2017 reflect PAN as IEC. There will be no separate IEC number allotted to the exporters. PAN number itself would be the IEC number and would be authorised as IEC.

The GSTIN is the key identifier at the transaction level. The importer/exporter need to declare only GSTIN (wherever registered with GST) at the time of import/export of goods. The PAN level aggregation of data would automatically happen in the system. The IEC holders shall quote their PAN number (instead of IEC) in all their future correspondence as well as documentation with DGFT.

Q 6. What IEC number is to be used for special category of importers like government, individual importing for personal use etc in terms of para 2.07(b) of Handbook of Procedure by DGFT?

Ans. DGFT has modified the para 2.07(b) and has allotted revised permanent IEC number for such category of importers vide DGFT Public Notice No. 09/2015-20 dated 29th June, 2017. The same can be used for import /export by the categories of importers/exporters mentioned therein.

For instance, persons /Institutions /Hospitals importing or exporting goods for personal use, not connected with trade or manufacture or agriculture, earlier using IEC no. 0100000053 now have to use IIE0153E as IEC.

Q 7. What is export of goods?

Ans. The definition of “export of goods” in section 2(5) of IGST Act has been straight taken from section 2(18) of the Customs Act, 1962 and means taking goods out of India to a place outside India.

Q 8. What is India in the context of GST?

Ans. The term “India” as per section 2(56) of CGST Act,

2017 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”

Under Article 1 of the Constitution of India, ‘India’ is defined as under:

1. *Name and territory of the Union*

- (1) India, that is Bharat, shall be a Union of States*
- (2) The States and the territories thereof shall be as specified in the First Schedule*
- (3) The territory of India shall comprise*
 - (a) The territories of the states*
 - (b) The Union Territories specified in the First Schedule*
 - (c) Such other territories as may be acquired*

Article 1 of the Constitution makes it clear that the territories of the States and that of the Union Territories are fixed in terms of First Schedule to the Constitution. India is a Union of States however the territory of India is not limited to the territories of the respective States but also includes other territories as may be acquired.

The Maritime Zone Act vide section 3(1) thereof provides that the sovereignty of India extends to territorial waters, sea bed and subsoil underlying such waters and the air space over such waters. The limit of territorial waters is fixed at 12 nautical miles from the baseline as per Section 3(2) of the Maritime Zone Act.

*The **continental shelf of India** comprises the seabed and subsoil of the submarine areas that extend beyond the limit of its territorial waters throughout the natural prolongation of its land territory to the outer edge of the continental margin or to a distance of two hundred nautical miles from the baseline where the outer edge of the continental margin does not extend up to that distance.*

*The **Exclusive Economic Zone ('EEZ')** of India is an area beyond and adjacent to the territorial waters, and the limit of such zone is two hundred nautical miles from the baseline.*

Q 9. What is a State in the context of GST?

Ans. The definition of Union Territory in Article 366 (30) of the Constitution means any Union Territory specified in the First Schedule of the Constitution and includes any other territory comprised within the territory of India but not specified in that Schedule. The territorial water is not referred to in the First Schedule of the Constitution, and therefore, as per the Constitutional provision, territorial waters up to twelve nautical miles is part of Union Territory.

In case of Great Eastern Shipping Company ... vs State of

Karnataka and Ors. on 23 January, 2004 before Karnataka High Court, the Court held that State of Karnataka had taxation powers over territorial waters. The matter was appealed against before the Supreme Court and the Supreme Court in Civil Appeal No. 3383/2004 has stayed the order of the High Court. The Hon'ble Supreme Court on 13.1.2016 while hearing this case had observed as follows: "any pronouncement of the court would have far reaching implications not only for central state relationship but the federal character and separation of legislative powers of the union and the States".

The GST Council in its ninth meeting held on 16th January, 2017 took the decision that the territorial water within the twelve nautical miles shall be treated as the territory of the Union of India unless the Hon'ble Supreme Court decides otherwise in the on-going litigation on the issue but the power to collect the State tax in the territorial waters shall be delegated by the Central Government to the States.

Accordingly, for supplies in territorial waters, section 9 of IGST Act gives powers to States to levy GST. Section 9 is reproduced below:

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.

Further, explanation clause to section 25(1) of CGST Act, 2017 on registration provisions provides that every person who makes a supply from the territorial waters of India shall obtain registration in the coastal State or Union territory where the nearest point of the appropriate baseline is located.

Q 10. Can an exporter purchase goods without payment of tax on furnishing of a declaration form?

Ans. No, there is no such provision in GST. Tax has to be payable on their inward supplies and they can claim refund of the accumulated ITC.

However, there is a 0.1% scheme in which a supplier can supply goods to an exporter by paying only 0.1% GST and claim refund of unutilised ITC. The exporter in such a scenario cannot export on payment of integrated tax and take refund. He has to adopt the LUT/Bond route only.

Q 11. What is the 0.1% scheme for procurement of exports by merchant exporters?

Ans. It is a scheme for merchant exporters who have an option to pay nominal GST of 0.1% for procuring goods from domestic suppliers for export vide Notification 40/2017-Central Tax (Rate) and 41/2017-Integrated Tax (Rate) both dated 23.10.2017.

Exemption from payment of GST on so much of the tax leviable on such goods as is in excess of the amount

calculated @0.1%, is granted, subject to fulfilment of following conditions:

- *Supply on a tax invoice*
- *Recipient to export goods within 90 days from issue of invoice by supplier*
- *Recipient to indicate the GSTIN number of the registered supplier & tax invoice number issued by the registered supplier in the shipping bill or bill of export as the case may be*
- *the registered recipient shall be registered with an Export Promotion Council or a Commodity Board recognised by the Department of Commerce*
- *the registered recipient shall place an order on registered supplier for procuring goods at concessional rate and a copy of the same shall also be provided to the jurisdictional tax officer of the registered supplier.*
- *the registered recipient shall move the said goods from place of registered supplier –*
 - *(a) directly to the Port, Inland Container Deport, Airport or Land Customs Station from where the said goods are to be exported; or*
 - *(b) directly to a registered warehouse from where the said goods shall be moved to the Port, Inland Container Deport, Airport or*

Land Customs Station from where the said goods are to be exported;

- *if the registered recipient intends to aggregate supplies from multiple registered suppliers and then export, the goods from each registered supplier shall move to a registered warehouse and after aggregation, the registered recipient shall move goods to the Port, Inland Container Depot, Airport or Land Customs Station from where they shall be exported;*
- *in case of situation referred to in above condition, the registered recipient shall endorse receipt of goods on the tax invoice and also obtain acknowledgement of receipt of goods in the registered warehouse from the warehouse operator and the endorsed tax invoice and the acknowledgment of the warehouse operator shall be provided to the registered supplier as well as to the jurisdictional tax officer of such supplier; and*
- *when goods have been exported, the registered recipient shall provide copy of shipping bill or bill of export containing details of Goods and Services Tax Identification Number (GSTIN) and tax invoice of the registered supplier along with proof of export general manifest or export report having been filed to the registered*

supplier as well as jurisdictional tax officer of such supplier.

Q 12. What are the provisions for refund of taxes for exporters in GST?

Ans. Provisions relating to refund are contained in section 54 of the CGST Act, 2017. It provides for refund of tax paid on zero-rated supplies of goods or services 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 unutilized input tax credit. Identical provisions exist under the IGST Act, 2017 and relevant SGST/UTGST Acts.

Q 13. Can unutilized input tax credit be allowed as refund to exporters?

Ans. Yes. Section 54(3) of the CGST Act, 2017 provides for refund of any unutilised input tax credit of inputs and input services at the end of any tax period except where

- i) the goods exported out of India are subjected to export duty; or*
- ii) the exporter claims drawback of CGST or refund of IGST paid on such export.*

Q 14. Will the principle of unjust enrichment apply to exports?

Ans. The principle of unjust enrichment is not applicable in case of exports of goods or services as the recipient is located outside the taxable territory.

However, in respect of supplies to SEZs, section 54(8) has

been amended vide CGST (Amendment) Act, 2018 so as to make the principle of unjust enrichment applicable. Thus, from the date of coming of the CGST(Amendment) Act, 2018 into force, the principle of unjust enrichment will be applicable in case of refunds against supplies to SEZs, even though such supplies are zero rated.

Q 15. What is deemed export under GST Law? Whether any supply has been categorized as deemed export by the Government?

Ans. *Deemed export has been defined under Section 2(39) of CGST Act, 2017 as supplies of goods as may be notified under section 147 of the said Act. Under section 147, the Government may, on the recommendations of the Council, notify certain supplies of goods manufactured in India 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. Notification No. 48/2017-Central tax dated 18th October, 2017 has been issued notifying the following supplies of goods as deemed exports.*

- (i) Supply of goods by a registered person against Advance Authorisation*
- (ii) Supply of capital goods by a registered person against Export Promotion Capital Goods Authorisation*
- (iii) Supply of goods by a registered person to Export Oriented Unit*
- (iv) Supply of gold by a bank or Public Sector Undertaking specified in the notification No.*

50/2017-Customs, dated the 30th June, 2017 (as amended) against Advance Authorisation.

Q 16. What are the documents to be submitted as evidence of supplies as deemed export supplies?

Ans. A supplier of deemed export supplies has to submit following documents for claiming refund:

- (i) Acknowledgment by the jurisdictional Tax officer of the Advance Authorisation holder or Export Promotion Capital Goods Authorisation holder, as the case may be, that the said deemed export supplies have been received by the said Advance Authorisation or Export Promotion Capital Goods Authorisation holder, or a copy of the tax invoice under which such supplies have been made by the supplier, duly signed by the recipient Export Oriented Unit that said deemed export supplies have been received by it.*
- (ii) An undertaking by the recipient of deemed export supplies that no input tax credit on such supplies has been availed of by him.*
- (iii) An undertaking by the recipient of deemed export supplies that he shall not claim the refund in respect of such supplies and the supplier may claim the refund.*

(Notification No. 49/2017-Central Tax dated 18th October, 2017)

Q 17. When an exporter cannot use the route of payment of IGST and taking refund under Rule 96 of CGST Rules, 2017?

*Ans. **Position from 23rd October, 2017 to 8th October, 2018:** An exporter cannot use the route of payment of IGST and taking refund under Rule 96 of CGST Rules, 2017 if he receives supplies on which following benefits are availed:*

If Supplier Claims benefit of –

- (i) Deemed Exports(Notn No. 48/2017-CT)*
- (ii) 0.1% scheme (Notn No. 40/2017-CT(R) and 41/2017-IGST(R))*
- (iii) EOU Scheme (Notn 78/2017-Customs)*
- (iv) AA/EPCG etc. (Notn No. 79/2017-Customs)*

***Position from 9th October, 2018:** An exporter cannot use the route of payment of IGST and taking refund under Rule 96 of CGST Rules, 2017 if he receives supplies on which following benefits are availed-*

- (i) Deemed Exports (Notn No. 48/2017-CT)*
- (ii) 0.1% scheme (Notn No. 40/2017-CT(R) and 41/2017-IGST(R))*

Or, if the exporter avails following benefits-

- (i) EOU Scheme (Notn 78/2017-Customs)*
- (ii) AA/EPCG etc. (Notn No. 79/2017-Customs, **except for capital goods**)*

In the above cases, he needs to avail refund of unutilised ITC as per Rule 89(4A) / (4B)

(Notification No. 54/2018 – Central Tax dated 09.10.2018)

Q 18. What would be the GST rate if the product procured by merchant exporter at 0.1 per cent is further exported on payment of IGST?

Ans. The option of payment of IGST and taking refund is not available in case the exporter has procured the goods under 0.1% scheme. He should avail the LUT facility while exporting such goods so that there is no tax liability at the time of export.

Q 19. Can we export under normal procedure without availing the benefit of 0.1 per cent while procuring goods for exports?

Ans. Yes, the facility of procuring goods at 0.1 per cent is an optional facility which is available subject to adhering to the conditions mentioned in Notification no. 41/2017-Integrated Tax (Rate) dated 23rd October, 2017. In case, an exporter wants to procure the goods for exports on payment of applicable GST and subsequent exports either on LUT or on payment of IGST, the exporter can do it and claim back ITC or IGST, as the case may be.

Q 20. Can duty credit scrips received as incentive by exporters such as MEIS, SEIS etc be utilised for payment of all duties at the time of import?

Ans. No, these scrips can be utilised only for payment of Basic Customs duty and Safeguard Duty, Transitional Product Specific Safeguard Duty, and Antidumping Duty. In case of non-GST supplies like petroleum products etc, the scrips can also be used for payment of duties like central

excise, CVD/ SAD.

The scrips cannot be used for payment of any type of GST-IGST/CGST/SGST/UTGST or compensation cess.

Q 21. How can a manufacturer exporter of exempted goods take input stage credit on raw materials used in the manufacture of exported goods?

Ans. Under IGST law a person engaged in export of goods which is an exempt supply is eligible to avail input stage credit for zero rated supplies. He needs to choose the Bond/LUT route and not payment of integrated tax route. Once the goods are exported, refund of unutilized credit can be availed under Section 16(3)(a) of IGST Act, 2017 and Section 54 of the CGST Act, 2017 and the rules made there.

Q 22. What is the rate of duty on sale of MEIS/SEIS scrips?

Ans. The MEIS/SEIS scrips are classifiable under HSN code 4907 and the sale of such scrips is exempted vide S. No. 122A of Notification No. 2/2017-Central Tax (Rate) dated 28.06.2017, as amended vide Notification No. 35/2017-Central Tax (Rate) dated 13.10.2017.

Q 23. Whether sale of DFIA scrips liable to GST?

