



***BACKGROUND MATERIAL
FOR TRAINING ON
'GOODS AND SERVICES TAX'***



**COMPILED BY
NATIONAL ACADEMY OF CUSTOMS EXCISE AND NARCOTICS
FARIDABAD**

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1. Goods and Services Tax (GST): An Overview

I. Introduction

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.

II. Genesis

2. The idea of moving towards the GST was first mooted in the Budget for 2006-07. Initially, it was proposed that GST would be introduced by 1st of April, 2010. The Empowered Committee of State Finance Ministers (EC) which had formulated the design of State VAT was requested to come up with a roadmap and structure for the GST. Joint Working Groups of officials having representation of the States as well as the Centre were set up to examine various aspects of the GST and draw up reports specifically on exemptions and thresholds, taxation of services and taxation of inter-State supplies. Based on discussions within and between it and the Central Government, the Empowered Committee released its First Discussion Paper on the GST in November, 2009. This spells out the features of the proposed GST and has formed the basis for discussion between the Centre and the States so far.

III. Salient Features of GST

3. The salient features of GST are as under:
- (i) The GST would be applicable on the supply of goods or services as against the present concept of tax on the manufacture and sale of goods or provision of services. It would be a destination based consumption tax.
 - (ii) 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 would be called the State GST (SGST).

- (iii) The GST would apply to all goods other than alcoholic liquor for human consumption and five petroleum products, viz. petroleum crude, motor spirit (petrol), high speed diesel, natural gas and aviation turbine fuel. It would apply to all services barring a few to be specified.
- (iv) Tobacco and tobacco products would be subject to GST. In addition, the Centre would have the power to levy Central Excise duty on these products.
- (v) The GST would replace the following 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
- (vi) 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
- (vii) 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.
- (viii) There would be a floor rate with a small band of rates within which the States may fix the rates for SGST.
- (ix) The list of exempted goods and services would be common for the Centre and the States.
- (x) Tax payers with an aggregate turnover in a financial year up to [Rs.10 lakhs] would be exempt from tax. [Aggregate turnover shall include the aggregate value of all taxable and non-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 Sikkim, the exemption threshold shall be [Rs. 5 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 or paying tax on reverse charge basis shall not be eligible for threshold exemption.
- (xi) Small taxpayers with an aggregate turnover in a financial year up to [Rs. 50 lakhs] shall be eligible for composition levy. Under the scheme, a taxpayer shall pay tax as a percentage of his turnover during the year without the benefit of ITC. The floor rate of tax for CGST and SGST shall not be less than [1%]. A tax payer opting for composition levy shall not collect any tax from his customers.
The composition scheme is optional. The eligible taxpayers shall have the option of paying tax with ITC benefits. Tax payers making inter-State supplies or paying tax on reverse charge basis shall not be eligible for composition scheme.
 - (xii) An Integrated GST (IGST) would be levied and collected by the Centre on inter-State supply of goods and services. Accounts would be settled periodically between the Centre and the States to ensure that the SGST portion of IGST is transferred to the destination State where the goods or services are eventually consumed.
 - (xiii) 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.
 - (xiv) 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.
 - (xv) Exports shall be treated as zero-rated supply. No tax is payable on export of goods or services but credit of the input tax related to the supply shall be admissible to exporters and the same can be claimed as refund by them.
 - (xvi) Import of goods and services would be treated as inter-State supplies and would be subject to IGST in addition to the applicable customs duties. The IGST paid shall be available as ITC for further transactions.
 - (xvii) The laws, regulations and procedures for levy and collection of CGST and SGST would be harmonized to the extent possible.

IV. GST and Centre-State Financial Relations

4. 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.

4.1 Introduction of the GST would require amendments in the Constitution so as to simultaneously empower the Centre and the States to levy and collect this tax. The assignment of simultaneous jurisdiction to the Centre and the States for the levy of GST would require a unique institutional mechanism that would ensure that decisions about the structure, design and operation of GST are taken jointly by the two. For it to be effective, such a mechanism also needs to have Constitutional force.

V. Amendment of the Constitution and Other Legislative Requirements

(a) Constitution (One Hundred and Twenty Second) Amendment Bill, 2014

5. To address all these and other issues, a Constitution Amendment Bill was introduced in the Lok Sabha in December, 2014 and the Bill (122nd Amendment Bill) has since been passed by the Lok Sabha (May, 2015). The Bill is currently under consideration of the Rajya Sabha. The salient features of the Bill are as under:

- (i) The GST shall be levied on all goods and services except alcoholic liquor for human consumption
- (ii) The tax shall be levied as dual GST separately by the Union and the States.
- (iii) Parliament will have power to make laws with respect to GST imposed by the Union (CGST) and the State Legislatures will have power to make laws with respect to GST imposed by the States (SGST).
- (iv) Parliament will have exclusive power to make laws with respect to GST where the supply of goods and/or services takes place in the course of inter-State trade or commerce (IGST).
- (v) The Government of India (GoI) will have exclusive power to levy and collect GST on inter-State trade or commerce. This tax shall be apportioned between the Union and States on the recommendations of the GST Council by Parliament by law.
- (vi) Petroleum & petroleum products would be subject to GST. [However, it has been decided that five products, viz. petroleum crude, motor spirit (petrol), high speed diesel, natural gas and aviation turbine fuel would be kept out of the purview of GST in the initial years of implementation]. In the case of tobacco and tobacco products, the Centre alone would have the power to levy excise duty in addition to the GST.
- (vii) Taxes on entertainments and amusements to the extent levied and collected by a Panchayat or a Municipality or a Regional Council or a District Council shall not be subsumed under GST. The local bodies of States could continue to levy such taxes.
- (viii) Parliament may, by law, provide for compensation to States for revenue loss arising out of the implementation of the GST, based on the recommendations of the GST Council. Such compensation could be for a maximum period of 5 years.

- (ix) 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 recommend on
- a. the taxes, cesses and surcharges to be subsumed under GST;
 - b. the goods and services that may be subjected to or exempted from the GST;
 - c. the date from which the specified petroleum products would be subject to GST;
 - d. model GST laws, principles of levy, apportionment of IGST and the principles that govern the place of supply;
 - e. the threshold limit of turnover below which the goods and services may be exempted from GST;
 - f. the rates including floor rates with bands of GST;
 - g. any special rate or rates for a specified period to raise additional resources during any natural calamity or disaster; and
 - h. special provision with respect to the North-East States, J&K, Himachal Pradesh and Uttarkhand.

5.1 The mechanism of GST Council would ensure some degree of harmonization on different aspects of GST between the Centre and the States as well as among States. It is being specifically provided 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.

5.2 As per the provisions of the Amendment Bill, every decision of the GST Council shall be taken 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 the meeting. One half of the total number of members of the GST Council shall constitute the quorum at its meetings.

5.3 The GST Council may decide about the modalities to resolve disputes arising out of its recommendation.

6. The Constitution Amendment Bill is expected to be passed by the Rajya Sabha in the ensuing monsoon session of Parliament. After ratification of the amendment bill by 50% of State Legislatures and receipt of assent by the President, the process of enactment would be complete.

(b) Other Legislative Requirements

7. Suitable legislation for the levy of GST (Central GST Bill, Integrated GST Bill and State GST Bills) drawing powers from the Constitution can be introduced in Parliament or the State Legislatures only after the enactment of the Constitution Amendment Bill.

Unlike the Constitutional Amendment which requires 2/3rd majority, the GST Bills would need to be passed by a simple majority. Obviously, the levy of the tax can commence only after the GST law has been enacted by the respective Legislatures. Also, unlike the State VAT, the date of commencement of this levy would need to be synchronized across the Centre and the States. This is because the IGST model cannot function effectively unless the Centre and all the States participate simultaneously.

VI. Work on the Various Aspects of GST: Recent Developments and Work Ahead

(a) Model GST Law

8. The Model GST Law, jointly drafted by the tax officials of the Centre and States, has been placed on the website of the Ministry of Finance on 14th June, 2016 for suggestions/comments. The model CGST/SGST legislation contains 162 sections spread over 25 Chapters and 4 Schedules. The draft sets out the provisions of taxable event, taxable person, time of supply, valuation of supply and input tax credit. The draft also deals with the various administrative and procedural aspects of levy, such as, registration, filing of returns, assessment, payment of tax, maintenance of accounts, refunds, audit, demands and recovery, inspection, search, seizure and arrest, offences and penalties, prosecution, appeals and revision, advance ruling and transitional provisions.

9. Under the GST regime, tax is payable by the taxable person on the supply of goods and/or services. Liability to pay tax arises when the taxable person crosses the threshold exemption, i.e. Rs.10 lakhs (Rs. 5 lakhs for NE 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. Intra-State supply of goods and/or services refers to those transactions where the location of the supplier and the place of supply are in the same State. Inter-State supply of goods and/or services refers to those transactions where the location of the supplier and the place of supply are in different States. The CGST /SGST and IGST are payable at the rates specified in the Schedules to the respective Acts.

10. The draft IGST law contains 33 sections divided into 11 Chapters. The draft, 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.

10.1 The draft also sets out in detail the rules for determination of the place of supply of services. As per the draft, the place of supply of services (other than some specified services) made to a registered person shall be the location of such person and that made to an unregistered person shall be the location of such person where the address on record exists. In other cases, i.e. where the address on record is not available, the place of supply shall be the location of the supplier of service. The draft law has also set out rules for determining the place of supply of certain services like immovable property, restaurant and catering, training and performance appraisal, admission to a cultural, scientific or educational event, organization of a fair, exhibition etc., transportation of goods and passengers, telecommunications, banking, insurance, advertisement and financial services.

10.2 The draft IGST law deals with the aspect of cross utilization of IGST credit. It has been provided that on utilization of IGST credit for payment of CGST, the Central Government shall transfer an amount equal to the credit so utilized from the IGST account to CGST account. Likewise, on utilization of IGST credit for payment of SGST, the Central Government shall transfer an amount equal to the credit so utilized from the IGST account to the SGST account of the respective State Government. The draft provides for apportionment of tax collected under this Act and settlement of funds. It has also been provided that certain provisions of the CGST Act such as registration, valuation, time of supply, exemption, ITC, audit, assessment, demands, adjudication, refund, search, seizure and arrest, prosecution and appeals shall apply *mutatis mutandis* to this Act.

11. The Model Law has been drafted keeping in view certain policy objectives, such as, clarity in tax laws, tax laws which are easy to administer, tax laws which are non-adversarial and tax payer-friendly, and which improves “ease of doing business”. An attempt has been made to provide a fair dispute resolution mechanism for tax payers under GST. The highlights of the Model Law are as under:

Minimal interface

11.1 The physical interface between the tax payer and the tax authorities would be minimal under GST. Certain important provisions in this regard are illustrated as under:

(i) Registration will be granted on line and shall be deemed to have been granted if no deficiency is communicated to the applicant within 3 common working days by either of the tax administration.

(ii) Taxable person shall himself assess the taxes payable (self-assessment) and credit it to the account of the Government. The return filed by the tax payer would be treated as self-assessed.

(iii) Payment of tax shall be made electronically through internet banking. Smaller taxpayers shall be allowed to use the systems generated challan and pay tax over the bank counter.

(iv) The tax payer shall furnish the details of outward supplies electronically without any physical interface with the tax authorities. Inward supply details would be auto-drafted from the supply details filed by the corresponding suppliers.

(v) Tax payers shall file, electronically, monthly returns of outward and inward supplies, ITC availed, tax payable, tax paid and other prescribed particulars. Composition tax payers shall file, electronically, quarterly returns. Omission/incorrect particulars can be self-rectified before the last date of filing of return for the month of September of the following year or the actual date of filing of annual return, whichever is earlier.

(vi) Matching, reversal and reclaim of input tax credit shall be done electronically on the GSTN portal without any tax payer contact. [This would prevent, *inter alia*, input tax credit being taken on the basis of fake invoices or twice on the same invoice.]

(vii) Tax payers shall be allowed to keep and maintain accounts and other records in electronic form.

Input tax credit

11.2 The provisions of input tax credit have been prone to litigation. The Model GST law provides an elaborate mechanism for availment and utilization of ITC and seeks to impart clarity with a view to minimizing disputes. The important provisions of the law are as under:

(i) Tax payer is allowed to take credit of taxes paid on inputs (input tax credit), as self-assessed, in his return.

(ii) Taxpayer can take credit of taxes paid on all goods and services, other than a few in the negative list, and utilize the same for payment of output tax.

(iii) Credit of taxes paid on inputs can be taken where the inputs are used for business purposes or for making taxable supplies.

(iv) Full input tax credit shall be allowed on capital goods on its receipt as against the current Central Government and many State Government practice of staggering the credit in two or three equal instalments.

(v) Unutilized input tax credit can be carried forward.

(vi) The facility of distribution of input tax credit for services amongst group companies has been provided for through the mechanism of Input Service Distributor (ISD).

Refund

11.3 Refund provisions have been simplified and made more taxpayer friendly. Some of the important provisions of the Model GST Law are as under:

- (i) Time limit for claiming refund has been increased from one year to two years.
- (ii) Refund claim along with documentary evidence is to be filed online without any physical interface and the tax refund will be directly credited to the nominated bank account of the applicant. Besides, refund of inadvertent/excess payment can be claimed through return also.
- (iii) Refund shall be granted within 90 days from the date of receipt of complete application. Interest is payable if refund is not sanctioned within the stipulated period of 90 days.
- (iv) If the refund claim is less than Rs. 5 lakhs, there is no need for the claimant to furnish any documentary evidence that he has not passed on the incidence of tax to any other person. Only a self-certification to this effect would suffice.
- (v) Refund of input tax credit shall be allowed in case of exports or where the credit accumulation is on account of inverted duty structure (i.e. where the tax rate on output is higher than that on inputs).
- (vi) In case of refund claim on account of exports, 80% of the claim shall be paid immediately on a provisional basis without verification of documentary evidence.

Demands

11.4 Keeping in view complaints of long delays in issuance of adjudication orders, a new concept of sunset clause for tax disputes has been introduced. The important provisions in this regard are as under:

- (i) Adjudication order shall be issued within 3 years of filing of annual return in normal cases.
- (ii) The time limit is 5 years (from filing of annual return) in fraud/suppression cases.
- (iii) There are no separate time lines for issue of SCN and adjudication order, as at present under Central Laws.
- (iv) Provisions for settlement of cases have been made available to taxpayers at every stage, right from audit/investigation to the stage of passing of adjudication order and even thereafter.
- (v) Penalty is Nil or minimal if the tax short paid / non-paid is deposited along with interest at the stage of audit/investigation.
- (vi) The officer shall in his order set out the relevant facts and the basis of his decision.
- (vii) The amount of tax, interest and penalty demanded in the order shall not be in excess of the amount specified in the notice.

(viii) No demand shall be confirmed on grounds other than the grounds specified in the notice.

Audit

11.5 The manner of conducting audit has been a sore point with the taxpayers. In the Model GST Law, certain disciplines have been brought in, as enumerated below, to streamline the process of audit.

(i) It is not necessary that in all cases the tax authorities would have to visit the place of business of the taxpayer for conducting audit. The audit can even be conducted at the office of the tax authorities.

(ii) Tax payer shall be informed sufficiently in advance, not less than 15 working days, prior to the conduct of audit.

(iii) The audit shall be carried out in a transparent manner and completed generally within a period of 3 months from the date of commencement of audit.

(iv) On conclusion of audit, the proper officer shall without delay notify the taxable person of the findings, the taxable person's rights and obligations and reasons for the findings.

Penalty disciplines

11.6 Another area of dissatisfaction of the taxpayers has been the propensity of the tax authorities to impose disproportionately high penalties for breaches of law which may not be that serious. In order to address this concern, certain general disciplines, as mentioned below, have been incorporated in the Model GST Law.

(i) No substantial penalties shall be imposed for minor breaches of tax regulations or procedural requirements.

(ii) No penalty shall be imposed in respect of any omission or mistake in documentation which is easily rectifiable and obviously made without fraudulent intent or gross negligence.

(iii) Penalty shall be commensurate with the degree and severity of the breach.

(iv) No penalty shall be imposed without issue of Show Cause Notice (SCN) and without giving personal hearing to the concerned person.

(v) Reasoning is to be given in the order, specifying the nature of the breach and the applicable laws or procedure.

(vi) In case of voluntary disclosure of breach, the tax authorities may consider this fact as a potential mitigating factor when establishing a penalty for that person.

Alternate dispute resolution mechanism

11.7 The various modes of dispute resolution like advance ruling and Settlement Commission have been continued under GST law. The salient features are as under:

(i) Advance ruling can be sought in respect of more subjects than allowed at present. The subjects are: classification of goods/or services, method of valuation, rate of tax, admissibility of input tax credit, liability to pay tax, liability to take registration and whether a particular transaction amounts to a supply under GST law.

(ii) Advance ruling can be sought not only for new activities but also for existing activities.

(iii) The facility of appeal, which is not there under the Central law, has been provided in the Model GST Law. The applicants or the Department, if aggrieved by the advance ruling, would henceforth get the opportunity to file an appeal before the Appellate Authority for revision of the ruling.

(iv) The provision of Settlement Commission has been included in the IGST Law.

Transitional provisions

11.8 In the Model GST law, elaborate transitional provisions have been made to enable smooth migration of tax payers from the present regime to GST. The important provisions in this regard are:

(i) The existing taxpayers shall be issued a certificate of registration valid for 6 months. Upon furnishing of prescribed information, registration shall be granted on a final basis.

(ii) The amount of CENVAT credit / VAT carried forward in a return shall be allowed to be taken as input tax credit subject to certain conditions. Un-availed CENVAT credit on capital goods, not carried forward in a return, shall also be allowed as ITC subject to certain conditions.

(iii) Credit of eligible duties and taxes in respect of inputs held in stock shall be allowed to a registered taxable person subject to fulfilment of certain conditions.

(iv) Credit of eligible duties and taxes in respect of inputs held in stock shall be allowed to a taxable person upon switching over from the composition scheme to the normal scheme.

(v) No tax is payable on the goods removed/despached earlier but returned to the place of business within a period of 6 months after the introduction of GST.

(vi) Likewise, no tax shall be payable on the inputs, semi-finished goods and finished goods removed/despached earlier for job work or for carrying out certain processes and returned to the place of business within a period of 6 months after the introduction of GST.

(vii) Pending refund claims shall be disposed of in accordance with the provisions of earlier law and the amount of refund shall be paid to the claimant in cash, subject to certain conditions.

(viii) Pending claim of CENVAT credit /input tax credit shall be disposed of in accordance with the provisions of earlier law and the amount of credit shall be paid to the claimant in cash, subject to certain conditions.

(ix) No tax shall be payable on the supply of goods and /or services made before the introduction of GST where a part of consideration for the said supply is received on or after the introduction of GST, but the full duty or tax payable on such supply has already been paid under the earlier law.

(x) No tax shall be payable on the goods sent on approval basis before the introduction of GST but which are rejected and returned to the supplier within 6 months from the introduction of GST.

Other provisions of Model GST Law

11.9 The Model Law contains several other provisions which are taxpayer friendly and are meant for facilitating trade and industry. The provisions worth mentioning here are:

(i) Valuation of goods shall be done on the basis of transaction value i.e. the invoice price, which is the current practice under the Central Excise and Customs Laws.

(ii) Taxpayers are allowed to issue supplementary or revised invoice in respect of a supply made earlier.

(iii) The facility of provisional assessment to tax payers in cases where he is unable to determine the value or rate of tax has been allowed.

(iv) Taxpayers are allowed to file the details of inward and outward supplies, and the various returns through Tax Return Preparers registered with tax administration.

(v) Tax payments for all months shall be made in the succeeding month. Tax dues of March are thus to be paid in April and not March, as at present in the Central Government. Composition taxpayers filing quarterly returns and thereby paying tax on a quarterly basis will be required to pay tax in the month succeeding the quarter-end.

(vi) New modes of payment of tax are being introduced, viz. through credit and debit cards, National Electronic Fund Transfer (NEFT) and Real Time Gross Settlement (RTGS).

(vii) The facility of job work has been continued under the GST regime.

(viii) E-Commerce companies are required to collect tax at source in relation to any supplies made through their online platforms, under market place and fulfilment model, at the rate notified by the Government.

(ix) The Commissioner has been empowered to grant extension of time for payment of certain tax dues or allow payment of such amount in monthly instalments to the tax payer.

(x) Exports shall be treated as zero rated supply. No tax is payable on exports but credit of the input tax related to that supply shall be admissible and the same can be claimed as refund by them.

(xi) Provision has been made for the Government to provide remission of tax on supplies which are found to be deficient in quantity due to any natural causes.

(xii) A separate schedule (schedule II) has been provided to clarify certain types of supply as either supply of goods or of services. For example, supply of intangibles, works contract supplies, lease transactions and restaurant supplies are categorised as supply of services. Hopefully, this would put an end to the prevailing confusion on their tax treatment.

(b) GST Rules and Regulations

12. Preparation of GST Rules and Regulations is another major area of work which needs to be completed well in advance before the implementation of GST. Rules and Regulations are to be jointly drafted by the officials of the Central and State Governments. The CBEC has set up a Working Group for this purpose.

(c) IT preparedness

13. Putting in place a robust IT network is an absolute must for implementation of GST. 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.

13.1 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 CBEC 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.

(d) Training and Workshops

14. A detailed calendar has since been drawn up for training the Central and State Government officers and staff on GST law, regulations and procedure. Some 10 officers from the Central Government and 15 officers from the State Governments have been identified as Source Trainers who would be training a pool of some 300 Master Trainers of the Central Government/State Governments who, in turn, would be training some 1600 Trainers drawn from the Central Government and State Governments. The Trainers would then train some 70,000 Central/State Government tax officials at the field level. Presentations and training materials are being prepared with the help of ICAI for this purpose. Training courses would be held at the various locations of the country.

14.1 Training of trade and industry on GST law and procedure is equally important. It has been decided to hold seminars/workshops in 50 cities spread across the country to prepare and educate the trade and industry on GST law, rules, regulations and procedure. Sectoral seminars/workshops for specific sectors such as IT, E-commerce, telecommunications and financial services are proposed to be organised at Bangalore and Mumbai. Further, the GSTN would be imparting training to the Master Trainers on GST IT systems who would, in turn, be imparting training to Central/State Government officials and trade & industry. Creating consumer awareness about the benefits of GST is also part of the work plan which needs to be completed before the introduction of GST.

VII. Conclusion

15. The target date for introduction of GST is 1st April 2017. Introduction of this transformational tax reform is expected to broaden the tax base, increase tax compliance and reduce economic distortions caused by inter-State variations in taxes. GST will boost economic activity and will benefit everyone. It will streamline the tax administration, avoid harassment of the business and result in higher revenue collection for the Centre and States. Compliance costs for the industry will go down. Last but not the least, it will create more jobs.



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2. Levy of and Exemption from Tax

INTRODUCTION:

As understood traditionally in Economics, a good taxation system should meet five basic conditions: fairness, adequacy, simplicity, transparency, and administrative ease. To achieve these, the legal framework of a taxation system should be oriented towards the same. The legality of any tax is established largely by some key aspects like the power to levy tax, the incidence of tax, the liability of being taxed, exemptions from being taxed and if there are any special provisions made in consonance with the socio-economic milieu of the country in which the tax is being introduced. These are largely covered under **Chapter III** of the Model GST Act. This write up would explicate these aspects thus attempting to give the reader an understanding of the legal foundations of the new taxation system.

THE POWER TO LEVY TAX :

2. The power to levy tax is drawn from the Indian Constitution as it is the fundamental law and source of all laws therein. Since G.S.T. requires different kind of taxation powers than provided for in the present Constitution thus certain Constitutional Amendments have been necessitated in this context.

3. The 122nd Constitutional Amendment Bill is introducing **Article 246A** which would confer simultaneous powers on both the Parliament and State Legislatures to make laws with respect to goods and services tax imposed by the Union or by such State. The Article is as follows:

Article 246A :

(1) Notwithstanding anything contained in articles 246 and 254, Parliament, and, subject to clause (2), the Legislature of every State, have power to make laws with respect to goods and services tax imposed by the Union or by such State.

(2) Parliament has exclusive power to make laws with respect to goods and services tax where the supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.

Explanation.—The provisions of this article, shall, in respect of goods and services tax referred to in clause (5) of article 279A, take effect from the date recommended by the Goods and Services Tax Council.”

4. In pursuance of the same **Section 7 of the Model GST Act** levies CGST /SGST and **Section 4 of the Model IGST Act** levies IGST. These are further elucidated upon in the description of the incidence of tax.

THE INCIDENCE OF TAX :

5. The incidence of tax is perhaps the foundation stone of any taxation system. It determines the point at which tax would be levied , i.e. the taxable event. Presently different taxes in India have differing taxable events e.g. : V.A.T. is levied on sale and purchase of goods and follows the destination – based principle of taxation ; Excise tax is levied on the manufacture of goods and follows the origin-based principle of taxation. Similarly the taxable event for GST would be supply of goods and services and would follow the destination – based principle of taxation. The incidence of tax for CGST , SGST and IGST according to the Model Acts is explained as follows .

THE INCIDENCE OF CGST AND SGST :

6. **Section 7(1)** of the CGST /SGST Act levies the tax on all intra-State supplies of goods and/or services.**Section 7(3)**levies CGST/SGST on specific categories of supply of goods and/or services on which tax is payable on reverse charge basis. These will be notified by the Central/State government (on the recommendation of the GST Council) [Note : **Reverse charge** means the liability to pay tax by the person receiving goods and / or services instead of the person supplying the goods and / or services (**Section 2(85)**)]. The Section is cited as follows :

Section 7 :

(1)There shall be levied a tax called the Central/State Goods and Services Tax (CGST/SGST) on all intra-State supplies of goods and/or services at the rate specified in the Schedule . . . to this Act and collected in such manner as may be prescribed.

(2) The CGST/SGST shall be paid by every taxable person in accordance with the provisions of this Act.

(3) Notwithstanding anything contained in sub-section (2), the Central or a State Government may, on the recommendation of the Council, by notification, specify categories of supply of goods and/or services the tax on which is payable on reverse charge basis and the tax thereon shall be paid by the person receiving such goods and/or services and all the provisions of this Act shall apply to such person as if he is the person liable for paying the tax in relation to such goods and/or services.

THE INCIDENCE OF IGST :

7. **Section 4(1)** levies IGST on all supplies of goods and/or services made in the course of inter-State trade or commerce. **Section 4(3)** levies IGST on specific categories of supply of goods and/or services the tax on which is payable on reverse charge basis. These are to be notified by the Central/State government (on the recommendation of the GST Council) Section 4 of IGST Act is cited as follows :

Section 4 :

(1) There shall be levied a tax called the Integrated Goods and Services Tax on all supplies of goods and/or services made in the course of inter-State trade or commerce at the rate specified in the Schedule to this Act and collected in such manner as may be prescribed.

(2) The Integrated Goods and Services Tax shall be paid by every taxable person in accordance with the provisions of this Act.

(3) Notwithstanding anything contained in sub-section (2), the Central Government may, on recommendation of the Council, by notification, specify categories of supply of goods and/or services the tax on which is payable on reverse charge basis and the tax thereon shall be paid by the person receiving such goods and/or services and all the provisions of this Act shall apply to such person as if he is the person liable for paying the tax in relation to such goods and/or services.

(4) Notwithstanding anything contained in sub-section (1) but subject to such conditions as may be notified in this behalf, no tax under this Act shall be payable by any taxable person in respect of such supplies of goods and/or services as are specified in Schedule . . . to the Act.

8. Thus it has been well established that at what point tax is to be levied in the new taxation regime. Now the question arises that the tax is to be levied on whom. The next section of the write-up dwells on this very aspect of who is liable to be taxed.

THE LIABILITY OF BEING TAXED :

9. This is a critical aspect to understand especially from the perspective of those who have to pay tax and also for tax administrators. The legal definitions in this regard are the foundation stones of the entire taxation ecosystem .

THE LIABILITY OF BEING TAXED FOR CGST/SGST :

10. This has been duly laid out in the Act . In the Chapter on definitions, Section 2(96) defines a taxable person which is further elaborated upon in Section 9 and Section 7(2) binds every taxable person to pay CGST/ SGST. Section 9 refers to Schedule III which explains that who is liable to be registered under the Act. Section 9 also lays down the threshold limit (of the gross annual turnover , which would include exempt supplies and exports) which would mark the advent of anyone into the fold of being called a taxable person. It has been set as Rupees ten lakh. This limit has been set as Rupees 5 lakh in the case of North –eastern states (including Sikkim). Section 9(3) lays down that who shall not be considered as taxable persons under the Act. The relevant Sections are cited as follows :

Section 2 (96):

taxable person shall have the meaning as assigned to it in section 9 of this Act;

Section 9:

(1) Taxable Person means a person who carries on any business at any place in India /State of ___ and who is registered or required to be registered under Schedule III of this Act:

Provided that an agriculturist shall not be considered as a taxable person.

Provided further that a person who is required to be registered under paragraph 1 of Schedule III of this Act shall not be considered as a taxable person until his aggregate turnover in a financial year exceeds [Rs ten lakh]

Provided further that a person who is required to be registered under paragraph 1 of Schedule III of this Act shall not be considered as a taxable person until his aggregate turnover in a financial year exceeds [Rs five lakh]

[This threshold of 5 lacs will apply only if a taxable person conducts his business in any of the NE States including Sikkim.]

(2) The Central Government, a State Government or any local authority shall be regarded as a taxable person in respect of activities or transactions in which they are engaged as public authorities other than the activities or transactions as specified in Schedule IV to this Act.

(3) The following persons shall not be considered as taxable persons for the purposes of this Act –

(a) any person who provides services as an employee to his employer in the course of, or in relation to his employment, or by any other legal ties creating the relationship of employer and employee as regards working conditions, remunerations and employer's liability;

(b) any person engaged in the business of exclusively supplying goods and/or services that are not liable to tax under this Act;

(c) any person, liable to pay tax under sub-section (3) of section 7, receiving services of value not exceeding ___ rupees in a year for personal use, other than for use in the course or furtherance of his business.

Section 7(2):

Every Taxable person shall pay CGST / SGST in accordance with the provisions of this Act

11. The Proviso to Section 9(1) provides that an Agriculturist will not be included in a taxable person. In this context the Chapter on definition defines an agriculturist and agriculture as follows :

Section 2(8):

Agriculturist means a person who cultivates land personally, for the purpose of agriculture .

Section 2(7):

Agriculture with all its grammatical variations and cognate expressions, includes floriculture, horticulture, sericulture, the raising of crops, grass or garden produce and also grazing, but does not include dairy farming, poultry farming, stock breeding, the mere cutting of wood or grass, gathering of fruit, raising of man-made forest or rearing of seedlings or plants;

Explanation.- For the purpose of this clause, the expression 'forest' means the forest to which the Indian Forest Act, 1927 applies .