Ans. As per Notification No. 35/2017-Central Tax (Rate) dated 13.10.2017, "Duty Credit scrips" are exempted from GST. DFIA scrips are not "Duty Credit scrips" and therefore are leviable to GST @ 12%.

Q 24. Can a person opting for composition scheme make supply of goods to SEZ?

Ans. No, because all supplies to SEZ are treated as inter-State supplies. A person paying tax under composition scheme cannot make inter-State outward supply of goods.

Q 25. An exporter gets an order from a Selling agent to whom he pays commission. Will it be taxable under GST?

*Ans. **Situation I- Selling agent is located in India:** The selling agent in India is providing service to the exporter. Supplier and recipient are in India, therefore place of supply would be governed by the default provision in section 12 of IGST Act, 2017 and would be location of exporter. Thus, it would be taxable in GST.*

***Situation II- Selling agent is located outside India:** The foreign agent, who facilitates the supply of goods, is covered within the definition of intermediary. Since the supplier is outside India and recipient is in India, place of supply would be as per section 13 of IGST Act, 2017. The place of supply of service for services provided by intermediary would be the location of service provider, i.e. the place where he is registered. Since a foreign agent is located outside India and not registered in India, the commission paid to him will not be taxable.*

Q 26. Whether commission received by a buying agent for helping procuring goods from an exporter is exempted from GST?

Ans. Situation I- Buying agent is located in India: The buying commission received by buying agent in India from the importer overseas in foreign exchange will be taxable as the agent is covered in definition of intermediary and therefore place of supply is in India.

Situation II- Buying agent is located outside India: The buying commission received will not be taxable as place of supply will be outside India.

Q 27. Does GST be payable on goods not intended to be sold, taken out for participation in overseas exhibitions and trade fairs and brought back into India after exhibition?

Ans. GST is not payable in such cases. Exporters will need exhibition participation letter and no foreign exchange involved letter from the concerned bank for the purpose of exchange control requirements.

At the time of re-import of the subject goods, identity of goods with respect to the export documents needs to be established to seek exemption from import duty in accordance with Customs provisions.

Q 28. What is e-wallet scheme?

Ans. Concept of "e-Wallet" is being worked upon by a committee appointed by GST Council. The e-wallet of the exporter would be credited with a notional amount on the

basis of the past export performance. An exporter could use the balance in e-Wallet to pay tax liability and then adjust the credit against the refund paid to him. The notional credit in e-Wallet is like an advance refund, with the restriction that this could only be used to pay taxes and would be adjusted against final payment of refunds. The credit in e-Wallet could be used for payment of IGST on imports thus ensuring that there was no additional burden of working capital. As regards payment of GST on domestic purchases, the e-Wallet system would permit transfer of balances from the exporter's account to his supplier's account so that GST could be paid by the supplier on the basis of the amount transferred in his e-Wallet by the exporter. The working capital requirement in the ecosystem would get reduced by the amount of the notional credit given in the e-Wallets. This credit would be used to pay IGST, GST etc. The details of the scheme are being worked out and will be announced later.

Q 29. Whether section 16 of the IGST applicable to exports in respect of compensation cess?

Ans. Section 11(2) of the GST (Compensation to States) Act, 2017 provides that provisions of IGST Act, and the rules made thereunder, 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.

Thus, provisions of section 16 of the IGST Act, 2017, relating to zero rated supply will apply mutatis mutandis for the

purpose of Compensation Cess. Exporter will be eligible for refund of Compensation Cess paid on goods exported by him and/or no Compensation Cess will be charged on goods exported by an exporter under bond and he will be eligible for refund of input tax credit of Compensation Cess relating to goods exported [on similar lines as refund of input taxes under section 16(3) (a) of the IGST, 2017.

(Circular No. 1/1/2017-compensation cess dated 26th July, 2017)

21.2 Export of Services

Q 30. What is supply of services in the GST?

Ans. *As in the earlier service tax regime, five conditions have been prescribed for a service to be treated as exports in GST. The five conditions comprised in the definition of the term “Export of Services” are cumulative and are to be fulfilled in totality in order to consider a transaction of supply of service as an export supply. They are as under:*

- (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;*

[Section 2 (6) of IGST Act read with IGST (Amendment) Act, 2018]

Q 31. What is location of supplier of service?

Ans. *The location of supplier of service has been defined in section 2(15) of the IGST Act, 2017 and is to be determined by applying the sequential test given in the definition which is reproduced hereunder:*

- (a) Where a supply is made from place of business for which the registration has been obtained, the location of such place of business*
- (b) Where a supply is made from a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment.*
- (c) Where a supply is made from more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the provision of the supply.*
- (d) In absence of such places, the location of the usual place of residence of the supplier.*

A “place of business” is defined in section 2(85) of the CGST Act, 2017 and 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;

A fixed establishment is defined in section 2(50) of the CGST Act, 2017 and “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.

Q 32. How is condition 5 viz 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 of the IGST Act, 2017 impacts the taxability?

Ans. Explanation I in section 8(2) of the IGST Act, 2017 states that where a person has an establishment in India and any other establishment outside India then such establishments shall be treated as establishment of distinct persons. Where the Indian arm is set up as a liaison office or a branch they would be treated as establishments of the same entity and hence the supply inter se shall not qualify as export of services.

However, if the Indian arm is set up as a wholly owned subsidiary company incorporated under the Indian laws, the foreign company and the Indian subsidiary would not be governed by the provisions of distinct person or related person as both are separate legal entities.

Q 33. Whether supply of services to Nepal and Bhutan in Indian rupees are liable to GST?

Ans. No. Supply of services where place of supply is Nepal & Bhutan against payment in Indian Rupees are exempted from GST vide Sr. No.10D of notification no.09/2017-Integrated Tax (Rate) dated 28.06.2017 as amended by Notification 42/2017-Integrated Tax (Rate) dated 27.10.2017.

Further, requirement of remittance in foreign exchange has been relaxed by amendment in the definition of "export of services" in section 2(6) of the IGST Act, 2017 vide the IGST (Amendment) Act, 2018. The payment for such service can now be received by the supplier of service in Indian rupees wherever permitted by the Reserve Bank of India.

Q 34. Whether services supplied by an establishment of a person in India to any establishment of that person outside India, which are treated as establishments of distinct persons in accordance with Explanation 1 in section 8 of the Integrated Goods and Services Tax Act, 2017 taxable?

Ans. No. Such services are exempted with a condition that the place of supply should be outside India as per section 13 of the IGST Act, 2017 (Notification No. 15/2018-Integrated Tax (Rate) dated 26th July, 2018)

21.3 Duty Drawback Scheme

Q 35. Is there any impact of GST on the Duty Drawback Scheme for exporters?

Ans. Following changes have been done in the Duty Drawback scheme in Customs:

- (i) *No amendments have been made to the drawback provisions (Section 74 or Section 75) under Customs Act 1962 in the GST regime.*
- (ii) *However, the duty drawback rules have substantially been amended and new Customs and Central Excise Duties Drawback Rules, 2017 with effect from 01.10.2017, have been issued. (Notification No. 88/2017-Customs (N.T) dated 21st September, 2017)*
- (iii) *The definition of drawback has been amended to exclude Integrated Tax and GST Compensation Cess, hence no refund of any of the GST taxes.*
- (iv) *A new Duty Drawback schedule, comprising of only one rate for every product irrespective of whether ITC is taken by the exporter or not has been introduced with effect from 01.10.2017. (Notification No. 89/2017-Customs (N.T) dated 21st September, 2017)*
- (v) *The rates of drawback have substantially been reduced. The earlier rebate had been done away with. Instead now, refund of integrated tax, if paid by the exporter, is refunded by Customs.*
- (vi) *The refund of integrated tax is irrespective of whether drawback is taken by the exporter or not.*
- (vii) *The drawback scheme will continue in terms of both section 74 and section 75. Option of All Industry Rate (AIR) as well as Brand Rate under Section 75 shall also continue.*
- (viii) *Drawback under Section 74 will refund Customs duties as well as Integrated Tax and*

Compensation Cess paid on imported goods which are re-exported. However, a part of the Integrated Tax and Compensation Cess paid on imported goods would have gone to the respective States/UT, therefore, the same can only be refunded only if the concerned State/UT has not refunded it and the importer has not taken ITC of the same.

Q 36. Will drawback at higher rate be available to exporters who do not avail Input Tax Credit (ITC) like presently available to those who do not avail CENVAT credit?

Ans. Prior to GST, there were two All Industry Rates (AIRs) of duty drawback on exports. The higher rate rebated Customs duties, Central Excise duties and Service tax on inputs or input services used in the manufacture of export goods subject to the condition that no input credit i.e. CENVAT credit was claimed. The lower rate rebated Customs duties on inputs and Central excise duty on fuel for generation of captive power, used in the manufacture of export goods.

In the post GST era, as Central Excise duties and Service Tax have been subsumed in GST, for which full input tax credit is available, only single rate of AIRs have been continued.

Therefore, there will be no difference in rate of Drawback for exporters not availing ITC in GST regime. In GST regime, drawback will be admissible only at lower rate determined on the basis of customs duties paid on imported materials used in the manufacture of export goods.

However, as an export facilitation measure, for the transition period of 3 months from July to September, 2017, drawback at higher composite rates were continued to be granted subject to the condition that no input tax credit of CGST/IGST was claimed, no refund of IGST paid on export goods was claimed and no CENVAT credit was carried forward.

Q 37. Do state taxes also are refunded through duty drawback scheme?

Ans. No. The central taxes which are outside GST but are embedded in exports namely Customs, Central Excise are refunded under the Duty Drawback Scheme. The State taxes are only refunded in respect of apparel and clothing under the Refund of State Levies (RoSL) scheme wherein the amount is refunded from the budget of Ministry of textiles.

21.4 Special Economic Zone(SEZ)

Q 38. How are supplies by and to SEZs treated in GST?

Ans. There is no change in the SEZ scheme. All imports by SEZs are exempted from any duty/tax.

As per section 7(5)(b) of the IGST Act, 2017, a supply of goods or services or both to or by a SEZ developer or a SEZ unit is treated to be a supply of goods or services or both in the course of inter-State trade or commerce.

Further as per section 16 of IGST Act, 2017 supply of goods or services or both to a SEZ developer or a SEZ unit is considered as zero rated supply.

Q 39. What will be the IGST rates when goods or services or both are supplied to SEZ unit?

Ans. Supplies to SEZ unit or developer are considered as zero rated. As such, the supplier can choose to either supply on payment of IGST and claim refund or supply without payment of IGST and in that scenario can only claim the refund of unutilized ITC, if any.

The IGST rates when supplying goods and services to SEZ unit on payment of tax and taking refund route, will be as per rate Notifications No. 01, 02 and 03/2017-Integrated Tax (Rate) dated 28.06.2017(for goods) and rate Notifications No. 08 and 09/2017 dated 28.06.2017(for Services) as amended from time to time.

Q 40. An SEZ unit in Mumbai avails hotel accommodation in Goa. Whether such supply is intra-state or inter-state supply?

Ans. It is an established principle of interpretation of statutes that in case of an apparent conflict between two provisions, the specific provision shall prevail over the general provision. section 7(5)(b) of the IGST Act is a specific provision relating to supplies of goods or services or both made to a SEZ developer or a SEZ unit, which states that such supplies shall be treated as inter-State supplies.

Accordingly, CBIC vide Circular No. 48/22/2018-GST dated 14.06.2018 has clarified that services of short term accommodation, conferencing, banqueting etc., provided to a SEZ developer or a SEZ unit shall be treated as an inter-State supply.

Q 41. Whether SEZ unit or developer needs to pay IGST when it received supplies which are under reverse charge mechanism?

Ans. All supplies to SEZs are zero rated. However, the suppliers are given two options. In this case, the supplier is not liable to pay GST as the supply is under reverse charge mechanism. The recipient is considered as deemed supplier. Therefore, SEZ has to pay GST in this case.

Q 42. What is the refund mechanism when a DTA supplier supplies goods/services to SEZ Unit?

Ans. The supplier to SEZs has following two options:

- (i) Supply goods or services or both to SEZ unit or developer on payment of Integrated tax and claim refund*
- (ii) Supply goods or services or both to SEZ unit or developer without payment of Integrated tax under LUT/Bond and claim refund of unutilized ITC*

Option I: *Supply goods or services or both to SEZ unit or developer on payment of Integrated tax and claim refund*

The supplier has to follow the procedure outlined in rule 89 of the CGST Rules, 2017. The refund in respect of supplies to a SEZ unit or a SEZ 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

The refund application in form GST RFD-01 shall be accompanied with:

- (i) 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;*
- (ii) 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;*
- (iii) 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;

(Section 89(1) of CGST (Rules), 2017.)

Option II: *Supply goods or services or both to SEZ unit or developer without payment of Integrated tax under LUT/Bond and claim refund of unutilized ITC*

The supplier has to follow the procedure outlined in rule 96A of the CGST Rules, 2017. He needs to submit a bond/LUT 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, or such further period as may be allowed by the Commissioner,] from the date of 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.

Q 43. Whether a DTA supplier has to furnish a Bond or LUT while supplying goods/services without payment of integrated tax?

Ans. Yes, a DTA supplier has to furnish a Bond or LUT while supplying goods/services without payment of integrated tax as per Section 16 of the Integrated Tax Act,

2017.

Q 44. Whether the Bond/LUT by a DTA supplier should be submitted to the Development Commissioner SEZ or the jurisdictional proper officer of GST?

Ans. As per Circular No.2/2/2017-GST dated 04.07.2017 Bond/LUT shall be furnished to the jurisdictional Deputy/Assistant Commissioner having jurisdiction over the principal place of business of the exporter.