12. Further Section 9(2) brings government bodies within the ambit of a taxable person but making an exception at the same time that they would be excluded if they are engaged in the sort of activities listed in Schedule IV. In this context Schedule IV has been cited as follows :

SCHEDULE IV

Activities or transactions in respect of which the Central Government, a State Government or any Local Authority shall not be regarded as a taxable person

(Indicative List)

1. Services provided by a Government or local authority to another Government or local authority excluding the following services:
 - (i) services by the Department of Posts by way of speed post, express parcel post, life insurance and agency services;
 - (ii) services in relation to an aircraft or a vessel , inside or outside the precincts of a port or an aircraft; or
 - (iii) transport of goods or passengers.
2. Services provided by a Government or local authority to individuals in discharge of its statutory powers or functions such as-
 - (i) issuance of passport, visa, driving licence, birth certificate or death certificate; and
 - (ii) assignment of right to use natural resources to an individual farmer for the purpose of agriculture.

3. Services provided by a Government or local authority or a governmental authority by way of:

- (i) any activity in relation to any function entrusted to a municipality under article 243 W of the Constitution;
- (ii) any activity in relation to any function entrusted to a Panchayat under article 243 G of the Constitution;
- (iii) health care; and
- (iv) education.

4. Services provided by Government towards-

- (i) diplomatic or consular activities;
- (ii) citizenship, naturalization and aliens;
- (iii) admission into , and emigration and expulsion from India;
- (iv) currency , coinage and legal tender , foreign exchange;
- (v) trade and commerce with foreign countries , import and export across customs frontiers , interstate trade and commerce; or
- (vi) maintenance of public order.

5. Any services provided by a Government or a local authority in the course of discharging any liability on account of any tax levied by such Government or authority.

6. Services provided by a Government or a local authority by way of -

- (i) tolerating non-performance of a contract for which consideration in the form of fines or liquidated damages is payable to the Government or the local authority under such contract; or
- (ii) assignment of right to use any natural resource where such right to use was assigned by the Government or the local authority before the 1st April, 2016:

Provided that the exemption shall apply only to service tax payable on one time charge payable, in full upfront or in instalments, for assignment of right to use such natural resource:

Explanation.- Periodic payment required to be made not exempt.

7. Services provided by Government by way of deputing officers after office hours or on holidays for inspection or container stuffing or such other duties in relation to import or export of cargo on payment of Merchant Overtime Charges (MOT).

8. Services provided by Government or a local authority by way of-

- (i) registration required under any law for the time being in force; or
- (ii) testing, calibration, safety check or certification relating to protection or safety of workers, consumers or public at large, required under any law for the time being in force.

Definitions:

1. Governmental Authority means a board, or an authority or any other body established with 90% or more participation by way of equity or control by Government and set up by an Act of the Parliament or a State Legislature to carry out any function entrusted to a municipality under article 243W or a Panchayat under article 243G of the Constitution.
2. Health care services means any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India and includes services by way of transportation of the patient to and from a clinical establishment, but does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma.
3. Education services means services by way of—
 - i) pre-school education and education up to higher secondary school or equivalent;
 - ii) education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force; or
 - iii) education as a part of an approved vocational education course.

THE LIABILITY OF BEING TAXED FOR IGST :

The liability to be taxed for IGST has not been laid out separately. Rather Section 2(2) provides that all those terms which have not been defined in this Act will have the same meaning as in the CGST Act. Thus a taxable person as defined in the Model CGST Act will be applicable for the IGST Act as well. In this context Section 2(2) of the IGST Act has been cited as follows :

Section 2(2):

Words and expressions not defined in this Act shall have the meaning assigned to them in the Central Goods and Service Tax Act, 2016.

Further Schedule III of the CGST Act provides that persons making any inter-State taxable supply would be required to be registered irrespective of the threshold specified. Thus the CGST Act itself determines the liability to be taxed under IGST .

Thus it has been established that who will levy tax on whom. But as mentioned in the Introduction itself there are certain special provisions to be made in consonance with the socio-economic milieu of a country. Such a provision has been made in the form of a Composition levy. It will be explored further in the next section.

COMPOSITION LEVY:

It is a special provision for taxable persons with aggregate turnover below fifty lakh rupees. They would not be part of the credit chain and would not be able to pass on the tax to consumers. The tax levied on them would be a certain percentage (not less than one percent) of the turnover during the year. The proper officer of the Central or a State Government may permit a registered taxable person to avail this special facility. The provisions in detail in this respect have been laid out in Section 8 of the Model CGST/SGST Act. There is a caveat in this that this would not be available for those effecting inter-state supply. Section 8 has been cited as below.

Section 8:

(1) Notwithstanding anything to the contrary contained in the Act but subject to sub-section (3) of section 7, on the recommendation of the Council, the proper officer of the Central or a State Government may, subject to such conditions and restrictions as may be prescribed, permit a registered taxable person, whose aggregate turnover in a financial year does not exceed [fifty lakh of rupees], to pay, in lieu of the tax payable by him, an amount calculated at such rate as may be prescribed, but not less than one percent of the turnover during the year:

Provided that no such permission shall be granted to a taxable person who effects any inter-State supplies of goods and/or services.

Provided further that no such permission shall be granted to a taxable person unless all the registered taxable persons, having the same PAN as held by the said taxable person, also opt to pay tax under the provisions of this sub-section.

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

(3) If the proper officer has reasons to believe that a taxable person was not eligible to pay tax under sub-section (1), such person shall, in addition to any tax that may be payable by him under other provisions of this Act, be liable to a penalty equivalent to the amount of tax payable as aforesaid:

Provided that no penalty shall be imposed without giving a notice to show cause and without affording a reasonable opportunity of being heard to the person proceeded against.

Besides these special provisions exemptions can also be made for certain category of taxable persons or even goods or services from being taxed. The provisions in relation to these are explained in the next section.

EXEMPTIONS FROM BEING TAXED :

As discussed in the previous section , exemptions from tax are sometimes needed to be made . These are often the need of the hour or sometimes made to protect certain

products or taxable persons. The Powers to make such exemptions have been conferred in Section 10 of the Act. The relevant Section is cited as follows :

Section 10 :

(1) If the Central or a State Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendation of the Council, by notification, exempt generally either absolutely or subject to such conditions as may be specified in the notification, goods and/or services of any specified description from the whole or any part of the tax leviable thereon.

Explanation.- Where an exemption under sub-section (1) in respect of any goods and/or services from the whole of the tax leviable thereon has been granted absolutely, the taxable person providing such goods and/or services shall not pay the tax on such goods and/or services.

(2) If the Central or a State Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendation of the Council, by special order in each case, exempt from payment of tax, under circumstances of an exceptional nature to be stated in such order, any goods and/or services on which tax is leviable.

(3) The Central or a State Government may, if it considers necessary or expedient so to do for the purpose of clarifying the scope or applicability of any notification issued under sub-section (1) or order issued under sub-section (2), insert an explanation in such notification or order, as the case may be, by notification at any time within one year of issue of the notification under sub-section (1) or order under sub-section (2), and every such explanation shall have effect as if it had always been the part of the first such notification or order, as the case may be.

(4) Every notification issued under sub-section (1) or sub-section (3) and every order issued under sub-section (2) shall

(a) unless otherwise provided, come into force on the date of its issue by the Central or a State Government for publication in the Official Gazette; and

(b) be made available on the official website of the department of the Central or a State Government.

In a similar vein , certain other exceptions can also be made while levying tax . There can be remission of tax on supplies found to be deficient in quantity. It has been described in the next section.

REMISSION OF TAX ON SUPPLIES FOUND DEFICIENT IN QUANTITY :

This is an exception which can be made in the case of supplies which are found to be deficient in quantity due to any natural causes. The Rules to be made would also fix the limit of percentage beyond which no remission can be allowed. These powers have been conferred upon the Central and State government by Section 11 of the Act. The relevant Section is cited as below.

Section 11 :

(1) The Central or a State Government may, by rules made under this sub-section, provide for remission of tax on such supplies which are found to be deficient in quantity due to any natural causes.

(2) Any rules made under sub-section (1) may, having regard to the nature of the supply, fix the limit or limits of percentage beyond which no such remission shall be allowed.

CONCLUSION:

The legal and conceptual foundations of the Goods and Services Tax have thus been laid out. The power to levy GST is drawn from Article 246A proposed in the Constitutional Amendment Act. In pursuance of the same Section 7 of the CGST / SGST Act and Section 4 of the IGST Act levy the respective taxes also determining the incidence of the respective taxes therein. Subsequently Section 7 along with Section 9 and Schedule III also lay down the liability to be taxed. Section 8 explicates the special case of Composition Levy and Section 10 has imbibed within it the special nature of the Indian State conferring special powers on the government for making exemptions from tax. Thus the legality of the tax has been established and the path has been paved for understanding the procedural intricacies of the proposed taxation regime.



***BACKGROUND MATERIAL
FOR TRAINING ON
'GOODS AND SERVICES TAX'***



**COMPILED BY
NATIONAL ACADEMY OF CUSTOMS EXCISE AND NARCOTICS
FARIDABAD**

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3. Registration: Law, Business Process and Transitional Provisions

Registration of any business entity under Model GST Law (have been referred here as law or Act) implies obtaining a unique number from the concerned tax authorities so that all the operations of and data relating to the business can be processed and agglomerated in seamless manner with a view to allow smooth flow of Input Tax Credit and also ultimately flow of fund in inter state transactions. Without registration, a person can neither collect tax from his customers nor claim any input tax credit of tax paid by him. In any tax system this is the most fundamental requirement for identification of tax payers ensuring tax compliance in the economy. Registration will confer following advantages to a taxpayer:

- He is legally recognized as supplier of goods or services.
- He is legally authorized to collect tax from his customers and pass on the credit of the taxes paid on the goods or services supplied to the purchasers/ recipients.
- He can claim input tax credit of taxes paid and can utilize the same for payment of taxes due on supply of goods or services.
- Seamless flow of fund from Centre / Exporting States to IGST Fund and then to importing States.
- Seamless flow of Input Tax Credit from suppliers to recipients at the national level.

Liability for Registration:

2. Liability for obtaining registration is explained in **Schedule III** of draft Model GST law. There will be State-wise registration i.e. GSTIN for CGST, SGST and IGST.

No Centralized Registration in GST:

The Constitutional Amendment Bill empowers both the Centre and the State to levy GST on supply of goods and services. In case taxpayer has business establishments in more than one States and if he supplies goods / services from such business establishments, he shall be liable to pay GST and shall be required to be registered in each State where he has his business establishments. Therefore, there can't be Centralized registration in GST.

3. Liability for Registration Based on Aggregate Turnover:

3.1 Every supplier shall be liable to be registered under this Law in the State from where he makes a taxable supply of goods and/or services if his aggregate turnover in a financial year exceeds threshold:

- Threshold for registration is [Rs. 9 Lakh]
- Threshold in north eastern States including Sikkim is [Rs. 4 Lakh]

Note: however certain categories of persons will be liable to get registered irrespective of threshold. [See para 5 of Schedule III]

Note: **Excluding cases where threshold is not applicable**, the liability to pay tax , however, will start only when the registered person reaches a threshold limit of turnover [Rs.10 lakhs] and [Rs. 5 lakhs] respectively. [See section 9 (1)]

What is the meaning of aggregate turnover?

As per section 2 (6) of the Law, aggregate turnover includes the aggregate value of:

- *all taxable and non-taxable supplies,*
- *exempt supplies, and*
- *exports of goods and/or service*

of a person having the same PAN, to be computed on all India basis and excludes taxes charged under the CGST Act, SGST Act and the IGST Act:

Aggregate turnover does not include:

- *value of supplies on which tax is levied on reverse charge basis, and*
- *value of inward supplies.*

3.2 The taxable threshold shall include all supplies made by the taxable person, whether on his own account or made on behalf of all his principals (by an agent).

3.3 The supply of goods, after completion of job-work, by a registered job-worker shall be treated as the supply of goods by the “principal” and the value of such goods shall not be included in the aggregate turnover of the registered job worker.

3.4 Exemption from Registration:

3.4.1 Supplier shall not be liable to registration if his aggregate turnover consists of only goods and/or services which are not liable to tax under this Act.

Examples:

- Taxpayers are engaged in supply of exempted goods.
- Taxpayers are engaged only in supply of goods which are outside purview of GST like liquor, petrol, diesel, crude oil, etc.
- **An individual importing service for personal consumption will not be liable to pay GST under reverse charge and therefore not liable to register under GST.**

3.4.2 As per section 19 (12) of the Law, the Central or a State Government may, on the recommendation of the Council, by notification, specify the category of persons who may be exempted from obtaining registration under this Act.

3.5 Threshold shall not be applicable to the following categories of persons i.e. they are required to be registered irrespective of the threshold:

- i. persons making any inter-State taxable supply, irrespective of the threshold specified under paragraph 1;
- ii. casual taxable persons, irrespective of the threshold specified under paragraph 1;
- iii. persons who are required to pay tax under reverse charge, irrespective of the threshold specified under paragraph 1;
- iv. non-resident taxable persons, irrespective of the threshold specified under paragraph 1;
- v. persons who are required to deduct tax under section 37;
- vi. persons who supply goods and/or services on behalf of other registered taxable persons whether as an agent or otherwise, irrespective of the threshold specified under paragraph 1;
- vii. input service distributor;
- viii. persons who supply goods and/or services, other than branded services, through electronic commerce operator, irrespective of the threshold specified in paragraph 1;
- ix. every electronic commerce operator, irrespective of the threshold specified in paragraph 1;

- x. an aggregator who supplies services under his brand name or his trade name, irrespective of the threshold specified in paragraph 1; and
- xi. such other person or class of persons as may be notified by the Central Government or a State Government on the recommendations of the Council.

3.6 A person may be liable for registration but may not be liable for payment of tax: Threshold for registration is given in paragraph 1 of Schedule III of the Act which is either [Rs. 9 Lakh] or [Rs. 4 Lakh] for north eastern States including Sikkim. However as per proviso to section 9 (1) of the Act, such person may not be considered as taxable person for payment of tax until his aggregate turnover in a financial year exceeds [Rs ten lakh] or [Rs five lakh] for north eastern States including Sikkim. Thus a person may be registered under the Act but may not be liable for payment of tax.

4. Liability to be registered by existing registered person under the earlier law:

Every person who is registered under an earlier law on the day immediately preceding the date of implementation of GST shall be liable to be registered with effect from the day the GST gets implemented.

5. Liability on transfer of business:

5.1 Where a business carried on by a taxable person is transferred, whether on account of succession or any other reason, to another person as a going concern, the transferee, or the successor, shall be liable to be registered with effect from the date of such transfer or succession.

5.2 Where the business is transferred pursuant to sanction of a scheme or an arrangement for amalgamation or, as the case may be, de-merger of two or more companies by an order of a High Court, the transferee shall be liable to be registered with effect from the date on which the Registrar of Companies issues a certificate of incorporation giving effect to such order of the High Court.

Application for Registration:

6. Application for compulsory registration:

6.1 Application for single registration: As per section 19 (1) of the Act, every

person who is liable to be registered under Schedule III of this Act is required to apply for registration in every such State in which he is so liable within thirty days from the date on which he becomes liable for registration. The manner to make an application and conditions will be prescribed in the Rules.

6.1.1 As per the proviso to section 19 (1), the persons who are registered under the earlier law shall not be required to apply for fresh registration. Separate procedure for migration will be prescribed in the Rules. However the Input Service Distributors who are registered under an earlier law shall be required to apply for fresh registration.

What is the meaning of Input Service Distributors?

As per **section 2 (56)** of the Act, “ **Input Service Distributor**” means an office of the supplier of goods and / or services which receives tax invoices issued under section 23 towards receipt of input services and issues tax invoice or such other document as prescribed for the purposes of distributing the credit of CGST or (SGST in State Acts) and / or IGST paid on the said services to a supplier of taxable goods and / or services having same PAN as that of the office referred to above;

Explanation.- For the purposes of distributing the credit of CGST (SGST in State Acts) and / or IGST, Input Service Distributor shall be deemed to be a supplier of services.

As per the decisions taken by the GST law Committee:

- 1. There shall be separate registration for ISD (i.e. a taxable person shall not have a single registration for ISD & for his normal business activity).*
- 2. A taxable person can have multiple ISDs across the country.*

6.2 Application for multiple registrations: As per **section 19 (2)** of the draft law, a person having multiple business verticals in a State may be allowed to obtain a separate registration for each business vertical. Conditions for having multiple registrations will be prescribed in the Rules.

7. Application for voluntary registration: As per section 19 (3) of the Act, a person who is not liable to be registered under Schedule III, may apply for voluntary registration. The person who gets himself registered voluntarily shall be liable for payment of tax.

8. Failure to apply for registration: As per section 19 (5) of the Act, a person, who is liable to be registered under this Act, fails to apply for registration, the tax authority will proceed to register such person. The manner to grant registration will be prescribed

in the Rules.

Procedure for obtaining Registration:

This procedure is based on the report of Business Process for GST on GST Registration, which has been approved by the Empowered Committee. the rules are yet to be finalised. For obtaining registration, all the taxable persons shall interact with tax authorities through a common portal called GST Common Portal that would be set up by Goods and Services Tax Network (GSTN). The portal will have backend integration with the respective IT systems of the Centre and the States.

New applicant can apply for registration:

1. at the GST Common Portal directly; or
2. at the GST Common Portal through the Facilitation Center (FC)

The process highlighted in the paragraphs below is applicable for new applicants for registration, both mandatory and voluntary.

A new applicant would be allowed to apply for registration without prior enrollment. Once a complete application is submitted online, a message asking for confirmation will be sent through e-mail and SMS to the authorized signatory of the applicant. On receipt of such confirmation from the authorized signatory, Acknowledgement Number would be generated and intimated to the applicant. Once the application is approved and GSTIN is generated, the same along with Log-in ID and temporary Password will be sent to the authorized signatory. This credential will be permanently used to access the GST Common Portal subsequently. Provision for capturing e-mail and Mobile Number of authorized representative of the taxpayer has also been incorporated in the proposed GST Registration Form. It would be the responsibility of the taxpayer to keep this information updated.

Online verification of PAN of the Business / Sole Proprietor/ Partner/Karta/**Managing Director and whole time directors**/Member of Managing Committee of Association, Managing trustee/authorized signatory etc. of the business would be mandatory and without such verification, registration application will **not be allowed to be submitted**.

Multiple applications can be filed at one go where a taxable person seeks registration in more than one State or for more than one business vertical located in a single / multiple State(s).

Following scanned documents are required to be filed along with the application for Registration:

	Document required to be uploaded
Constitution of Business	<ul style="list-style-type: none"> ➤ No documents are required in case of proprietors and companies (Verification through PAN/Company Identification Number through MCA 21). ➤ Partnership Deed in case of partnership firm and Registration Certificates in case of society, trust etc. as details are not captured in PAN.
Principal Place of business	<ul style="list-style-type: none"> ➤ Own premises – any document in support of the ownership of the premises like Latest Tax Paid Receipt or Municipal Khata copy or Electricity Bill copy. ➤ Rented or Leased premises ➤ Consent Letter, duly notarized, obtained from the Lessee of the premises, where the main lease allows sub-lease. ➤ In the absence of consent letter, rent receipt in respect of the relevant premises may be accepted with ownership proof of the property. ➤ Where ownership proof is not available, proof of possession by certain prescribed documents (such as Certificate issued under Shop and Establishment Act, electricity bill, telephone bill, bank account showing address proof, etc.) would suffice. ➤ An affidavit in a prescribed format may be taken along with any of the other documents mentioned above where ownership proof or lease agreement is not available.
Details of Bank Account (s)	<ul style="list-style-type: none"> ➤ Any documents that contain the details like the Account No., Name of the Account Holder, MICR

		<p>and IFS Codes and Branch details. This can include documents like (a) self-certified copy of the online banking details; (b) bank statement / cancelled cheque; (c)Also certificate issued by concerned Bank.</p> <ul style="list-style-type: none"> ➤ Required for all the bank accounts through which the taxpayer would be conducting business.
	<p>Details of Authorised Signatory</p>	<ul style="list-style-type: none"> ➤ Letter of Authorisation and copy of Resolution of the Managing Committee or Board of Directors to that effect. ➤ Required to verify whether the person signing as Authorised Signatory is duly empowered to do so.
	<p>Photograph</p>	<ul style="list-style-type: none"> ➤ Proprietary Concern – Proprietor ➤ Partnership Firm / LLP – Managing/ Authorized Partners (personal details of all partners is to be submitted but photos of only ten partners including that of Managing Partner is to be submitted) ➤ HUF – Karta ➤ Company – Managing Director or the Authorised Person ➤ Trust – Managing Trustee ➤ Association of Person or Body of Individual – Members of Managing Committee (personal details of all members is to be submitted but photos of only ten members including that of Chairman is to be submitted) ➤ Local Body – CEO or his equivalent ➤ Statutory Body – CEO or his equivalent ➤ Others – Person in Charge. <p>Photographs only in .jpg and .png format</p>

If applicant files application through the Facilitation Center, then the above procedure shall be followed by him through the FC by making available the requisite documents to the FC. The User ID and Password of taxable person will however be forwarded by portal to the e-mail furnished by the taxable person (that of primary authorized signatory) and by SMS to the mobile number furnished by taxable person or by post, if the taxable person so desires. It will not be sent to FC.

The GST common portal shall carry out preliminary verification / validation, including real-time PAN validation with CBDT portal, Adhaar No validation with UIDAI, CIN (Company Identification) with MCA 21 and other numbers issued by other Departments through inter-portal connectivity before submission of the application form. Taxpayer would have the option to sign the submitted application using valid digital signatures (if the applicant is required to obtain DSC under any other prevalent law then he will have to submit his registration application using the same).

All applications are required to be uploaded online with DSC/E-signature/ EVC. Applicant is not required to send a signed copy of the summary extract of submitted application form. Centralized Processing Unit is not required for collection of a signed copy of the summary extract of submitted application form. In case of EVC (Electronic verification code), post /pre site verification of the business premises would be done.

GST portal would acknowledge the receipt of application for registration and issue an Acknowledgement Number which could be used by the applicant for tracking his application. Such Acknowledgement Number would not contain the details of jurisdictional officers.

The application form will be passed on by GST portal to the IT system of the concerned State/ Central tax authorities for onward submission to appropriate jurisdictional officer (based on the location of the principal place of business) along with the following information –

- Uploaded scanned documents;
- State specific data and documents;
- Details if the business entity is already having registration in other States. This should also include GST compliance rating;

- Details of the PAN(s) of individuals mentioned in the application which are part of the other GST registrations;
- Acknowledgment number stated in para 6.7 above;
- Details of any record of black-listing or earlier rejection of application for common PAN(s).
- Last day for response as per the 3 common working day limit for both tax authorities as set out through Holiday Master.

On receipt of application in their respective system, the Centre / State authorities would forward the application to jurisdictional officers who shall examine whether the uploaded documents are in order and respond back to the common portal within 3 common working days, excluding the day of submission of the application on the portal, using the Digital Signature Certificates.

An indicative process for processing of the application by the concerned tax authorities will be drafted and shared separately. Submission of latitude and longitude data in respect of principal place of business will be of help in automatic identification of jurisdictional officer in case of geographically distributed officials mapped on a digital map. However, submission of latitude and longitude would be optional.

After verification, the following situations are possible:

1. If the information and the uploaded documents are found in order, the State and the Central authorities shall approve the application and communicate the approval to the common portal **within 3 common working days**. The portal will then automatically generate the Registration Certificate.
2. If during the process of verification, one of the authorities raises some query or notices some error, the same shall be communicated to the applicant either by the Tax Authority directly or through the GST Common Portal and also simultaneously to the other authority and to 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 informed by the concerned tax authorities (**Normally this period would be seven days**). A separate sub-process and interactive form for this purpose will have to be designed. On receipt of

additional document or clarification, the relevant tax authority will respond **within 7 commonworking days**.

3. Thereafter the processing of registration application will commence resulting in either grant of registration or refusal to grant registration. If either of the two authorities (Centre or State) refuses to grant registration, the registration will not be granted.
4. In case registration is refused, the applicant will be informed about the reasons for such refusal through a speaking order.
5. The tax authorities in the Centre and State would have a period of **7 common working days** to respond to the application, either conveying approval or raising a query. In case any of the authority neither rejects the application nor raises a query within 3 common working days, then the registration would be deemed to have been approved by both the authorities and the GST Common Portal will automatically generate the registration certificate. In case either authority raises a query within 3 common working days, applicant will have to respond to the same within next 7 common working days failing which the application will be rejected. After the applicant has responded to the query raised by any authority, a period of another 7 common working days will be given to the authorities to respond to the application. In case any of the authority neither rejects the application nor raises a query during this period, then the registration would be deemed to have been approved by both the authorities and the GST Common Portal will automatically generate the registration certificate.

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.

In case registration is granted, applicant can download the Registration Certificate from the GST common portal. Provisions in GST rules shall be made such that **GST Registration certificate is required to be displayed at the principal place of business of the taxpayer.**

Prerequisite for registration:

9. As per section 19 (4) of the Act, a Permanent Account Number (PAN) issued under the Income Tax Act, 1961 (43 of 1961) is necessary and required to be provided (in application form) to obtain registration. As per section 19 (4A) of the Act, documents other than PAN will be prescribed for non-resident taxable persons to obtain registration.

As per the report of Business Process for GST on GST Registration, which has been approved by the Empowered Committee:

In some North-eastern States, individuals (Proprietorship firms) are exempt from Income Tax. However, to obtain GSTIN they will have to obtain a PAN before they can apply for registration under GST. Further Government departments will also be required to obtain PAN if they are required to obtain registration under GST. **Under GST regime, registration will not be allowed without a valid PAN.**

As per the decisions taken by the GST law Committee:

When PAN gets cancelled, GSTIN should not get cancelled automatically. GSTN may get this information periodically and convey the information to tax authorities for appropriate action.

Unique Identity Number for certain categories of person:

10. As per section 19 (6) of the Act, following categories of persons will be required to obtain a Unique Identity Number (UIN):

- any specialized agency of the United Nations Organization or any Multilateral Financial Institution and Organization notified under the United Nations (Privileges and Immunities) Act, 1947 (46 of 1947),
- Consulate or Embassy of foreign countries and
- any other person or class of persons as may be notified by the Board / Commissioner,

Manner to obtain registration will be prescribed in the Rules. The purpose of granting UIN is to provide refund of taxes on the notified supplies of goods and/or services following international conventions and treaties. Granting UIN to certain class of persons also helps to ascertain that due amount of credit of IGST comes to the importing

States through IGST mechanism.

Other legal aspects to grant registration:

11. As per section 19 (7) of the Act, granting or rejection of registration or UIN shall be carried out after due verification. Period and procedure for verification will be prescribed in the Rules. As per section 19 (9) of the Act, if no deficiency has been communicated to the applicant by tax authority within that period, a registration or UIN shall be deemed to have been granted.

As per the report of Business Process for GST on GST Registration, which has been approved by the Empowered Committee:

The GST common portal will provide a risk profile to the tax authorities based on the risk parameters made available by the tax authorities. The Central/State tax authorities will also have their own risk profile based on their own risk parameters. It was noted that submission of Adhaar No. cannot be made compulsory. Non-submission of Adhaar No. could be one of the risk parameters for deciding about the post registration physical verification. **On the basis of both risk profiles, the jurisdictional officer of tax authorities will take a decision about post registration verification of the application.**

12. As per section 19 (8) of the Act, before rejecting an application for registration or UIN, a person shall be given a show cause notice (SCN) and a reasonable opportunity of being heard.

13. As per section 19 (8A) of the Act, a certificate of registration shall be issued in the prescribed form, with effective date. Effective date of registration under different circumstances will be prescribed in the Rules.

As per the report of Business Process for GST on GST Registration, which has been approved by the Empowered Committee:

Each taxpayer will be allotted a State wise PAN-based 15-digit Goods and Services Taxpayer Identification Number (GSTIN). Various digits in GSTIN will denote the following:

State Code		PAN										Entity Code	BLANK	Check Digit
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15

State Code: In the GSTIN, the State Code as defined under the Indian Census 2011 would be adopted. In terms of the Indian Census 2011, each State has been allotted a unique two digit code e.g. '09' for the State of Uttar Pradesh and '27' for the State of Maharashtra.

13th digit: 13th digit would be alpha-numeric (1-9 and then A-Z) and would be assigned depending on the number of registrations a legal entity (having the same PAN) has within one State. For example, a legal entity with single registration within a State would have '1' as 13th digit of the GSTIN. If the same legal entity goes for a second registration for a second business vertical in the same State, the 13th digit of GSTIN assigned to this second entity would be '2'. This way 35 business verticals of the same legal entity can be registered within a State.

14th digit: 14th digit of GSTIN would be kept BLANK for future use.

Effective date of registration:

With respect to effective date of registration, the following decisions have been taken by the GST law Committee:

1. Effective date of registration shall be date of liability, if the application for registration is filed within 30 days from the date on which the taxpayer becomes liable to pay tax (in case of circumstances given in paragraph 5 in the Schedule III).
2. Effective date of registration shall be the date on which the registration is granted by the tax authority if taxpayer doesn't apply for registration within time. The liability of taxpayer to pay tax will be from the date of liability but he will be eligible for ITC from the date of registration only. The recipient of supplies (from such supplier) made during the period will not be entitled for ITC, as such a supplier would not be eligible to issue revised tax invoice.
3. The ITC on inputs held in stock will be permitted only if the taxpayer has applied for registration within 30 days from the date he became liable for registration (Section 16 (2))
4. As per section 27A, a person is required to file the first return for a period starting from date of liability till last date of the tax period in which the registration has been granted.

5. As per proviso to section 23, new registrant would be permitted to issue the revised tax invoices in lieu of the invoices already issued during the intervening period i.e. the period from date of liability till the date of grant of registration.
6. **The new registrant would be allowed to avail the ITC without matching of invoices on a manual basis provided he satisfies the conditions laid down in Section 18.**

14. As per section 19 (10) of the Act, any rejection of application under any of the Act shall be deemed to be a rejection of application under both the Acts. As per section 19 (11) of the Act, registration or UIN shall be deemed to be granted under both the Acts.

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

15. As per section 19A (1) of the Act, the certificate of registration issued to a casual taxable person or a non-resident taxable person shall be valid for a period of 90 days. On request of such person, this period may be extended by a further period not exceeding 90 days.

What does it mean by a casual taxable person?

*As per section 2 (21) of the Act, a **casual taxable person** means a person who occasionally undertakes transactions involving supply of goods and/or services in the course or furtherance of business whether as principal, agent or in any other capacity, in a taxable territory where he has no fixed place of business;*

What does it mean by a non-resident taxable person?

*As per section 2 (69) of the Act, a **non-resident taxable person** means a taxable 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 in India;*

16. As per section 19A (2) of the Act, a casual taxable person or a non-resident taxable person shall, at the time of submission of application for registration, be required to make an advance deposit of tax in an amount equivalent to the estimated tax liability for the period for which the registration is sought. In case any extension of time is sought, he shall be required to deposit an additional amount of tax equivalent to the

estimated tax liability for the period for which the extension is sought.

17. As per section 19A (3) of the Act, such deposit shall be credited to his electronic cash ledger and shall be utilized in the manner provided under section 35.

Penal provision for not applying for registration:

18. As per clause (x) in section 66 (1) of the Act, where a taxable person who is liable to be registered under this Act but fails to obtain registration, he shall be liable to a penalty of:

1. Rs. 10,000/- or an amount equivalent to the tax evaded or the tax not deducted or short deducted or deducted but not paid to the Government or
2. input tax credit availed of or passed on or distributed irregularly, or
3. the refund claimed fraudulently,

whichever is higher.