Q 45. What are the requirement for submitting Bond/LUT?

Ans. The requirement of Bond/LUT will be as prescribed under Circulars No. 4, 8 and 40/2017.

The registered person (exporters) shall fill and submit FORM GST RFD-11 on the common portal. An LUT shall be deemed to be accepted as soon as an acknowledgement for the same, bearing the Application Reference Number (ARN), is generated online. No document needs to be physically submitted to the jurisdictional office for acceptance of LUT.

If it is discovered that an exporter whose LUT has been so accepted, was ineligible to furnish an LUT in place of bond as per Notification No. 37/2017-Central Tax, then the exporter's LUT will be liable for rejection. In case of rejection, the LUT shall be deemed to have been rejected ab initio.

[Circular 8/2017 as amended by 40/2018 dated 06.04.2018].

Q 46. Whether Bond/LUT is required to be submitted in case of exempted /non-GST goods?

Ans. In case of zero rated supply of exempted or non-GST goods, the requirement for furnishing a bond or LUT cannot be insisted upon. In this regard, the circular no. 45/19/2018-Central Tax dated 30-05-2018 clarifies that in respect of refund claims on account of export of non-GST and exempted goods without payment of integrated tax, LUT/bond is not required

Q 47. If a DTA supplier is supplying the goods to SEZ unit without payment of integrated tax what will the taxable value as per the format prescribed for SEZ supply?

Ans. The taxable value will be the invoice value of the goods supplied to the SEZ unit.

Q 48. Whether Bank as a nominated agency in the non-processing area of SEZ will be eligible for exemption granted to SEZs?

Ans. No. Bank as a nominated agency in the non-processing area of SEZ will not be eligible for exemption granted to SEZ.

Q 49. Whether the exemption granted to nominated agency pre GST regime will continue in the post GST regime for importing gold?

Ans. The bank as a nominated agency will continue to get the exemption of Customs duty as prevailed before the GST regime vide Notification No. 57/2000-Cus dated 08.05.2000.

Import of gold by specified banks and specified PSUs as mentioned in Notification No. 77/2017-Cus dated 13.10.2017 attracts Nil IGST. However, other banks will have to pay the IGST as per the Notification No. 26/2017-Cus dated 28.06.2017 as no exemption has been granted for payment of IGST duty to these.

Q 50. Can bank recover the IGST rate from the SEZ Unit while supplying gold to the SEZ Unit?

Ans. No. The banks cannot recover IGST rate from the SEZ Unit. However, the Banks can claim the refund of the IGST paid on imports after supplying the goods to the SEZ Unit.

Q 51. Whether services of short term accommodation, conferencing, banqueting etc., provided to a SEZ developer or a SEZ unit shall be treated as an intra or inter-State supply?

Ans. Even though as per section 12(3)(c) of the IGST Act, the place of supply of services by way of accommodation in any immovable property for organising any functions is the location at which the immovable property is located and therefore the above supply should be intra state supply, it is an established principle of interpretation of statutes that in case of an apparent conflict between two provisions, the specific provision shall prevail over the general provision.

Section 7(5)(b) of the IGST Act is a specific provision relating to supplies of goods or services or both made to a SEZ developer or a SEZ unit, which states that such supplies shall be treated as inter-State supplies. Therefore, the services of short term accommodation, conferencing,

banqueting etc., provided to a SEZ developer or a SEZ unit shall be treated as an inter-State supply.

(CBIC Circular No. 48/22/2018- GST dated 14th June, 2018)

Q 52. Whether the benefit of zero rated supply can be allowed to all procurements by a SEZ developer or a SEZ unit such as event management services, hotel and accommodation services, consumables etc?

Ans. Subject to the provisions of section 17(5) of the CGST Act, if event management services, hotel, accommodation services, consumables etc. are received by a SEZ developer or a SEZ unit for authorised operations, as endorsed by the specified officer of the Zone, the benefit of zero rated supply shall be available in such cases to the supplier.

(CBIC Circular No. 48/22/2018- GST dated 14th June, 2018)

Q 53. Whether a company having a unit in SEZ and a unit in DTA require separate registration for both the units?

Ans. Yes, as per Section 8(1) of CGST (Registration) Rules, 2017 a person having a units(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.

In the CGST Amendment Act, 2018, the concept of business vertical has been removed. However, following proviso has been inserted in section 25(2), making it mandatory for

SEZs to have separate registration.

“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.”

Q 54. Whether a SEZ unit or SEZ developer procure any goods or services from an unregistered supplier, and whether these will be zero rated supplies?

Ans. Supplies to SEZ unit or SEZ developer have been accorded the status of inter-State supplies under the IGST Act. Under the GST Law, any supplier making inter-State supplies has to compulsorily get registered under GST. Thus anyone making a supply to a SEZ unit or SEZ developer has to necessarily obtain GST registration.

Q 55. Whether SEZ Act/Rules are aligned with the GST?

Ans. SEZ Rules, 2006 have been synced with the GST Provisions vide SEZ (Amendment) Rules, 2018. The terms like Service Tax, Stamp Duty etc replaced with CGST/SGST/IGST/UTGST etc. GST registration certificate required instead of Sales tax registration earlier for establishment / setting up of SEZ unit(s)

Q 56. Whether duty drawback is admissible on supplies by DTA units to SEZs?

Ans. Yes. Supplies made by DTA unit to SEZ Unit or developer are eligible for drawback in cases where the SEZ Unit or developer issues a disclaimer to the DTA supplier and drawback is claimed by the DTA supplier.

Drawback shall be processed and paid by the office of Principal Commissioner or Commissioner of Customs/ Customs (Preventive) in whose jurisdiction the DTA Unit falls. Brand rate fixation also to be done by the office of Principal Commissioner/ Commissioner of Customs/ Commissioner of Customs (Preventive).

21.5 Export Oriented Units

Q 57. Whether the exemption granted to EOUs pre GST regime will continue in the post GST regime?

Ans. Imports by EOUs: The EOUs will continue to get the exemption of Customs duty as prevailed before the GST regime vide Notification No. 52/2003-Cus dated 31.03.2003.

The imports by EOUs are to be levied IGST and compensation cess as per the Notification No. 59/2017-Cus dated 30.06. 2017. However, as part of export package, imports by EOUs have been temporarily exempted from payment of IGST and compensation cess up to 31st March, 2019 vide Customs Notification No. 65/2018-Customs dated 24.09.2018.

***Supply to EOUs:** A supply to EOU is considered as deemed exports in terms of Notification No. 48/2017-Central tax dated 18th October, 2017. Supply has to be made on payment of GST following the procedure as prescribed vide*

Circular No. 14/14/2017-GST dated 06.11.2017 but the refund of such GST can be claimed either by supplier or receiver EOU.

Q 58. Is there any procedural change in import clearance by EOUs post introduction of GST?

Ans. For import of goods, EOUs are required to follow Rule 5 of Customs (Import of goods at Concessional rate of Duty) Rules, 2017 instead of earlier procedure of obtaining procurement certificate. Under this, EOU has to submit a copy of requirement of goods to be imported to the jurisdictional Customs Officer as well as to the Customs Officer at port of import. On the basis of the declaration by EOU, Customs Officer at port will allow the clearance of goods giving benefit of exemption notification No. 52/2003 dated 31.03.2003. There is no requirement of separate continuity bond to be submitted by EOU as per the requirement under Customs (Import of goods at Concessional Rate of Duty) Rules, 2017 as B-17 bond, being a general purpose bond will serve the said purpose.

The inter unit transfer would be on invoice on payment of applicable GST taxes. However, such transfer would be without payment of custom duty. The supplier unit will endorse on such documents the amount of custom duty, availed as exemption, if any, on the goods intended to be transferred. The recipient unit would be responsible for paying such basic customs duty, as is obligated under Notification no. 52/2003-Cus dated 31-3-2003 (as amended), when the finished goods made out of such goods or such goods are cleared in DTA.

*(Circular No. 35/2016-Customs dated 29.06.17 and
29/2017-Customs dated 17.07.2017)*

Q 59. Can EOUs take input tax credit of the IGST paid on imports?

Ans. Yes. EOUs can avail credit of IGST paid which can be used by them for payment of IGST for local supply of goods manufactured by them.

Q 60. Are EOUs entitled for refund of IGST and what is the time limit for obtaining refund on the IGST paid?

Ans. Yes. EOUs are entitled for refund of IGST paid on export or refund of accumulated input tax credit(ITC) on account of exports made under bond/LUT. As per section 54 of CGST Act, 2017, a refund application may be filed within two years from the relevant date by EOUs. The application in form RFDOIA has to accompanied with the documents as prescribed under Rule 89 of CGST Rules, 2017 for claiming refund of ITC. Refund of IGST on exports is available as per Rule 96 of CGST Rules and shipping bill filed is deemed to be application filed for refund. 90% of the total amount claimed as refund will be granted within 10 days of making application or within 7 days of issuance of acknowledgement of refund application. Balance amount of 10% will be granted after verification of documents furnished by the applicant.

Q 61. Will supply of goods from one EOU to another EOU termed as inter unit transfer and whether the same will attract IGST?

Ans. Yes, the EOUs have to pay applicable IGST on inter unit transfer also. The basic customs duty exempted on inputs of supplier unit utilised in such transferred goods would have to be reversed by the recipient EOU at the time of clearance into DTA.

Q 62. What are the conditions for DTA sales by EOUs?

Ans. DTA sale of goods by EOU is subject to fulfilment of following conditions:

- (i) Fulfilment of maintaining positive Net Foreign Exchange Earnings (NFE)*
- (ii) Payment of applicable GST on the product under DTA sale*
- (iii) Reversal of the Basic Customs Duty exemption availed by the unit on the inputs used in the manufacture of products under DTA Sale.*

Q 63. Can the EOU use MEIS/SEIS scrips for payment of IGST or CGST?

Ans. No, the scrips cannot be used for payment of IGST or CGST.

Q 64. What will be the value to be taken for levy of IGST on goods imported by EOUs?

Ans. IGST is levied on the value of imported goods including Customs duty and Customs Cess levied thereon.

21.6 Imports

Q 65. How will imports be taxed under GST?

Ans. Import of Goods and Services are treated as deemed inter-state supplies and IGST is levied on import of goods and services in to the country. The IGST on import of goods is leviable under the provisions of Section 5 of the IGST Act, 2017 read with Section 3(5) of the Customs Tariff Act, 1975 and shall be levied at the time of imports along with the levy of the applicable Customs duties on the value in accordance with Section 3 of the Customs Tariff Act, 1975.

**Q 66. What is import of goods under the GST regime?
How are they taxed?**

Ans. The import of goods has been defined in sub-section (10) of Section 2 of the IGST Act, 2017 as bringing goods into India from a place outside India.

The IGST Act, 2017 provides that the integrated tax on goods shall be in addition to the applicable Basic Customs Duty (BCD) which is levied as per the Customs Tariff Act. In addition, GST compensation cess, may also be leviable on certain luxury and de-merit goods under the Goods and Services Tax (Compensation to States) Cess Act, 2017.

Q 67. What valuation is to be adopted for levying integrated tax and compensation cess?

Ans. The value of the goods for the purpose of levying Integrated tax as well as compensation cess shall be assessable value plus Customs Duty levied under the Act, and any other duty chargeable on the said goods under any law for the time being in force as an addition to, and in the same manner as, a duty of customs.

For instance: Suppose the assessable value of an article imported into India is Rs. 100/-. Basic Customs Duty is

10% ad-valorem; SWC- 10%; Integrated tax rate is 18% and compensation cess is 15%. The taxes will be calculated as under:

| <i>Particulars</i> | <i>Duty</i> |
|--|------------------|
| <i>(A) Assessable Value</i> | <i>Rs. 100/-</i> |
| <i>(B) Basic Customs Duty@10%</i> | <i>Rs.10/-</i> |
| <i>(C) Social Welfare Charge @10%</i> | <i>Rs.1/-</i> |
| <i>(D) Value for Integrated Tax</i> | <i>Rs.111/-</i> |
| <i>(E) Integrated Tax @18%</i> | <i>Rs.19.98</i> |
| <i>(F) Value for Compensation Cess</i> | <i>Rs.111</i> |
| <i>(G) Compensation Cess @ 15%</i> | <i>Rs. 16.65</i> |
| <i>(H) Total Duty (B+C +E+G)</i> | <i>Rs. 47.63</i> |

Q 68. Whether Anti-dumping duty/ safeguard duty are to be added for determining the value for integrated tax?

Ans. Yes. In cases where imported goods are liable to Anti-Dumping Duty or Safeguard Duty, value for calculation of IGST as well as Compensation Cess shall also include Anti-Dumping Duty amount and Safeguard duty amount. Let's say in the above case if Safeguard duty is Rs.20/-, the assessable value for integrated tax as well as compensation cess shall be Rs. 131/-. The taxes calculation chart is as under:

| <i>Particulars</i> | <i>Duty</i> |
|---------------------------------------|------------------|
| <i>(A) Assessable Value</i> | <i>Rs. 100/-</i> |
| <i>(B) Basic Customs Duty@10%</i> | <i>Rs.10/-</i> |
| <i>(C) Social Welfare Charge @10%</i> | <i>Rs.1/-</i> |
| <i>(D) Safeguard Duty</i> | <i>Rs.20/-</i> |
| <i>(E) Value for Integrated Tax</i> | <i>Rs.131/-</i> |
| <i>(F) Integrated Tax @18%</i> | <i>Rs.23.58</i> |

| | |
|---------------------------------|-----------|
| (G) Value for Compensation Cess | Rs.131/- |
| (H) Compensation Cess @ 15% | Rs. 19.65 |
| (I) Total Duty (B+C +D+F+H) | Rs. 74.23 |

Q 69. Whether GST is leviable on baggage imports?