Amendment of registration

19. As per section 20 (1) of the Act, registered taxable person shall be required to inform the tax authority of any changes in the information furnished at the time of registration, or that furnished subsequently. The manner and time period to inform the tax authority for such amendment will be prescribed in the Rules.

20. As per section 20 (2) of the Act, tax authority may either approve or reject amendments. The manner and time period for approval or rejection of amendment will be prescribed in the Rules. However for certain changes in the particulars or information, approval from tax authority shall not be required. Such particulars will be prescribed in the Rules.

Proposed registration form is annexed as Annexure that is given in the report of Business Process for GST on GST Registration. Fields marked by asterisk in the form are mandatory fields and must be filled by the applicant.

Total 6 mandatory fields (with * asterisk sign)

3 (Three) fields i.e.

- PAN
- Name of Business,
- Constitution of Business:
can be filled from validated PAN data

4th field i.e. Name of State:

5th& 6th field i.e.

- Principle place of business
- Details of promoters

Based on the principal place of business, the applicant has facility to select his State as well as Central Jurisdiction and based on that information the application would be pushed to the concerned authority. In case of the wrong selection, the concerned authority can forward the same to correct authority through his login.

All remaining fields are non-mandatory items.

For changes in the non-mandatory items, approval from tax authority shall not be required.

21. As per section 20 (3) of the Act, before rejecting an application for amendment, such person shall be given a show cause notice (SCN) and a reasonable opportunity of being heard.

22. As per section 20 (4) of the Act, any rejection or approval of amendments under any of the Act shall be deemed to be a rejection or approval of amendments under both the Acts.

Cancellation of registration

23. As per section 21 (1) of the Act, Registration may be cancelled either (i) by the tax authority or (ii) by the registered taxable person or (iii) by his legal heirs, in case of

death of such person in the following circumstances:

- the business has been discontinued, transferred fully for any reason including death of the proprietor, amalgamated with other legal entity, demerged or otherwise disposed of; or
- change in the constitution of the business; or
- the taxable person (other than the person who applied for registration voluntarily under sub-section (3) of section 19) is no longer liable to be registered under Schedule III.

The manner for such cancellation having regard to the above circumstances will be prescribed in the Rules.

As per the report of Business Process for GST on GST Registration approved by the EC:

In case of surrender, the system will send an acknowledgment by SMS and e-Mail to the applicant regarding his surrender of registration and he will be deemed to be unregistered from the date of such acknowledgement. There will be a provision in the system to prompt such surrendered registrants to update their address and mobile number at a prescribed periodicity till all dues are cleared/refunds made.

24. As per section 21 (2) of the Act, registration of the taxable person may be cancelled by the tax authority from the date, including any anterior date in the following cases:

- registered taxable person has contravened the provisions of the Act /the rules; or
- a taxable person paying tax under section 8 has not furnished returns for three consecutive tax periods; or
- any taxable person, other than paying tax under section 8, has not furnished returns for a continuous period of six months; or
- any person who has taken voluntary registration under sub-section (3) of section 19 has not commenced business within six months from the date of registration.

25. As per section 21 (3) of the Act, registration of the taxable person may be cancelled by the tax authority with retrospective effect in case where any registration

has been obtained by means of fraud, willful misstatement or suppression of facts.

26. As per section 21 (4) of the Act, before cancelling the registration, such person shall be given a show cause notice (SCN) and a reasonable opportunity of being heard.

27. As per section 21 (6) of the Act, the cancellation of registration under any of the Act shall be deemed to be a cancellation of registration under both the Acts. As per section 21 (5) of the Act, the cancellation of registration shall not affect the liability of the taxable person to pay tax and other dues under the Act.

28. As per section 21 (7) of the Act, due to cancellation of registration, taxable person shall pay by way of debit in the electronic credit or cash ledger

(a) In case of inputs:

(1) an amount equivalent to the credit of input tax in respect of:

(i) inputs held in stock and

(ii) inputs contained in semi-finished or finished goods held in stock

or

(2) the output tax payable on such goods

whichever is higher, calculated in the manner prescribed in the rules

(b) In case of capital goods:

(1) an amount equal to the input tax credit taken on the said capital goods reduced by the percentage points as may be prescribed in this behalf

or

(2) the tax on the transaction value of such capital goods under sub-section (1) of section 15,

whichever is higher.

Calculation shall be made in accordance with generally accepted accounting principles.

The manner shall be prescribed in the Rules.

Revocation of cancellation of registration

29. As per section 21 (7) of the Act, the registered taxable person, whose registration is cancelled by the tax authority can apply for revocation of cancellation of the registration within thirty days from the date of service of the cancellation order. The manner shall be prescribed in the Rules.

30. As per section 22 (2) of the Act, the authority may either revoke cancellation of the registration or reject the application for revocation. The manner and time period for revocation or rejection of the application will be prescribed in the Rules.

31. As per section 22 (3) of the Act, before rejecting an application for revocation of cancellation of registration, such person shall be given a show cause notice (SCN) and a reasonable opportunity of being heard.

32. As per section 22 (4) of the Act, revocation of cancellation of registration under any of the Act shall be deemed to be a revocation of cancellation of registration under both the Acts.

Migration of existing taxpayers to GST

33. Issuance of registration on a provisional basis: As per section 142 (1) of the Act, every person registered under any of the earlier laws shall be issued a certificate of registration on a provisional basis. The manner of issuing the registration will be prescribed in the rules.

34. Validity of registration: As per section 142 (2) of the Act, such certificate shall be valid for a period of six months from the date of its issue. However the said validity period may be extended for such further period as the Central/State Government may, on the recommendation of the Council, notify.

35. Furnishing information: As per section 142 (3) of the Act, the person to whom a certificate of registration has been issued shall, within the period specified under section 142 (2), furnish the information as prescribed in the rules.

36. Issuance of registration on a final basis: As per section 142 (4) of the Act, on furnishing of such information, tax authority shall issue the certificate of registration on a final basis.

37. Cancellation of registration: As per section 142 (5) of the Act, if the person to whom the registration is issued on a provisional basis fails to furnish information in a specified time, his certificate of registration will may be cancelled.

38. As per section 142 (6) of the Act, the certificate of registration issued on a provisional basis shall be deemed to have not been issued if the said registration is cancelled in pursuance of an application filed by such person that he was not liable to registration under section 19.

As per the report of Business Process for GST on GST Registration, which has been approved by the Empowered Committee, separate procedure for migration of existing registrants is given:

For existing registrants who are either registered with States or with the Centre or with both, the system shall be designed to migrate the cleaned and verified data from the existing database to the GST Common Portal and a GSTIN shall be generated. With regard to the migration of data of the existing registrants, following steps are necessary:

1. The process of migration of data must be started sufficiently in advance so that the business of existing registrants does not suffer and transition from the present system to GST is smooth.
2. At present, tax payers are separately registered with State and/ or with Central tax administrations or with both based on their business activity. In the GST regime, a taxpayer will have to obtain State wise registration. Even within a State, the taxpayer may either opt for a single registration or multiple registrations for different business verticals.
3. Analysis of registration data available with States and Centre conducted by NSDL and GSTN reveals the following:
 - a. The numbers of fields in the registration database of various State VAT and CBEC system are different than that finalized for GST. The number of fields varies from 50 to 107 in case of States/Centre whereas GST Registration Form has 120 fields. Thus there is a gap of 13 to 70 fields, meaning that data will have to be collected from the taxpayers.
 - b. As per report of NSDL, which conducted “as is study” of State Systems as well as that of CBEC, in majority of cases, the available data does not comply with Metadata and Data Standards (MDDS) of Government of India.

This is also confirmed by the feedback received from States in May 2015. Importing such data, which is not MDDS compliant, will lead to wrong or incomplete results on query.

- c. The data from States also shows that they do not have scanned copies of supporting documents for mandatory fields like principle place of business, photos of MD or Karta etc. in their database. This again will have to be collected from them.

Since, lots of reports will be using registration database, purity of registration data will be of paramount importance. Migrating half-complete and incorrect data from existing registration databases to GST database will adversely impact the reports and intelligence derived out of it. Thus data will have to be collected afresh from the existing taxpayers. GSTIN can be issued based on State and validated PAN. In case of taxpayers under Excise and VAT, source of data for issuing GSTIN should be VAT data as in most cases Excise assessee will also be registered under VAT. For taxpayers under Service Tax the source of data for issuing GSTIN should be Service Tax.

Out of six mandatory data fields in the GST Registration field, three can be filled up from **validated PAN data, namely PAN, name of business, constitution of business**. The name of State is known in case of VAT data. The remaining two mandatory data fields namely **'Principal Place of Business' and 'details of promoters'** will have to be collected from taxpayers along with non-mandatory items. In case of Service Tax, State will have to be collected before generating GSTIN. With this the following process has been suggested:

For Taxpayers Registered under State VAT/Excise

1. GSTIN will be generated by NSDL in case of all VAT TINs where PAN has been validated **on provisional basis**. Along with a password the GSTIN will be sent to respective State Tax Authorities.
2. State tax authorities will communicate the GSTIN/password to taxpayers, with instruction to log on the GST portal and fill up the remaining data. State specific data over and above what is contained in the GST Registration Form can be collected after GST registration becomes operational.
3. The data so collected by GSTN/NSDL will be provided to States so that they can undertake the verification exercise as per their convenience in a staggered manner spread over a period of one to two quarters so that it

does affect the working of the tax authorities. This is being suggested as the dealer is already registered with VAT department.

4. In case, PAN has been validated but the email or mobile numbers of dealers are not available, such dealers may be advised through newspaper advertisement to visit the GST portal and use the following data for user authentication:
 - a. VAT-TIN
 - b. PAN
 - c. Date of Birth/Date of Incorporation in DDMMYYYY format. (This data is available with PAN Database)
 - d. Date of birth of proprietor in case of Proprietorship firm.
 - e. Date of incorporation in case of all other types of dealers.
 - f. In those cases where PAN has not been validated, State VAT department will have to collect the taxpayers.

For Taxpayers Registered under Service Tax

For the taxpayers who are not registered under a State, a different approach will have to be adopted.

1. Since all Service Taxpayers have user ID and password and Service Tax has their email IDs, they may advise the taxpayers to intimate State(s) where they would like to get themselves registered in.
2. Service Tax portal will check from GST portal whether GSTIN has been generated for combination of State and PAN of the taxpayer. If not generated, request GST portal to generate the same.
3. GST portal will generate the GSTIN and communicate to Service Tax, which will be communicated to the taxpayer asking him/her to provide remaining data at GST Portal.

Any verification / updation of the information as outlined above would have to be done by the taxable person within a specified period.

If the verification/updation is not done within the stipulated period, the GSTIN will be suspended till the taxable person does the needful.

Any verification by State / Central authorities can be done after GSTIN is issued.

ANNEXURE: Form GST –

[See Rule _]

Application for Registration under Goods and Services Tax Act, Year

1	Legal Name of Business*	
1A	Trade Name (optional)	

2	Constitution of Business (Please Select the Appropriate)*
----------	--

Proprietorship	<input type="checkbox"/>	Partnership	<input type="checkbox"/>
Hindu Undivided Family	<input type="checkbox"/>	Private Limited Company	<input type="checkbox"/>
Public Limited Company	<input type="checkbox"/>	Society/Club/Trust/Association of Persons	<input type="checkbox"/>
Government Department	<input type="checkbox"/>	Public Sector Undertaking	<input type="checkbox"/>
Unlimited Company	<input type="checkbox"/>	LLP's	<input type="checkbox"/>
Local Authority	<input type="checkbox"/>	Statutory Body	<input type="checkbox"/>
Others (Please Specify)	<input type="checkbox"/>		

In case of Proprietorship*

3	Name of Proprietor	
4	PAN of the proprietor	

In case of other Businesses*

4A	PAN of the Business	
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11 Indicate Existing Registrations

	Yes/No	Registration Details
Central Excise		
Service Tax		
State VAT Registration (TIN)		
CST Registration No		
IEC No.(Importer Exporter Code Number)		
Corporate Identity Number (CIN)		
GSTIN		

12 Details of Principal Place of Business*

ADDRESS													
Building No/Flat No/Door No								Floor No					
Name of the Premises/Building								Road/Street/Lane					
Locality/Area/Village								District/Town/City					
Latitude (optional)								Longitude (optional)					
PIN Code													
CONTACT DETAILS													
Telephone number										Fax Number			
Mobile Number													

Branch and Address of the Bank & Branch	To be auto-populated (Edit mode)											
PIN Code											State	

Details 3...n (Multiple fields will be available to capture the details of all the additional Bank A/c)

14 Details of the Goods/Commodities supplied by the Business

Please specify top 5 Commodities		
S.No.	Description of Goods	HSN Code (4 digit code)
1		
2		
...		
5		

15 Details of Services supplied by the Business.

Please specify top 5 Services		
S. No.	Description of Services	Service Accounting Code
1		
2		

5		

16 Details of Additional Place of Business

Number of additional places	
-----------------------------	--

Premises 1									
Details of Additional Place of Business									
ADDRESS									
Building No/Flat No/Door No							Floor No		
Name of the Premises/Building							Road/Street/Lane		
Locality/Area/Village							District/Town/City		
PIN Code									
CONTACT DETAILS									
Telephone number					Fax Number				
Mobile Number									
Email Address									
Nature of possession of premises									
Owned	<input type="checkbox"/>	Leased	<input type="checkbox"/>	Rented	<input type="checkbox"/>	Consent	<input type="checkbox"/>	Shared	<input type="checkbox"/>
Please Tick the Nature of Business Activity being carried out at above mentioned Premises									
Factory / Manufacturing		<input type="checkbox"/>	Wholesale Business		<input type="checkbox"/>	Retail Business		<input type="checkbox"/>	
Warehouse/Deport		<input type="checkbox"/>	Bonded Warehouse		<input type="checkbox"/>	Service Provision		<input type="checkbox"/>	
Office/Sale Office		<input type="checkbox"/>	Leasing Business		<input type="checkbox"/>	Service Recipient		<input type="checkbox"/>	
EOU/ STP/ EHTP		<input type="checkbox"/>	SEZ		<input type="checkbox"/>	Input Service Distributor (ISD)		<input type="checkbox"/>	
Works Contract		<input type="checkbox"/>							

Premises 2.....n (Multiple fields will be available to capture the details of all the

additional places of business within the state)

17 Details of Proprietor/all Partners/Karta/Managing Directors and whole time Director/Members of Managing Committee of Associations/Board of Trustees etc.

*

Total Number of Persons

Please provide details in the table below. In case you need more tables, click on add table

- 22. In case of **Proprietorship**: Details of Owner/Proprietor
- 23. In case of **Partnership**: Details of **all Managing/ Authorized Partners**
(personal details of all partners but photos of only ten partners including that of Managing Partner is to be submitted)
- 24. In case of **Companies** registered under Companies Act: **Managing Director and whole time directors**
- 25. In case of **HUF**: Details of **Karta of HUF**
- 26. In case of **Trust**: Details of **Managing Trustee**
- 27. In case of **Association of Persons**: Details of Members of Managing Committee (personal details of all members but photos of only ten members including that of Chairman is to be submitted)
- 28. In case of Local Authority: Details of CEO or equivalent
- 29. In case of Statutory Body: Details of CEO or equivalent
- 30. In case of others: Details of person responsible for day to day affairs of the business

	First Name	Middle Name	Surname
Name of Person			
Name of Father /Husband			
Designation			Date of Birth
			DD MM YYYY
PAN			

Passport No (in case of foreigners)																				
UID No																				
DIN No. (if any)																				
Mobile Number																				
E-mail address											Gender	M	<input type="checkbox"/>	F	<input type="checkbox"/>					
Telephone No												FAX No								

Residential Address					
Building No/Flat No/Door No		Floor No			
Name of the Premises/Building		Road/Street/Lane			
Locality/Area/Village		District/Town/City			
PIN Code				State	

Details 2...n (Multiple fields will be available to capture the details of other persons)

18 Details of Authorized Signatory

Number of Authorized Signatory

Details of Signatory No. 1

	First Name	Middle Name	Surname
Name of Person			
Name of Father / Husband			
Designation			Date of Birth
			DD MM YYYY
PAN			
UID No			
DIN No. (if any)			
Mobile Number			
E-mail address			Gender M <input type="checkbox"/> F <input type="checkbox"/>
Telephone No			FAX No
Residential Address			
Building No/Flat No/Door No		Floor No	
Name of the Premises/Building		Road/Street/Lane	
Locality/Area/Village		District/Town/City	
PIN Code		State	

Details 2....n (Multiple field will be available to capture the details of other authorized persons)

19 Details of Authorized Representative (TRP / CA / Advocate etc.)

	First Name	Middle Name	Surname
Name of Person			
Status	TRP / CA / Advocate etc.		

Mobile Number																																												
E-mail address																																												
Telephone No																								FAX No																				

20 State Specific Information

- 31. Field 1**
- 32. Field 2**
- 33.**
- 34.**
- 35. Field n**

21 Document Upload

A customized list of documents required to be uploaded (as detailed in para 6.3 of the process document) as per the field values in the form should be auto-populated with provision to upload relevant document against each entry in the list.

36. Verification

I hereby solemnly affirm and declare that the information given herein above is true and correct to the best of my knowledge and belief and nothing has been concealed therefrom

Place Name of Authorized Signatory

Date Designation



***BACKGROUND MATERIAL
FOR TRAINING ON
'GOODS AND SERVICES TAX'***



**COMPILED BY
NATIONAL ACADEMY OF CUSTOMS EXCISE AND NARCOTICS
FARIDABAD**

JULY 2016

4. Meaning and Scope of Supply, Time and Valuation of Supply of Goods and Services

Meaning and Scope of Supply

I. Introduction

Article 366(12A) of the proposed 122nd Constitutional Amendment Bill, 2014 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. While Article 246A provide simultaneous powers to both the Central and State governments to levy the goods and services tax on intra-state supply, the Parliament alone shall have exclusive power to make laws with respect to levy of goods and services tax on inter-state supply. Article 269A empowers the Parliament to formulate the principles for determining the place of supply and when a supply of goods/services takes place in the course of inter-state trade or commerce. The term 'supply' is, however, not defined in the Constitution.

2. The concept of 'supply' is the key stone of the proposed GST architecture. GST is a multi-stage tax levied on supply of goods and / or services, collected at each stage of the production and distribution, in proportion to the value added by each taxable person in the chain of supply. In the GST regime, the entire value of supply of goods and / or services is proposed to be taxed in an integrated manner, unlike the existing indirect taxes, which are charged independently either on the manufacture or sale of goods, or on the provisions of services. This paper explains the meaning and scope of supply, the various types of supply, the time when the GST is chargeable (time of supply), and the valuation of supply as provided in the Model GST Law.

II. Supply – Meaning

3.1. In general, supply for GST purposes covers all forms of supply where goods and/or services are supplied in return for a consideration. Any transaction involving supply of goods and/or services without consideration is not a supply unless it is deemed to be a supply under law. Drawing upon the international experience, the following criteria have been identified to distinguish a transaction as supply on which GST is levied;

- (i) supply of goods and / or services
- (ii) supply is for a consideration
- (iii) supply is made in the course or furtherance of business
- (iv) supply is made in the taxable territory
- (v) supply is a taxable supply, and
- (vi) supply is by a taxable person.

3.2. Under certain circumstances, there can be a supply under GST even when one or more of the above criteria are not satisfied. For instance, in free of charge supply, there could be no consideration or a supply may not be in the course or furtherance of business. Such transactions could be deemed by law to be a supply for GST purposes. There may also be instances where a transaction is kept out of GST despite the existence of the above criteria e.g. services rendered by an employee to his employer in the course of employment, transfer of business as a going concern.

(i). Supply of goods and/or services;

4.1. As GST is levied on supply of goods and/or services, classification of a transaction as a supply of goods or supply of services becomes essential. A single transaction may consist of different elements of supplies that may be taxed at different rates – a portion that is taxed at standard rate and another at lower rate, or the time and place of supply provisions may apply differently for different elements of such supply. Therefore, it becomes necessary to understand what constitutes a supply of goods or supply of services.

4.2. Supply of goods is not defined in the Model GST Law. Generally, supply of goods mean the transfer of the right to dispose of the goods as owner. Ordinarily, this would mean the transfer of both title and possession of the goods. Transfer of goods may be effected in any of the following manner:

- Transfer of title as well as possession – In a simple sale, title as well as possession is transferred such as over the counter sale of a drug or a readymade garment;
- Transfer of possession but not title – sale on approval basis or hire purchase;
- Possession of goods is transferred but title is retained – when goods are let out on hire or lease, the transaction will be treated as supply of service.

Transfer of title to the goods may be effected with immediate effect or at a future date. Instances of immediate transfer of title include, a contract of sale, exchange or barter etc. Instances of future sale include hire purchase contract, an agreement for the sale of goods where the seller retains ownership until the goods are fully paid for, or sometimes until everything owed by the customer has been paid, conditional sale, supply on approval basis etc.

4.3. Supply of service is not specifically defined in the Model GST Law. Internationally, supply of services is defined as any supply that is not a supply of goods. A supply of service is said to be made when a person does something, or agrees to do something for a consideration. A supply of service is also said to be made when a person agrees to refrain from doing something or gives up a right for consideration which also includes grant, assignment or surrender of any right. In some situations, supply involving goods may be treated as the service. Lease/hire of goods/immovable property,

transfer/sale of undivided share in title of goods, temporary application of business assets for non-business use are treated as supply of services.

(ii).Supply for a consideration;

5.1. One of the essential conditions for the supply of goods and/or services to fall within the ambit of GST is that a supply is made for a consideration. For GST purposes, consideration does not refer only to money. It covers anything which might be possibly done, given or made in exchange for something else. For example, it might be something exchanged in a barter arrangement, such as in a part exchange, or where a service is performed in return for another service or it may simply be a condition imposed upon the making of the supply. A consideration may be monetary, non-monetary or a combination of both but it must be capable of being expressed in monetary terms. There must be a direct link between the supply and the consideration. In order to qualify as consideration for a supply, there must be at least two parties. A direct link is established between the supply made and the consideration given. A consideration need not always flow from the recipient of the supply. It could be made by a third person. Consideration refers to 'reciprocal performance' capable of being expressed in monetary terms.

5.2. The Model GST Law defines consideration in relation to the supply of goods and/or services to any person to include (a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods and/or services, whether by the said person or by any other person; (b) the monetary value of any act or forbearance, whether or not voluntary, in respect of, in response to, or for the inducement of, the supply of goods and/or services, whether by the said person or by any other person. However, a deposit whether refundable or not, given in respect of the supply of goods and/or services shall not be considered as payment made for the supply unless the supplier applies the deposit as consideration for the supply.

5.3. Certain transactions made without considerations (free supply of goods and services) are deemed to be supply for GST purposes. For example, the permanent transfer /disposal of business assets, temporary application of business assets to a private or non-business needs, services put to a private or non-business use, self-supply of goods or services, assets retained after de-registration and a supply made by the same PAN based entity across different States without consideration (stock/branch transfer) shall be deemed to be taxable supplies, though no consideration may be involved.

(iii).Supply made in the course or furtherance of business;

6.1. A transaction made in the course or furtherance of business, alone will be treated as a supply under GST. As the objective of GST is to tax the value addition, it would not be appropriate to tax, for instance, the sale of a car by an individual who is not in the business of supplying cars. Such transaction may otherwise be treated as a supply if the concept of business is not brought in. There is no exhaustive definition or test for

determining whether an activity is in the course or furtherance of business. Internationally, the business test has emerged through judicial decisions. Generally, whether an activity carried by a taxable person constitutes a business or not is determined by considering the whole of the activities carried on by him. If these activities are predominately concerned with the making of taxable supplies to customers for a consideration, it has to be held that the taxable person is in the business of making taxable supplies, and the taxable supplies which he makes are supplies made in the course of carrying on that business, especially if the supplies are of a kind which are made commercially by those who seek to profit from them.

6.2. However, there is no presumption that activities carried on by a taxable person cannot be business if the profit motive is absent. GST is not a tax on profit or income but on taxable supplies by taxable persons. Whether an activity is in the course of business or not is dependent on the business test. This test ensures that occasional supplies, even if made for consideration, will not be subjected to GST. For example, when a household makes a one-time sale of some paintings, if it is not in the business of selling paintings, the sale will not be a supply for GST purposes. However, a painter who sells his paintings on regular basis, even infrequently, will be liable to pay GST since he is in the business of selling paintings. The 'business test' requires examination of the following;

1. Is the activity, a serious undertaking earnestly pursued?
2. Is the activity is pursued with reasonable or recognisable continuity?
3. Is the activity conducted in a regular manner based on sound and recognised business principles?
4. Is the activity predominantly concerned with the making of taxable supply for consideration/profit motive?

6.3. Section 2(17) of the Model GST Law defines 'business' to include (a) any trade, commerce, manufacture, profession, vocation or any other similar activity, whether or not it is for a pecuniary benefit; (b) any transaction in connection with or incidental or ancillary to (a) above; (c) any transaction in the nature of (a) above, whether or not there is volume, frequency, continuity or regularity of such transaction; (d) supply or acquisition of goods including capital assets and services in connection with commencement or closure of business; (e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members, as the case may be; (f) admission, for a consideration, of persons to any premises; and (g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;

Certain supplies listed under Schedule I of the Model GST law which are made not in the course or furtherance of business are deemed as taxable supply.

(iv). Supply made in the taxable territory;

7. GST being a destination based consumption tax, the GST law must define the jurisdictional limit of the tax under which a transaction is proposed to be taxed. Under this principle, imports are taxed and exports are zero rated. Importation of services are taxed under the reverse charge mechanism at the hands of the recipient of the supplier. To zero rate exports, the exports are treated as taxable supply made within the country to enable an exporter to claim the input tax credit. Place of supply determines whether a supply is made within or outside the country/within or outside the state. The scope of supplies in India, whether intra or inter-State supplies are determined by the place of supply provisions. As place of supply for import of goods will not be India, GST on imports is proposed to be levied through a specific provision in the Customs Act.

(v). Supply - a taxable supply;

8. Taxable supply means supply of goods and/or services that are subjected to GST. Supplies which are exempt or subjected to NIL rate of tax will not be treated as taxable supply. In the GST regime, exemptions may be provided to the specified goods or services or to a specified category of persons / entities making supply and such supplies may be treated as out of scope of GST supply. For the purpose of GST, zero rated supplies will not be treated as exempted supplies.

(vi). Supply - by a taxable person;

9. For GST purposes, supply is reckoned only in the context of a taxable person. A taxable person is defined in the Model GST Law to mean a person who carries on any business at any place in India/State who is registered or required to be registered under Schedule III. Such taxable person includes a public authority, a department of central or state government subject to specified exclusions. Person whose aggregate turnover during a year is below the prescribed threshold or persons making only exempted supplies may not be considered as a taxable person; however persons making interstate supplies, persons liable to pay tax under reverse charge are required to obtain registration irrespective of their turnover.

III. Supply - Model GST law

10. The Model GST Law defines 'supply' to include, (a) all forms of supply of goods and / or services such as 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, (b) importation of service, whether or not for a consideration and whether or not in the course or furtherance of business, and (c) a supply specified in Schedule I, made or agreed to be made without a consideration. Schedule II of the Model GST Law classify specified transactions as supply of goods or supply of services. Where a person acting as an agent for consideration, either supplies or receives any goods and/or services on behalf of any principal, the transaction between such principal and the agent shall be deemed to be a supply. Supply of any branded service by an aggregator under a

brand name or trade name is deemed to be a supply of service by the aggregator. The Model GST Law also empowers the Central or State government to specify the transactions that are to be treated as (i) a supply of goods and not as a supply of services; or (ii) a supply of services and not as a supply of goods; or (iii) neither a supply of goods nor a supply of services.

IV. Types of Supply

(i). Taxable supply

11.1 Taxable supply refers to a supply of goods and/or services which is chargeable to tax under the GST Act. Supplies which are exempt or subject to NIL rate of tax will not be treated as taxable supplies. However, exempt supplies shall be included for the purpose of computing the aggregate turnover to determine the threshold / composition limits.

(ii). Exempt supply

11.2. Exempt supply means supply of any goods and/or services which are not taxable under the GST Act and includes such supply of goods/or services which are specified in the Schedule to the Act or which may be exempt from payment of tax under Sec. 10 of the Model GST Law. Under Section 10 of the Model GST Law, a supply may be exempt generally either absolutely or subject to such conditions as may be specified in a notification issued by the appropriate government. Further, where an exemption in respect of any goods and/or services from the whole of the tax leviable thereon has been granted absolutely, the taxable person providing such goods and/or services shall not be eligible pay tax on such goods and/or services.

(iii). Zero-rated supply

11.3. Zero rated supply is a supply of any goods and/or services on which no tax is payable but credit of the input tax related to that supply is admissible. Exports shall be treated as zero-rated supply. Zero rated supplies will be treated as taxable supply.

(iv). Composite / Mixed supply

11.4. Section 2(27) of the Model GST Law defines composite supply to mean a supply consisting of two or more goods, two or more services or a combination of goods and services provided in the course or furtherance of business, whether or not the same can be segregated. Many transactions that fall within the scope of GST may consist of more than one element. These elements may be a mix of goods, or services, or both. Sometimes these elements, if supplied separately, may have different GST liabilities depending upon the rates, applicability of time of supply and place of supply provisions. To avoid disputes about whether the supplier is making a single supply with one liability, or multiple supplies with different liabilities, it has to be determined whether the supply is one of goods, or of services, or it is a supply constituted of both goods and services (composite supplies).

11.5. To determine whether a particular supply consists of various elements to be treated as a single supply or as multiple supplies, one has to first identify the essential

features of the transaction which involves, ascertaining what the recipient has received. If a component of the supply is to be treated separately from the overall supply of which it is a part, it should be distinct and independent and should amount to more than merely a component of the overall supply. For instance, when a car is given for servicing, as a part of the service, engine oil may be replaced. The supply of the oil cannot be considered as distinct or independent in the context of the overall service required by the recipient. It is also necessary to ascertain whether each supply shall be properly regarded as a principle supply or some of them are merely ancillary to principle supply.

11.6. The Model GST Law contains specific provisions [sub-Section (3) Section 3] empowering the Central or a State government to specify, by notification, on the recommendations of the GST Council, whether a transaction involving composite supply will be treated as a supply of goods and not a supply of service or a supply of service and not a supply of goods.

(v). Continuous supply of goods/services

12.1. Continuous supply of goods means a supply of goods which is provided or agreed to be provided, continuously or on recurrent basis, under a contract, for which the supplier invoices the recipient on a regular or periodic basis. Continuous supply of services means a supply of service notified by the Central or a State government, provided or agreed to be provided, continuously or on recurrent basis under a contract, for a period of exceeding three months, with periodic payment obligations.

12.2. Identifying a supply as a continuous supply of goods/services is required in view of the time of supply of provisions. Section 12 of the Model GST Law provides that in the case of continuous supply of goods, involving successive statement of accounts or successive payments, the time of supply shall be the date of expiry of the period to which such successive statements of accounts or successive payments relate. Where there are no successive statements of accounts, the date of issue of invoice or the date of receipt of payment, whichever is earlier, shall be the time of supply.