Ans. Passenger Baggage are exempted from IGST as well as compensation cess. The basic customs duty at the rate of 35% and the applicable education cess shall be leviable on the value which is in excess of the duty free allowances provided under the Baggage Rules, 2016.

Q 70. Please explain the tax treatment of goods imported into India and deposited in a warehouse and sold while in warehouse before clearance from Customs

Ans. The Customs Act, 1962 provides for removal of goods from a customs station to a warehouse without payment of duty. The said Act has been amended to include 'warehouse' in the definition of "customs area" in order to ensure that an importer would not be required to pay the Integrated tax at the time of removal of goods from a customs station to a warehouse.

The "transfer/sale of goods while being deposited in a customs bonded warehouse" is a common trade practice whereby the importer files an into-bond bill of entry and stores the goods in a customs bonded warehouse and thereafter, supplies such goods to another person who then files an ex-bond bill of entry for clearing the said goods from the customs bonded warehouse for home consumption.

As per section 7(2) of the IGST Act, 2017, the supply of goods imported into the territory of India, till they cross the

customs frontiers of India, is treated as a supply of goods in the course of inter-State trade or commerce. Further, the proviso to section 5(1) of the IGST Act provides that the integrated tax on goods imported into India would be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975. Thus, in case of supply of the warehoused goods, the point of levy would be the point at which the duty is collected under section 12 of the Customs Act, 1962 which is at the time of clearance of such goods under section 68 of the Customs Act.

The Customs Tariff Act has been amended and a sub-section (8A) has been inserted in section 3 of the CTA vide Finance Act, 2018, with effect from 31st March, 2018, so as to provide that the valuation for the purpose of levy of integrated tax on warehoused imported goods at the time of clearance for home consumption would be either the transaction value or the value as per section 3(8) of the CTA (i.e. valuation done at the time of filing the into-bond bill of entry), whichever is higher.

Thus, the integrated tax shall be levied and collected at the time of final clearance of the warehoused goods for home consumption i.e., at the time of filing the ex-bond bill of entry and the value addition accruing at each stage of supply shall form part of the value on which the integrated tax would be payable at the time of clearance of the warehoused goods for home consumption. In other words, the supply of goods before their clearance from the warehouse would not be subject to the levy of integrated tax and the same would be levied and collected only when the warehoused goods are cleared for home consumption from the customs bonded warehouse.

Q 71. Whether high seas sales treated as supply in GST?

Ans. 'High Sea Sales' is a common trade practice whereby the original importer sells the goods to a third person before the goods are entered for customs clearance. After the High sea sale of the goods, the Customs declarations i.e. Bill of Entry etc. is filed by the person who buys the goods from the original importer during the said sale. IGST on high sea sale (s) transactions of imported goods, whether one or multiple, shall be levied and collected only at the time of importation i.e. when the import declarations are filed before the Customs authorities for the customs clearance purposes for the first time. Further, value addition accruing in each such high sea sale shall form part of the value on which IGST is collected at the time of clearance.

Q 72. How are import of goods and services by EOUs and SEZs treated in GST?

Ans. Goods imported by a unit or a developer in the Special Economic Zone for authorised operations are exempted from the whole of integrated tax under section 3(7) of the Customs Tariff Act, 1975 vide Notification No. 64/2017-Customs dated 05.07.2017.

Services imported by a unit or a developer in the Special Economic Zone for authorised operations, are exempted from the whole of the integrated tax leviable thereon under section 5 of the IGST Act, 2017 vide Notification No. 18/2017-Integrated tax dated 30th June, 2017.

Import of goods by 100% EOU's are governed by Notification no. 52/2003-Customs as amended by

Notification no. 78/2017-Customs dated 13.10.2017. EOUs are allowed duty free import of goods (exempt from Customs duties, IGST & Compensation Cess) under the said notifications. However, exemption from IGST is only available till 01.10.2019.

Q 73. What are import of services? How are they treated in GST?

Ans. Import of services has specifically been defined under IGST Act, 2017 and refers to supply of any service where the supplier is located outside India, the recipient is located in India and the place of supply of service is in India.

As per the provisions contained in Section 7(1) (b) of the CGST Act, 2017, import of services for a consideration whether or not in the course or furtherance of business shall be considered as a supply. Thus, in general, import of services without consideration shall not be considered as supply. However, business test is not required to be fulfilled for import of service to be considered as supply.

Furthermore, in view of the provisions contained in Schedule I of the CGST Act, 2017, the import of services by a taxable person from a related person or from a distinct person as defined in Section 25 of the CGST Act, 2017, in the course or furtherance of business shall be treated as supply even if it is made without any consideration.

In view of the provisions contained in Section 14 of the IGST Act, 2017, import of free services from Google and Facebook by individuals without any consideration are not considered as supply. Import (Downloading) of a song for consideration for personal use would be a service, even though the same

are not in the course or furtherance of business. Import of some services by an Indian branch from their parent company, in the course or furtherance of business, even if without consideration will be a supply.

Thus, import of services can be considered as supply based on whether there is consideration or not and whether the service is supplied in the course or furtherance of business. The same has been explained in the table below:

| Nature of Service | Consideration | Business Test |
|--|----------------------|----------------------|
| Import of services | Necessarily Required | Not required |
| Import of services by a taxable person from a related person or from a distinct person | Not required | Necessarily Required |

Q 74. As per the Customs Act, 1962, royalty and license fees are includible in the assessable value of goods. Whether GST is also payable on such royalty and license fees which is already included in the value of goods and IGST is already paid at the time of import?

Ans. No. As per the notification no. 06/2018-Integrated tax dated 25th January, 2018, supply of services, imported into the territory of India covered by such temporary transfer or permitting the use or enjoyment of any intellectual property right are exempted from payment of integrated tax to the extent that royalties and license fees have been included in the transaction value as specified

under rule 10(1)(c) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 on which the appropriate duties of Customs have been paid.

Q 75. What procedure will be followed by EOU to import goods without payment of Customs duty in the GST regime?

To avail such import benefits, EOUs will have to follow the procedure under the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017

Q 76. Is the registered person procuring goods or services from a supplier outside India required to raise a self-invoice, debit note or credit note in respect of the price or value of services and adjustments thereto?

Ans. As the import of goods are under the cover of a bill of entry, there is no need to raise a self-invoice.

In case of import of services, a self-invoice on the date of receipt of such supplies is required to be issued. [Section 31(3)(f) of CGST Act read with section 20 of the IGST Act]

Q 77. An airline imports aircrafts into India on lease basis. Whether integrated tax is to be charged on such supplies as such supplies are supply of services under item 1(b) or 5(f) of Schedule II of the CGST Act?

Ans. In case integrated tax is paid on the lease charges under the IGST Act, the goods imported are exempted from payment of integrated tax at the time of import subject to the importer undertaking to pay integrated tax on lease

charges and other conditions as stipulated in notification no. 65/2017-Customs dated 8th July, 2018

Q 78. Whether import of rigs and ancillary goods imported under lease is chargeable to IGST?

Ans. Import of rigs and ancillary goods imported under lease is exempted from IGST, subject to payment of appropriate IGST on the supply/import of such lease service and fulfilment of other specified conditions.

Q 79. Whether bona fide gifts imported through post or air are exempted?

Ans. Bona fide gifts up to CIF value limit of Rs. 5000 imported through post or air are exempted from payment of basic customs duty and integrated tax.

Q 80. How are supplies by SEZs to DTA treated in GST?

Ans. Supplies by SEZs to DTA units are liable to GST. Supplies from SEZs to DTA can be categorised as under:

Supply under Bill of Entry: *The supplies made by SEZ on cover of a bill of entry shall be reported by DTA unit in its GSTR-3B as imports.*

Supply without Bill of Entry: *Any supply made by SEZ to DTA, without the cover of a bill of entry is required to be reported by SEZ unit in GSTR-1. The liability for payment of IGST in respect of supply of services is created from this Table.*

Q 81. Whether imports by UINs are taxable?

Ans. The exemption in respect of Import of goods by UN

bodies was available through Notn No. 03/57-Customs which has been suitably amended vide Customs Notifications No. 39/2017-Customs dated 30th June, 2017. Thus, the import of goods by UN Bodies shall not be subjected to integrated tax.

Similarly, import of services by Foreign diplomatic mission or consular post in India, or diplomatic agents or career consular officers posted therein; United Nations or a specified international organisation are exempted vide Notification No. 09/2017- Integrated Tax(Rate) dated 30th June, 2017.

Q 82. Whether services provided by the Central Government, State Government, Union territory by way of deputing officers after office hours or on holidays for inspection or container stuffing or such other duties in relation to import export cargo on payment of Merchant Overtime charges are taxable?

Ans. No. These services have specifically been exempted vide Notification No. 09/2017- Integrated Tax(Rate) dated 28th June, 2017

22. Place of Supply of Goods and Service

Q 1. What is the need for the Place of Supply of Goods and Services under GST?

Ans. The basic principle of GST is that it should effectively tax the consumption of such supplies at the destination thereof or as the case may be at the point of consumption. So place of supply provision determines the place i.e. taxable jurisdiction where the tax should reach. The place of supply determines whether a transaction is intra-state or inter-state. In other words, the place of Supply of Goods or services is required to determine whether a supply is subject to SGST plus CGST in a given State or union territory or else would attract IGST if it is an inter-state supply.

Q 2. Why are place of supply provisions different in respect of goods and services?

Ans. Goods being tangible do not pose any significant problems for determination of their place of consumption. Services being intangible pose problems w.r.t determination of place of supply mainly due to following factors:

(i) The manner of delivery of service could be altered easily. For example, telecom service could change from mostly post-paid to mostly pre-paid; billing address could be changed, billers address could be changed, repair or maintenance of software could be changed from onsite to online; banking services earlier required the customer to go to the bank, now the customer could avail service from anywhere;

(ii) Service provider, service receiver and the service

provided may not be ascertainable or may easily be suppressed as nothing tangible moves and there would hardly be a trail;

(iii) For supplying a service, a fixed location of service provider is not mandatory and even the service recipient may receive service while on the move. The location of billing could be changed overnight;

(iv) Sometime the same element may flow to more than one location, for example, construction or other services in respect of a railway line, a national highway or a bridge on a river which originate in one state and end in the other state. Similarly, a copy right for distribution and exhibition of film could be assigned for many states in single transaction or an advertisement or a programme is broadcasted across the country at the same time. An airline may issue seasonal tickets, containing say 10 leafs which could be used for travel between any two locations in the country. The card issued by Delhi metro could be used by a person located in Noida, or Delhi or Faridabad, without the Delhi metro being able to distinguish the location or journeys at the time of receipt of payment;

(v) Services are continuously evolving and would thus continue to pose newer challenges. For example, 15-20 years back no one could have thought of DTH, online information, online banking, online booking of tickets, internet, mobile telecommunication etc.

Q 3. What proxies or assumptions in a transaction can be used to determine the place of supply?

Ans. The various element involved in a transaction in services can be used as proxies to determine the place of

supply. An assumption or proxy which gives more appropriate result than others for determining the place of supply, could be used for determining the place of supply. The same are discussed below:

(a) location of service provider;

(b) the location of service receiver;

(c) the place where the activity takes place/ place of performance;

(d) the place where it is consumed; and

(e) the place/person to which actual benefit flows

Q 4. What is the need to have separate rules for place of supply in respect of B2B (supplies to registered persons) and B2C (supplies to unregistered persons) transactions?

Ans. In respect of B2B transactions, the taxes paid are taken as credit by the recipient so such transactions are just pass through. GST collected on B2B supplies effectively create a liability for the government and an asset for the recipient of such supplies in as much as the recipient is entitled to use the input tax credit for payment of future taxes. For B2B transactions the location of recipient takes care in almost all situations as further credit is to be taken by recipient. The recipient usually further supplies to another customer. The supply is consumed only when a B2B transaction is further converted into B2C transaction. In respect of B2C transactions, the supply is finally consumed and the taxes paid actually come to the government.

22.1 Place of Supply of Goods

Q 5. What would be the place of supply where movement of goods is involved?

Ans. The place of supply of goods shall be the location of the goods at the time at which the movement of goods terminates for delivery to the recipient. (Section 10 of IGST Act)

Q 6. What would be the place of supply wherein the supplier hands over the goods to recipient in his state and further movement is caused by the recipient?

Ans. The movement can be caused by supplier, recipient or any other person. Where the supply involves movement of goods, the place of supply shall be the location where the movement of goods terminates for delivery to the recipient.

Illustration: *A person from Gujarat comes to Mumbai and purchases goods. He declared his Gujarat GSTIN, arranges transport himself and takes goods to Gujarat. The place of supply would be Gujarat in this case.*

Q 7. What is the place of supply wherein movement of goods is not involved?

Ans. Where supply does not involve movement of goods, the place of supply shall be the location of goods at the time of delivery to the recipient.

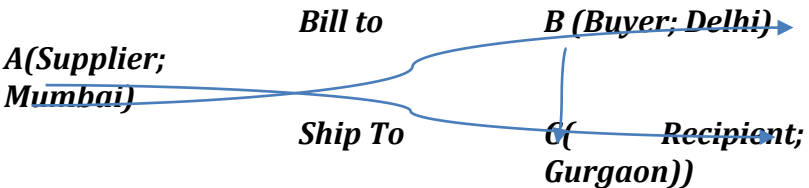
Illustration: *A in Mumbai has given his goods on lease basis to B in Delhi. After some time, the lessee B decides to purchase the goods. The supply takes place by way of*

change of title and no movement is required as the goods are already with the buyer. The place of supply is Delhi, the location of goods at the time of delivery.

Q 8. What will be the place of supply if the goods are delivered by the supplier to a person on the direction of a third person?

Ans. It would be deemed that the third person has received the goods and the place of supply of such goods shall be the principal place of business of such person. (Section 10 of IGST Act)

Such cases are termed as bill to ship to cases wherein the supplier sends the invoice to the buyer and the goods to the recipient on the direction of the buyer. Even though the goods are not received by the buyer, it is presumed that he has received the goods and he is able to take the input tax credit. The buyer may further issue his invoice to the actual recipient of goods. Thus, it is a tripartite arrangement wherein there are usually three parties and two transactions.



In the above case, goods go directly to C. The place of supply is location of B

| Location of Supplier | Location of third Party | Delivery of goods | Place of Supply |
|---|--------------------------------|--------------------------|------------------------|
| First Transaction between A and B with delivery to C | | | |
| Mumbai | Delhi | Gurgaon(| Delhi |

| | | | |
|---------------|--|----------|--|
| (Maharashtra) | | Haryana) | |
|---------------|--|----------|--|

Q 9. What will be the place of supply where the goods or services are supplied on board a conveyance, such as a vessel, an aircraft, a train or a motor vehicle?

Ans. In respect of goods, the place of supply shall be the location at which such goods are taken on board. (Section 10 (1)(e) of IGST Act). For instance, if goods are taken on board at Vadodara, Gujarat on Rajdhani Express from Mumbai to Delhi. The place of supply shall be Vadodara, Gujarat.

However, in respect of services, the place of supply shall be the location of the first scheduled point of departure of that conveyance for the journey. (Section 12 and 13 of IGST Act)

Q 10. What is the place of supply in case of assembly or installation of goods at site?

Ans. The place of supply of goods, where the goods are installed or assembled at the site, will be the place of such installation or assembly. (Section 10(1)(d) of IGST Act)

Q 11. What is the place of supply of goods imported into India?

Ans. The place of supply of goods imported into India shall be the location of the importer.

Illustration: *An importer from Jaipur, Rajasthan imports goods from China through Mumbai Air Cargo and declared the GSTIN of Rajasthan. The place of supply of goods shall be Rajasthan. Thus, the state tax component of the*

integrated tax would accrue to Rajasthan.

Q 12. What is the place of supply of goods exported from India?

Ans. The place of supply of goods exported from India shall be the location outside India.

22.2 Place of Supply of Services (Location of supplier as well as recipient are in India)

Q 13. What is the default presumption for place of supply in respect of B2B supply of services?

Ans. The terms used in the IGST Act are registered taxpayers and unregistered person. The presumption in case of supplies to registered person is the location of such person until and unless otherwise specified.

Q 14. What is the default presumption for place of supply in respect of unregistered recipients?

Ans. In respect of unregistered recipients, the usual place of supply is the location of the recipient, where the address on records exists. However, in many cases, the address of recipient is not available, in such cases, location of the supplier of services is taken as proxy for place of supply.

Q 15. What is the place of supply in case of services in relation to immovable property?

Ans. Any service provided 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 coordination of construction shall be the location at which the immovable property is situated. (Section 12(3) of the IGST Act)

Q 16. What is the place of supply in respect of a service of interior decorator in relation to a palace in Nepal by an interior designer from Mumbai to a person from Delhi?

Ans. The place of supply shall be the location of recipient viz Delhi. (Proviso clause to section 12(3) of IGST Act)

Q 17. The place of supply in relation to immovable property is the location of immovable property. Suppose a road is constructed from Delhi to Mumbai covering multiple states. What will be the place of supply?

Ans. Where the immovable property is located in more than one State, the supply of service shall be treated as made in each of the States 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 reasonable basis as may be prescribed in this behalf. (The Explanation clause to section 12(3) of the IGST Act, for domestic supplies)

Q 18. What is the place of supply of services of accommodation services in homestays in Goa?

Ans. The place of supply shall be Goa, the location of the homestay. (Section 12(3) of the IGST Act).

Q 19. What would be the place of supply of services provided for organizing an event, say, IPL cricket

series which is held in multiple states?

Ans. In case of an event, if the recipient of service is registered, the place of supply of services for organizing the event shall be the location of such person.

However, if the recipient is not registered, the place of supply shall be the place where event is held. Since the event is being held in multiple states and a consolidated amount is charged for such services, the place of supply shall be taken as being in each state in proportion to the value of services so provided in each state. (The Explanation clause to section 12(7) of the IGST Act)

Q 20. What will be the place of supply of goods services by way of transportation of goods, including mail or courier?

Ans. In case both location of supplier & location of recipient is in India: If the recipient is registered, the location of such person shall be the place of supply.

However, if the recipient is not registered, the place of supply shall be the place where the goods are handed over for their transportation (section 12(8) of the IGST Act.)

However, where the transportation of goods is to a place outside India, the place of supply shall be the place of destination of such goods (This proviso to section 12(8) has been inserted vide the IGST (Amendment) Act, 2018, however, the notification to bring it into effect is yet to be issued)

In case location of supplier or location of recipient is outside India: 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. For courier, the place of supply of services shall be the location of the recipient of services. Wherever the location of the recipient of services is not available in ordinary course of business, the Place of supply shall be location the supplier of service.

Q 21. A film star from Mumbai gets his cosmetic surgery done in a Hospital in Delhi. What should be the place of supply?

Ans. The place of supply shall be based on the principle of place of performance and shall be in Delhi. (Section 12(4) of IGST Act)

Other such similar services requiring physical presence of natural person (recipient) like restaurant and catering services, personal grooming, fitness, beauty treatment, health services including cosmetic and plastic surgery shall be the location where the services are actually performed.

Q 22. What will be the place of supply in case of training services provided in Goa?

*Ans. **When provided to a registered person:** The place of supply shall be the location of such registered person. If M/s Mahindra & Mahindra Ltd, Mumbai conducts training for its employees at Goa, the place of supply shall be Mumbai.*

***When provided to a person other than a registered person:** The place of supply shall be the location where the services are actually performed viz Goa*

Q 23. What will be the place of supply of passenger transportation service, if a person travels from

Mumbai to Delhi and back to Mumbai?

Ans. If the person is registered, the place of supply shall be the location of recipient. If the person is not registered, the place of supply for the forward journey from Mumbai to Delhi shall be Mumbai, the place where he embarks.

However, for the return journey, the place of supply shall be Delhi as the return journey has to be treated as separate journey. (The Explanation clause to section 12(9) of the IGST Act)

Q 24. Suppose a ticket/ pass for anywhere travel in India is issued by M/s Air India to a person. What will be the place of supply?

Ans. In the above case, the place of embarkation will not be available at the time of issue of invoice as the right to passage is for future use. Accordingly, place of supply cannot be the place of embarkation. In such cases, the default rule shall apply. (The proviso clause to section 12(9) of the IGST Act)

Q 25. What will be the place of supply for mobile connection? Can it be the location of supplier?

Ans. For domestic supplies: The location of supplier of mobile services cannot be the place of supply as the mobile companies are providing services in multiple states and many of these services are inter-state. The consumption principle will be broken if the location of supplier is taken as place of supply and all the revenue may go to a few states where the suppliers are located.

The place of supply for mobile connection would depend on whether the connection is on postpaid or prepaid basis. In

case of postpaid connections, the place of supply shall be the location of billing address of the recipient of service.

In case of pre-paid connections, the place of supply shall be the place where payment for such connection is received or such pre-paid vouchers are sold. However, if the recharge is done through internet/e-payment, the location of recipient of service on record shall be taken as the place of service.

For international supplies: The place of supply of telecom services is the location of the recipient of service.

Q 26. A person in Goa buys shares from a broker in Delhi on NSE (in Mumbai). What will be the place of supply?

Ans. The place of supply shall be the location of the recipient of services on the records of the supplier of services. So Goa shall be the place of supply.

Q 27. A person from Mumbai goes to Kullu-Manali and takes some services from ICICI Bank in Manali. What will be the place of supply?

Ans. If the service is not linked to the account of person, place of supply shall be Kullu i.e. the location of the supplier of services. However, if the service is linked to the account of the person, the place of supply shall be Mumbai, the location of recipient on the records of the supplier.

Q 28. A person from Gurgaon travels by Air India flight from Mumbai to Delhi and gets his travel insurance done separately in Mumbai. What will be the place of supply of insurance service?

Ans. The location of the recipient of services on the records of the supplier of insurance services shall be the place of supply. So Gurgaon shall be the place of supply. (Proviso clause to section 12(13) of the IGST Act)

Q 29. A person from Gurgaon travels by Air India flight from Mumbai to Delhi and gets his travel insurance done in Mumbai. What will be the place of supply?

Ans. The location of the recipient of services on the records of the supplier of insurance services shall be the place of supply. So Gurgaon shall be the place of supply. (Proviso clause to section 12(13) of the IGST Act)

22.3 Place of Supply of Services (Location of supplier or recipient is outside India)

Q 30. What is the place of supply in respect of goods that are required to be made physically available for providing the service?

Ans. The place of supply of service in respect of goods that are required to be made physically available by the recipient of service to the supplier of service shall be the location where the services are actually performed. (Section 13 (3) (a) of the IGST Act, 2017)

Q 31. What is the place of supply of services provided from a remote location using electronic means on goods?

Ans. The place of supply shall be the location where the goods are actually located at the time of supply of services. (Proviso to Section 13(3) (a) of the IGST Act, 2017)

Illustration: A Laptop at Mumbai is repaired remotely by a software engineer from Bangalore using TeamViewer software. The place of supply shall be Mumbai, the place where the goods are located.

Q 32. Whether supplies by a banking company, or a financial institution, or a non-banking financial company, in Mumbai to its account holders in Dubai can be considered as export of service?

Ans. No. The place of supply of such services is location of supplier and therefore these cannot be considered as export of services. In the present case, the supplier being located in Mumbai and place of supply also in Mumbai, these services will be taxed and CGST plus SGST would be levied. [Section 13(8)(a) of IGST Act]

Q 33. Who is an intermediary?

Ans. "intermediary" means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account.

Q 34. What is the place of supply of an intermediary?

Ans. The place of supply for intermediary services will be the location of supplier of service. It is to be noted that this rule will apply only when either the supplier or recipient is located outside India.

Q 35. What would be the place of supply in respect of services pertaining to goods transportation, wherein either the supplier or recipient is located

outside India?

Ans. 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. (Section 13(9) of IGST Act)

For goods transportation via mail or courier, the default provision of Section 13(2) will apply i.e. place of supply will be the location of the recipient of service.

Q 36. What would be the place of supply in respect of Online Information and Database Access or Retrieval (OIDAR) Services?

Ans. For OIDAR services the place of supply will be the location of recipient of services. In case the recipient of OIDAR services is registered, he will pay Integrated tax on reverse charge basis. However, if the recipient is unregistered, the supplier will be liable to pay the tax. For the purpose of determining place of supply, the location of recipient of service shall be deemed to be in the taxable territory if any two of the following seven non-contradictory 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.*

Q 37. Whether the launch service provided by ANTRIX Corporation qualifies to be considered as export of services?

Ans. In terms of Section 13(9) of IGST Act, 2017, the place of supply of satellite launch service by ANTRIX Corporation to international customers would be outside India and wherever such supply qualifies all conditions specified under Section 2(6) of the IGST Act, 2017, would constitute as export of service and shall be zero rated.

Where satellite service was provided to a person in India, the place of supply of satellite launch service would be location of the recipient of services, provided the recipient is registered. In case where the recipient is not registered then place of supply is the place where such goods are handed over for their transportation.

(CBIC Circular No. 02/1/2017- IGST dated 27th September, 2017)

Q 38. What is the place of supply in case of supply of services relating to R&D, technical testing etc. to a person located outside India who sends the goods temporarily into India as the same are required by

the supplier to provide the services?

Ans. In such cases, the general principle as per section 13(3)(a) is that the place of supply shall be the location where the services are actually performed. However, following proviso has been inserted to section 13(3)(a) vide the IGST (Amendment) Act, 2018. This amendment is yet to be brought into force.

However, 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, the default rule would be applicable i.e. the place of supply shall be the location of recipient of services.

Thus, in such cases, the place of supply shall be the location of recipient of services (Default provision in section 13(2)) i.e. outside India.

Q 39. How will the place of supply be determined wherein the goods are supplied from the premises of job worker?

Ans. The principal may supply, from the place of business / premises of a job worker on payment of tax within India. The place of supply would have to be determined in the hands of the principal irrespective of the location of the job worker's place of business/premises.

Illustration: The principal is located in State A, the job worker in State B and the recipient in State C. In case the supply is made from the job worker's place of business / premises, the invoice will be issued by the supplier

(principal) located in State A to the recipient located in State C. The said transaction will be an inter-State supply. In case the recipient is also located in State A, it will be an intra-State supply.

(CBIC Circular No. 38/2018 dated 26th March, 2018)

23. GSTN and Frontend Business Process on GST Portal

Q 1. What is GSTN?

Ans. Goods and Services Tax Network (GSTN) is a not-for-profit, non-government company under Section-8 of the Companies Act-2013, promoted jointly by the Central and State Governments, to provide shared IT infrastructure and services, to both central and state governments including tax payers and other stakeholders. The Front end services of Registration, Returns, Payments, etc. to all taxpayers will be provided by GSTN. It will be the interface between the government and the taxpayers. Further, GSTN also provides the Back-End Services to tax officers of the Model 2 states.