12.3. Section 13 of Model GST Law provides that in case of continuous supply of services, the time of supply to be (a) where the due date of payment is ascertainable from the contract, the date on which the payment is liable to be made by the recipient of service, whether or not any invoice has been issued or any payment has been received by the supplier of service;(b) where the due date of payment is not ascertainable from the contract, each such time when the supplier of service receives the payment, or issues an invoice, whichever is earlier;(c) where the payment is linked to the completion of an event, the time of completion of that event.

(vi). Inward/Outward supply

13.1 An inward supply [Section 2(61)] refers to receipt of goods and/or services whether by purchase, acquisition or any other means by a person registered under the Act. Section 26 of the Model GST Law mandates every registered taxable person other than an input service distributor, a person paying tax under composite scheme or a tax deductor at source to file details of inward supplies as a part of monthly / quarterly return.

13.2. An outward supply [Section 2(73)] refers to supply of goods and/or services, whether by sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made by such person in the course or furtherance of business except in case of such supplies where the tax is payable on reverse charge basis. Section 25 of the Model GST Law mandates every registered taxable person other than an input service distributor, a person paying tax under composite scheme or a tax deductor at source to file details of outward supplies as a part of monthly / quarterly return.

(vii). Inter/Intra State supply

14.1. The location of the supplier and the place of supply determines whether a supply is treated as an Intra State supply or an Inter State supply. Determination of the nature of supply is essential to ascertain which type of GST is payable (i.e. CGST/SGST or IGST). Inter State supply of goods means (subject to Section 5 of the draft IGST Act), supply of goods where the location of the supplier and place of supply are in different States. Inter State supply of service means (subject to Section 6 of the draft IGST Act), supply of services where the location of the supplier and place of supply are in different States.

14.2. Intra State supply of goods means (subject to Section 5 of the draft IGST Act), supply of goods where the location of the supplier and place of supply are in the same State. Intra State supply of service means (subject to Section 6 of the draft IGST Act), where the location of supplier and the place of supply are in the same State.

(viii). Deemed supply

15. Schedule I of the Model GST Law lists specific transactions made without consideration as deemed supply for GST purposes. They include (i) permanent transfer / disposal of business assets (ii) temporary application of business assets to a private or non-business use (iii) services put to a private or non-business use (iv) assets retained after deregistration and (v) supply of goods / or services by a taxable person to another taxable or non-taxable person in the course or furtherance of business.

V. Treatment of certain transactions as supply of goods or as supply of services

16.1. Schedule II of the Model GST Law lists certain specified transactions as a supply of goods or as a supply of services. Under the Schedule, transfer of title in goods with immediate effect or with effect from a future date under an agreement is considered as supply of goods. Transfer of goods or of rights in goods without the transfer of title is treated as supply of services. Any loan, tenancy, easement, license to occupy land, or lease or letting out a building for business or commerce, treatment or process applied to another person's goods (job work) is treated as supply of services.

16.2. Where goods forming part of the assets of the business are transferred or disposed of by a person who no longer carries on the business (ceases to be a taxable person), such transfer/disposal is a supply of goods. When the goods held or used for the purposes of the business are put to any private or personal use other than for the

purpose of business, whether or not for consideration, the usage or making available of such goods for non-business use is a supply of services. The Schedule II also provides that, where any goods forming part of the business assets of a taxable person are sold by any other person who has the power to do so to recover any debt owed by the taxable person, the goods shall be deemed to be the supplies by the taxable person in the course of furtherance of his business.

16.3. Where any person ceases to be a taxable person, any goods forming part of the assets of any business carried on by him shall be deemed to be supplied by him in the course or furtherance of his business immediately before he ceases to be a taxable person, unless (a) the business is transferred as a going concern to another person; or (b) the business is carried on by a personal representative who is deemed to be a taxable person.

16.4. The Schedule II further provides that (a) renting of immovable property, (b) construction of building/civil structure, (c) temporary transfer or permitting use or enjoyment of intellectual property right, (d) development, design, programming and certain other activities relating to information technology software, (e) agreeing to or refrain from an act or to tolerate an act, (f) works contract, (g) transfer of the right to use any goods, (h) catering services, as a supply of services.

Time of Supply

I. Introduction

The liability to pay the goods and services tax arises only when a supply has been made. The time of supply fixes the point when the liability has to be discharged. The time of supply is the time when a supply of goods and / or services is treated as being made under the GST law. It is important to determine the time of supply because a taxable person should charge GST at the time when the supply is made / deemed to have been made. A supplier becomes liable to account for GST once a tax point has occurred and must include it in the return covering the period in which it falls. The time of supply differs for supply of goods and supply of services. This is because goods are tangible and involve physical movement / removal or transport whereas services are intangible that involve performance, for making supply.

2. There are general provisions for determining the time of supply. However in certain cases and in particular situations, specific time of supply provisions are to be applied. It is important to note that where a specific time of supply provision applies, it will override the general provisions.

II. General principles for goods

3.1. The general principles followed internationally for determining the time of supply of goods are

Removal of Goods;

(a) if the goods are to be removed, the time of removal; (b) if the goods are not to be removed, the time when they are made available to the person to whom the goods are supplied. Removal is said to occur when the goods are sent for delivery by the supplier or somebody acting on behalf of the supplier, to a recipient of the supply. (Basic tax point)

Issue of invoice;

Goods are either accompanied by the invoice or the invoice may be sent before or after delivery of the goods. The GST law may provide for time limit within which an invoice has to be issued from the date of supply. (Actual tax point)

Receipt of payment;

A payment for supply is made either before or after delivery or before or after issue of the invoice. (Actual tax point)

3.2. Normally, the date of removal and the date of invoice could be the same. However, there can be situations where the invoice is issued or payment is received before the basic tax point occurs. Internationally, the time of supply is normally reckoned with the basic tax point or the actual tax point whichever is earlier. Following this principle, the Model GST Law provides to determine the time of supply of goods as the earliest of the events listed above.

III. Time of supply of goods

(i) General rule

4.1. The Model GST Law provides that the time of supply of goods shall be the earliest of the following dates:

- (a) (i) the date on which the goods are removed by the supplier for supply to the recipient, in a case where the goods are required to be removed or
- (ii) the date on which the goods are made available to the recipient, in a case where the goods are not required to be removed, or
- (b) the date on which the supplier issues the invoice with respect to the supply, or
- (c) the date on which the supplier receives the payment with respect to the supply, or
- (d) the date on which the recipient shows the receipt of the goods in his books of account.

4.2. Where goods are made available to the recipient refers to cases where the goods (i) are physically not capable of being moved; or (ii) are supplied in assembled or installed form; or (iii) are supplied by the supplier to his agent or his principal. The expression 'made available to the recipient' mean when the goods are placed at the disposal of the recipient. For the purposes of clauses (b) and (c) above, the supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment. For the purpose of clause (c) above, "the date on which the

supplier receives the payment” shall be the date on which the payment is entered in his books of accounts or the date on which the payment is credited to his bank account, whichever is earlier.

(ii) Continuous supply of goods

5.1. In case of continuous supply of goods, where successive statements of accounts or successive payments are involved, the time of supply shall be the date of expiry of the period to which such successive statements of accounts or successive payments relate. If there are no successive statements of account, the date of issue of the invoice (or any other document) or the date of receipt of payment, whichever is earlier, shall be the time of supply. The Model GST Law empowers the Central or State government to notify specified supply of goods as continuous supply of goods.

(iii) Reverse charge

5.2. In case of supplies in respect of which tax is payable on reverse charge basis, the time of supply shall be the earliest of the following dates;

- (a) the date of the receipt of goods, or
- (b) the date on which the payment is made, or
- (c) the date of receipt of invoice, or
- (d) the date of debit in the books of accounts.

(iv) Supply on approval basis

5.3. If the goods (being sent or taken on approval or sale or return or similar terms) are removed before it is known whether a supply will take place, the time of supply shall be at the time when it becomes known that the supply has taken place or six months from the date of removal, whichever is earlier.

(v) Residual provision

5.4. In case it is not possible to determine the time of supply as above, the time of supply shall (a) in a case where a periodical return has to be filed, the date on which such return is to be filed and in any other case, the date on which the CGST/SGST is paid.

IV. Time of supply of services

(i) General rule

6.1. The general principle for determining the time of supply of service is the time when the services performed (i.e. completed) which is the basic tax point for the services. Issue of the invoice and the payment of service are the actual tax point. Time of supply of services shall be the earliest of the above.

6.2. The Model GST Law provides that the time of supply of services shall be;

- (a) the date of issue of invoice or the date of receipt of payment, whichever is earlier, if the invoice is issued within the prescribed period, or

(b) the date of completion of the provision of service or the date of receipt of payment, whichever is earlier, if the invoice is not issued within the prescribed period, or

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

For the purposes of clauses (a) and (b) above, the supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment. For the purpose of clause (a) and (b) above, "the date of receipt of payment" shall be 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, whichever is earlier.

(ii) Continuous supply of services

6.3. In case of continuous supply of services, the time of supply shall be -

(a) where the due date of payment is ascertainable from the contract, the date on which the payment is liable to be made by the recipient of service, whether or not any invoice has been issued or any payment has been received by the supplier of service;

(b) where the due date of payment is not ascertainable from the contract, each such time when the supplier of service receives the payment, or issues an invoice, whichever is earlier;

(c) where the payment is linked to the completion of an event, the time of completion of that event;

The Model GST Law empowers the Central or State government to notify specified supply of services as continuous supply of services.

(iii) Reverse charge

6.4. In case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earliest of the following dates, namely-

(a) the date of receipt of services, or

(b) the date on which the payment is made, or

(c) the date of receipt of invoice, or

(d) the date of debit in the books of accounts.

(iv) Residual provisions

6.5. In a case where the supply of services ceases under a contract before the completion of the supply, such services shall be deemed to have been provided at the time when the supply ceases. Where it is not possible to determine the time of supply of services under any of the above mentioned provisions, the time of supply shall be (a) in a case where a periodical return has to be filed, the date on which such return is to be filed or in any other case, the date on which the CGST/SGST is paid.

V. Change in rate of tax (services)

7. The time of supply, in cases where there is a change in the effective rate of tax in respect of services, shall be determined in the following manner.

(a) in case the taxable service has been provided before the change in effective rate of tax:

- (i) where the invoice for the same has been issued and the payment is also received after the change in effective rate of tax, the time of supply shall be the date of receipt of payment or the date of issue of invoice, whichever is earlier; or
 - (ii) where the invoice has been issued prior to change in effective rate of tax but the payment is received after the change in effective 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 effective rate of tax, but the invoice for the same has been issued after the change in effective rate of tax, the time of supply shall be the date of receipt of payment;
- (b) in case the taxable service has been provided after the change in effective rate of tax -
- (i) where the payment is received after the change in effective rate of tax but the invoice has been issued prior to the change in effective rate of tax, the time of supply shall be the date of receipt of payment; or
 - (ii) where the invoice has been issued and the payment is received before the change in effective rate of tax, the time of supply shall be the date of receipt of payment or date of issue of invoice, whichever is earlier; or
 - (iii) where the invoice has been issued after the change in effective rate of tax but the payment is received before the change in effective rate of tax, the time of supply shall be the date of issue of invoice.

VI. Imports and Exports

8.1. As imports of goods is not treated as domestic supply, the treatment for levy of GST on imports will be distinct from GST on domestic supplies. The time of supply in such cases will be the relevant date for levy of Customs duty. Date of filing of Bill of Entry /Declaration for clearance of goods for home consumption shall be the time of supply in normal cases. In case of prior entry, the date of entry inwards or arrival of the aircraft under which the goods have been imported, shall be the time of supply.

8.2. The time of supply for export of goods/services shall be governed by the general provisions relating to the determination of time of supply of goods/services in India.

Valuation of Supply

I. Introduction

The value of the supply is the value on which the GST is chargeable. Determination of value of the supply is not only required to charge the goods and services tax, but also for arriving at the value of supply to compute the turnover prescribed for obtaining registration under GST. The Model GST Law proposes to adopt the concept of 'transaction value' for determining the taxable value of supply on which

the goods and services tax shall be levied. Currently, the concept of transaction value is followed both under Central Excise and Customs legislations for levying central excise and customs duties by the Central government.

II. Value of a taxable supply

2. The value of a supply of goods and/or services shall be the transaction value, that is the price actually paid or payable for the said supply of goods and/or services where the supplier and recipient of the supply are not related and the price is the sole consideration for the supply. Section 15 of the Model GST Law provides that the transaction value for the purpose of valuing a taxable supply shall include;

- any amount that the supplier is liable to pay in relation to such supply 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.
- the value, apportioned as appropriate, of such goods and/or services as are supplied directly or indirectly by the recipient of the supply free of charge or at reduced cost for use in connection with the supply of goods and / or services being valued, to the extent such value has not been included in the price actually paid or payable
- royalties and licence fees related to the supply of goods and / or services that the recipient of supplies must pay either directly or indirectly, a condition of the said supply, to the extent that such royalties and fees are not included in the price actually paid or payable
- any taxes, duties, fees and charges levied under any statute other than the SGST Act or the CGST Act or the IGST Act
- incidental expenses such as commission and packing, including any amount charged for anything done by the supplier in respect of the supply of the goods and/or services at the time of, or before the delivery of goods /supply of services.
- subsidies provided in any form or manner, linked to the supply
- any reimbursable expenditure or cost incurred by or on behalf of the supplier and charged in relation to the supply of goods and / or services
- any discount or incentives that may be allowed after the supply has been effected. However, post-supply discount which is established as per the agreement and known at before the time of supply linked to relevant invoices shall not be included in the transaction value.

III. Discounts

1. The Model GST Law provides that the transaction value defined under subsection (1) of section 16 shall not include any discount allowed before or at the time of supply provided such discount is allowed in the course of normal trade practice and has been duly recorded in the invoice issued in respect of the supply.

IV. GST Valuation Rules

(i) General provisions

4.1. The Model GST Law provides that where the value of supply of goods and/or services cannot be determined under sub-section (1) of Section 16, the same shall be determined in such manner as may be prescribed in the rules, in the following situations where;

- (i) the consideration paid or payable, is not money, wholly or partly
- (ii) the supplier and the recipient of the supply are related
- (iii) there is reason to doubt the truth or accuracy of the transaction value declared by the supplier
- (iv) business transactions are undertaken by a pure agent, money changer, insurer or travel agent and distributor or selling agent of lottery
- (v) such other supplier as may be notified by the Central or a State government on the recommendations of the Council.

4.2. Section 2(28) of the Model GST Law defines consideration in relation to supply of goods and /or services to include '(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods and/or services, whether by the said person or by any other person; (b) the monetary value of any act or forbearance, whether or not voluntary, in respect of, in response to, or for the inducement of, the supply of goods and/or services, whether by the said person or by any other person. However, a deposit, whether refundable or not, given in respect of the supply of goods and/or services shall not be considered as payment made for the supply unless the supplier applies the deposit as consideration for the supply'.

4.3. Rule 3 of the GST Valuation (Determination of Value of Supply of Goods and Services) Rules, 2016 (hereinafter refer to as the GST Valuation Rules) provides for determining the transaction value in monetary terms.

4.4. Where the supply consists of both taxable and non-taxable supply, the taxable supply shall be deemed to be for such part of the monetary consideration as is attributable thereto.

4.5. Transaction value shall be accepted even where the supplier and the recipient of supply are related, provided that the relationship has not influenced the price.

4.6. Transaction value shall be applicable where the goods are transferred from (a) one place of business to another place of the same business, and (b) the principal to an agent or from an agent to the principal.

4.7. The value of supplies specified in para 4.1 above shall be determined by proceeding sequentially through rule 4 to 6 of the GST Valuation Rules.

(ii) Value of supply by comparison (Rule 4)

5.1. Where the value of supply cannot be determined under rule 3 of the GST Valuation Rules, the value has to be determined on the basis the transaction value of goods and/or services of like kind and quality supplied at or about the same time to other recipients, adjusted after taking into consideration the relevant factors such as difference in the (i) dates of supply, (ii) commercial/quantity levels, (iii) composition, quality/design between the goods / services valued and the goods / services with which they are compared and (iv) freight and insurance charges depending upon the place of supply.

5.2. Goods of like kind and quantity is defined to mean goods which are identical or similar in physical characteristics, quality and reputation, and perform the same functions, commercial interchangeable with the goods being valued, supplied by the same person or by a different person. Services of like kind and quality are defined to mean the services which are identical or similar in nature, quality and reputation as the services being valued and supplies by the same person or by a different person.

(iii) Value of supply by computed value method (Rule 5)

6. Where the value of the supply cannot be determined by comparison method, the same shall be based on a computed value which shall include (a) the cost of production, manufacture or processing of the goods or the cost of the provision of services, (b) charges if any for the design or brand, and (c) an amount towards profit and general expenses equal to that usually reflected in supply of goods and / or services of the same class or kind as the goods and/or services being valued which are made by other suppliers.

(iv) Residual method (Rule 6)

7. Where of value of the goods and services cannot be determined under rule 5, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules.

(v) Rejection of declared value

8.1 Where the proper officer has reason to doubt the truth and the accuracy of the value declared in relation to supply of goods and / or services, he may ask the supplier to furnish further information including documents or other evidence and after receiving such information or where no such information is forthcoming, it shall be deemed that the transaction value of such goods and or services cannot be determined under rule 3 of the GST Valuation Rules.

8.2 The reasons to doubt the truth and accuracy of the value of the supply may include;

- the significantly higher value at which goods and / or services of like kind or quality supplied at or about the same time in comparable quantity, in a comparable commercial transaction
- significantly lower or higher value of the supply of goods and / or services compared to the market value of goods and or services of like kind and quality at the time of supply
- mis-declaration of goods and or services such as description, quality, quantity, year of manufacture etc.

8.3. The proper officer has to follow the principles of natural justice including granting of hearing, recording of reasons in writing before proceeding to determine the value in accordance with the provisions of rule 4 or rule 5 or rule 6, proceeding sequentially.

(vi) Valuation in certain cases

Pure Agent

9.1 Clause (b) to sub-section (2) of section 15 provides that any reimbursable expenditure or cost incurred by or on behalf of the supplier and charged in relation to the supply of goods and or services shall be included in the transaction value, as defined under sub-section (1) of section 15. Rule 8 of the GST Valuation Rules carves out an exception to the provisions contained in sub-section (2) of section 15 in respect of the expenditure or cost that a service provider is incurs, as a pure agent of the recipient, so as to exclude the same from the transaction value, if such supplier fulfils all the following conditions, listed below;

- the service provider acts as a pure agent of the recipient of service when he makes payment to third party for the goods and/or services procured
- the recipient of service receives and uses the goods and/or services so procured by the service provider in his capacity as pure agent of the recipient of service
- the recipient of service is liable to make payment to the third party
- the recipient of service authorises the service provider to make payment on his behalf
- the recipient of service knows that the goods and/or services for which payment has been made by the service provider shall be provided by the third party
- the payment made by the service provider on behalf of the recipient of service has been separately indicated in the invoice issued by the service provider to the recipient of service
- the service provider recovers from the recipient of service only such amount as has been paid by him to the third party, and
- the goods and/or services procured by the service provider from the third party as a pure agent of the recipient of service are in addition to the services he provides on his own account.

9.2 A 'pure agent' means a person who(a) enters into a contractual agreement with the recipient of service to act as his pure agent to incur expenditure or costs in the

course of providing taxable service (b) neither intends to hold nor holds any title to the goods and/or services so procured or provided as pure agent of the recipient of service (c) does not use such goods and/or services so procured, and (d) receives only the actual amount incurred to procure such goods and/or services.

Money Changer

10.1. The value of taxable service provided for the services in so far as it pertains to purchase or sale of foreign currency, including money changing, shall be determined by the service provider in the following manner:-

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. 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:

10.2. 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.



***BACKGROUND MATERIAL
FOR TRAINING ON
'GOODS AND SERVICES TAX'***



**COMPILED BY
NATIONAL ACADEMY OF CUSTOMS EXCISE AND NARCOTICS
FARIDABAD**

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5. GST Payment of Tax

Ease in making payment towards tax and other dues is very important in a country like India. Challenge before the Empowered Committee was to usher in a mechanism of payment which is user friendly and at the same time allows payment through various modes, after utilization of ITC. A seamless payment mechanism has been envisaged.

2. It is noted that under GST regime, some taxes and duties may remain outside the purview of GST and will continue to be collected in the manner prescribed under existing accounting procedures/rules/manuals, etc. This means that two types of challans (one for GST and other for non-GST) will be used and accounted for by the respective Pay and Accounts Offices (PAOs)/State AGs.

3. The payment processes under proposed GST regime have the following features:

- a) **Electronically generated** challan from GSTN Common Portal in all modes of payment and no use of manually prepared challan;
- b) **Facilitation** for the taxpayer by providing hassle free, anytime, anywhere mode of payment of tax;
- c) **Convenience** of making payment online;
- d) **Logical** tax collection data in electronic format;
- e) **Faster** remittance of tax revenue to the Government Account;
- f) **Paperless** transactions;
- g) **Speedy** Accounting and reporting;
- h) **Electronic** reconciliation of all receipts;
- i) **Simplified** procedure for banks;
- j) **Warehousing** of Digital Challan.

Mode of Payment:

4. As per section 35 (1) of the Act, every deposit made towards tax, interest, penalty, fee or any other amount shall be credited to the electronic cash ledger of a taxable person by:

- i. internet banking or by using credit/debit cards or
- ii. National Electronic Fund Transfer (NEFT) or Real Time Gross Settlement (RTGS) or
- iii. any other mode,

Conditions and restrictions with respect to mode of payment and the manner shall be prescribed in the rules.

What is the meaning tax?

As per section 2 (94) of the Act, tax means goods and services tax levied on the supply of goods and/or services under this Act and includes any amount payable under section 8.

5. Date of deposit:

As per the explanation to section 35 (1) of the Act, the date of credit to the account of the appropriate Government in the authorized bank shall be deemed to be the date of deposit.

Maintenance of electronic ledgers:

6. These are running electronic ledgers maintained on the dashboard of a taxpayer by GSTN). These would be updated in real time on an activity in connection with these ledgers by the taxpayer. Both the ITC ledger and the cash ledger will be utilized by the taxpayer for discharging the tax liabilities of the returns and others. Details in these ledgers will get auto populated from previous tax period returns (irrespective of mode of filing return i.e. online / offline utility)

7. Cash ledger: As per section 35 (1), any amount deposited to the account of the concerned Government (CGST, SGST, IGST and additional tax) shall be credited to the electronic cash ledger of such person.

8. ITC ledger: As per section 35 (2), ITC as self-assessed in the return shall be credited to his electronic credit ledger in the first instance. It will have details on ITC claimed & utilized for CGST, SGST & IGST.

9. Tax Liability ledger: As per section 35 (7) of the act, liabilities of a taxable person in form of tax, interest, fee & penalty towards CGST, SGST & IGST is recorded and maintained in this ledger.

Rules for Utilization of Amount in Electronic Ledger:

10. Utilization of amount in cash ledger: As per section 35 (3) of the act, amount available in the electronic cash ledger may be used for making any payment towards:

- tax,
- interest,
- penalty,
- Fees,
- any other amount payable

11. Utilization of amount in credit ledger: As per section 35 (4) of the act, amount available in the electronic credit ledger may be used for making any payment towards:

- making any payment towards tax.

ITC Utilization Rules

12. ITC Utilization shall be made in the following order:

12.1 As per Section 35 (5) (a) of the act, the amount of input tax credit on account of IGST available in the electronic credit ledger shall

- (a) first be utilized towards payment of IGST liability
- (b) IGST credit, if available, may be utilized towards payment of CGST liability
- (c) IGST credit, if available, may be utilized towards payment of SGST liability

12.2 As per section 35 (5) (b) in CGST act, the amount of input tax credit on account of CGST available in the electronic credit ledger shall:

- (a) first be utilized towards payment of CGST liability
- (b) CGST credit, if available, to set-off IGST liability, if any

12.3 As per section 35 (5) (b) in SGST Act, the amount of input tax credit on account of SGST available in the electronic credit ledger shall:

- (a) first be utilized towards payment of SGST liability
- (b) SGST credit, if available, to set-off IGST liability, if any

12.4 As per section 35 (5) (c) of the act, cross utilization of credit between CGST & SGST shall not be permitted.

Refund of Balance Amount in Electronic Ledger

13. As per section 35 (6) of the act, the balance in the cash or credit ledger after payment of tax, interest, penalty, fee or any other amount payable under the Act/the rules may be refunded in accordance with the provisions of section 38 and the amount collected as CGST/SGST shall stand reduced to that extent.

Rules for Discharging Liability

14. As per section 35 (8) of the act, the taxable person shall discharge his tax and other dues in the following order:

- (a) self-assessed tax, and other dues related to returns of **previous tax periods**;
- (b) self-assessed tax, and other dues related to return of **current tax period**;
- (c) **any other amount** payable under the Act / the rules including the demand determined under section 51.

15. As per section 35 (9) of the act, person who has paid the tax shall unless the contrary is proved be deemed to have passed on the full incidence of such tax to the recipient.

Provision of Interest on Delayed Payment of Tax

16. As per section 36 (1) of the act, interest shall be payable at a specified rate in case where a person, who fails to pay the tax or any part thereof for the period for which the tax or any part thereof remains unpaid. Rate of interest shall be notified by the Central or a State Government on the recommendation of the Council.

17. As per section 36 (2) of the act, interest shall be calculated from the first day such tax was due to be paid.

18. As per section 36 (3) of the act, interest at the prescribed rate shall be payable in case where taxable person makes an undue or excess claim of ITC under section 29 (10) on such undue or excess claim. Manner for computation of interest shall be prescribed in the rules.

Provisions of TDS

19. **Who can be the deductor:** As per section 37 (1) of the act, the deductor can be:

- (a) a department or establishment of the Central or State Government, or
- (b) Local authority, or
- (c) Governmental agencies, or
- (d) such persons or category of persons as may be notified, by the Central or a State Government on the recommendations of the Council,

20. **Rate of TDS:** The deductor is required to deduct tax at rate of 1% from the payment made or credited to the supplier of taxable goods and/or services, notified by the Central or a State Government on the recommendations of the Council.

21. **Value of supply for TDS:** The deductor is required to deduct tax where total value of supply under a contract exceeds Rs. 10 lakh. As per the explanation to section 37 (1), for the purpose of deduction of tax, the value of supply shall be taken as the amount excluding the tax indicated in the invoice.

22. **Time-limit for Payment:** As per section 37 (2) of the act, the deductor shall be required to pay the amount deducted as tax **within ten days** after the end of the month in which such deduction is made. **Certificate to the deductee:** As per section 37 (3) of the act, deductor shall be required to furnish to the deductee a certificate mentioning therein:

- i. the contract value,
- ii. rate of deduction,
- iii. amount deducted,
- iv. amount paid to the appropriate Government and
- v. such particulars as may be prescribed in this behalf.

23. **Time limit to furnish such certificate & penalty thereof:** As per section 37 (4) of the act, if any deductor fails to furnish to the deductee the certificate, after deducting the TDS **within five days** of crediting the amount so deducted to the appropriate Government, the deductor shall be liable to pay, by way of a late fee, **a sum of Rs. 100/- per day** from the day after the expiry of the five day period until the failure is rectified. However, the amount of **fee shall not exceed Rs 5,000/-**.

24. **Claiming credit of TDS:** Deductor is required to file the return and has to provide the detail of amount of TDS in his return. When deductor pays the amount of TDS, it shall get reflected into the credit ledger of the deductee. As per section **37 (5)**

of the act, the deductee shall claim credit, in his electronic cash ledger, of the tax deducted by the deductor.

25. Interest liability on deductor: As per section **37 (6)** of the act, if any deductor fails to pay the amount of TDS to the credit of the appropriate Government, he shall be liable to pay interest in accordance with the provisions of section 36, in addition to the amount of TDS.

Transitional Provisions on Recovery, etc:

26. Finalization of proceedings relating to output duty liability: As per section **156 (1)** of the act, every proceeding of appeal, revision, review or reference relating to any output duty liability initiated before the implementation of GST, shall be disposed of in accordance with the provisions of the earlier law, and if any amount becomes recoverable as a result of such appeal, revision, review or reference, the same shall be recovered as an arrear of tax under this Act.

27. Treatment of the amount recovered or refunded in pursuance of assessment or adjudication proceedings: As per section 157 (1) of the act, where in pursuance of an assessment or adjudication proceedings instituted, whether before or after the implementation of GST, under the earlier law, any amount of tax, interest, fine or penalty becomes recoverable from the taxable person, the same shall be recovered as an arrear of tax under this Act.

28. Treatment of the amount recovered or refunded pursuant to revision of returns: As per section 158 (1) of the act, where any return, furnished under the earlier law, is revised and if, pursuant to such revision, any amount is found to be recoverable from the taxable person, the same shall be recovered as an arrear of tax under this Act.

Details of three modes of payment: Abstracts from the report of Business Process for GST on GST Payment Process as approved by the Empowered Committee (It may be noted that the rules are yet to be finalized):

- 29.** The following **three modes of payment** are proposed:
- a) Payment by taxpayers through Internet Banking through authorized banks and through credit card/debit card;
Agency banks are permitted to both receive and make payments on behalf of the Government and therefore act as Banker to respective governments. However, authorized banks are only permitted to receive payment of GST on behalf of the Government, and keeping this distinction in view, the expression 'authorized bank' is used throughout this Document.
 - b) Over the Counter payment (OTC) through authorized banks;
 - c) Payment through NEFT/RTGS from any bank (including other than authorized banks).

I PAYMENT BY TAXPAYERS THROUGH INTERNET BANKING THROUGH AUTHORIZED BANKS AND THROUGH CREDIT CARD/ DEBIT CARD:

Process involved in e-payment of GST:

1. Every tax payer who wants to avail the facility of e-payment will access GSTN for generation of the Challan through which payment is to be made. The following methods for creation of draft challan for GST payments are recommended:

- a) By Registered tax payer or his authorized person by logging on to GSTN Common Portal where basic details (such as name, address, email, mobile no. and GSTIN) of the tax payer will be auto populated in the challan;
- b) By authorized representatives of tax payers by logging on to the GSTN Common Portal whereafter the list of registered taxpayers represented by him will be displayed. He can select any tax payer on whose behalf he proposes to pay GST and challan details for such tax payer will be auto populated;
- c) By grant of temporary Registration number by any one Tax authority on GSTN Common Portal which can be used by both the tax authorities for facilitating tax payments on behalf of an unregistered person. Such a situation can arise during enforcement action by a tax authority and this temporary registration can be later converted into a regular registration number (GSTIN) if the tax payer has a regular GST liability to discharge after the enforcement action (detailed procedure described in Para 78 below);
- d) By creation of a challan without requirement of USER ID and Password, for enabling payment of GST by a registered or an unregistered person on behalf of a taxpayer as per the directions of the tax authority using the GSTIN (like the present provision under Service tax). In this method, GSTN would provide for a validation check (like CAPTCHA) so that challan can be created by a person and not by machine.

2. Challans will not have details of jurisdictional authorities. The Tax authorities would send the Taxpayers updated master data to GSTN as well as to Accounting Authorities. The incremental changes in the said master would also be sent on real time basis by the Tax authorities to GSTN and Accounting authorities. As challan would not have a jurisdictional location code, the Accounting Authorities would use the TAXPAYER Master received from Tax authorities for mapping the challans with the Jurisdictional PAOs / tax authorities' offices by having a suitable mapping mechanism.

3. The taxpayer will fill in the in draft challan details of the taxes that are to be paid. The tax payer will have the option to pay CGST, IGST, Additional Tax and SGST concurrently. The tax payers 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. The challan so generated will have a 14-digit (yymm followed by 10-digit) Unique Common Portal Identification Number (CPIN), assigned only when the challan is finally generated. After the challan is generated, it will be frozen and will not be allowed to be modified. The CPIN/challan so generated would be valid for a period of fifteen days. In case of payment through Mode III i.e. NEFT/RTGS, CPINs would remain live with RBI for a period of 30 days.

The system would purge all unused CPINs on the day immediately after the date on which the validity period is over (i.e. 15 days if Mode I or II is selected and 30 days if Mode III is selected for payment).

4. Since there are three modes of payment, the tax payer has to choose the e-payment mode. This mode will also cover payment by Credit/Debit Card which can be used only after log in on the GSTN.

5. Once e-payment mode is selected, options will be shown to taxpayer to choose between Internet Banking and Credit / Debit Cards for making payment. In case Internet Banking mode is selected, a field with drop down box detailing names of various authorized banks, registered with GSTN for Internet Banking, would be displayed.

6. In case of payment through Internet Banking, once the taxpayer chooses a particular bank for payment of taxes, GSTN will direct him to the website of the selected bank. Alongside, GSTN will forward an electronic string to the selected bank carrying the following details for each challan on real time basis:

- a) GSTIN;
- b) CPIN;
- c) Challan Amount;
- d) Break Up of the Amount into CGST, IGST, Additional Tax and SGST ;
- e) State/UT Government to which SGST remittance pertains.

GSTN in consultation with banks would decide about the requirement of merchant code as a GSTN identifier.

7. Taxpayer will make the payment using the **USER ID** and **Password** provided by the bank to enter into the secured e- banking area of his bank. He will select an account for debiting the total tax amount and authorize the payment. While making the payment, the bank will display the breakup of total amount payable into CGST, IGST, Additional Tax and SGST and seek confirmation from the user. No change in the break up as well as the total amount would be allowed on the Bank's portal. In case the user wants to change the break up or the total amount, he should abort the transaction and go back to GSTN portal from the bank's portal and reinitiate the process.

8. After the successful completion of a transaction, e-FPB of the concerned bank will create a unique Challan Identification Number (CIN) against the CPIN. This will be a unique 17-digit number containing 14-digit CPIN generated by GSTN for a particular challan and unique 3-digit Bank code (MICR based which will be communicated by RBI to GSTN). This CIN, as a combination of CPIN and

Bank Code, will be reported by the banks along with its own Unique Bank reference number (BRN). Such CIN is an indicator of successful transaction and will be used as a key field for accounting, reconciliation etc. by taxpayers, accounting authorities and tax authorities. After every successful e-payment transaction, there will be an instantaneous reverse flow of information through an electronic data string from the collecting bank to the GSTN containing the following details:

- a) CIN;
- b) GSTIN;
- c) Bank Reference number (BRN);
[Since there could be maximum of four credits against one debit, banking practice may be ascertained by GSTN. If such transactions (i.e. four credits against one debit require multiple BRNs i.e. one for each credit entry), all BRNs should be reported.]
- d) Challan amount;
- e) Date of Payment;
- f) Time of Payment

9. If the transaction cycle is not completed because of failure of credential verification, there would be no response from the bank to portal informing about the same. If a response (positive or negative) is not received by GSTN within the stipulated period (few minutes), there would be a feature in GSTN to re-ping the bank system and seek a response against CPIN. There may be a scenario in which the internet banking transaction is successful, but the connection drops before the control comes back to GSTN portal, and the re-ping facility will help in finding the status of such transactions.

10. Upon receipt of confirmation from the bank regarding successful completion of the transaction, GSTN will inform the relevant tax authorities about payment of taxes. A copy of the paid challan (downloadable/printable) with auto-populated CIN, date and time of payment and a statement confirming receipt of the amount by the bank will be provided to the taxpayer by GSTN.

11. Thereafter the tax paid challan (CIN) will be credited to the tax ledger account of the taxpayer. It was discussed and agreed by the Committee that there would be 20 ledger accounts (one for each Major heads i.e. CGST, IGST, Additional Tax & SGST and 4 Minor heads for each Major Head i.e. Interest, Penalty, Fees & Others).

II. OVER THE COUNTER PAYMENT THROUGH AUTHORIZED BANKS:

Process involved in Over the Counter payment of GST through authorized banks:

1. Every tax payer who wants to avail the facility of OTC payment (only for paying tax upto certain amount - **The limit will be prescribed in Rules**), will access GSTN for generation of a challan through which payment is to be made.

2. Upon creation of the draft challan, the taxpayer will fill in the details of the taxes that are to be paid. From the available payment options, the taxpayer would select option of cheque, DD or cash based payment. The name of the authorized bank and its location (city/town/village) where the instrument/cash is to be presented is required to be filled in necessarily. No outstation cheques are to be accepted except those which are payable at par at all branches of bank having presence at that location. In case cheque or DD is selected as the mode of payment, entry of Instrument details is recommended, but not mandatory, as the taxpayer may not have the instrument ready at the time of challan generation. The tax payers 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 challan so generated will have a Unique Common Portal Identification Number (CPIN), assigned only when the challan is finally generated, that will help the portal and other authorities in identifying the challan. After the challan is generated, it will be frozen and will not be allowed to be modified. The CPIN / challan so generated would be valid for a period of seven days within which payment is to be tendered. GSTN will inform the challan details including validity period to the CBS (Core Banking System) of the selected bank on a real time basis.

3. Upon successful saving of the challan details, the challan will be available on the dashboard of the taxpayer in downloadable/printable form. So the taxpayer can either download the challan form and print it offline or can print the challan directly from GSTN. If the payment is made by cheque or DD, the challan itself would have a disclaimer that the payment is subject to realization of cheque or DD.

4. Thereafter taxpayer will approach the branch of the authorized bank for payment of taxes along with the instrument or cash. Since the tax payer is required to pay four types of taxes and the amount is required to be credited in the accounts maintained by bank for each type of tax, one option for the tax payer is to submit four instruments for crediting to the respective accounts. Four instruments may not be required if pooled account for realization of instrument is maintained. The matter was discussed in detail and it was recommended, that in the interest of facilitating the payment, each e-FPB should maintain a GST pool account so that the tax payer can issue only one instrument which will be written in the name of the GST pool account of the concerned bank. The bank’s IT system upon realization of the instrument, will immediately first credit that amount to the GST pool account and then immediately transfer that amount to the respective tax accounts [CGST, IGST, Additional Tax or SGST(39 accounts) as per details in challan (CPIN Data)]. However RBI representatives observed that since there would be real-time sharing of data between GSTN and Agency Banks, the details would be available to the bank official before submission of the challan by the customer. In such a situation, GSTN would have already shared the break-up

of the total amount to the bank and the bank needs to credit the same in the appropriate head. The internal Accounting mechanism of bank may be left to the bank to design, as the requirement here is the proper booking and reporting of the transaction which banks would have to ensure. It was decided that those banks need not operate a GST pool account which can credit the amount in the respective tax accounts 'on the fly'.

5. There should be a linkage between the GSTN and the Core Banking System (CBS) of the authorized banks whereby the details of challan are shared with the Authorized bank selected by the tax payer on real time basis so that they can be stored in the database of banks and also to facilitate the cashier / Teller to verify the details of the challan submitted by the remitter. This will eliminate the need for manual feeding of the challan details by the cashier / Teller in the banking system and thereby reduce the errors in data processing.

6. The taxpayer should preferably carry two copies of the challan, one for the bank's record and another for himself to get acknowledgement. In the alternative, he can use a normal pay-in-slip and mention CPIN and challan amount in it. On approaching the bank, he should provide the challan itself or at least CPIN number on normal pay-in-slip to enable the cashier / teller to fetch the challan details in his system. There should be a customized IT application (software) in the bank's system to accept GST receipts on OTC basis. While each branch can accept GST receipts, the credits should always be to the GST accounts maintained and operated by e-FPB. The banks not having such system should not be allowed to accept OTC payments.

7. The cashier / teller will verify the details of challan, payment instrument and amount provided by the taxpayer with those displayed in his system and should accept the receipt only when no discrepancy is found. **If the challan has crossed its validity period of 15 days**, the bank's system itself should bar acceptance of the payment. In any case, the challan would also not be available in the GSTN and consequently in the bank's system because it would have been purged from the System by **GSTN upon the expiry of the 15 day validity period**.

8. The tax payer may make payment by cash or instruments drawn on the same bank or on some other bank in the same city. In case of cash payments or same bank instruments, the payment would be realized immediately and a transaction number (BTR/BRN) and CIN will be generated immediately at the authorized bank's system which will be unique for each and every transaction. Such successful transactions shall be intimated to GSTN on real-time basis with details similar to those mentioned in **para 21** above. This message will convey to the common portal that the payment has been successfully received at the bank's counter.

9. After generation of **BRN**, the bank cashier may give a printed receipt from his system including the Bank's transaction **number (BTR/BRN)** and CIN. However, if it not found feasible to print a separate receipt, the cashier should

record the BRN and CIN generated from the system, on the tax payer's copy of the challan or pay-in-slip as acknowledgment.

10. In case an instrument drawn on another bank in the same city is presented, the payment would not be realized immediately. In such case, CIN will not be generated immediately, and cashier should write only the system generated acknowledgment number on the challan / pay-in-slip and a stamp to the effect that the acknowledgment by the bank is subject to realization of the cheque / DD. The tax-payer need not visit the bank again to get CIN as the same will be communicated to him from GSTN as per the process detailed in **para 47 & 48** below. However, if he does not receive any communication from GSTN within 3 days, he should visit the bank to ascertain the status of his payment.

11. Where the instrument is drawn on another bank, **there should be a validation in the bank's system to prevent out station cheques** (except those payable at par across cities), and to also prevent deduction of commission charges for instruments drawn on another bank in the same city.

12. The Authorized Bank would send the instrument for collection and the transaction would be treated as complete and successful only after the actual receipt of the amount by the said bank.

13. The bank will inform GSTN on real time basis in two stages. First when an instrument is given OTC. At this stage the Authorized bank will forward an electronic string to GSTN which will contain the following details:

- a) CPIN;
- b) GSTIN;
- c) Challan Amount;
- d) Bank's acknowledgement number.

On receipt of the above first message, GSTN should send a SMS to the tax payer, in addition to showing the status of the payment on its portal as subject to realization.

14. **The bank's system would send a second message to GSTN once the cheque is realized**, the total amount is credited first to GST pool account and thereafter the funds are credited to the respective tax accounts as per CPIN data (as stated in para 34 above, GST pool accounts are not required to be maintained by those banks who can credit the amount in the respective tax accounts 'on the fly'). On the day of realization, it will become a successful transaction to be reported to RBI on T+1 (T = 0 being day of realization). After the successful completion of transaction, the second acknowledgement will have the same details as mentioned in para 46 above with three additional details:

- a) CIN;
- b) Date of Realization of Cheque;
- c) Time of realization of cheque;
- d) Bank Transaction Number (BRN/BTN).

On receipt of the second message, GSTN would send a SMS to the tax payer, in addition to updating the status of the payment on its portal.

15. This 2 stage intimation by authorized banks is recommended for the following reasons:

- a) Keep a watch on delays on the part of authorized banks in realization;
- b) Maintaining a system based control as all branches of authorized banks will be allowed for OTC.

16. On receipt of the real time information for a successful transaction as per **para 41** above (cash, cheque on same bank or DD) or receipt of the second message from Bank as per **para 47** above (cheque drawn on another bank), the tax paid challan will be credited to the tax ledger account of the taxpayer. If the OTC payment was subject to realization (**para 46**), the initial status on the dashboard will state so. If the cheque is dishonoured, the presenting bank should inform GSTN about the fact of dishonour and same will be informed by GSTN to taxpayer and reflected on his dashboard.

III. PAYMENT THROUGH NEFT/RTGS FROM ANY BANK (INCLUDING OTHER THAN AUTHORIZED BANKS):

Process involved in payment through NEFT / RTGS from any Bank (including other than authorised banks):

1. Every tax payer who wants to avail the facility of payment through NEFT/RTGS mode will access GSTN for generation of a challan through which payment is to be made.

2. Upon creation of the draft challan, the taxpayer will fill in the details of the taxes that are to be paid. As agreed by the RBI representative, RBI would itself be the recipient of the amount transferred through NEFT / RTGS, thus eliminating the need for a link-up first with an authorized branch to receive the payment and thereafter its transfer to the RBI. RBI would thus perform the role of Authorized bank and that of e-FPB in this mode of payment. In this view, the name of the authorized bank will be auto populated as RBI. As a part of the challan preparation, a tax payer will have to choose the mode of payment as NEFT / RTGS from any bank. The challan so generated will have a Unique Common Portal Identification Number (CPIN), assigned only when the challan is finally generated. The generated Challan will have a NEFT / RTGS mandate associated with it. This mandate will contain NEFT / RTGS pooling bank account details (i.e. of RBI) along with IFSC for receiving money. After the challan is generated, it will be frozen and will not be allowed to be modified. The CPIN so generated would be valid for a period of seven days within which payment is to be tendered but would remain live with RBI for a period of 30 days. NEFT/RTGS mandate would have the validity period of CPIN printed on it. As mentioned above, there shall be a provision in the GST Law whereby any taxpayer using challan under this mode beyond the validity period of seven days of the CPIN more than two times would be barred from availing this facility by GSTN.

3. Upon successful saving of the challan details, the challan will be available on the dashboard of the taxpayer in downloadable / printable form. So the taxpayer can either download the challan form or print it offline or can print the challan directly from GSTN.

4. Besides the generation of challan, GSTN will also generate NEFT / RTGS mandate form in prescribed format. The CPIN generated at the portal shall be incorporated in NEFT/RTGS mandate form in "Account Name" field. RBI would provide for suitable validations for this field. The "Sender to Receiver" field shall carry the entry "GST Payment". In case of NEFT / RTGS payments, there shall also be a disclaimer on the challan copy and the mandate form that the payment through NEFT / RTGS is a transaction between the tax payer and his bank and the payment will be deemed to be received by the government only when the amount is credited to the designated account in RBI. **The payments in this mode would be permitted only against cheques and no cash payments would be permitted to initiate NEFT / RTGS transaction for the reasons mentioned in Para 67 below.**

5. The following details will be available in the NEFT / RTGS mandate form:

- a) Beneficiary IFSC : IFSC of RBI hosting the NEFT / RTGS account for GST;
- b) Beneficiary Account Number : Account Number of RBI's pooled account for GST;
- c) Account Name : CPIN of relevant challan (suitable validation to be provided by RBI);
- d) Total Amount;
- e) Sender to Receiver Remarks: GST Payment.

The form will have a provision to write the NEFT/RTGS charges manually and then record the total amount to be collected by the bank (sum of challan amount and charges). The entire NEFT/RTGS form will be auto-populated except the part relating to the charges.

6. Thereafter taxpayer can print a copy of NEFT / RTGS mandate form and approach his bank branch (any bank) for payment of taxes (within a period of seven days of the generation of CPIN, so that when the amount is received by RBI, the CPIN is still valid.) The payments in this mode would be permitted only against cheques and no cash payments would be permitted to initiate NEFT / RTGS transaction. NEFT/RTGS mandate would have validity period of CPIN printed on it. As already mentioned above, there should be a provision in GST law whereby any taxpayer using this mode beyond the validity period (seven days) of the CPIN more than twice would be barred from availing this facility by GSTN.

7. GSTN will inform RBI on real time basis the following details:

- a) CPIN;
- b) GSTIN;
- c) Challan Amount;
- d) Break Up of the Amount into CGST, IGST, Additional Tax and SGST;
- e) State/UT Government to which SGST remittance pertains.

8. The accepting bank should add its charges for doing NEFT / RTGS remittance and collect gross amount from the customer. The amount indicated as GST amount for remittance should be transferred by the remitter bank to the designated account of the government in RBI. For the proper identification of the transaction, there should be a Unique Transaction Reference (UTR) that should be conveyed along with file details to RBI. The remitter bank must also mention the CPIN in the NEFT/RTGS mandate as part of the Account Name. The Remarks field shall mention 'GST Payment'.

9. Upon successful completion of the transfer at the end of the remitter bank, the remitter will get a receipt detailing Unique Transaction Reference (UTR). Taxpayer should thereafter login back to GSTN portal and update the challan details with Unique Transaction Reference (UTR) provided by the remitter bank for NEFT / RTGS transaction. An alternate SMS based facility for such updating by the tax payer (instead of internet based) may be established by GSTN to facilitate those taxpayers who do not have an internet access. On receipt of the transaction number, GSTN will communicate this Unique Transaction Reference (UTR) (for the corresponding CPIN) also to RBI on real time basis.

10. Once the RBI receives the payment in its account with NEFT/RTGS message, it will link up the payment with the CPIN earlier received from GSTN and report the transaction to GSTN on real time basis through an electronic string which will contain the following details:

- a) CIN (CPIN and Bank Code of RBI);
- b) GSTIN;
- c) Challan Amount;
- d) BRN of RBI;
- e) Unique Transaction Reference (UTR);
- f) Time of Payment;
- g) Date of Payment.

11. Upon receipt of the electronic string regarding successful completion of the transaction by GSTN, the tax paid challan will be credited to the cash ledger of the taxpayer. The GSTN will thereafter lock the CIN so that it cannot be used again.

12. As recommended in para 58 above, the Mode III may be implemented with arrangement of CPIN being mentioned as the "Account Name" in NEFT/RTGS message. RBI will provide for a suitable validation for this field. In such arrangement, the chances of error will be only marginal as the remitter banks take care to mention the account name correctly in any NEFT/RTGS message. In case of error, NEFT/RTGS unique transaction number (UTR) intimated by the tax payer can be used as a secondary identifier. The primary matching by RBI should be with reference to CPIN only, i.e., CPIN as contained in NEFT/RTGS message and CPIN data provided by GSTN. On successful matching, the GST pooled account should be debited and the respective 39 tax accounts (CGST, IGST, Additional Tax and SGST) should be credited simultaneously as per

the challan details with generation of CIN and BRNs. At this stage, the transaction should be treated as successful and CIN and BRNs should be communicated to GSTN by RBI.

13. As stated in para 15 above, though the CPIN is valid for a period of 7 days, the same would remain live with RBI for a period of 30 days. Thus RBI can accept the payment during the said period of 30 days. In case payment is received after the expiry of 30 days, RBI would refund the said amount to the remitter bank. Keeping in view this requirement, it has been recommended, as mentioned above, that payments in cash would not be accepted for initiating NEFT / RTGS transaction.

14. The Committee deliberated the need for a pooled GST account. Based on inputs provided by RBI, a receiving account is necessary for NEFT/RTGS process. Therefore, a pooled GST account as an operational necessity will have to be opened in RBI. This account may be opened in the name of the Accounting Authority of the Government of India solely for the operational reasons as a transit account. There should be a validation in RBI system that no funds pertaining to the transactions with date value T=0 are left in this account when the scroll is prepared on T+1.

15. If the matching based on CPIN does not succeed, the role of UTR as secondary matching identifier becomes important. However, it is possible that RBI may receive NEFT/RTGS message even before the tax payer updates his challan with UTR number and GSTN informs RBI on real time basis. In case of failure of CPIN based matching and UTR not being available, the funds will remain in the pooled account till the UTR is received or scroll is prepared, whichever is earlier. Such credit in the pooled account should be with a "CPIN mis-match" flag that a secondary level matching needs to be carried out before scroll is generated on T+1 basis. Once UTR is provided by GSTN, the secondary matching of all such transactions remaining in the pooled account should be carried out. If a transaction can now be linked to the correct challan, the respective Tax accounts should be credited with generation of CIN and BRNs. There should be a validation in RBI system that all the transactions with "CPIN mis-match" and date value T=0 in the pooled account are subjected to secondary level matching before generation of scroll for all taxes.

16. If the matching based on CPIN and UTR NEFT / RTGS transaction number UTR both fails, the entire receipt should be credited to CGST account with a "CPIN mis-match" flag so that the Accounting Authorities of Government of India can account such amount under a separate suspense sub-head (possibly receipts awaiting transfer i.e. RAT).

17. In all such cases of CGST credits with "CPIN mis-match", the tax payer will not get a confirmation SMS from GSTN and his ledger will not reflect the payment. He can be expected to provide UTR at this stage. Once the UTR becomes available, GSTN should carry out the matching with CPIN, and communicate following

details to the Accounting Authorities of Government of India and concerned State Government.

- a) RBI scroll number and date which carried the credit (CGST scroll);
- b) BRN;
- c) CIN (of credit to CGST account with “CPIN mis-match” flag);
- d) Challan amount;
- e) Breakup of total amount in CGST, IGST, Additional Tax and SGST;
- f) Name of State Government to whom SGST pertains.

18. Based on the communication from GSTN, CGST Accounting Authorities shall take steps for clearing the suspense sub-head by transferring the credit to CGST, IGST and Additional Tax accounting heads, and for carrying out inter-government transfer to the concerned State Government.

19. The reconciliation between e-Scroll sent by RBI on T+1 and the transaction details available with GSTN (provided earlier by RBI) will be performed using CIN and Unique Transaction Reference (UTR).



***BACKGROUND MATERIAL
FOR TRAINING ON
'GOODS AND SERVICES TAX'***



**COMPILED BY
NATIONAL ACADEMY OF CUSTOMS EXCISE AND NARCOTICS
FARIDABAD**

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6. Electronic Commerce

In the existing VAT, service tax and excise legislation, there are no specific provisions for e-commerce operators to pay taxes on sale of goods or to make any tax deductions from the payments being made by them to actual seller of goods. However, many states, under their VAT law have started prescribing returns to be filed by the e-commerce operators with information relating to the supplies made through their portal. In order to mitigate the challenges being posed by e-commerce transactions, the Model GST Law (MGL) endeavors to establish a compliance mechanism to ensure that the appropriate taxes are discharged by the actual suppliers supplying goods or services through electronic portals. The pivotal point from where this can be ensured is the E-commerce operator.

2. Treatment of supplies through e-commerce mode:

2.1 Many models are in vogue for making supplies through e-commerce route. Most common models are 'inventory model', 'market place model', 'fulfillment model', 'hybrid model' and 'aggregator model', etc. A distinction has been made between the supplies of goods or services being made under various models.

2.2 Section 43B(e) of the MGL defines an Electronic Commerce Operator (Operator) as every person who owns, operates or manages an electronic platform which is engaged in facilitating the supply of any goods and/or services. Also a person providing any information or any other services incidental to or in connection with such supply of goods and services through electronic platform would be considered as an Operator. A person supplying goods/services on his own account, however, would not be considered as an Operator. For instance, Amazon and Flipkart are Operators because they are facilitating actual suppliers to supply goods through their platform, however, Titan supplying watches and jewels through its own website would not be considered as an Operator for the purposes of this provision. Similarly Amazon and Flipkart will not be treated as Operators in relation to those supplies which they make on their own account.

2.3 The GST provisions relating to supplies through e-commerce mode prescribe the obligations for Operators facilitating supplies by actual suppliers; actual supplier supplying goods or services through Operators; supplies through e-commerce mode on own account; supplies of branded services by aggregators and powers and obligations of the government under the MGL. The following discussion elaborates these obligations and powers.

3. Obligations in respect of supplies made through e-commerce route:

3.1 All supplies of goods and / or services, whether through e-commerce route or otherwise, are subject to payment of CGST & SGST if the supplies are treated as intra-state supplies or payment of IGST if the supplies are treated as inter-state supplies in

terms of section 3 and 3A of the IGST Act respectively. The suppliers are eligible for the benefit of threshold exemption provided in the MGL. Section 19 r/w Schedule-III of the MGL, however, provides that the threshold exemption is not available to *inter alia* following categories of suppliers:

- (i) person making inter-state supplies;
- (ii) person supplying goods and / or services, other than branded services, through e-commerce Operator;
- (iii) every electronic commerce Operator;
- (iv) aggregator providing branded services under his brand name or trade name.

3.2 It may be seen that the actual supplier of goods and / or services and e-commerce operator making supplies of goods and / or services on his own account would be liable to discharge liability of GST in respect of supplies made by them and they are even not eligible for any threshold benefit either. They are liable to comply with all the obligations cast on normal suppliers under MGL / IGST Act like obtaining registration, payment of GST, filing of periodical returns, etc.

3.3 A separate category of supplier of branded services has also been provided in the MGL. The aggregator providing a branded service under his brand name or trade name would be responsible for payment of GST instead of the actual supplier of service. This concept has been borrowed from the present service tax law. Companies like Ola, Uber would get covered under this provision. Section 43(a), 43(c) and 43(b) of the MGL defines aggregator, branded services and brand name / trade name respectively..

4. Obligations of Operator in respect of supplies made by actual suppliers:

4.1 Under Section 43C(1) of the MGL, the Operator is required to collect (i.e. deduct) an amount out of the consideration paid or payable to the actual supplier of goods or services in respect of supplies of goods and / or services made through such Operator. The Government, on the recommendation of the GST Council, would specify the rate for such collection (deduction). The timings for such collection/deduction are earlier of the two events:

- (i) the time of credit of any amount to the account of the actual supplier of goods or services;
- (ii) the time of payment of any amount in cash or by any other mode.

This provision casts an obligation on the Operator to collect an amount at the given rate out of the proceeds payable to the actual supplier of goods or services making supplies through it.

4.2 The amount so collected by the Operator is to be paid to the credit of appropriate government within 10 days after the end of the month in which amount was so collected

/ deducted. Further, the Operator is required to file a Statement containing all amounts collected by him for the supplies made through his Portal within 10 days of the end of the calendar month to which such statement pertains. The said statement would contain the names of the supplier(s), details of respective supplies made by them and the amount collected on their behalf. The Form and Manner of the said Statement would be prescribed in the GST Rules.

4.3 It may be noted that the Operator is broadly responsible to collect/deduct the specified percentage of amount out of the proceeds payable to the actual suppliers, pay such amount to the government and file a statement containing respective details. The time available to the Operator to deposit the collected amount on behalf of suppliers and to file the respective Statement containing the details of such collection is 10 days after the end of the month to which such collection relates. Further, the Operator is responsible to provide the information sought by the Government relating to the details of the supplies made by the actual suppliers using his Portal.

5. Obligations of actual suppliers making supplies through the Operators:

5.1 The suppliers on whose behalf payments have been made to the Government by the Operator after making deductions out of the amount collected on account of their supply proceeds, would be entitled to claim credit of such amount in their respective electronic cash ledger.

5.2 The details of supplies contained in the statements submitted by the Operator would be matched with the information contained in the periodical returns submitted by the actual suppliers and the discrepancy, if any would be notified to both Operator as well as actual supplier. In case of any discrepancy, the actual supplier need to rectify that in the same month in which the discrepancy is communicated, and this should be reflected in the return filed for that month. In case such rectification is not made within the same month, the amount of discrepancy shall be added to the output liability of the actual supplier for the next calendar month in the prescribed manner. The said liability is to be paid by the actual supplier along with interest from the date when such tax was due.

6. Powers of Government:

6.1 An officer not below the rank of Joint Commissioner may require the Operator to furnish details relating to:

- (i) supplies of goods / services effected through the Operator during any period;
- (ii) stock of goods held by actual supplier making supplies through such Operator in the godowns or warehouses belonging to the Operator and registered as additional place of business by the actual supplier.

6.2 The Operator is required to furnish the above information within 5 working days from the date of service of notice asking such information. In case of failure to furnish such information, the penalty could be extended to Rs. 25,000/- .

7. Conclusion:

7.1 In sum, the e-commerce operators facilitating supplies by actual suppliers would be required to collect TCS on such supplies besides being liable for paying GST as supplier of services rendered in relation to such supplies, while those making supplies on their own account or the aggregators making supplies of branded services would be liable to discharge the GST liability as suppliers of goods or services.

7.2 It may be noted that as far as e-commerce operators are concerned, no tax liability has been imposed upon them in respect of supplies made by actual suppliers through them except for the liability to discharge tax on the services rendered in relation to such supplies. Their obligation is restricted to provide information to the government regarding the details of supplies made by the actual suppliers and to deduct and deposit a percentage of taxes from the collection payable to the said suppliers.

ANNEXURE

LIST OF RELEVANT PROVISIONS

1. Section 43B: E-commerce related definitions
2. Section 43C: TCS
3. Section 3(4): Supply of a branded service by an aggregator
4. Section 7: Levy and collection of CGST / SGST
5. Section 9: Taxable person
6. Section 19 r/w Schedule – III (para 5(i), (viii), (ix) & (x): Categories of persons who are required to get registered notwithstanding the general provisions relating to threshold
7. Section 3 & 3A of IGST Act: Nature of supply
8. Section 4 of IGST Act: Levy and collection of IGST
9. Section 5 of IGST Act: Place of provision for goods
10. Section 6 of IGST Act: Place of provision for services



***BACKGROUND MATERIAL
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**COMPILED BY
NATIONAL ACADEMY OF CUSTOMS EXCISE AND NARCOTICS
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7. Job Work

Movement of goods to job workers is an essential business situation which occurs frequently. Many times a manufacturer send goods to a job worker for getting further work done on them, and receive the goods back from job worker or sell the goods directly from the place of job worker. The tax position along with this movement of goods needs specific attention because the availability of input credit depends on use of goods for the manufacture of final product, and once goods are removed from the factory, it is significant to ensure that these goods either come back to the factory of manufacturer or otherwise are incorporated in the final goods sold by the manufacturer. In the existing regime, the value addition by the job worker is either taxable as manufacture or as taxable service, and in both cases, an exemption is granted to job worker in case, the principal manufacturer pays duty on the goods received after job work including the value addition. Presently the concept of taxation of the goods sent to a job worker is used in central laws, namely central excise and service tax. It is not used in VAT laws. In GST Act, the same concept has been adopted more or less.

2. Concept of Job Work:

2.1 Section 2(62) of the MGL provides that “**job work**” means *undertaking any treatment or process by a person on goods belonging to another registered taxable person and the expression “job worker” shall be construed accordingly*. This definition is much wider than the one given in Notification No. 214/86 – CE dated 23rd March, 1986 as amended, wherein 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 regime.

3. Concept of supply:

3.1 As the incidence of supply attracts GST, the first question is whether the goods sent by the principal to a job-worker is a supply of goods or not. In this regard, Para 5 of Schedule I of the MGL states that the supply of goods and/or services by a taxable person to another taxable or non-taxable person in the course of furtherance of business shall be treated as supply without consideration. However, the proviso to the said para carves out a distinction in case of supply of goods for job-work by a registered taxable person to a job-worker in terms of section 43A of the MGL. The proviso clearly spells out that the supply of goods by a registered taxable person (principal) to job worker shall not be regarded as supply of goods. Therefore, it can be inferred that no GST shall be applicable on the goods supplied by the registered principal to a job worker. This position is same as is prevalent in the present law.