Considering the nature of function performed by GSTN, GST Council has taken a decision that GSTN be converted into a fully owned government Company. For this, the entire 51% equity holding held by the Non-Governmental Institutions in GSTN shall be acquired equally by the Centre and the States governments.

The existing financial commitments given by Centre and States to GSTN to share the capital and O&M cost of the IT Systems shall continue.

Q 2. What was need to create GSTN?

Ans. The GST System Project is a unique and complex IT initiative. Before GST, since, the Centre and State indirect tax administrations worked under different laws, regulations, procedures and formats, there IT infrastructure and systems were also independent of each other. Integrating them for GST implementation would

have been complex since it would have required integrating the entire indirect tax ecosystem so as to bring all the tax administrations (Centre, State and Union Territories) to the same level of IT maturity with uniform formats and interfaces for taxpayers and other external stakeholders. Besides, GST being a destination based tax, the inter-state trade of goods and services (IGST) would have needed a robust settlement mechanism amongst the States and the Centre. Meeting these objectives were only possible only when there is a strong IT Infrastructure and Service back bone which would have enabled capturing, processing and exchange of information amongst the stakeholders (including taxpayers, States and Central Government, Bank and RBI). To achieve these objectives of establishing a uniform interface for the tax payer and a common and shared IT infrastructure between the Centre and States, the SPV namely GSTN was created.

Q 3. What is the genesis of GSTN?

The requirement of a strong IT Infrastructure was discussed in the 4th meeting of 2010 of the Empowered Committee of State Finance Ministers (referred to as the EC) held on 21/7/2010. In the said meeting, the EC approved the creation of an 'Empowered Group on IT Infrastructure for GST' (referred to as the EG) under the chairmanship of Dr. Nandan Nilekani with Additional Secretary (Rev), Member (B&C) CBIC, DG (Systems), CBIC, FA Ministry of Finance, Member Secretary EC and five state commissioners of Trade Taxes (Maharashtra, Assam, Karnataka, West Bengal and Gujarat) as its Members. The Group was mandated to suggest, inter alia, the modalities for setting up a

National Information Utility (NIU/ SPV) for implementing the Common Portal to be called GST Network (GSTN) and recommend the structure and terms of reference for the NIU/ SPV, detailed implementation strategy and the road map for its creation in addition to other items like training, outreach etc.

In March 2010, TAGUP constituted by the Ministry of Finance had recommended that National Information Utilities should be set up as private companies with a public purpose for implementation of large and complex Government IT projects including GST. Mandate of TAGUP was to examine the technological and systemic issues relating to the various IT projects such as GST, TIN, NPS, etc.

The EG had seven meetings between 2nd August 2010 and 8th August 2011 to discuss the modalities. After due deliberations, the EG recommended creation of a Special Purpose Vehicle for implementing the GST System Project. To enable efficient and reliable provision of services in a demanding environment, the EG recommended a non-Government structure for the SPV called GSTN with Government equity of 49% (Centre – 24.5% and States – 24.5%) after considering key parameters such as independence of management, strategic control of Government(s), flexibility in its organizational structure, agility in decision making and ability to hire and retain competent human resources from both, government and private sector.

In view of the sensitivity of the role of GSTN and the information that would be available with it, the EG also considered the issue of strategic control of Government over GSTN. The Group recommended that strategic control

of the Government over the SPV should be ensured through measures such as composition of the Board of Directors (also referred to as the Board), mechanisms of Special Resolution and Shareholders Agreement, induction of Government officers on deputation, and agreements between GSTN SPV and the Government(s). Also, the said shareholding pattern ensured that the Centre individually and States collectively are the largest stakeholders at 24.5% each. In combination, the Government shareholding at 49% would far exceed that of any single private institution.

EG also brought out the need to have technology specification to run this company so that there is 100 percent matching of returns. The business knowledge resides with the officials of Government of India and the States/Union Territories. However, the professionals with knowledge pertaining to technology will also be required as equally important stakeholders to run this company independently, on the lines of NSDL which is working professionally, as well as independently. EG also recommended a non-government company as that will have operational freedom.

These recommendations were presented before the Empowered Committee of State Finance Ministers in its 3rd meeting of 2011 held on 19th August 2011 and in the 4th meeting of 2011 of the EC held on 14th Oct 2011. The proposal of the EG on IT infrastructure for GST regarding GSTN and formation of a not-for-profit section 25 company with the strategic control of the Government were approved by the Empowered Committee of State Finance Ministers (EC) in its meeting held on 14.10.11.

The note of Department of Revenue for setting up a Special Purpose Vehicle to be called Goods and Services Tax Network (GSTN-SPV) on the lines mentioned above was considered by the Union Cabinet on 12th April 2012 and approved. The Union cabinet also approved the following:

- i. Suitable and willing non-government institutions will be identified and firmed up by the Ministry of Finance to invest in GSTN-SPV prior to its incorporation.*
- ii. The strategic control of the Government over the SPV would be ensured through measures such as composition of the Board, mechanisms of Special Resolution and Shareholders Agreement, induction of Government officers on deputation, and agreements between GSTN SPV and Governments.*
- iii. The Board of Directors of GSTN SPV would comprise 14 Directors with 3 Directors from the Centre, 3 from the States, a Chairman of the Board of Directors appointed through a joint approval mechanism of Centre and States, 3 Directors from private equity stake holders, 3 independent Directors who would be persons of eminence and a CEO of the GSTN SPV selected through an open selection process.*
- iv. Relaxation in relevant rules to enable deputation of Government officers to the GSTN SPV for exercise of strategic control and for bringing in necessary domain expertise.*
- v. GSTN SPV would have a self- sustaining revenue model, where it would be able to levy user charges on the tax payers and the tax authorities*

availing services.

- vi. GSTN SPV to be the exclusive national agency responsible for delivering integrated indirect Tax related services involving multiple tax authorities. Accordingly, any other service provider seeking to deliver similar integrated services would be required to enter into a formal arrangement with GSTN SPV for the services.*
- vii. A one- time non- recurring Grant- in aid of Rs. 315 crores from the Central Government towards functioning of the SPV for a three-year period after incorporation.*

Considering the nature of function performed by GSTN, GST Council has taken a decision that GSTN be converted into a fully owned government Company. For this, the entire 51% equity holding held by the Non-Governmental Institutions in GSTN shall be acquired equally by the Centre and the States governments.

Q 4. What is the equity structure and Revenue Model of GSTN?

*Ans. (a) **Equity Structure:** - In compliance of the Cabinet decision, GST Network was registered as a not-for-profit, non-Government, private limited company under section 8 of the Companies Act, 1956 with the following equity structure:*

| | |
|---------------------|----------|
| <i>Central Govt</i> | <i>2</i> |
| <i>State Govts</i> | <i>2</i> |
| <i>HDFC</i> | <i>1</i> |
| <i>HDFC Bank</i> | <i>1</i> |

| | |
|------------------------------------|----------|
| <i>ICICI Bank</i> | <i>1</i> |
| <i>NSE Strategic Investment Co</i> | <i>1</i> |
| <i>LIC Housing Finance Ltd</i> | <i>1</i> |

The GSTN in its current form was created after taking approval of the Empowered Committee of State Finance Ministers and Union Government after due deliberations over a long period of time.

(b) Revenue Model: *An amount of 315 Cr. was approved by the Govt. of India as Grants-in-Aid for initial setting up of the GSTN-SPV in 2013. During the period 31.03.2013 to 31.03.2016, an amount of **Rs 143.96 Crores** was released as Grant-In-Aid to GSTN out of Rs 315 Crores approved by Govt of India. Out of the grant-in-aid received, only **Rs. 62.11 Cr** was spent during this period in setting of the Company and making it functional. The balance grant was returned to Govt. of India. During FY 2016-17, GSTN has got loan sanctioned from a commercial bank to meet expenditure over setting up the IT Platform to provide services to the Center and States through GST portal and developing the backend for 27 States and Union Territories. The Revenue model for GSTN has been approved by **the Empowered Committee of State Finance Ministers** under which user charges will be paid by the Centre and States/UTs equally on behalf of taxpayers and other stakeholders for availing services from the GST Portal. The user charges will be shared equally by the Centre and the States. The user charges for States will be apportioned amongst them based on number of registered taxpayers.*

Q 5. What services are being rendered by GSTN?

Ans. GSTN renders the following services through the Common GST Portal:

- (a) Registration (including existing taxpayer migration);*
- (b) Payment management including payment Gateways and integration with banking systems;*
- (c) Return filing and processing;*
- (d) Taxpayer management, including account management, notifications, information, and status tracking;*
- (e) Tax authority account and ledger Management;*
- (f) Computation of settlement (including IGST Settlement) between the Centre and States; Clearing house for IGST;*
- (g) Processing and reconciliation of GST on import and integration with EDI systems of Customs;*
- (h) MIS including need based information and business intelligence;*
- (i) Maintenance of interfaces between the Common GST Portal and tax administration systems;*
- (j) Provide training to stakeholders;*
- (k) Provide Analytics and Business Intelligence to tax authorities; and*
- (l) Carry out research and study best practices.*
- (m) E-way bill generation by the stake holders*

Q 6. What is the interface system between GSTN and the States/CBIC?

Ans. It was decided that in the GST regime, while taxpayer facing core services of applying for registration, uploading of invoices, filing of return, making tax payments shall be hosted by GST System, all the statutory functions (such as approval of registration, assessment of return, conducting investigation and audit etc.) shall be conducted by the tax authorities of States and Central governments.

Thus, it was decided that the Front-End (GST Portal services) shall be provided by GSTN and the Back-End modules shall be developed by states and Central Government themselves. However, 27 states (termed as Model-2 states) asked GSTN to develop their Back-End interface also. The CBIC and 9 states (Model 1) decided to develop and host the Back-End modules themselves. For Model 1 states/ CBIC full data (registration, return, payment etc.) submitted by taxpayers is being shared with them for information and analysis as deemed fit by them.

Q 7. What is the role of GSTN in registration?

Ans. The application for Registration is made Online on GST Portal. Some of the key data like PAN, Business Constitution, Aadhaar, CIN/DIN etc. (as applicable) is validated by the GST Portal online with the respective agency i.e. CBDT, UID, MCA etc., thereby ensuring minimum need for submission of documentation. The application data along with supporting scanned documents is being sent by GSTN to states/ Centre, which in turn processed that application and sends the query, if any, or approval or rejection intimation and digitally signed registration to GSTN for eventual download by the taxpayer.

Q 8. What is the role of Infosys in GSTN?

Ans. GSTN has engaged M/s Infosys as a single Managed Service Provider (MSP) for the design, development and deployment of GST system, including all application software, tools and Infrastructure and for operating & maintaining the system for a period of 5 years from the Go-Live date.

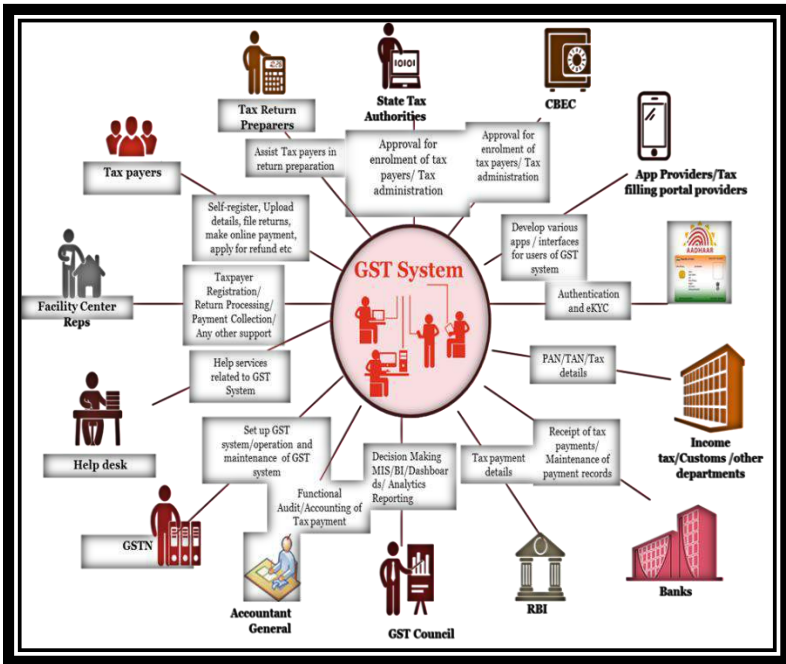
Q 9. What are the basic features of GST common portal?

Ans. The GST portal (www.gst.gov.in) is accessible over Internet (by Taxpayers and their CAs/Tax Advocates etc.) and Intranet by Tax Officials etc. The portal is going to be one single common portal for all GST related services e.g.–

- i. Tax payer registration (New, surrender, cancelation, amendment etc.);*
- ii. Invoice upload, auto-drafting of Purchase register of buyer, GST Returns filing on stipulated dates for each type of return (GSTR [1, 2, 3, 5, 9.etc];*
- iii. Tax payment by creation of Challan and integration with agency Banks;*
- iv. ITC and Cash Ledger and Liability Register;*
- v. MIS reporting for tax payers, tax officials and other stakeholders;*
- vi. BI/Analytics for Tax officials.*

Q 10. What is the concept of GST Eco-system?

Ans. A common GST system will provide linkage to all State/UT Commercial Tax departments, Central Tax authorities, Taxpayers, Banks and other stakeholders. The eco-system consists of all stakeholders starting from taxpayer to tax professional to tax officials to GST portal to Banks to accounting authorities. The diagram given below depicts the whole GST eco-system.



Q 11. What is GSP (GST Suvidha Provider)?