3.2 Section 43A of the MGL provides that the registered taxable person (principal) can send the taxable goods to a job worker for job work without payment of tax. He can further send the goods from one job worker to another job worker and so on. The principal can bring back such goods, after completion of job work, for supply from his own place of business either on payment of tax within India or the goods can be cleared for exports with or without payment of tax. The principal need not bring back the goods to his place of business and he can supply such goods from the place of business of job worker itself provided the principal has declared the premises of job worker as his additional place of business. 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 in this behalf.

3.3 Explanation 2 to para 1 of Schedule-III also provides that the supply of goods, after completion of job-work, by a registered job-worker shall be treated as the supply of goods by the principal and the value of such goods shall not be included in the aggregate turnover of the registered job worker.

4. Position of Input Credit in respect of the goods sent to job worker:

4.1 In the Central Excise Law, since duty is payable at the time of removal of goods from the factory of the manufacturer, the incidence of sending goods to job worker which involves removal of goods from the manufacturer's factory has been specifically noted and its tax position has been specifically carved out. However, the input credit position and duty payment position at the time of removal of goods from the factory are inter-twined because of the fact that the reversal of respective credit on account of removal of goods practically amounts to payment of duty on such removal.

4.2 In the MGL, aspects relating to taking input tax credit in respect of inputs/capital goods sent for job-work have been specifically dealt in Section 16A, which provides that the credit of taxes paid on inputs or capital goods can be taken in the following manner:

1. Principal shall be entitled to take credit of inputs sent to a job-worker if the said inputs, after completion of job-work are received back in 180 days from the date of being sent out. In case the inputs are sent directly to the job-worker, the date shall be counted from the date of receipt of inputs by job-worker. Further the credit has to be reversed, with interest, in case the inputs are not received back within the specified time. The credit can be reclaimed when the inputs are actually received back.
2. Principal shall be entitled to take credit of capital goods sent to a job-worker if the said capital goods, after completion of job-work are received back in 2 years from the date of being sent out. In case the capital goods are sent directly to the job-worker, the date shall be counted from the date of receipt of capital goods by job-worker. Further the credit has to be reversed, with interest, in case the

capital goods are not received back within the specified time. The credit can be reclaimed when the capital goods are actually received back.

4.3 This position is similar to the existing position as is obtaining in the CENVAT Credit Rules, 2004 (CCR). The related existing provisions provide that when inputs are removed from factory to job worker, respective CENVAT credit is not to be reversed (or duty is not payable) at the time of removal; and in case such goods are received back in the factory within 180 days of removal, there is no need for any credit reversal or duty payment on this account. Similar provision exists for sending the capital goods to job worker if the goods are returned within 2 years of removal. In case, goods do not come back within the specified time frame of 180 days or 2 years, the respective credit on these goods has to be reversed (or duty to be paid equal to the amount of credit taken on them), and whenever the goods come back, the same credit can be taken again by the manufacturer.

5. **Movement of goods from Job Worker's place:**

5.1 There could be three possible situations –

1. The goods sent from first job-worker to another job worker - the permission taken from the Commissioner by special order would suffice.
2. After completion of job-work, the Commissioner may allow to bring back such goods without payment of tax to any place of business of the principal (as defined in section 2(75) of MGL), from where the goods will be finally supplied on payment of tax within India or the goods may be exported with or without payment of tax.
3. After completion of job-work, the Commissioner may allow the registered taxable person to supply the goods directly to the customers from the place of job worker on payment of tax within India or export the goods with or without payment of tax. This is allowed only when –
 - a. Either the job worker is registered taxable person under GST; or
 - b. The principal declares the place of business of job worker as his additional place of business; or
 - c. The goods supplied are notified goods where above conditions do not apply.

5.2 It may be noted that the provisions relating to 'job work' are applicable only to taxable goods. In other words, these provisions are not applicable to exempted or non-taxable goods. The principal, if intends to send exempt / non-taxable goods for job work, can devise his own procedure for the same.

5.3 The responsibility for accountability of the goods sent for job work including payment of tax thereon shall always lie on the principal.

6. Transitional provisions:

6.1 One of the critical aspects while transition into GST would be the goods already sent on job-work prior to the appointed date i.e. date on which Act shall come into effect. In this regard, transitional provisions have been specified for inputs/semi-finished goods/finished goods sent to job-worker prior to appointed date but received on or after the appointed date. Further, the provisions have been specified from the perspective of CGST as well as SGST. Section 150 and 151 of the MGL deals with the job work which may amount to manufacture and Section 152 deals with the finished goods sent for specified services like testing etc. which are chargeable to service tax in the existing regime.

6.2 No transitional provision has been provided for the capital goods removed prior to appointed day and received back thereafter.

6.3 As per the provisions contained in Section 150 to 152 of the MGL, where inputs/semi-finished goods/finished goods are sent for job work, etc. prior to the appointed day and are received back after that day, there could be following situations –

1. When goods are received back within 6 months of the appointed day, no tax shall be payable under GST regime – the manufacturer would have already taken credit on such inputs.
2. When goods are not received back within 6 months of the appointed day, the time may be extended by a maximum period of 2 months by the appropriate authority on showing a reasonable cause, no tax shall be payable under GST regime – the manufacturer would have already taken credit on such inputs.
3. When goods are not received back within 6 months of the appointed day or the extended period, immediately after the expiry of such period, the principal (known as manufacturer under the earlier regime) is liable to pay GST (both CGST and SGST) on the goods so removed earlier.

Note: The manufacturer would have already taken credit on such inputs in the earlier regime which would have got converted to the GST credit for the equal value, the GST payable by the principal would present an equitable tax position.

4. When after six months from appointed day or extended period thereafter, at any point of time, goods are finally received back from the job worker, the job worker will charge GST (both CGST and SGST) as such return of goods would constitute supply for the job worker.

6.4 The above facility would be applicable only when both principal and job worker declare the details of stock of inputs, semi-finished goods or finished goods, as the case may be, on the appointed day.

7. Conclusion:

7.1 In sum, it may be mentioned that the provisions as obtaining in the present central taxation system have been retained in the GST regime.

ANNEXURE

LIST OF RELEVANT PROVISIONS

1. Definitions:
 - a) Section 2 (62): Job work & Job worker
 - b) Section 2 (75): Place of Business
 - c) Section 2(96) r/w Section 9: Taxable person
2. Section 16A: Taking ITC of tax paid on inputs or capital goods sent for job work
3. Section 43A: Sending goods for job work
4. Para 5 of Schedule-I: Supply of goods and / or services, without consideration, to a job worker is not to be treated as supply
5. Explanation 2 to para 1 of Schedule-III: Value of goods after job work not to be included in aggregate turnover of registered job worker
6. Transitional Provisions:
 - a) Section 150: Inputs removed for job work before appointed day but returned after the appointed day
 - b) Section 151: Semi-finished removed for job work before appointed day but returned after the appointed day
 - c) Section 152: Finished goods removed for carrying out certain processes before appointed day but returned after the appointed day



***BACKGROUND MATERIAL
FOR TRAINING ON
'GOODS AND SERVICES TAX'***



**COMPILED BY
NATIONAL ACADEMY OF CUSTOMS EXCISE AND NARCOTICS
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8. Input Tax Credit

One of the key features of Goods and Service Tax (GST) in India is its uninterrupted and continuous chain of input tax credit (ITC). In the present indirect taxation system, cascading of tax is significant due to non-availability of ITC at various stages. For example ITC of CST, Entry Tax, Luxury Tax is not available. Similarly ITC of VAT is not available to manufacturers and service providers and ITC of Central Excise duty, service tax & CVD is not admissible to dealers in goods. Under GST law, ITC will follow supply chain not only in intra-State transactions but also in inter-State transactions. Moreover, credit of tax paid at the time of import of goods and services would also be creditable. This is expected to result into significant reduction in cascading of taxes.

2. Concept of ITC in Model GST Law (MGL)

2.1 Section 2 (58) of MGL defines ITC as credit of input tax as defined in section 2 (56) [actually it is section 2 (57)]. "Input tax" has been defined in section 2 (57) as

"input tax" in relation to a taxable person, means the {IGST and CGST}/{IGST and SGST} charged on any supply of goods and/or services to him which are used, or are intended to be used, in the course or furtherance of his business and includes the tax payable under sub-section (3) of section 7.

It implies that input tax consist of IGST & CGST in CGST Act and IGST & SGST in SGST Act. It also provides that the underlying supply of goods and/or services should be used or intended to be used by the taxable person in the course or furtherance of his business. Further, credit of tax paid on reverse charge basis can also be taken by the taxable person. It may be noted that since CGST Act also recognizes credit of IGST, the credit of IGST is allowed to be used for discharging CGST liability. Similarly, SGST Act also recognizes credit of IGST, so the credit of IGST is allowed to be used for discharging SGST liability.

2.2 Under section 2 (1) (d) of the IGST Act, **input tax** is defined as IGST, CGST or SGST charged on any supply of goods and / or services. So, in the IGST Act, input tax consists of all three taxes, IGST, CGST and SGST. It implies that credit of all three can be used for discharging IGST liability.

2.3 As ITC is credit of tax paid on inward supplies of goods or services, it is essential to understand three terms, namely inputs, capital goods and input services.

2.4 As per section 2 (54) of the MGL, *"input" means any goods other than capital goods, subject to exceptions as may be provided under this Act (i.e. MGL) or the rules made thereunder, used or intended to be used by a supplier for making an outwardsupply in the course or furtherance of business.*

2.5 As per section 2 (55) of the MGL, “**input service**” means any service, subject to exceptions as may be provided under this Act or the rules made thereunder, used or intended to be used by a supplier for making an outwardsupply in the course or furtherance of business.

2.6 As per section 2 (20) of MGL “**capital goods**” means: -

(A) the following goods, namely:-

(i) all goods falling within Chapter 82, Chapter 84, Chapter 85, Chapter 90, heading 6805, grinding wheels and the like, and parts thereof falling under heading 6804 of the Schedule to this Act;

(ii) pollution control equipment;

(iii) components, spares and accessories of the goods specified at (i) and (ii);

(iv) moulds and dies, jigs and fixtures;

(v) refractories and refractory materials;

(vi) tubes and pipes and fittings thereof;

(vii) storage tank; and

(viii) motor vehicles other than those falling under tariff headings 8702, 8703, 8704, 8711 and their chassis but including dumpers and tippers

used-

(1) at the place of business for supply of goods; or

(2) outside the place of business for generation of electricity for captive use at the place of business; or

(3) for supply of services,

(B) motor vehicle designed for transportation of goods including their chassis registered in the name of the supplier of service, when used for

(i) supplying the service of renting of such motor vehicle; or

(ii) transportation of inputs and capital goods used for supply of service; or

(iii) supply of courier agency service;

(C) motor vehicle designed to carry passengers including their chassis, registered in the name of the supplier of service, when used for supplying the service of-

(i) transportation of passengers; or

(ii) renting of such motor vehicle; or

(iii) imparting motor driving skills;

(D) Components, spares and accessories of motor vehicles which are capital goods for the taxable person.

2.7 It may be seen that the definition of capital goods is borrowed from the CENVAT Credit Rules. There is however a distinguishing feature in GST. Under the GST regime, ITC in respect of capital goods is allowed to be taken in one go unlike staggered availment presently permitted in Central Excise and Service Tax and in some VAT laws. It is also important to note that although ITC on inputs and capital goods is permitted in one go yet inputs and capital goods have been defined separately. The necessity of separate definitions of inputs and capital goods is required because some provisions of MGL differentiate capital goods from inputs. For example, when capital goods, on which ITC had been taken, are supplied, the reversal of ITC or payment of ITC is calculated in a specific manner in terms of the provisions contained in section 16 (14) of MGL. Similarly, capital goods and inputs have been treated differently, in section 16A, when these are sent for job work.

3. Additional Concepts:

In order to fully comprehend the concept of ITC, some other concepts like supply, inward supply, outward supply, output tax, place of business, reverse charge, valid return, etc. as provided in the MGL are discussed in subsequent paras.

3.1 In terms of section 2 (92) of MGL, “**supply**” shall have the meaning as assigned to it in section 3. Section 3 defines supply as:

“(1) Supply includes

(a) all forms of supply of goods and/or services such as 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,

(b) importation of service, whether or not for a consideration and whether or not in the course or furtherance of business, and

(c) a supply specified in Schedule I, made or agreed to be made without a consideration.

(2) Schedule II, in respect of matters mentioned therein, shall apply for determining what is, or is to be treated as a supply of goods or a supply of services.

(2A) Where a person acting as an agent who, for an agreed commission or brokerage, either supplies or receives any goods and/or services on behalf of any principal, the transaction between such principal and agent shall be deemed to be a supply.

(3) Subject to sub-section (2), the Central or a State Government may, upon recommendation of the Council, specify, by notification, the transactions that are to be treated as—

- (i) a supply of goods and not as a supply of services; or
- (ii) a supply of services and not as a supply of goods; or
- (iii) neither a supply of goods nor a supply of services.

(4) Notwithstanding anything contained in sub-section (1), the supply of any branded service by an aggregator, as defined in section 43B, under a brand name or trade name owned by him shall be deemed to be a supply of the said service by the said aggregator.”

Thus, the definition and scope of supply in MGL is quite expansive and comprehensive. Supply includes all forms of supply whether or not for a consideration as long as it is in the course or furtherance of business.

3.2 **Inward supply** in relation to a person, in terms of section 2 (61) of MGL, shall mean *receipt of goods and/or services whether by purchase, acquisition or any other means and whether or not for any consideration*. Thus, it covers receipt of goods or services by any means with or without consideration.

3.3 **Outward supply** in relation to a person, in terms of section 2 (73) of MGL, shall mean *supply of goods and/or services, whether by sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made by such person in the course or furtherance of business except in case of such supplies where the tax is payable on reverse charge basis*. Thus, it covers all forms of supply excluding supplies where GST is payable by the recipient under reverse charge mechanism. It is important to note that the supply is not to be treated as outward supply in the hands of the recipient although he is liable to discharge the GST liability. In view of this, he cannot discharge this tax liability by utilizing the ITC available with him and he would be required to discharge this tax liability in cash only i.e. through electronic cash ledger only.

3.4 **Output tax** in relation to a taxable person, in terms of section 2 (72) of MGL, means *the CGST/SGST chargeable under this Act on taxable supply of goods and/or services made by him or by his agent and excludes tax payable by him on reverse charge basis*. Section 2(1)(g) of the IGST Act defines output tax as **“output tax”** in relation to a taxable person, means *the IGST chargeable under the Act on taxable supply of goods and/or services by him or his agent and excludes tax payable by him on reverse charge basis*. It can be inferred from this definition that tax payable by a recipient on reverse charge basis is not an output tax although he is liable to discharge the GST liability. In view of this, he cannot discharge this tax liability by utilizing the ITC available with him and he would be required to discharge this tax liability in cash only i.e. through electronic cash ledger only.

3.5 **Place of business**, in terms of section 2 (75) of MGL, 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, provides or receives goods and/or services; 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.”

3.6 It may be seen from the definition of capital goods, as contained in para 2.6 above, that the place of business plays an important role with respect to availability of ITC on capital goods. The ITC on capital goods is admissible if used:

- (i) at the place of business for supply of goods;
- (ii) outside the place of business for generation of electricity for captive use at the place of business;
- (iii) for supply of services.

Thus capital goods have to be used at the place of business by the supplier of goods whereas they can be used anywhere by supplier of services.

3.7 **Reverse charge**, in terms of section 2 (85) of MGL, *means the liability to pay tax by the person receiving goods and/or services instead of the person supplying the goods and/or services in respect of such categories of supplies as the Central or a State Government may, on the recommendation of the Council, by notification, specify.* Provision for Reverse charge liability has been created under section 7 (3) of MGL which provides that *“notwithstanding anything contained in sub-section (2), the Central or a State Government may, on the recommendation of the Council, by notification, specify categories of supply of goods and/or services the tax on which is payable on reverse charge basis and the tax thereon shall be paid by the person receiving such goods and/or services and all the provisions of this Act shall apply to such person as if he is the person liable for paying the tax in relation to such goods and/or services”.*

3.8 Thus, section 2 (85) read with section 7 (3) of the MGL puts onus of payment of tax in certain supplies on the recipient of goods and / or services. It may be noted that this arrangement has precedence in the present service tax law. The objective of this special provision is to cover those sectors which are difficult to tax because of their unorganized and scattered nature.

3.9 As per the provisions contained in section 2(106) of the MGL, **Valid return** means the return as per section 27 of the MGL. Section 27(3) of the MGL provides that the return furnished by a taxable person shall not be treated as valid return unless the full tax due as per the said return has been paid. It is only the valid return that would be used for allowing ITC to the recipient. In other words, unless the supplier has not 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.

4. Categories of eligible taxpayers who can avail ITC:

4.1 The scheme of taking ITC is provided under section 16 of Chapter V of the MGL.

4.2 As per the provisions contained in section 16(1) of the MGL, every registered taxable person shall be entitled to ITC which shall be credited to the electronic credit ledger of such person. The conditions and restrictions on taking ITC shall be prescribed under rules. ITC can be taken in time and manner provided in section 35 of MGL. Section 35(2) of the MGL (similar provision contained in section 7(2) of the IGST Act) provides that the ITC as self-assessed in the return would be credited to the electronic credit ledger of the recipient.

4.3 Section 16(2) of the MGL provides that a person who has applied for a new registration shall be entitled to ITC in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock (hereinafter called 'goods held in stock') on the day immediately preceding the date from which he becomes liable to pay tax. However, the person has to apply for registration within thirty days from the date on which he becomes liable to registration. The amount of ITC would be calculated in accordance with the generally accepted accounting principles. It may be inferred, therefore, that a new registrant would not be eligible for ITC in respect of goods held in stock if he does not apply for registration within thirty days of the liability to obtain registration.

4.4 A person can take voluntary registration under section 19 (3) of the MGL and pay tax even when his aggregate turnover is below the exemption threshold. Section 16(2A) of the MGL allows such person to take ITC in respect of "goods held in stock" on the day immediately preceding the date of registration. The amount of ITC would be calculated in accordance with the generally accepted accounting principles.

4.5 Section 8 of the MGL provides for composition scheme which provides that the person, whose aggregate turnover is below certain threshold, can opt to pay tax on his turnover at certain specified rate. A person opting for composition levy is not eligible to take ITC. Such person can opt out of composition scheme or ceases to be a composition taxpayer after crossing the prescribed composition threshold. Such person at the time of switching over to normal scheme, in terms of section 16(3) of the MGL, shall be entitled to take ITC in respect of "goods held in stock" on the day immediately preceding the date from which he becomes liable to pay tax as normal taxpayer. The amount of ITC would be calculated in accordance with the generally accepted accounting principles.

5. General disciplines in taking ITC:

5.1 Section 16 (11) of the MGL lays down four essential conditions for entitlement of ITC:

- (a) The registered taxable person should be in possession of tax paying document issued by a supplier;
- (b) The taxable person has received the goods and / or services;
- (c) The tax charged on such supply has been actually paid to the government either in cash or through utilization of input tax credit; and
- (d) The taxable person should have furnished the return under section 27.

5.2 Under the present central indirect tax laws, filing of return by the recipient is not compulsory in order to take ITC. A combined reading of section 27(3) and Proviso to section 28 of the MGL makes it clear that filing of valid return both by the supplier as well as by the recipient is necessary for availment and utilization of ITC.

5.3 Where the goods against an invoice are received in lots or instalments, the registered taxable person shall be entitled to the credit upon receipt of the last lot or instalment.

5.4 It has also been provided that ITC can be taken on an invoice billed to the taxable person even where goods have been delivered to a person other than taxable person [*'bill to'- 'ship to' scenarios*]. For this purpose, it would be deemed that the taxable person has received the goods although the goods have been delivered to a third party on his directions.

6. Restrictions on taking ITC:

6.1 Section 16 (3A) of the MGL provides that the ITC cannot be taken in respect of any supply of goods and / or services after the expiry of one year from the date of issue of tax invoice relating to such supply. So, the recipient cannot take ITC on any inward supply beyond one-year period from the date of issuance of invoice even if he was otherwise eligible for ITC.

6.2 Section 16 (15) of the MGL provides that ITC cannot be taken beyond the month of September of the following FY to which invoice pertains or 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.

6.3 A combined reading of section 16(3A) and 16(15) makes it clear that the ITC can be availed within one year of issuance of invoice by the supplier or filing of return for the month of September of the following FY or filing of annual return whichever is earlier.

6.4 Section 16 (5) of the MGL provides for the restrictions on the amount of ITC to the extent of taxes paid on goods and / or services used partly for the purpose of any business and partly for other purposes. Similarly section 16 (6) of the MGL restricts the

amount of ITC to the extent of taxes paid on goods and / or services are partly used for making taxable supplies including zero-rated supplies and partly in non-taxable supplies including exempt supplies. In other words, ITC of taxes paid on goods and / or services is permitted only to the extent they are used in taxable supplies and zero-rated supplies only. The manner of attribution shall be prescribed by notification.

6.5 Section 16 (9) of the MGL provides for the **negative list** with respect to the admissibility of ITC. It is provided that the ITC on following items cannot be availed:

(a) motor vehicles, except when they are supplied in the usual course of business or are used for providing the following taxable services—

(i) transportation of passengers, or

(ii) transportation of goods, or

(iii) imparting training on motor driving skills;

(b) goods and / or services provided in relation to food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as leave or home travel concession, when such goods and/or services are used primarily for personal use or consumption of any employee;

(c) goods and/or services acquired by the principal in the execution of works contract when such contract results in construction of immovable property, other than plant and machinery;

(d) goods acquired by a principal, the property in which is not transferred (whether as goods or in some other form) to any other person, which are used in the construction of immovable property, other than plant and machinery;

(e) goods and/or services on which tax has been paid under section 8; and

(f) goods and/or services used for private or personal consumption, to the extent they are so consumed.

6.6 In other words, ITC is allowed in respect of taxes paid on all goods and / or services, except listed in para 6.5 above, provided they are used or intended to be used for making taxable including zero-rated supplies.

6.7 Section 16(10) of the MGL provides that the ITC on capital goods cannot be taken where depreciation on the tax component of the cost of capital goods has been claimed under Income Tax Act, 1961. This provision has been borrowed from the CENVAT Credit Rules and is based on the principle that the taxable person cannot enjoy double benefit even under two different statutes.

7. Availment and Utilization of ITC:

7.1 As per the provisions contained in section 16(11) of the MGL, filing of return by the recipient is one of the important conditions for availing the ITC. Section 28 r/w section 35(2) of the MGL (section 7 (2) of the IGST Act) provides that the ITC, as self-assessed, would be credited to the electronic credit ledger of the recipient on a provisional basis. Provisions contained in section 29 of the MGL provides that the ITC would be confirmed only if the inward details filed by the recipient are matched with the outward details furnished by the supplier in his valid return. In case of mismatch between the inward and outward details, the supplier would be required to rectify the mis-match within a period of two months and if the mis-match continues, the ITC would have to be reversed by the recipient. Proviso to section 28 of the MGL also provides that the recipient can avail the ITC but cannot utilize the same unless he also discharges his self-assessed tax liability.

7.2 A combined reading of all these provisions indicates that the recipient can avail the ITC, on provisional basis, immediately on receipt of goods and / or services but the ITC will have to be reversed after a period of two months if the outward and inward supply details are not matched. The said matching would happen only when both the supplier and the recipient have uploaded the respective outward and inward supply details, the supplier has filed his valid return and the recipient has filed his return. It is only after such matching has taken place that the ITC allowed on provisional basis would be confirmed.

7.3 Section 35(4) of the MGL (section 7(4) of IGST Act) provides that ITC can be used only for payment of tax, and not for any other liability like interest, penalty, fee.

7.4 Section 35 (5) of the MGL (section 7 (5) of IGST Act) provides the manner in which the ITC can be utilized. The permitted combinations are as follows:

(a) The amount of ITC of IGST available in the electronic credit ledger shall first be utilized towards payment of IGST and the amount remaining, if any, may be utilized towards the payment of CGST and SGST, in that order.

(b) The amount of ITC of CGST available in the electronic credit ledger shall first be utilized towards payment of CGST and the amount remaining, if any, may be utilized towards the payment of IGST.

(c) The amount of ITC of SGST available in the electronic credit ledger shall first be utilized towards payment of SGST and the amount remaining, if any, may be utilized towards the payment of IGST.

It has also been provided that cross-utilization of CGST and SGST credit is not allowed.

7.5 The unutilized ITC can be claimed as refund in two situations namely, export of goods or services and in case of inverted tax structure [section 38 (2)]. In case of exports

also, no refund of unutilized ITC is allowed where goods are subjected to export duty. In all other cases, unutilized ITC can be carried forward.

8. Transfer, reversal of ITC:

8.1 Section 16(8) of the MGL provides that on change in the constitution of a registered taxable person on account of sale, merger, demerger, amalgamation, lease or transfer of the business, transfer of unutilized ITC is allowed to the new entity. However, there is a caveat that terms of such change in constitution should also provide for specific provision for transfer of liabilities. In other words transfer of ITC is permitted only and only if both assets, including balance in electronic credit ledger, and liabilities are being transferred from the old entity to the new entity.

8.2 Section 16(12) of the MGL provides that the registered taxable person who has availed of ITC and have been paying taxes as normal taxable person, switches over to composition scheme, is required to pay an amount equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date of switch over from the normal scheme to the composition scheme. It has been further provided that the amount can be paid by way of debit in the electronic credit or cash ledger. Likewise, where the goods or services supplied by a registered taxable person become exempt, he is required to pay in similar manner. It has also been provided that the balance of input tax credit, if any, lying in his electronic credit ledger shall lapse. Section 16 (13) of the MGL provides that the manner in which amount shall be calculated would be prescribed.

8.3 Section 16 (14) of the MGL provides for payment of tax when capital goods, on which ITC had been taken, are supplied. In such a situation, the registered taxable person shall pay an amount equal to the ITC taken on the said capital goods reduced by the percentage points as may be specified in this behalf or the tax on the transaction value (TV) of such capital goods as determined under section 15(1) of the MGL, whichever is higher.

9. Penal provisions:

9.1 Section 16 (16) of the MGL gives power to prescribe manner for recovery of ITC, taken wrongly, from the registered taxable person. Such recovery would have to be made by invoking the provisions contained in section 51 of the MGL.

9.2 Section 66 (1) (vi) provides that where a taxable person takes and/or utilizes input tax credit without actual receipt of goods and/or services either fully or partially, he shall be liable to a penalty of rupees ten thousand or an amount equivalent to input tax credit availed of, whichever is higher.

10. Transitional Provisions:

10.1 Since a large number of taxes, which are in the nature of taxes on supply of goods and / or services, are being subsumed in GST, elaborate transitional provisions have been provided in the MGL. These provisions have been provided so that the available ITC balances should be carried forward to the new regime without any undue revenue loss to either the taxable persons or to the tax authorities.

10.2 Section 143 of the MGL provides that a registered taxable person shall be entitled to take, in his electronic credit ledger, credit of the amount of CENVAT credit (under CGST Act) or Value Added Tax (under SGST Act) carried forward in a return furnished under the earlier law. The manner shall be prescribed by rules. The ITC shall be allowed only if the said amount was admissible as CENVAT credit or ITC under the earlier law and is also admissible as input tax credit under this Act. The recovery of the amount taken as credit, under section 143, shall be under this Act, if found recoverable as a result of proceedings instituted, whether before or after the appointed day, under earlier law.

10.3 In the present law on Central side and in some of the States, ITC of capital goods is allowed in two or more instalments. The portion of such credit of capital goods which is not available in the current year cannot be reflected in the returns filed by assessee. As per the provisions of section 143 of the MGL, such amount of credit in respect of capital goods would not get transferred to electronic credit ledger in the new regime. Therefore, separate provision has been made. Section 144 of the MGL provides that a registered taxable person shall be entitled to take, in his electronic credit ledger, credit of the unavailed CENVAT credit (under CGST Act) or input tax credit (under SGST Act) in respect of capital goods, not carried forward in a return, furnished under the earlier law by him. Unavailed CENVAT credit means the amount that remains after subtracting the amount of CENVAT credit already availed in respect of capital goods by the taxable person under the earlier law from the aggregate amount of CENVAT credit to which the said person was entitled in respect of the said capital goods under the earlier law. The ITC shall be allowed only if the said amount was admissible as CENVAT credit or input tax credit under the earlier law and is also admissible as input tax credit under this Act. The recovery of the amount taken as credit, under section 144, shall be under this Act, if found recoverable as a result of proceedings instituted, whether before or after the appointed day, under earlier law.

10.4 Some persons may not have been liable for registration in the earlier law. One reason can be higher exemption threshold in the earlier law. Some of the goods which were exempted under the earlier law may come in tax net in the GST regime. The persons dealing in such goods were not required to be registered under the earlier law. Section 145 of the MGL provides for entitlement of ITC to such registered taxable persons under GST. The ITC of eligible duties and taxes or value added tax in respect of

inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day would be allowed subject to the following conditions:

(i) such inputs and / or goods are used or intended to be used for making taxable supplies under this Act;

(ii) the said taxable person was eligible for CENVAT credit or ITC on receipt of such inputs and/or goods under the earlier law but for his not being liable for registration or the goods remaining exempt under the said law;

(iii) the said taxable person is eligible for input tax credit under this Act;

(iv) the said taxable person is in possession of invoice and/or other prescribed documents evidencing payment of duty / tax under the earlier law in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day; and

(v) such invoices and /or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day.

(vi) the recovery of the amount taken as credit, under section 145, shall be under this Act, if found recoverable as a result of proceedings instituted, whether before or after the appointed day, under earlier law.

10.5 Section 146 of the MGL provides for transfer of credit of eligible duties and taxes on inputs held in stock to a taxable person switching over from composition scheme under the earlier law to the normal scheme in the GST regime. It has been provided that a registered taxable person, who was either paying tax at a fixed rate or paying a fixed amount in lieu of the tax payable under the earlier law (composition taxpayer), shall be entitled to take, in his electronic credit ledger, credit of eligible duties and taxes (under CGST Act) or Value Added Tax (under SGST Act) in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed date subject to the following conditions:

(i) such inputs and / or goods are used or intended to be used for making taxable supplies under this Act;

(ii) the said person is not paying tax under section 8 of this Act;

(iii) the said taxable person was eligible for CENVAT credit on receipt/purchase of such inputs and/or goods under the earlier law but for his being a composition taxpayer under the said law;

(iv) the said taxable person is eligible for input tax credit under this Act;

(v) the said taxable person is in possession of invoice and/or other prescribed documents evidencing payment of duty / tax under the earlier law in respect of inputs

held in stock and inputs contained in semi- finished or finished goods held in stock on the appointed day; and

(vi) such invoices and /or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day.

It has also been provided that the amount of credit shall be calculated in accordance with the generally accepted accounting principles in such manner as may be prescribed. The recovery of the amount taken as credit, under section 146, shall be under this Act, if found recoverable as a result of proceedings instituted, whether before or after the appointed day, under earlier law.

10.6 The expression “eligible duties and taxes” used in section 145 and 146 of the MGL has been defined. The said duties and taxes are those duties and taxes the credit of which is presently available under the CENVAT Credit Rules.

10.7 A person may switch over to composition scheme under GST from normal scheme under the earlier law. Such a person, in terms of section 147 of the MGL, is required to pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger, equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date of such switch over. It has also been provided that the balance of input tax credit, if any, lying in electronic credit ledger shall lapse.

10.8 Section 155 (1) of the MGL provides that every proceeding of appeal, revision, review or reference relating to a claim for CENVAT credit or input tax credit shall be disposed of under the earlier law. As a result of the proceedings, if any amount of credit is found to be admissible to the claimant, it shall be refunded to him in cash subject to the provisions of unjust enrichment, and shall not be admissible as input tax credit under this Act.

10.9 Section 155 (2) of the MGL provides that every proceeding of appeal, revision, review or reference relating to recovery of CENVAT credit or input tax credit under the earlier law shall be disposed under the earlier law. As a result of the proceedings, if any amount of credit becomes recoverable, the same shall be recovered as an arrear of tax under this Act. Further the amount so recovered shall not be admissible as input tax credit under this Act.

10.10 It may so happen that on the appointed day, tax paid goods belonging to the principal are lying at the premises of the agent. In terms of section 162A of the MGL, the agent shall be entitled to take credit of the tax paid on such goods subject to fulfillment of the following conditions:

(i) the agent is a registered taxable person under this Act;

(ii) both the principal and the agent declare the details of stock of goods lying with such agent on the date immediately preceding the appointed day in such form and manner and within such time as may be prescribed in this behalf;

(iii) the invoices for such goods had been issued not earlier than twelve months immediately preceding the appointed day; and

(iv) the principal has either reversed or not availed of the input tax credit in respect of such goods.

10.11 It may so happen that on the appointed day, tax paid capital goods belonging to the principal are lying at the premises of the agent. In terms of section 162B of the MGL, the agent shall be entitled to take credit of the tax paid on such capital goods subject to fulfillment of the following conditions:

(i) the agent is a registered taxable person under this Act;

(ii) both the principal and the agent declare the details of the stock of capital goods lying with such agent on the date immediately preceding the appointed day in such form and manner and within such time as may be prescribed in this behalf;

(iii) the invoices for such capital goods had been issued not earlier than twelve months immediately preceding the appointed day; and

(iv) the principal has either not availed of the input tax credit in respect of such capital goods or, having availed of such credit, has reversed the said credit, to the extent availed of by him.

11. Conclusion:

11.1 In sum, a liberal and elaborate scheme for allowing ITC has been provided in the MGL. An effort has been made to permit ITC in respect of all taxes paid in respect of business expenses except a very small list of items on which ITC will not be permitted. The ITC would be initially allowed on provisional basis for a period of two months. The said ITC would be reversed in the hands of the recipient in case of mismatch between the outward supply details submitted by the supplier and inward supply details submitted by the recipient whether on account of non-payment of self-assessed tax by the supplier or due to non filing of returns by the supplier. The recipient can avail the ITC by filing a return but he cannot utilize the same unless he has filed the valid return. The recipient can re-claim the reversed ITC after the supplier has paid the taxes due from him.

11.2 In other words, filing of valid return both by the supplier and recipient is an absolute must before the ITC chain (from eligibility, availment on confirmed basis and utilization thereof) can be said to be complete.

ANNEXURE

LIST OF RELEVANT PROVISIONS

1. Definitions:

- a) Section 2 (5): Agent
- b) Section 2 (20): Capital goods
- c) Section 2 (41): Electronic credit ledger
- d) Section 2 (54): Inputs
- e) Section 2 (55): Input services
- f) Section 2 (57) / Section 2(1)(d) of IGST Act: Input tax
- g) Section 2 (58) / Section 2(1)(e) of IGST Act: Input Tax Credit (ITC)
- h) Section 2 (61): Inward supply
- i) Section 2 (72) / Section 2(1)(g) of IGST Act: Output tax
- j) Section 2 (73): Outward supply
- k) Section 2 (75): Place of business
- l) Section 2 (77): Principal
- m) Section 2 (85): Reverse charge
- n) Section 2 (92) r/w section 3: Supply
- o) Section 2 (106) r/w section 27(3): Valid return

2. Section 8: Composition levy

3. Section 16: Manner of taking ITC

4. Section 19 (3): Voluntary registration

5. Section 25: Furnishing details of outward supply

6. Section 26: Furnishing details of inward supply

7. Section 27: Returns

8. Section 28: Claim of ITC & provisional acceptance thereof

9. Section 29: Matching, reversal and reclaim of input tax credit

10. Section 35 (2) / 7 (2) of IGST Act: Credit of self-assessed ITC in electronic credit ledger

11. Section 35 (4) / 7 (4) of IGST Act: Utilisation of ITC

12. Section 35 (5) / 7(5) of IGST Act: Cross – utilisation of ITC

13. Section 38 (2): Refund of unutilised ITC

14. Section 66: Offences and penalties

15. Transitional provisions

- a) Section 143: Transfer of credit carried forward in return
- b) Section 144: Transfer of unavailed credit of capital goods not carried forward in return
- c) Section 145: Transfer of credit of eligible duties and taxes in certain situations
- d) Section 146: Transfer of credit of eligible duties and taxes for a person switching over from composition to normal scheme
- e) Section 147: Reversal of credit while switching over to composition from normal scheme
- f) Section 155: Claim of credit to be disposed of under the earlier law
- g) Section 162A: Credit of tax paid on goods lying with agents
- h) Section 162B: Credit of tax paid on capital goods lying with agents



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9. Concept of Input Service Distributor in GST

The Existing Model of Input Service Distributor (ISD) for the purpose of distribution of input credit on services has been adopted in the Model GST Law with modifications to align the concept with the framework of GST law. In the existing model of ISD, an office of manufacturer or service provider who procures services which are used by or intended to be used by the different factories/offices (collectively called 'units') of the said manufacturer/service provider can distribute the respective input credit on such services to the units to which such credit may be attributed, by using the ISD mechanism provided in the CENVAT Credit Rules, 2004 (CCR).

2. Concept of Input Service Distributor (ISD) in Model GST Law (MGL):

2.1 In the ISD mechanism proposed in the MGL, the same concept has been carried forward and an ISD has been defined under Section 2 (56) as follows –

“input service distributor” means an office of the supplier of goods and/or services, which receives tax invoices issued under section 23 towards receipt of input services and issues tax invoice or such other document as prescribed for the purposes of distributing the credit of CGST (SGST in State Acts) and/or IGST paid on the said services to a supplier of taxable goods and / or services having same PAN as that of the office referred to above.

Explanation – For the purposes of distributing the credit of CGST (SGST in State Acts) and / or IGST, Input Service Distributor shall be deemed to be a supplier of services.

2.2 The above definition provides that, an ISD –

- (i) is the office of supplier of goods and / or services;
- (ii) the said office receives tax invoices towards receipt of input services;
- (iii) the said office distributes credit of CGST/ SGST/IGST to a supplier of goods/services having same PAN;
- (iv) the said office issues tax invoice or other prescribed document for distribution of credit.

2.3 The above definition of ISD is almost similar to the one in the existing regime with the difference being that recently in the existing regime, distribution of input service credit has been allowed to an outsourced manufacturing unit also, while the ISD in GST regime is to distribute credit only to the supplier having same PAN, that means the credit can be distributed only to the units of the same entity. The reason of non inclusion of outsourced manufacturing unit for the purpose of credit distribution seems to be that - in the GST regime, 'manufacture' is not a taxable event, and tax liability

would arise only at the time of supply, which would be ultimately paid by the principal in this case when the respective input credit can be used.

3. Registration of Input Service Distributor (ISD):

3.1 As per Section 19 of the MGL read with Clause (vii) of Para 5 of Schedule III thereof, an ISD would have to take registration under GST regime as a deemed supplier of services. The threshold limit of turnover is also not applicable to ISD. Further as per the provisions contained in Proviso to Section 19, the ISD registration in the existing regime would not get migrated into ISD registration in GST regime. An aspiring ISD in GST would have to apply for registration afresh.

3.2 As ISD would be a deemed supplier of services, it is possible that at the same address a supplier of services is registered as 'supplier of services' and also as 'ISD'. In the existing service tax regime, there is a confusion regarding registration status of ISD in such cases – some field formations grant status of ISD in the same registration number of service provider while some other formations provide a separate registration number as ISD in addition to service tax registration number. In the GST regime, however, ISD would always have a separate registration number (GSTIN). Further the ISD is required to file return by 13th while a supplier of services is required to file return by 20th of the succeeding month, which is possible with different registration numbers only.

4. Distribution of credit by Input Service Distributor (ISD):

4.1 Once a person gets registered as ISD in the GST regime, he would be eligible to transfer or distribute credit as per provisions of Section 17 of the MGL. As per this provision, an ISD would be able to -

2. Distribute credit of CGST/SGST and IGST to the supplier to whom such services may be attributed.
3. In case of inter-state transfer of input credit where ISD and recipient are located in different States:
 - a) under the CGST law, components of CGST and IGST can be transferred as IGST.
 - b) under the SGST law, components of SGST and IGST can be transferred as IGST.

Note: It is important to note that ITC of CGST cannot be utilized for payment of SGST. However, for inter-state transfer of input credits, there could be no other mechanism because SGST of one State cannot be transferred and used in the other State. Further, if it is presumed that the distribution by ISD to its own supplier unit constitutes a taxable supply, the appropriate tax would have been IGST only, against which the distributor would have been in a position to claim input credit of CGST/SGST/IGST. In other words, ITC of CGST, SGST as well as that of IGST can be distributed as ITC of IGST.

4. In case of intra-state transfer of input credit where ISD and recipient (business verticals having obtained separate registrations in same State):
 - a) under the CGST law, components of CGST and IGST can be transferred as CGST.
 - b) under the SGST law, components of SGST and IGST can be transferred as SGST.

Note: Distribution of credit through ISD would be required within the same State when the taxable person is having more than one tax registration within the State which is possible only if the taxpayer has opted for separate registrations for separate business verticals under the provisions of section 19(2) of the MGL. In other words, ITC of CGST & IGST can be distributed as ITC of CGST while ITC of SGST & IGST can be distributed as ITC of SGST.

4.2 The conditions and manner of distribution of credit by ISD are same as are there in the present service tax regime, and the same are summarized as follows:

1. The credit would be distributed through tax invoice or other document as prescribed;
2. The amount of credit distributed shall not exceed the amount of credit available for distribution;
3. If the credit is attributable to one supplier, it shall be distributed only to that supplier;
4. The credit of tax paid on input services attributable to more than one supplier shall be distributed only amongst such suppliers to whom a given input service is attributable. The manner of allocating the amount for distribution is governed by clause (d) of section 17(3) of the MGL. As per this provision -
 - a. the distribution would be pro rata the value of turnover in a STATE of such supplier to the aggregate of turnover of all such suppliers to whom the input service is attributable.
 - b. for the purpose of computing distribution ratio, the turnover of respective suppliers for preceding year is to be taken. In case any of the supplier was not operational in the preceding year, the turnover of immediately preceding quarter from the month of distribution is to be taken as basis. (as per 'explanation' to section 18 of the MGL, 'relevant period' has been defined in this manner).

4.3 Once the credit is distributed by an ISD in the prescribed manner by way of a prescribed document, the supplier(s) to whom such credit is distributed get credit in their Electronic Credit Ledger and can use it for payment of their output taxes.

4.4 An ISD is required to file its Return by 13th of the month succeeding the month in which the credit has been distributed. When ISD files his return, the amount of credit gets credited in Electronic Credit Ledger of the Supplier.

5. Recovery of credit distributed in excess by Input Service Distributor (ISD):

5.1 There could be a situation of distribution/use of excess credit in comparison to what is available or allowed under the law. To take care of this situation, Section 18 of the MGL contains provisions for recovery of excess credit distributed by ISD.

5.2 Section 18(1) of the MGL provides that in case the credit distributed by an ISD is more than the credit available to them, the excess credit may be recovered from ISD by initiating action under the provisions of Section 51 of the MGL.

5.3 Section 18(2) of the MGL provides that in case the credit distributed by ISD is in contravention of Section 17 (which could be distribution of more than available credit or distribution of credit in incorrect ratio or distribution of credit to a supplier not entitled to it or it could relate to the type of tax distributed), the excess credit may be recovered from the Supplier (i.e. recipient) by initiating action under the provisions of Section 51 of the MGL.

6. Transitional provisions:

6.1 As for the transition of input credit lying with the ISDs in the existing regime to GST, relevant Sections in the MGL are Sections 143 and 162.

6.2 Section 143 of the MGL provides that the amount of CENVAT Credit carried forward in a return furnished under the earlier law by an assessee would be allowed as input tax credit in the GST regime.

6.3 Section 162 of the MGL provides that input tax credit on account of any services received prior to the appointed day by an ISD shall be eligible for distribution as credit even if the related invoices are received on or after the appointed day, that is the day when GST would get implemented. It is important to note that the transition of ISD credit is with respect to CGST only.

6.4 Section 162 of the MGL provides for distribution of credit for such services only which were received prior to the appointed day but invoices are received later. That means the credit for such services was not booked prior to the appointed day, and it will be booked in the GST regime for the first time. Thus no carrying over of documentation etc. would be required. The MGL does not provide any time limit for taking such credit either.

6.5 It may be noted that Section 162 of the MGL does not take care of the credit which is lying in the books of an ISD on the appointed day. This has been taken care of by Section 143 of the MGL which is a general transition provision for all types of credit, and would apply to ISD as well because the ISD credit is also carried forward in a return which is filed by ISD under the existing law, and the related procedure may be used for transition of ISD credit also.

7. Conclusion:

7.1 A broad look at the ISD provisions proposed in the MGL reflects that the provisions are on the lines of the existing ISD provisions in the CCR. The modifications have been made to fit these provisions in the framework of GST. Recovery provisions are new.

ANNEXURE

LIST OF RELEVANT PROVISIONS

1. Section 2(56): Input Service Distributor (ISD)
2. Section 17: Manner of distribution of credit by ISD
3. Section 18: Manner of recovery of credit distributed in excess by ISD
4. Section 19 r/w clause (vii) of Para 5 of Schedule-III: Liability to be registered
5. Transitional Provisions:
 - a) Section 143: Amount of credit carried forward in a return to be allowed as ITC
 - b) Section 162: Credit distribution of service tax by ISD (only in CGST Act)



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10. Cross Utilization of CGST/SGST/IGST and Fund Transfer

Under the proposed GST Law, tax components could be CGST/SGST/IGST. CGST & SGST is leviable on intra-state supplies whereas IGST is levied on inter-state supplies. CGST represents tax belonging to Central Government; SGST represents tax belonging to respective State Government and IGST represents a tax levied and collected by the Central Government which would be containing share of both the Central and the State Government.

2. Cross utilization of credits:

2.1 Since the Law allows utilization of credit of one component of tax against the other in different situations except for utilization of CGST for SGST and vice versa, the Government needs to do a lot of background accounting to keep the respective accounts of CGST/SGST/IGST straight and compute the respective balances of these accounts after making the respective transfers of funds from one account to the other depending on the computation of taxes paid in a given account and utilization of these taxes as credit for making tax payment in the other account.

2.2 For this, the related provisions are incorporated in Section 35(5) & Section 37A of the MGL and Section 7(5) and Section 9 of IGST Act. A combined reading of all these provisions reveals how the government would work out the balances in the respective accounts and transfer the respective funds on the basis of information contained in the valid returns submitted by the taxable person for each tax period:

1. **Order of Utilization of credit:** The amount of ITC on account of IGST is allowed to be utilized towards payment of IGST, CGST and SGST in that order. Similarly the amount of ITC on account of CGST is allowed to be utilized for payment of CGST and thereafter for payment of IGST. Further the amount of ITC on account of SGST is allowed to be utilized for payment of SGST and thereafter for payment of IGST. ITC of CGST cannot be utilized for payment of SGST liability and vice versa. (Section 37(5) of MGL and Section 7(5) of IGST Act).
2. **Utilization of input tax credit of CGST for payment of IGST:** When the ITC of CGST is used for payment of IGST by the taxable person, Central Government has to receive an amount equal to the CGST so utilized in the IGST account. Thus the Central Government would be required to transfer the fund from CGST account to IGST account equivalent to the amount of ITC of CGST used for payment of IGST. This is important because even though both CGST and IGST accounts are maintained by the Central Government, the distribution of CGST and IGST is to be made in a different manner and therefore, the balances in the respective accounts

need to be maintained separately and transfer of funds need to be made for this purpose. (Section 37A (1) of MGL).

3. **Utilization of input tax credit of SGST for payment of IGST:** When the ITC of SGST is used for payment of IGST by the taxable person, Central Government has to receive an amount equal to the SGST so utilized in the IGST account. Thus the State Government would be required to transfer the fund from SGST account to IGST account equivalent to the amount of ITC of SGST used for payment of IGST. (Section 37A (2) of MGL).
4. **Utilization of input tax credit of IGST for payment of CGST:** When the ITC of IGST is used as credit for payment of CGST by the taxable person, Central Government has to receive an amount equal to the IGST so utilized in the CGST account. Thus the Central Government would be required to transfer the fund from IGST account to CGST account equivalent to the amount of ITC of IGST used for payment of CGST. This is important because even though both CGST and IGST accounts are maintained by the Central Government, the distribution of CGST and IGST is to be made in a different manner and therefore the balances in the respective accounts need to be maintained separately and transfer of funds need to be made for this purpose (Section 9 (1) of IGST Act).
5. **Utilization of input tax credit of IGST for payment of SGST:** When the ITC of IGST is used as credit for payment of SGST by the taxable person, State Government has to receive an amount equal to the IGST so utilized in SGST account. Thus the Central Government would be required to transfer the fund from IGST account to SGST account equivalent to the amount of ITC of IGST used for payment of SGST. (Section 9 (2) of IGST Act).

3. Apportionment of tax collected under IGST Act and settlement of funds:

3.1 Given the above scheme of transfer of funds in the CGST/SGST and IGST accounts inter-se, there is a further need of apportionment of taxes from the IGST account to the central and the State government(s) as this is the only component which is having share of both governments. Section 10 of the IGST Act governs the principles for such apportionment. Broadly, the distribution of the IGST to the Centre and the States would take place with respect to the taxes collected on the supplies in which credit chain is stopped. Further, the manner prescribed by the provision indicates that – first the amount for distribution is computed for the central government taking the applicable CGST rate as the basis of apportionment of the amount to the CGST account of the central government, and the residual amount is distributed to the States in their respective SGST accounts.

3.2 The provision indicates following situations where credit chain could be stopped, and the respective amount payable as CGST is to be identified and apportioned to CGST account:

1. Where inter-state supplies are made within India or from outside India by way of imports, to an unregistered person;
2. Where the inter-state supplies are made within India or from outside by way of imports, to a taxable person paying taxes under composition scheme (under section 8 of the MGL);
3. Where the inter-state supplies are made within India or from outside India to India by way of imports, to a taxable person not eligible to claim the input tax credit;
4. Where inter-state supplies are made within India or from outside India by way of imports, to a taxable person who does not avail the said credit within the specified period and thus the credit remains in the IGST account after the expiry of due date for filing of annual return, i.e. 31st December of the next year from the year to which the credit pertains.

3.3 In all the above cases, the amount of tax calculated at the rate equivalent to the CGST on similar intra-state supply shall be apportioned to the Central Government and the amount so calculated would be transferred from IGST Account to the CGST Account.

3.4 Now, in respect of the supplies for which apportionment has been done for CGST as above, the rest of the amount of IGST shall be apportioned to the States in their respective SGST accounts where such supply has taken place. The amount so calculated would be transferred from IGST Account to the SGST Account. The place of such supply shall be determined according to the provisions contained in Section 5 and 6 of the IGST Act dealing with the Place of Supply of Goods and Place of Supply of Services respectively.

3.5 Section 10 of the IGST Act further provides that the amount of interest and penalty collected on any supplies for which IGST has been apportioned to CGST and SGST as above, shall also be apportioned in the same manner.

4. Amount in CGST, SGST and IGST Account:

4.1 It may be noted that in view of above discussions, CGST Account would comprise of the following:

- a) CGST from intra-state supplies;
- b) Add: Transfer from IGST account on account of utilization of ITC of IGST for payment of CGST;
- c) Add: CGST component of IGST from inter-state supplies / imports to an unregistered person, to a composition taxable person, to a taxable person not eligible for ITC or to a registered taxable person who has not availed ITC;
- d) Less: Transfer from CGST on account of utilization of ITC of CGST for payment of IGST.

4.2 Similarly in view of above discussions, SGST Account would comprise of the following:

- a) SGST from intra-state supplies;
- b) Add: Transfer from IGST account on account of utilization of ITC of IGST for payment of SGST;
- c) Add: SGST component of IGST from inter-state supplies / imports to an unregistered person, to a composition taxable person, to a taxable person not eligible for ITC or to a registered taxable person who has not availed ITC;
- d) Less: Transfer from SGST on account of utilization of ITC of SGST for payment of IGST.

4.3 Further, IGST Account would comprise of the following:

- a) IGST from inter-state supplies;
- b) Add: Transfer from CGST account on account of utilization of ITC of CGST for payment of IGST;
- c) Add: Transfer from SGST account on account of utilization of ITC of SGST for payment of IGST;
- d) Less: Transfer from IGST account on account of utilization of ITC of IGST for payment of CGST;
- e) Less: Transfer from IGST account on account of utilization of ITC of IGST for payment of SGST;
- f) Less: CGST and SGST (IGST – CGST) component of IGST from inter-state supplies / imports to an unregistered person, to a composition taxable person, to a taxable person not eligible for ITC or to a registered taxable person who has not availed ITC.

5. Conclusion:

5.1 It may be seen that the above mentioned provisions would facilitate cross utilization of ITC thus obviating the need for filing of refund claims by the taxable persons in case of inter-state supplies.

5.2 Normally, at the end of the year there should not be any balance in the IGST account as the entire amount should be either transferred to CGST or the SGST account. In any case, the balance, if any is left in the IGST account as well as the amount in CGST account would be devolved to the States in accordance with Article 270 of the Constitution.

ANNEXURE

LIST OF RELEVANT PROVISIONS

1. Section 35(5): Payment of tax, interest, penalty and other documents
2. Section 37A: Transfer of input tax credit
3. Section 7(5): Payment of tax, interest, penalty and other documents
4. Section 9 of IGST Act: Transfer of input tax credit
5. Section 10 of IGST Act: Apportionment of tax collected under the IGST Act and settlement of funds



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FARIDABAD**

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11. Returns under Goods and Services Tax and Matching of Input Tax Credit

1. Introduction

1.1. A return is a statement of specified particulars relating to business activity undertaken by the taxable person during a prescribed period. Return is a very critical aspect of any tax administration since it is the formal mode for submission of information important for administration of tax in a structured and time bound manner. Return provides a framework for working out the tax that becomes payable in the prescribed period applying the legal principles laid down in the tax law to the transactions during the period. A taxable person has a legal obligation:

- (i) to declare his tax liability for a given period in the return;
- (ii) furnish details about the taxes paid in accordance with that return; and
- (iii) file correct and complete return within stipulated time frame.

1.2. The submission and processing of return is an important link between the taxpayer and tax administration as it is an important tool for:

- (i) Compliance verification program of tax administration;
- (ii) Providing necessary inputs for taking policy decision;
- (iii) Management of audit and anti-evasion programs of tax administration;
- (iv) (Finalization of the tax liabilities of the taxpayer within stipulated period of limitation.

1.3. GST is a self-assessed destination based taxation system. It is a transaction based tax and the unit for calculation of tax liability is individual transaction, both outward as well as inward. This document explains the legal provisions with respect to returns, the underlying principles and the processes involved. Returns in GST are totally electronic without any requirement of physical submission. The effort has been to make it as transaction based as possible so that once the tax payer gives the details of transactions, most part of the return is auto generated from details of underlying individual transactions. There shall be one common return for IGST, CGST and SGST that shall be submitted on the GST Common Portal and tax departments will pull the return data relevant to them from the portal for further processing and analysis.

Who needs to file Return in GST regime?

1.4. Every registered taxable person is required to file a return for the prescribed tax period. A return needs to be filed even if there is no business activity (i.e. Nil Return) during the said tax period of return. Persons who have crossed 90% of the threshold for

liability to pay taxes are liable to register but are not required to file a return till they cross the threshold for payment of taxes.

1.5. UN agencies etc. will have unique GST ID and will file a purchase statement as return for the month (in simpler form) during which they make purchases and claim refunds. They would not be required to file regular return. They would submit their purchase statements (without purchase invoices) as per the periodicity prescribed for claim of refund.

1.6. Government entities/ PSUs, etc. not dealing in GST supplies or persons exclusively dealing in exempted/ Nil rated/ non-GST goods or services would neither be required to obtain registration nor required to file returns under the GST law. However, State tax authorities may assign Departmental ID to such government departments/ PSUs/ other persons. They will ask the suppliers to quote the Department ID in the supply invoices for all inter-State purchases being made to them. Such supplies will be at par with B2C supplies and will be governed by relevant provisions relating to B2C supplies. They shall provide the details of their purchases made during a period as and when sought by the tax authorities that will be uploaded on the GST common portal for compliance verification purposes.

2. Periodicity of Return Filing

2.1. Common periodicity of returns for a class of taxpayers would be enforced. There will be different frequency for filing of returns for different class of taxpayers, after payment of due tax, either prior to or at the time of filing return. The return can be filed without payment of self-assessed tax as per the return but such return would be treated as an invalid return and would not be taken into consideration for matching of invoices and for inter-governmental fund settlement among States and the Centre. The periodicity of return for different categories of taxpayers is as follows:

S. No.	Return / Ledger	For	To be filed by
1	GSTR 1	Outward supplies made by taxpayer (other than compounding taxpayer and ISD)	10 th of the next month
2	GSTR 2	Inward supplies received by a taxpayer (other than a compounding taxpayer and ISD)	15 th of the next month
3	GSTR 3	Monthly return (other than compounding taxpayer and ISD)	20 th of the next month
4	GSTR 4	Quarterly return for compounding Taxpayer	18 th of the month next to quarter
5	GSTR 5	Periodic return by Non-Resident Foreign Taxpayer	Seven days from last day of registration
6	GSTR 6	Return for Input Service Distributor (ISD)	13 th of the next month
7	GSTR 7	Return for Tax Deducted at Source	10 th of the next month
8	GSTR 8	Annual Return	By 31 st December of next FY

2.2. Other important points relating to periodicity of return filing are as under:-

- (i) Normal/Regular taxpayers (including casual taxpayers) would have to file details of outward supplies (GSTR-1), details of inward supplies (GSTR-2) and monthly Return (GSTR-3) for each registration.
- (ii) Normal/ Regular taxpayers with multiple registrations (for business verticals) within a State would have to file GSTR-1, GSTR-2 and GSTR-3 for each of the registrations separately.
- (iii) Compounding taxpayers would have to file a quarterly return in GSTR-4.
- (iv) Taxpayers otherwise eligible for the composition scheme can opt out of composition and file monthly returns and thereby make their supplies eligible for ITC in hands of the purchasers. In such a case, they will have to file GSTR 1-3 irrespective of their turnover.
- (v) Casual taxpayers would have to file GSTR-1, GSTR-2 and GSTR-3 returns for the period for which they have obtained registration. The registration of Casual taxpayers will be done in the same manner as that of Normal/ Regular taxpayers but with payment of advance tax.
- (vi) Non-Resident Taxpayers (foreigners) would be required to file GSTR-5 return for the period for which they have obtained registration within a period of seven days after the date of expiry of registration. In case registration period is for more than one month, monthly return(s) would be filed and thereafter return for remaining period would be filed within a period of seven days as stated earlier.
- (vii) Annual return (GSTR-8) will be filed by all normal/ regular and composition taxpayers. It will be based on financial records.
- (viii) Cut-off date for filing of details of outward supplies (GSTR-1), inward supplies (GSTR-2) and monthly return (GSTR-3) would be 10th, 15th and 20th day respectively of the succeeding month for all monthly filers.
- (ix) Cut-off date for filing of Quarterly return (GSTR-4) by compounding taxpayer would be 18th day of the first month of the succeeding quarter.
- (x) Cut-off date for filing of Input Service Distributor return (GSTR-6) would be 13th day of the succeeding month.
- (xi) Cut-off date for filing of TDS (Tax Deducted at Source) return (GSTR-7) by Tax Deductor would be 10th day of the succeeding month.
- (xii) For Annual return, the cut-off date would be 31st December following the end of the financial year for which it is filed.
- (xiii) The filing of return would be only through online mode although the facility of offline generation and preparation of returns would be provided. The returns prepared in offline mode would have to be uploaded before due date.

3. Monthly Return

3.1. The return for any normal tax payer under GST consists of three parts, viz statement of outward supplies, statement of inward supplies and the return. The basic

information in the GST ecosystem emanates from the statement of outward supplies i.e. GSTR-1. GSTR-1 captures the transaction level details of the outward supplies of a tax payer. GSTR-1 of all suppliers forms the basis for the statement of details of the inward supplies of all suppliers as somebody's outward supply's is somebody else's inward supply. Therefore, the statement of inward supplies i.e. GSTR-2 is auto drafted from the GSTR-1 of all the suppliers. Once the outward and inward supplies of every tax payer is frozen, the tax liability is calculated and paid in the return i.e. GSTR-3. Therefore, GSTR-1 to 3 collectively form the return under GST. It is only for operational conveniences that they have been split into three parts with staggered date of filing. Unless all GSTR-1 are filed, auto generation of GSTR-2 is not possible and only after all GSTR-1 and GSTR-2 have been finalized can GSTR-3 be auto generated. This logical sequence defines the workflow for filing of returns in GST.

3.2. In addition, there are separate formats for certain specific category of taxpayers viz. Input Service Distributors, non-resident taxpayers (foreigners) and Tax Deductors keeping in view certain specific characteristics of their transactions. The components of each of these return is being discussed hereunder:

Statement of Outward Supplies

3.3. As explained above, GSTR-1 is a statement of outward supplies and primarily consists of details of invoices pertaining to outward supplies of the tax payer for the month as provided in section 25 of the draft model bill. To meet the objective of matching of input tax credit, it is essential that all B2B transactions are captured at invoice level. For B2C transactions, since the recipient shall not claim input tax credit, the same can be captured at consolidated level. However, keeping in view the importance of destination-based nature of the tax, it has been mandated that invoice level details of interstate B2C transaction of value above Rs.2.5 lakh shall be captured.

3.4. This form would capture the following information:

1. Basic details of the Taxpayer i.e. Name along with GSTIN
2. Period to which the Return pertains
3. Gross Turnover of the Taxpayer in the previous Financial Year. This information would be submitted by the taxpayers only in the first year and will be auto-populated in subsequent years.
4. Final invoice-level supply information pertaining to the tax period separately for goods and services:
 - i. For all B2B supplies (whether inter-state or intra-state), invoice level specified details will be uploaded.
 - ii. For all inter-state B2C supplies (including to non-registered Government entities, Consumer / person dealing in exempted / NIL rated / non GST goods or services), the suppliers will upload invoice level details in respect of every invoice whose value is more than Rs. 2,50,000/-. For invoices below this value, summary of supplies made for every State as the place of supply shall be filed. In this context, it is important to note that where address of the

recipient is available on record, both in case of goods as well as services, other than a few exceptions, the place of supply is broadly the location of recipient and in all such cases, if the State of place of supply is different from the State where supplier is registered, it has to be treated as inter-state supply. If the address of recipient does not exist on record, the place of supply shall become the state in which the supplier is registered, making it an intra-state supply.