Ans. GST System will provide a GST portal for taxpayers to access the GST System and do all the GST compliance activities. But there will be wide variety of tax payers (SME, Large Enterprise, Micro Enterprise etc.) which may require different kind of facilities like converting their purchase/sales register data in GST compliant format, Integration of their Accounting Packages/ERP with GST System etc., various kind of dashboards to view Matched/Mismatched ITC claims, Tax liability, Filing status etc. As invoice level filing is required, so large organizations may require an automated way to interact with GST system as it may be practically impossible for them to upload large number of invoices through a web portal. So an eco- system is required, which can help such taxpayers in GST compliance.

As Tax payer convenience will be the key to success of GST regime, this eco-system also provides tax payer options of using third party applications, which can provide different kind of interfaces on desktop/mobile for them to be GST compliant.

All above reasons require an eco-system of third party service providers, who have access to GST System and capability to develop such applications. These service providers have been given a generic name, GST Suvidha Providers or GSP.

Q 12. What is the role of GST Suvidha Providers (GSP)?

Ans. GSP develops applications having features like return filing, reconciliation of purchase register data with auto populated data for acceptance/rejection/Modification, dashboards for taxpayers for quick monitoring of GST compliance activities. They may also provide role based access to divide various GST related activities like uploading invoice, filing returns etc., among different set of users inside a company (medium or large companies will need it), Applications for Tax Professional to manage their client's GST compliance activities, Integration of existing accounting packages/ERP with GST System, etc.

Q 13. What are the benefits to taxpayers in using the GSPs?

Ans. At the outset it is clarified that all required functions under GST can be performed by a taxpayer at the GST portal. GSP is an additional channel being made available for facilitating the taxpayers for performing some of the functions and use of their services is optional. Some of the

specific solution(s) which could be offered by the GSPs to meet specific requirements of Taxpayers for GST compliance are given below:

- 1. Conversion of their current invoice format generated by their existing accounting software, which could be in csv, pdf, excel, word format, into GST compliant format.*
- 2. Reconciliation of auto populated data from GST portal with their purchase register data, where purchase register data can be on excel, csv or in any proprietary database and uploaded data from GST format could be in json/csv.*
- 3. Organization having various branches will need a way to upload branch wise invoices, as GST System will only provide one user-id/password for GST system access. An application having role based access and different view for different branches will be needed.*
- 4. A company registered in multiple States may require unified view of all branches in one screen,*
- 5. GST professionals will need some specific applications to manage and undertake GST compliance activities for their client Tax payers from one dashboard, etc.*

Above are just a few illustrations. There will be many more requirements of different sets of Tax payers. These requirements of taxpayers can be met by GSPs.

Q 14. What are the functions which a taxpayer performs at the GST Common Portal being developed and maintained by GSTN for the taxpayers?

Ans. GST Common Portal is envisaged as one-stop-shop for all requirements under GST for the taxpayers. Illustrative list of functions that can be performed by taxpayers through GST Portal managed by GSTN are:

- *Application for registration as well as amendment in registration, cancellation of registration and profile management;*
- *Payment of taxes, including penalties, fines, interest, etc. (in terms of creation of Challan as payment will take place at bank's portal or inside a bank premises);*
- *Change of status of a taxpayer from normal to Compounding and vice-versa;*
- *Uploading of Invoice data & filing of various statutory returns/Annual statements;*
- *Track status of return/tax ledger/cash ledger etc. using unique Application Reference Number (ARN) generated on GST Portal.*
- *File application for refund, appeal, advance ruling etc.*
- *Status review of return/tax ledger/cash ledger*
- *Generation of E-way bill*

Q 15. What is the role of tax officers from State and Central Govt in respect of the GST system being developed by GSTN?

Ans. The officers use information/ application submitted by taxpayer on GST Portal for following statutory functions:

- *Approval/rejection for enrollment/registration of taxpayers;*

- *Tax administration (Assessment / Audit / Refund / Appeal/ Investigation etc.);*
- *Business Analytics, MIS and other statutory functions.*

Q 16. Can invoice data be uploaded on day to day basis?

Ans. Yes, GST Portal will have functionality for taxpayers to upload invoice data on any time basis. Early upload of invoices by supplier taxpayer will help receiver taxpayer in early reconciliation of data in Invoices as well as help supplier taxpayer in avoiding last minute rush of uploading returns on the last day.

Q 17. Does GSTN provide tools for uploading invoice data on GST portal?

Ans. Yes, GSTN has provided spreadsheet like tools (such as Microsoft Excel), Offline Utilities, free of cost, to taxpayers to enable them to compile invoice data in the same and generate files which can then be uploaded on GST portal. These are offline tools which can be used to input/capture invoice data without being online and then generate final files in compatible format for uploading to GST portal. These can be accessed at Download section of GST Portal.

Q 18. Does GSTN provide mobile based Apps to view ledgers and other accounts?

Ans. The GST portal is being designed in such a way that it can be seen on any smart phone. Thus ledgers like cash ledger, liability ledger, ITC ledger etc. can be seen on a mobile phone using compatible browsers.

Q 19. Does GSTN provide separate user ID and password for GST Practitioner to enable them to work on behalf of their customers (Taxpayers) without requiring user ID and password of taxpayers, as happens today?

Ans. Yes, GSTN has provided a separate user ID and Password to GST Practitioner to enable them to work on behalf of their clients without asking for their user ID and passwords. They will be able to do all the work on behalf of taxpayers as allowed under GST Law.

Q 20. Could the tax payer change the GST Practitioner once chosen in above mentioned facility?

Ans. Yes, a taxpayer may choose a different GST Practitioner by simply unselecting the previous one and then choosing a new GST Practitioner on the GST portal.

Q 21. What material has been provided by GSTN, on various aspects of working on GST portal, for the benefit of taxpayers?

Ans. GSTN has prepared Computer Based Training materials (CBT's), which have videos embedded into them, for each process to be performed on the GST portal. These have been put on the GST portal as well as on the website of all tax authorities. Apart from CBT's, Various User Manuals, FAQ's etc., have also be placed on GST Portal for education of the taxpayers. Apart from it, an interactive Self Help Grievance Redressal Portal has been set up for the taxpayers for logging of their tickets (<https://selfservice.gstsystem.in/>) or phone (0124-4688999). CBT, FAQ and User Manuals for enrolment

process are readily available at <https://www.gst.gov.in/help>.

GSTN conducts webinars on various topics related to GST Portal and same can be seen in GSTN you tube channel (<https://www.youtube.com/c/GoodsandServicesTaxNetwork>).

Apart from sending bulk mails to the taxpayers regarding new functionalities and advisories, GSTN connects with the taxpayers and other stakeholders through its social media channel i.e facebook

<https://www.facebook.com/gstsystemsindia/> and twitter handle (@askGSTech)

<https://www.facebook.com/gstsystemsindia/> and through regular updates on new functionalities /advisories and troubleshooting tips.

Q 22. Does the return and registration data furnished by the taxpayers on the GST Common Portal remain Confidential? How does GSTN ensure the same?

Ans. Yes, all steps are being taken by GSTN to ensure the confidentiality of personal and business information furnished by the taxpayers on GST Common Portal. This is being done by ensuring Role Based Access Control (RBAC) and encryption of critical data of taxpayers both during transit and in storage. The access to the taxpayer data is given only to the jurisdictional officers, and strictly on a need to know basis, with ensuring due checks and balances.

Q 23. What are the security measures being taken by GSTN to ensure security of the GST system?

Ans. GST Systems project has incorporated state of art

security framework for data and service security. Besides high end firewalls, intrusion detection, data encryption at rest as well as in motion, complete audit trail, tamper proofing using consistent hashing algorithms, OS and host hardening etc. has been done. GSTN has also established a primary and secondary Security Operations Command & Control center, which proactively monitors and protect malicious attack on a real-time basis. GSTN is also ensuring secure coding practices through continuous scanning of source code & libraries being used in GST system to protect against commonly known and unknown threats.

24. Transitional Provisions

Q 1. Will CENVAT credit (or VAT credit) carried forward in the last return prior to GST under existing law be available as ITC under GST?

Ans. A registered person, other than a person opting to pay tax under composition scheme, shall be entitled to take credit in his electronic credit ledger the amount of CENVAT (or VAT credit) credit carried forward in the return of the last period before the appointed day, subject to the conditions stated therein. (Section 140(1) of the CGST/SGST Act)

Q 2. What are those conditions?

Ans. The conditions are that: -

- (i) the said amount of credit is admissible as input tax credit under this Act;*
- (ii) the registered person has furnished all the returns required under the existing law (i.e. Central Excise and VAT) for the period of six months immediately preceding the appointed date;*
- (iii) the said amount of credit does not relate to goods manufactured and cleared under such notifications as are notified by the Central Government.)*

Under SGST law there will be one more condition as given below: -

So much of the said credit as is attributable to any claim related to section 3, sub-section (3) of section 5, section 6, section 6A or sub-section (8) of 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:

However, an amount equivalent to the credit specified above 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.

Q 3. A registered person, say, purchases capital goods under the existing law (Central Excise) in the June quarter of 2017-18. Though the invoice has been received within 30th June but the capital goods are received on 5th July, 2017 (i.e. in GST regime). Will such a person get full credit of CENVAT in GST regime?

Ans. Yes, he will be entitled to credit in 2017-18 provided such a credit was admissible as CENVAT credit in the existing law and is also admissible as credit in CGST - section 140(2) of the CGST Act.

Q 4. VAT credit was not available on items 'X' & 'Y' as capital goods in the existing law (Central

Excise). Since they are covered in GST, can the registered taxable person claim it now?

Ans. He will be entitled to credit only when ITC on such goods are admissible under the existing law and is also admissible in GST. Since credit is not available under the existing law on such goods, the said person cannot claim it in GST – proviso to section 140(2) of the SGST Act.

Q 5. Assuming the registered person has wrongly enjoyed the credit (Refer to Q4) under the existing law, will the recovery be done under the GST Law or the existing law?

Ans. The recovery relating to ITC wrongfully enjoyed, unless recovered under the existing law, will be recovered as arrears of tax under GST.

Q 6. Give two examples of registered taxable persons who are not liable to be registered under the existing law (Central Excise / VAT) but are required to be registered under GST?

Ans. A manufacturer having a turnover of say Rs 60 lakh who is enjoying SSI exemption under the existing law will have to be registered under GST as the said turnover exceeds the basic threshold of Rs 20 lakh - section 22.

A trader having turnover below the threshold under VAT but, making sales through e-commerce operator will be required to be registered in GST. There will be no threshold for such person(s) – section 24.

Q 7. Will ITC be allowed to a service provider on VAT paid inputs held as stock on the appointed day?

Ans. Yes, he will be entitled to input tax credit on inputs held in stock in accordance with the provisions of section 140(3).

Q 8. A registered person has excess ITC of Rs 10,000/- in his last VAT return for the period immediately preceding the appointed day. Under GST he opts for composition scheme. Can he carry forward the aforesaid excess ITC to GST?

Ans. The registered person will not be able to carry forward the excess ITC of VAT to GST if he opts for composition scheme – Section 140(1).

Q 9. Sales return under CST (i.e. Central Sales Tax Act) is allowable as deduction from the turnover within six months? If, say, goods are returned in GST regime by a buyer within six months from appointed day, will it become taxable in GST?

Ans. Where tax has been paid under the existing law [CST, in this case] on any goods at the time of sale, not being earlier than six months prior to the appointed day, and such goods are returned by the buyer after the appointed day, the sales return will be considered as a supply of the said buyer in GST and tax has to be paid on such supply, if, –

- (i) the goods are taxable under the GST Law; and*
- (ii) the buyer is registered under the GST Law.*

However, the seller is entitled to refund of such tax [CST, in this case] paid under the existing law if the aforesaid buyer is an unregistered person under GST and the goods are returned within 06(six) months (or within the extended period of maximum two months) from the appointed day and the goods are identifiable - Section 142(1).

Q 10. Shall a manufacturer or a job worker become liable to pay tax if the inputs or semi-finished goods sent for job work under the existing law are returned after completion of job work after the appointed day?

Ans. No tax will be payable by the manufacturer or the job worker under the following circumstances: –

- (i) Inputs/ semi-finished goods are sent to the job worker in accordance with the provisions of the existing law before the appointed day.*
- (ii) The job worker returns the same within six months from the appointed day (or within the extended period of maximum two months).*
- (iii) Both the manufacturer and the job worker declare the details of inputs held in stock by the job worker on the appointed day in the prescribed form.*

The relevant sections are 141(1), 141(2) & 141 (4).

However, if the said inputs/semi- finished goods are not returned within six months (or within the extended period of maximum two months), the input tax credit availed is liable to be recovered.

Q 11. What happens if the job worker does not return the goods within the specified time?

Ans. Input tax credit availed by manufacturer will be payable by said manufacturer on the said goods if they are not returned to the place of business of the manufacturer within six months (or within the extended period of maximum two months) from the appointed day –

Q 12. Can a manufacturer transfer have finished goods sent for testing purpose to the premises of any other taxable person?

Ans. Yes, a manufacturer can transfer finished goods sent for testing purpose to the premise of any other registered person on payment of tax in India or without payment of tax for exports within six months (or within the extended period of maximum two months)– section 141(3)

Q 13. If finished goods removed from a factory for carrying out certain processes under existing law are returned on or after the appointed day, whether GST would be payable?

Ans. No tax under GST will be payable if finished goods removed from factory prior to the appointed day to any other premise for carrying out certain processes are

returned to the said factory after undergoing tests or any other process within six months (or within the extended period of maximum two months) from the appointed day - section 141(3).

Q 14. When tax shall become payable in GST on manufactured goods sent to a Job worker for carrying out tests or any other process not amounting to manufacture under the existing law?

Ans. Where manufactured goods are sent to a job worker prior to the appointed day for carrying out tests or any process not amounting to manufacture under the existing law and if such goods are not returned to the manufacturer within six months (or within the extended period of maximum two months) from the appointed day, the input tax credit availed by the manufacturer will liable to be recovered if the aforesaid goods are not returned within six months from the appointed day. – Section 141(3)

Q 15. Is extension of two months as discussed in section 141 automatic?

Ans. No, it is not automatic. It may be extended by the Commissioner on sufficient cause being shown.

Q 16. What is the time limit for issue of debit/credit note(s) for revision of prices?

Ans. The taxable person may issue the debit/credit note(s) or a supplementary invoice within 30 days of the price revision.

In case where the price is revised downwards the taxable person will be allowed to reduce his tax liability only if the recipient of the invoice or credit note has reduced his ITC corresponding to such reduction of tax liability—section 142(2).

Q 17. What will be the fate of pending refund of tax/interest under the existing law?

Ans. The pending refund claims will be disposed of in accordance with the provisions of the existing law – section 142(3).

Q 18. What will be fate of any appeal or revision relating to a claim of CENVAT/ITC on VAT which is pending under the existing law? If say, it relates to output liability then?

Ans. Every proceeding of appeal, revision, review or reference relating to a claim for CENVAT/input tax credit or any output tax liability initiated whether before, on or after the appointed day, will be disposed of in accordance with the existing law and any amount of credit of CENVAT/ input tax credit or output tax found admissible for refund will have to be refunded in accordance with the existing law. However, any amount which becomes recoverable will have to be recovered as arrears of tax under the GST Law---Section 142(6)/142(7).

Q 19. If the appellate or revisional order goes in favour of the assessee, whether refund will be

made in GST? What will happen if the decision goes against the assessee?

Ans. The refund will be made in accordance with the provisions of the existing law only. In case any recovery is to be made then, unless recovered under existing law, it will be recovered as an arrear of tax under GST – sections 142(6) & 142(7)

Q 20. How shall the refund arising from revision of return(s) furnished under the existing law be dealt in GST?

Ans. Any amount found to be refundable as a consequence of revision of any return under the existing law after the appointed day will be refunded in cash in accordance with the provisions of the existing law – section 142(9)(b).

Q 21. If any goods or services are supplied in GST, in pursuance of contract entered under existing law, which tax will be payable?

Ans. GST will be payable on such supplies– section 142(10) of the CGST Act.

Q 22. Tax on a particular supply of goods/services is leviable under the existing law. Will GST be also payable if the actual supply is made in GST regime?

Ans. No tax will be payable on such supply of goods/services under GST to the extent the tax is

leviable under the existing law – section 142(11).

Q 23. In pursuance of any assessment or adjudication proceedings instituted, after the appointed day, under the existing law, an amount of tax, interest, fine or penalty becomes refundable. Shall such amount be refundable under the GST law?

Ans. No refund of such amount will be made in cash under the existing law – section 142(8)(b) of the CGST Act.

Q 24. If services are received by ISD under the earlier law, can the ITC relating to it be distributed in GST regime?

Ans. Yes, irrespective of whether the invoice(s) relating to such services is received on or after the appointed day – section 140(7) of the CGST Act.

Q 25. Where any goods are sold on which tax was required to be deducted at source under State VAT law and an invoice was also issued before the appointed day, shall deduction of tax at source shall be made under this Act if the payment is made after the appointed day?

Ans. No, in such case no deduction of tax at source shall be made under GST.

Q 26. Goods were sent on approval not earlier than six months before the appointed day but are

returned to the seller after 6 months from the appointed day, will tax be payable under GST?

Ans. Yes, if such goods are liable to tax under GST and the person who has rejected or has not approved the goods, returns it after 6 months (or within the extended period of maximum two months) from the appointed day. In that case tax shall also be payable by the person who has sent the goods on approval basis- section 142(12).

25. Anti-profiteering provisions

Q 1. What is profiteering?

Ans. In terms of Section 171 of the CGST Act, 2017, the suppliers of goods and services should pass on the benefit of any reduction in the rate of tax or the benefit of input tax credit to the recipients by way of commensurate reduction in prices. The wilful action of not passing on the above benefits to the recipients in the manner prescribed is known as “profiteering”.

Q 2. What is the background to providing statutory provisions on anti-profiteering in GST law?

Ans. The Study Report titled ‘Implementation of Value Added Tax (VAT) in India-Lessons for transition to GST’ released by the Comptroller & Auditor General (C&AG) of India in June, 2010 mentioned about several cases of profiteering by dealers by not passing on the benefit of tax rate reduction to the consumers in the wake of implementation of VAT in the country. The above C&AG report, after checking the records of 13 manufacturers in a State in three initial months of implementation of VAT, found that the manufacturers did not reduce the MRP of the goods despite sharp fall in the tax rate post-VAT implementation. As a learning from the VAT experience, legal teeth was sought to be provided in GST law by incorporating anti-profiteering provisions to check profiteering by businesses when GST was being rolled out in the country.

Q 3. What are the statutory provisions of anti-profiteering in GST law?

Ans. Section 171 of CGST Act, 2017, provides that 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.

Chapter XV of the CGST Rules, 2017 comprising of 16 Rules (Rule 122 to Rule 137), contains the detailed mechanism and procedure.

Q 4. Is there a sunset clause for Anti-Profiteering law'?

Ans. Yes. In terms of Rule 137 of the CGST Rules, 2017, the Anti-profiteering Authority shall cease to exist after the expiry of two years from the date on which the Chairman of the Authority enters upon his office unless the GST Council recommends otherwise.

Q 5. What are some of the instances in which the statutory provisions of anti-profiteering will kick in?

Ans. The different situations in which Section 171 of CGST Act, 2017 & the identical provision in State/ UT GST Act will get attracted include:

- i. reduction in tax rate;*
- ii. benefit of Input Tax Credit (ITC) available to the registered person/ supplier.*

Q 6. What is the function of National Anti-Profiteering Authority (NAA)?

Ans. The National Anti-Profiteering Authority (NAA) is required to determine whether the benefit of input tax credit or reduction in the tax rate has actually resulted in a commensurate reduction in the price of the goods or

services or both.

The NAA has the power to identify the registered person who has not passed on the benefit of reduction in tax rate or input tax credit by way of commensurate reduction in prices and it may order reduction in prices; return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest; cancellation of registration of the supplier and imposition of penalty. In case the eligible recipient is not identifiable or does not claim return of the amount, the NAA may order the supplier to deposit the amount in the Consumer Welfare Fund.

Q 7. Should a customer pay extra GST on Maximum Retail Price (MRP) affixed on goods?

Ans. No. MRP is inclusive of GST and is the maximum retail price that can be charged from the consumers.

Q 8. In cases of over-charging in the name of GST, where can a consumer register his complaint for redressal?

Ans. Charging more than MRP attracts the provisions of Legal Metrology Act. In case of over-charging over MRP, a complaint can be lodged on toll-free number 1800-11-4000/14404.

There are multiple ways through which aggrieved consumers or suppliers of goods and services can register their complaints against profiteering:

a. Online complaint facility:

Complainant can register an online complaint at <http://www.naa.gov.in/complaint.php>

Link to see the guidelines to register online complaint:
<http://www.naa.gov.in/page.php?id=guidelines-for-consumers>

b. Via Mail:

User can mail the complaint at:

| Agencies | Mail-Id | Nature of the complaint |
|----------------------------|---|--|
| Standing Committee | sc.antiprofitteering@gov.in anti-profitteering@gov.in | Complaints involving issues of all-India nature. |
| State-Screening Committees | For State-wise E-mail Addresses please refer to: http://www.naa.gov.in/docs/screening%20committees%2020-08-18.xlsx | Complaints involving issues of local nature. |

c. By Post:

| Agencies | Postal Addresses |
|--|--|
| National Anti-profitteering Authority | National Anti-profitteering Authority Dept. of Revenue, Ministry of Finance 6th Floor, Tower One Jeevan Bharati Building Connaught Place New Delhi-110 001. |
| Directorate General of Anti-Profitteering & Standing Committee | Directorate General of Anti-profitteering, Dept. of Revenue, Ministry of Finance, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi -110 001. |

Q 9. In cases of profiteering in the name of GST, what is the complaint redressal mechanism available to the consumer?

Ans. The CGST Act, SGST Acts & the CGST/ SGST Rules framed thereunder provide for the following complaint redressal mechanism.

- 1. The aggrieved persons may file an application, in the prescribed format, before the Standing Committee on Anti-profiteering or before the State Level Screening Committee. (If the issue involved is of local nature).*
- 2. The State Level Screening Committee constituted in every State/UT with legislature examines it & forwards it to the Standing Committee constituted at the national level, if a prima facie case of profiteering is made out against the registered person.*
- 3. Thereafter, the Standing Committee shall refer the matter to the Director General of Anti-Profiteering (erstwhile DG, Safeguards) for a detailed investigation, if prima facie evidence of profiteering exists.*
- 4. The DG, Anti-Profiteering shall conduct the investigation and submit its report to the National Anti-Profiteering Authority (NAA) constituted by the Central Government under section 171 (2) of the CGST Act, 2017 for taking appropriate action, as mentioned in the Answer to Q 6. above.*

Q 10. How can one file complaint against profiteering?

Ans. An online complaint can be filed at

<http://www.naa.gov.in/complaint.php> . Complaints of the nature of national-level can be filed by e-mail at sc.antiprofitteering@gov.in . Complaints of local nature can be sent by mail to the respective State Screening Committee.

Q 11. Whether one form is sufficient for multiple goods or services?

Ans. No, the prescribed application form APAF-01 is with reference to a single Good/Service. In case of application for multiple Goods/Services, separate application for each Good/Service is required to be filed.

Q 12. What is the methodology to identify cases of profiteering?

Ans. Rule 126 of the CGST Rules, 2017 vests the power to determine the methodology & procedure with the National Anti-Profiteering Authority constituted by the Central Government under Section 171 (2) of the CGST Act, 2017. The guiding principle mentioned in the said Rule states that the reduction in tax rate on supply of goods or services or benefit of input tax credit has to be passed on to the recipient by way of commensurate reduction in prices. The methodology and procedure adopted to identify cases of profiteering may vary from case to case, depending upon the facts of the case and the nature of goods or services supplied.

Q 13. What are some of the measures taken by the Consumer Affairs Ministry in the Government of India to check cases of profiteering post implementation of GST?

Ans. The Consumer Affairs Ministry in the Government of India, vide its letter no. WM-10(31)/2017, dated 04.07.2017,

permitted the manufacturers or packers or importers of pre-packaged commodities to affix new MRP labels (after incorporating tax changes due to GST) in addition to existing MRP for three months from 1st Jul to 30th Sept 2017. Similar action was taken after the GST rate reduction in November, 2017 and July, 2018.

Q 14. What can buyers do if shopping malls and retail stores are still selling goods at pre-GST affixed labels?

Ans. As per the Government's directive, shopping malls and retail stores are required to affix two MRP labels reflecting both pre-GST & post-GST prices. Despite this, if consumers find that retailers are selling goods at pre-GST affixed labels, they can report to National Consumer Helpline. Also, the administrative machinery of the Controller of Legal Metrology can be effectively used by States/UTs to monitor & resolve such cases.

Q 15. How can buyers of under-construction flats benefit from the anti-profiteering provisions?

Ans. Section 171 of the CGST Act, 2017 can be invoked when the builder increases the instalment amount to be paid in case of an under construction flat, complex etc, on the pretext of leviability of 12% GST as against the apparently lower tax rates in the earlier indirect tax regime. In pre-GST era, Central Excise duty was payable on most construction material at 12.5%. In addition, VAT was payable on construction material at 12.5% to 14.5% in most of the States & the construction material also suffered entry tax. The input tax credit of the above taxes was inadmissible for meeting Service Tax liability of the builder, thus leading to cascading of input taxes on constructed flats & a higher

effective tax incidence. But GST regime allows full input tax credit for offsetting the headline rate of 12%, thereby reducing the effective tax incidence.

Q 16. Can action be taken under the anti-profiteering provisions in case benefit of transitional credit availed is not passed to the consumers?

Ans. The benefit of transitional input tax credit allowed under Section 140 (3) of the CGST Act, 2017, is required to be passed on to the recipient by way of reduced prices.

Q 17. What is the time-frame for deciding cases of anti-profiteering provisions?

Ans. The maximum time envisaged for resolution of cases is 9 months excluding the time taken by the State-level screening committee and the Standing Committee (maximum 2 months) for processing the complaints.

Q 18. What should a complainant ensure while submitting complaint to Screening Committee/ Standing Committee?

Ans. The complainant should submit a duly filled in application form APAF-01 along with his identification document and evidence of profiteering. The instructions for filling the said form are contained in form APAF-01.

Q 19. A company in order to justify the prices being charged by it may have to submit information which could be confidential and may impact its business interest?

Ans. The provisions of section 11 of the Right to Information Act, 2005, shall apply mutatis mutandis to the disclosure of any information which is provided on a confidential basis.

The DG, Anti-Profiteering may require the parties providing information on confidential basis to furnish a non-confidential summary thereof. If, in the opinion of the party providing such information, the said information cannot be summarised, such party may submit a statement of reasons as to why summarisation is not possible.

Q 20. Where can one access the orders passed by NAA?

Ans. All the orders passed by NAA are available on their website <http://www.naa.gov.in/news.php?cat=2>.