- iii. The recommendation of the Committee on IGST and GST on Imports with respect to the details about HSN code for goods and Accounting code for services to be captured in an invoice have been accepted with certain modifications. The details proposed by this Committee are as follows:-
 - a. HSN code (4-digit) for Goods and Accounting Codes for Services will be mandatory initially for all taxpayers with turnover in the preceding financial year above Rs. 5 Crore (For the first year of operations of GST, self-declaration of turnover of previous financial year will be taken as the basis as all India turnover data will not be available in the first year. From the 2nd year onwards, turnover of previous financial year under GST will be used for satisfying this condition).
 - b. For taxpayers with turnover between Rs 1.5 Crore and Rs 5 Crore in the preceding financial year, HSN codes may be specified only at 2-digit chapter level as an optional exercise to start with. From second year of GST operations, mentioning 2-digit chapter level HSN Code will be mandatory for all taxpayers with turnover in previous financial year between Rs. 1.5 Crore and Rs. 5.0 Crore.
 - c. Any taxpayer, irrespective of his turnover, may use HSN code at 6- digit or 8-digit level if he so desires.
 - d. To start with, compounding dealers may not be required to specify HSN at 2-digit level also.
 - e. Prescribed Accounting code will be mandatory for those services for which Place of Supply Rules are dependent on nature of services to apply the destination principle, irrespective of turnover.
 - f. HSN Codes at 8-digit level and Accounting Codes for services will be mandatory in case of exports and imports.
- iv. The above parameters with respect to HSN code for goods and Accounting Code for services will apply for submitting the information in return relating to relevant invoice level information for B2B supplies (both intra-state and inter-state) and inter-state B2C supplies (where taxable value per invoice is more than Rs. 2.5 lakhs). It is proposed that in the return form the description of goods and services may not be required to be submitted by the taxpayer as the same will be identified through the submission of HSN code for goods and Accounting Code for services. In order to differentiate between the HSN code and the Service Accounting Code (SAC), the latter will be prefixed with "s". The taxpayers who have turnover below the limit of Rs. 1.5 Crore will have to

mention the description of goods/service, as the case maybe, wherever applicable.

- v. For all Intra-State B2C supplies (including to non-registered Government entities, consumer / person dealing in exempted / NIL rated / non GST goods or services), consolidated sales (supply) details will be uploaded. However a dealer may at his option furnish invoice wise information in respect of exempted and nil rated supplies also.
 - vi. The supply information will also have details relating to the Place of Supply in order to identify the destination state as per the Place of Supply Rules where it is different from the location of the recipient.
 - vii. Details relating to supplies attracting Reverse charge will also be submitted
5. Details relating to advance received against a supply to be made in future will be submitted in accordance with clause (2) of sections 12 and 13 of the draft model bill.
 6. Details relating to taxes already paid on advance receipts for which invoices are issued in the current tax period will be submitted.
 7. Details relating to supplies exported (including deemed exports) both on payment of IGST as well as without payment of IGST would be submitted.
 8. There will be a separate table for submitting the details of revisions in relation to the outward supply invoices pertaining to previous tax periods. This will include the details of Credit/Debit Note issued by the suppliers and the differential value impact and the concomitant tax payable or refund/tax credit sought.
 9. There will be a separate table for effecting modifications/correcting errors in the returns submitted earlier.
 10. There will be a separate table for submitting details in relation to NIL rated, Exempted and Non GST outward supplies to (both inter-state and intra-state) to registered taxpayers and consumers.

3.5. Section 25 (1) of the draft model bill mandates that the statement of outward supplies should be finalized submitted by 10th of the succeeding month to ensure that the statement of inward supplies can be auto populated soon after 10th of the month. The taxpayers can upload the invoice level details on a continuous basis and the same would be visible to even the corresponding purchasing taxpayers.

3.6. The GSTN ecosystem provides multiple ways to upload the invoice level details depending on the convenience and the size of tax payer. The most rudimentary route to upload the invoice level details would be the web interface of GST Common Portal. GSTN would also provide a utility to either enter the details offline and upload it in one go or export it from the system of taxpayer and upload it to GSTN servers. Various popular accounting software providers and also in the process of integrating their system with GSTN system to allow direct upload of GSTR-1 from their accounts to GSTN. GSTN is also developing a GST Service Provider (GSP) framework where GSPs can develop their own utilities to perform different functions and register them with GSTN for allowing online operations through their utility directly. All these would ensure that the burden of

uploading invoice details is minimized and at the same time sufficiently reduce the possibility of errors creeping in due to data entry mistakes.

Statement of Inward Supplies

3.7. Section 26 of the draft model bill provides for the statement of inward supplies. The statement of inward supplies is a statement that primarily determines the Input Tax Credit (ITC) eligible to be claimed by a tax payer in a given tax period. Like statement of outward supplies, even this statement is a transaction based statement. Since every inward supply of a tax payer is an outward supply of some other tax payer, this statement can be auto drafted by the system from the statements of outward supplies filed by all the tax payers in the GST system. Based on this principle, the GSTR-2 is auto populated after the last date of filing of the statement of outward supplies based on the details of outward supplies filed on the system.

3.8. Since the GSTR-2 is a claim made by the tax payer for his ITC, although his GSTR-2 has been auto populated, he is allowed to change them, delete them or even add his own claims based on invoices where he has received goods and / or services but, for some reason, his supplier has failed to upload it on the system.

3.9. This return form would capture the following information:

1. Basic details of the Taxpayer i.e. Name along with GSTIN
2. Period to which the Return pertains
3. Final invoice-level inward supply information pertaining to the tax period for goods and services separately
4. The information submitted in GSTR-1 by the counterparty supplier of the taxpayer will be auto populated in the concerned tables of GSTR-2. The same may be modified i.e. added or deleted by the Taxpayer while filing the GSTR-2. The recipient would be permitted to add invoices (not uploaded by the counterparty supplier) if he is in possession of invoices and has received the goods or services.
5. There will be separate tables for submitting details relating to import of Goods/Capital Goods from outside India and for the services received from outside India.
6. The details of inward supplies would be auto-populated in the ITC ledger of the taxpayer on submission of his return. The taxpayer will select the invoice details regarding the in-eligibility and eligibility of ITC in relation to these inward supplies and the quantum available in a particular tax period.
7. There will be a separate table for submitting details in relation to ITC received on an invoice on which partial credit has been availed earlier.
8. In respect of inputs, there can be two situations. If inputs are received in one lot, the ITC will be given in the return period in which the purchase is recorded in the books of accounts. In case inputs covered under one invoice are received in more than one instance/lot, as per section 16 (1) of the draft model bill, the ITC will be given in the return period in which the last purchase is recorded in the books of

accounts. A note in this regard has been incorporated in the Return form for the guidance of the taxpayer.

9. There will be a separate table for submitting the details of revisions in relation to inward supply invoices pertaining to previous tax periods (including post purchase discounts received). This will include the details of Credit/Debit Note issued by the suppliers and the differential value impact and concomitant tax payable or refund/tax credit sought.
10. There will be a separate table for effecting modifications/correcting errors in the returns submitted earlier.
11. There will be a separate table for submitting details in relation to NIL rated, Exempted and Non GST inward Supplies (Both Inter-State and Intra-State) including those received from compounding taxpayers and unregistered dealers.
12. There will be a separate table for the ISD credit received by the taxpayer.
13. There would be a separate table for TDS Credit received by the taxpayer.

3.10. Auto Population in this return from GSTR-1 will be done on or after 11th of the succeeding month. Addition or Deletion of the invoice by the taxpayer will be permitted between 11th and 15th of the succeeding month. As per section 26 (1), GSTR-2 can be filed any time after 10th and on or before 15th. Filing of GSTR-2 after 15th will attract late fee.

3.11. Based on the GSTR-2, if there are any changes as compared to what was auto generated the corresponding supplier would be allowed to change his GSTR-1 accordingly. If the GSTR-1 is changed by the supplier by 17th the same will be taken for generation of the monthly return. Adjustments would be permitted on 16th and 17th of the succeeding month.

Monthly Return

3.12. Section 27 of the draft model bill deals with returns under GST. Monthly return shall be completely auto generated from the information furnished in GSTR-1 and GSTR-2. The only additional information additionally furnished in the return relates to the utilization of ITC and debit of cash ledger for payment of taxes. The GST Monthly Return form would capture the following information:

1. Basic details of the Taxpayer i.e. Name and Address along with GSTIN
2. Period to which the Return pertains
3. Turnover Details including Gross Turnover, Export Turnover, Exempted Domestic Turnover, Nil Rated Domestic Turnover, Non GST Turnover and Net Taxable Turnover
4. Final aggregate level outward and inward supply information. These details will be auto populated from GSTR-1 and GSTR-2.
5. There will be separate tables for calculating tax amounts on outward and inward supplies based on the information contained in various tables in the GSTR-3 return.
6. There will be a separate table for capturing the TDS credit received and which has been credited to his cash ledger (the deductee).

7. Tax liability under CGST, SGST, IGST and Additional Tax.
8. Details regarding revision of invoices relating to outward and inward supplies
9. Details of other liabilities (i.e. Interest, Penalty, Fee, others etc.).
10. Information about ITC ledger, Cash ledger and Liability ledger (these are running electronic ledgers maintained on the dashboard of taxpayer by GSTN). These would be updated in real time on an activity in connection with these ledgers by the taxpayer. Both the ITC ledger and the cash ledger will be utilized by the taxpayer for discharging the tax liabilities of the returns and others. Details in these ledgers will get auto populated from previous tax period return (irrespective of mode of filing return i.e. online / offline utility)
11. Details of ITC utilized against tax liability of CGST,SGST and IGST on supplies of goods and services.
12. Net tax payable under CGST, SGST and IGST.
13. Details of the payment of tax under various tax heads of CGST, SGST and IGST separately would be populated from the debit entry in Credit/Cash ledger.GST Law may have provision for maintaining four head wise account for CGST, SGST, IGST and Additional tax and at associated minor heads for interest, penalty, fee and others. Excess payment, if any, will be carried forward to the next return period. The taxpayer will have the option of claiming refund of excess payment through the return for which appropriate field will be provided in the return form. The return form would display all bank account numbers mentioned in the registration, out of which one will be selected by the taxpayer to which the refund will be credited.
14. Details of other payments - Interest/Penalties/Fee/Others, etc. This will be auto populated from the Debit entry in Cash ledger irrespective of mode of filing i.e. online / offline utility.
15. Details of ITC balance (CGST, SGST and IGST) at the end of the tax period will be auto-populated in the ITC ledger irrespective of mode of filing return. In case of net exporter or taxpayers dealing with inverted duty structure or similar other cases, where input tax credit is greater than output tax due on supply, the taxpayer would be eligible for refund. The return would have a field to enable the tax payer to claim the refund or to carry forward the ITC balance (CGST, SGST and IGST). The return form should display all bank account numbers mentioned in the registration, out of which one will be selected by the taxpayer to which the refund will be credited.
16. Details of cash balance (CGST, SGST and IGST) in personal ledger at the end of the tax period (this will be auto-populated irrespective of mode of filing return).
17. Information regarding quantity of goods (as per Unique Quantity Code) supplied will not be contained in the monthly return. However, the same would be submitted by the taxpayer in the annual return. The format of the annual return would have a suitable field for this purpose.

3.13. A return related liability would mean the tax liability for the transactions (including credit/debit notes) of the return period and the additional liability arising out of any ITC reversal or late inclusion of the supply in the return period. Arrears pertaining to audit/reassessment/enforcement outcomes would be handled separately, and not mixed with the return related liabilities and payments. The payments made on this account, however, would be reflected in the return.

3.14. The return would be permitted to be filed both on online and offline mode. In case of offline mode, payment by debit to cash/ ITC ledger can be done at an earlier date also and such debit entry number would be verified at the time of uploading of the return. In online mode, both debiting and filing can be done simultaneously. Section 26 (1) mandates that the return would be filed by 20th of the succeeding month. Late filing would be permitted on payment of late fees only.

3.15. Most of the tax payers shall be required to file return in GSTR-3 backed by information in GSTR-1 and GSTR-2. However, there are certain specified category of tax payers for whom a simplified return is specified owing the nature of their activities. They are tax payers under composition scheme, non-resident foreign tax payers, ISD and TDS deductors. These special returns are explained below.

Quarterly Return for Taxpayers under composition scheme

3.16. After crossing the threshold exemption limit, the taxpayers may opt for composition scheme wherein they would be required to pay taxes at fixed rate on their turnover as per section 8 of the model law. Such taxpayers can neither avail ITC nor can their purchasers claim ITC on purchases made from them. Therefore a simpler return can be prescribed for such payers and they would be required to file a simplified quarterly return in the format GSTR-4.

3.17. In this return the taxpayer is only required to indicate the total value of supplies made during the period of return and the tax paid at the composition rate alongwith the details of payment of tax in the return. The composition taxpayer will also need to declare invoice-level purchase information for the purchases from normal taxpayers, which will be auto-drafted from supply invoice information uploaded by counter-party taxpayers. Suppliers making interstate supplies shall not be allowed composition benefit but composition taxpayers can receive interstate supplies.

3.18. The composition taxpayers will also be required to submit details of the goods and services imported from outside India. The composition taxpayers would be allowed to export supplies outside India. Composition taxpayers shall normally make purchases from registered taxpayers but if they make any purchase from unregistered taxpayers, it shall attract tax on reverse charge. As per section 27 (1) of the draft model bill, the return for composition taxpayers shall have to be filed for every quarter on 18th of the month after the end of the quarter.

Non-Resident Foreign Taxpayers

3.19. Non-Resident foreign taxpayers are those suppliers who do not have a business establishment in India and have come for a short period to make supplies in India. They would normally import their products and make local supplies. Therefore, they will be allowed to avail ITC only on IGST paid on imports. However, other taxpayers will be eligible to take credit on supplies made by them. Such taxpayers would be required to file return in form GSTR-5 for the period for which they have obtained registration within a period of seven days after the date of expiry of registration. In case registration period is for more than one month, monthly return(s) would be filed and thereafter return for remaining period would be filed within a period of seven days as stated earlier.

Input Service Distributor Return

3.20. Input Service Distributors (ISD), as a specified category, only distribute credit on tax invoices received centrally on services to units that actually use those services in the course of their business. Since they do not normally have a net tax liability, a simplified return has been specified in form GSTR-6. This return form would capture the following information:

1. Basic details of the Taxpayer i.e. Name along with GSTIN
2. Period to which the Return pertains
3. Final invoice-level inward supply information pertaining to the tax period separately for goods and services on which the ITC is being claimed. This will be auto populated on the basis of GSTR-1 filed by the Counterparty Supplier of the taxpayer. The same may be modified i.e. added or deleted by the Taxpayer while filing the ISD return. The recipient would be permitted to add invoices (not uploaded by the counterparty supplier) if he is in possession of invoices and have received the services.
4. Details of the Invoices along with the GSTIN of the receiver of the credit i.e. to whom the ISD is distributing credit.
5. There will be separate ISD Ledger in the return that will detail the Opening Balance of ITC (to be auto- populated on the basis of previous return), credit for ITC services received, debit for ITC reversal and ITC distributed and Closing Balance.

3.21. As per section 27 (6) this return would be filed by 13th of the succeeding month. Late filing would be permitted on payment of late fees only.

Tax Deduction at Source Return

3.22. Section 37 of the draft model bill mandates some specified recipients to deduct tax at source on certain supplies while making payment for such supplies. They shall deduct an amount at a specified percentage of the payment being made and credit it to the Government as tax paid on behalf of the supplier. The supplier shall be allowed to take credit of such tax deducted and paid. Since these taxpayers shall not be making

outward supplies but are only deducting tax on their inward supplies and paying it on behalf of their suppliers, a simplified return form in GSTR-7 is prescribed for them. This return would capture the following information:

1. Basic details of the Taxpayer i.e. Name along with GSTIN
2. Period to which the Return pertains
3. Details of GSTIN of the Supplier along with the invoices against which the Tax has been deducted. This will also contain the details of tax deducted against each major head i.e. CGST, SGST and IGST.
4. Details of other payments - Interest/Penalties/Fee/Others, etc. (This will be auto populated from the Debit entry in Cash ledger)

3.23. As per section 27 (5) of the draft model bill, this return would be filed by 10th of the succeeding month. Late filing would be permitted on payment of late fees only.

4. Steps for Return Filing

4.1. For the purpose of reaping the benefit of the fact that various returns will be filed across the country on the same platform and therefore, information entered once by one taxpayer need not be entered again by any other taxpayer, there is a need to sequence the events in a particular fashion. This section outlines the sequence in which the statements/returns are expected to be filed.

Filing of GSTR-1

4.2. The taxpayer will upload the final GSTR-1 form either directly through data entry at the GST Common Portal or by uploading the file containing the details through an offline utility or through third party applications or software by 10th day of month succeeding the month during which supplies has been made. The increase or decrease in supply invoices would be allowed, only on the basis of the details uploaded by the counter-party purchaser in GSTR-2 upto 17th day of the month. In other words, the supplier would not be allowed to include any missing invoices on his own after 10th day of the month.

4.3. GSTN will facilitate periodic regular upload of such information to minimize last minute load on the system. GSPs are expected to develop client applications that will facilitate easy filing of GSTR-1.

Auto-generation of GSTR-2

4.4. GST Common Portal will auto-draft the provisional GSTR-2 of taxpayer based on the supply invoice details reported by the counter-party taxpayers (suppliers) on a near real-time basis. While every taxpayer will be able to see the invoices uploaded by their suppliers, they will be able to finalise their GSTR-2 only after the last date of filing GSTR-1. After filing of GSTR-1, the taxpayers will be able to view/download their provisional GSTR-2 for further steps.

Finalisation and filing of GSTR-2

4.5. Purchasing taxpayers will accept/reject/modify invoices in the auto-drafted provisional GSTR-2. A taxpayer will have the option to download his provisional purchase statement from the Portal and update/modify it off-line. Purchasing taxpayer will also be able to add additional purchase invoice details in his GSTR-2 which have not been uploaded by counter-party taxpayer (supplier) as described above, provided he is in possession of valid invoice issued by counter-party taxpayer and he has actually received such supplies. The taxpayer would, indicate the eligibility/ partial eligibility for ITC in those cases where either he is not entitled or he is entitled for partial ITC. The taxpayers can then file their GSTR-2 either online or through offline utility or through third party applications or software.

Reconciliation of outward and inward supplies

4.6. Taxpayers will have the option to do reconciliation of inward supplies with counter-party taxpayers (suppliers) during the period of 7 days from filing of GSTR-1 with their counter-party taxpayers for any missing supply invoices in the GSTR-1 of the counter-party taxpayers, and prompt them to accept the same as uploaded by the purchasing taxpayer. Where a purchasing taxpayer has added an invoice and the corresponding supplying taxpayer accepts the addition, it will amend his GSTR-1 accordingly.

Finalisation of Return

4.7. Finalisation of GSTR-1 and GSTR-2 would enable taxpayers in finalizing their return for the month. The GST Common portal would auto-generate the GSTR-3 for the taxpayer. GSTR-3 would show the amount that will be credited/debited to the ITC ledger of the taxpayer and the amount of ITC available for payment of taxes. The taxpayer will fill in the details of ITC that he intends to utilise for payment of taxes. Any balance amount will have to be paid by the taxpayer as cash. The return would also show the late fee and interest payable, if any.

Payment of Taxes and submission of return

4.8. GST follows a system of ledgers for ITC and cash. ITC availed by the taxpayer shall be credited to the ledger on filing of return and ITC utilised by the taxpayer for payment of taxes shall be debited to the ledger on filing of the return. Any payment made through challan gets credited to the ledger and does not automatically get offset against any tax liability. Payment of taxes has to be done by debiting the cash ledger and the taxpayer can opt to debit the cash ledger while submitting the return.

4.9. The tax payer will submit the return with the payment of the amount of cash payable as per the return. The two activities can also be done separately and the taxpayer can make the payment in advance and credit his cash ledger. On filing of return, the ITC ledger will be credited with the amount of ITC available in the return, will be

debited by the amount of ITC availed for payment of taxes in the return and the cash ledger will be debited by the amount payable by the cash.

Acknowledgement

4.10. On submission of return, an Acknowledgement Number will be generated. In case of submission of a return which has been prepared by using offline tools, acknowledgement of submission will take some time as GSTN System will need to first verify details like the carry forward cash as per personal ledger, ITC, tax payment details etc. In such cases, initially a Transaction ID confirming receipt of data will be conveyed to the taxpayer, (as also envisaged in case of filing of short paid / non –paid return). Final acknowledgement of receipt of return will be generated after validation of data is completed, which will also lock-in the Transaction ID.

4.11. The acknowledgement of e-return would contain the following details:

- (i) Return acknowledgement number (unique number generated by the GSTN), Date and Time
- (ii) Transaction ID No., Date and Time
- (iii) GSTIN of taxpayer
- (iv) Relevant tax period details
- (v) Gross Supplies, Taxable Supplies and Tax paid / refund claimed (CGST, SGST, IGST and Additional tax separately) during the Return period

5. Where will the taxpayer file Return?

5.1. A registered Tax Payer shall file GST Return on GST Common Portal either:

- (i) by himself logging on to the GST Common Portal using his own user ID and password;
- (ii) Through his authorized representative using the user Id and password (allotted to the authorized representative by the tax authorities), as chosen at the time of registration, logging on to the GST Common Portal.

5.2. The filing may be done either directly or by using third party apps or software which will interact with GST System using APIs or through Facilitation Centre (FC).

5.3. At the time of registration, every taxpayer has to enrol with GST Common Portal (GSTN). A unique User-ID and Password will be generated and intimated to the taxpayer. This User-ID and Password shall be used by him for filing the tax return on the Common Portal as well.

Tax Return Preparers

5.4. The draft model bill in section 34 provides for a formal role for Tax Return Preparers (TRP). A taxable person may prepare and submit his returns himself or can use services of a TRP. The process for filing return through TRP is given below:

- (i) A TRP will have to be chosen by the taxpayer out of TRPs registered with respective State tax authorities/CBEC. (taxpayer will have the option to change TRP any time);
- (ii) The TRPs registered with tax authorities will be provided separate user ID and password;
- (iii) Using his own user Id and password, the TRP will prepare the 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 return prepared by the TRP will rest with the taxable person only and the TRP shall not be liable for any errors or incorrect information;
- (iv) The TRP will be able to upload all types of return, based on the information provided by the taxpayer who has authorized him to do so at the portal;
- (v) The system will generate an email and SMS having basic data of return and send the same to the taxpayer;
- (vi) The taxpayer can accept the correctness of the return and submit the same by just clicking on the link provided in the e-mail. In case he does not respond to the e-mail, return will be considered as not submitted;
- (vii) In case taxpayer wants to respond to the SMS, he may do so by replying YES and mention the OTP sent alongwith the SMS. In case he does not respond to the SMS, return will be considered as not submitted;

Facilitation Centres

5.5. The return can also be submitted by the taxpayer through any Facilitation Centre (FC) notified by the Tax authorities and selected by the taxpayer at GST System. The taxpayer shall make available the requisite documents to the facilitation centre. Facilitation Centre (FC) shall be responsible for the uploading of all types of return given to it by the taxable person. After uploading the data on the common portal using the ID and Password of FC, the GSTN system will generate an email/SMS for the taxpayer.

5.6. Registration of TRP/FC will be done by CBEC / respective State tax authorities and the registration data will be shared with GSTN to enable applicants/taxpayers to choose one from the available list of registered TRPs/FCs.

GST Common Portal

5.7. The Common Portal shall act as a channel for most of the communication between the taxpayer and tax administration. The Common Portal will provide the taxpayer with a dashboard that will give a snapshot of all the activities of the taxpayer and details of what is required from him.

5.8. The common portal will display the electronic form to be used for filing the return. The Common portal will also provide an offline utility for entering the details offline and uploading the information in one go. In case of offline filing, the validations will be done after filing of the information and the taxpayers will be intimate accordingly. The taxpayers can use their Digital Signature Certificate for validating the

return filed by them. However, to ensure that e-verification can be provided even to taxpayers who don't have DSC, separate mechanism like EVC using Adhar or net banking credentials is being worked out. Overall, the effort will be to avoid any kind of paper interface.

5.9. Along with the return, taxpayer is not required to submit any other document. The documents as required for scrutiny or audit shall be made available by the taxpayer to the audit party deputed by CBEC/State tax authorities/CAG.

5.10. The Common Portal will also maintain and display the ledger of the Tax Payer providing information about the tax deposited, input tax credit availed/taken, input tax credit utilized, tax liability created, balance ITC carried forward, tax payments made by debiting the ledgers under respective major tax heads, refund granted and balance in respective cash ledger and credit ledger carried. The information of Interest on delayed payments, Penalty for legal defaults, Tax Demand as per adjudication/appellate orders, etc. would also be provided. The ledger will also give the status of the tax dues or excess payment on any given date.

6. Contents of transaction level information

6.1. Section 23 of the draft model bill mandates issue of invoice for every supply at the time of supply in case of supply of goods or at prescribed time in case of supply of services. As explained earlier, invoices will form the basis of the returns to be filed under GST. The following invoice level information would be captured in the statements pertaining to return:

Invoices pertaining to B2B transactions

6.2. For all invoices pertaining to all intra/inter-state B2B supplies and supplies made to entities with UID, following details shall be submitted as part of statement of outward supplies and inward supplies, wherever relevant:

- (i) Goods and Services Tax Identification Number (GSTIN)/Unique ID issued to UN organizations/Embassies
- (ii) Invoice Number, Date and value
- (iii) HSN code for each item line (for Goods)/Accounting code for each item line (for services)
- (iv) Taxable Value
- (v) Tax Rate (CGST & SGST or IGST)
- (vi) Tax Amounts (CGST & SGST or IGST)
- (vii) Place of Supply (State)

6.3. An Invoice may have two items having different tax rates or different HSN codes in case of B2B supplies. If the invoice contains more than one tax rate/one HSN Code, the taxpayer would have to submit line-wise information separately for each HSN Code/each tax rate.

Invoices pertaining to B2C transactions

6.4. In respect of invoices for interstate supplies whose taxable value is more than Rs. 2.5 lakhs, details of invoices shall have to be submitted in the following format for proper tracking of flow of funds to the destination State:

- (i) Invoice Number, Date and value
- (ii) HSN Code for goods / Accounting code for services
- (iii) Taxable Value
- (iv) Tax Rate
- (v) Tax Amount
- (vi) Buyer's address (State Code)
- (vii) Departmental ID allotted by State Government to Government entities/ PSUs, etc. not dealing in GST supplies or to persons dealing in exempted/ Nil rated/ non-GST goods or services
- (viii) Place of Supply (State) if different than S. No. (vi) above

6.5. For invoices relating to interstate supplies to unregistered persons whose taxable value is upto Rs 2.5 lakhs, only state-wise and tax rate-wise aggregated taxable value of all such invoices will be submitted,. In case of intrastate supplies to unregistered persons, tax rate-wise aggregated taxable value of all such invoices will be submitted.

Invoice pertaining to Export and deemed export supply

6.6. For export related supplies, it is intended that the transaction level information shall be submitted in the following format to ensure linkages with the IT systems of Customs.

- (i) Invoice Number, Date and value
- (ii) 8-digit HSN Code for goods/ Accounting Code of Services for each line item (as HSN Code / Accounting code is mandatory in case of exports)
- (iii) Taxable Value
- (iv) Tax Rate
- (v) Tax Amounts (IGST, CGST & SGST) (in case exports on payment of GST).
- (vi) Shipping Bill/ Bill of Export Number

Details pertaining to exempted including Nil rated supply

6.7. Aggregate value of all exempted, including Nil rated outward and inward supplies made by the taxpayer during the return period would be submitted. Although this has no tax significance in direct sense but capturing this information would be important for tallying the total supply turnover and the total taxable turnover during the tax period.

Bills of Entry relating to Import

6.8. For import related transaction, following details pertaining to inward supplies shall be submitted. These details would be verified from Bill of Entry data available at ICES / ICEGATE.

- (i) Bill of Entry Number, Date and value

- (ii) Assessable Value for IGST
- (iii) 8-digit HSN Code for goods
- (iv) IGST rate
- (v) IGST Amount
- (vi) Importer's address (for transfer of IGST)[Will get auto populated in case of registered taxpayer. In case of others, it will have to be provided by them]

Credit Note and Debit Note

6.9. There are various situations in which the taxpayers may need to issue credit and debit notes. Credit and debit notes may be issued in case of price and quantity variations, sale/purchase returns or post sale discounts. Section 24 of the draft model bill recognises credit and debit note issued for an outward supply by the supplier and the recipient of the supply shall show it as a receipt of the credit or debit note. It has been made mandatory that every credit or debit note shall have to relate to an invoice issued by the supplier earlier.

6.10. Following information relating to credit or debit note will have to be submitted as part of the return.

- (i) Debit / Credit Note Number
- (ii) Original Invoice Number and Date
- (iii) Taxable Value, Tax Rate and Tax Amount (CGST & SGST or IGST) (that is being modified)

6.11. Section 24 of the draft model bill requires that Credit or Debit note for any tax invoice should be issued before 30th September of the financial year succeeding financial year in which the invoice has been submitted and the credit/debit note will be reflected in the monthly return in which such notes have been issued. This will ensure that matching and auto-reversal pertaining to credit or debit note can happen before last date of filing the annual return of the financial year in which the invoice was issued. In case of supplier issuing credit note, since the tax liability stands reduced, it is essential that only the reduced tax amount has been passed on to the recipient.

Post sales discount

6.12. Section 15 of the model GST bill deals with valuation of taxable supply and clause (h) of sub-section (2) allows only those discounts to reduced from the value of supply that can established as per the agreement of supply and is known at or before the time of supply. It also requires that such discounts should be specifically linked to relevant invoices and therefore, excludes any lump-sum discount. The adjustments for post sales discount will be completed before filing of annual return. The credit/debit note will be reflected in the monthly return in which the said adjustment is made.

Advances received against a supply to be made in future

6.13. Section 12 and 13 of the draft model bill deals with the time of supply of goods and services respectively and determine when tax shall become payable. Sub-section (2)

of both sections provide that tax shall become payable when advance payment is received against any supply even if the recipient has not received goods or services or even if supplier has not actually supplied goods or services. Therefore, in case of an advance received, the supplier will have to pay tax and therefore it needs to be captured in the statement of outward supplies. This will have to be settled finally when the supply is made and final invoice is issued when the recipient will be allowed to claim ITC. So, accordingly, if the tax is to be paid on the basis of advance payment received against a future supply of goods and/or services, then the following details would be required to be provided:

- (i) GSTIN/UID/GDI/Name of customer
- (ii) State Code
- (iii) HSN Code for goods / Accounting code for services
- (iv) Amount of advance received
- (v) Tax Rate (CGST and SGST or IGST and Additional Tax)
- (vi) Tax Amount (CGST and SGST or IGST and Additional Tax)

TDS

6.14. Persons who are mandated to deduct tax at source as per section 37 from the payments made to their supplier for supplies made to them will have to submit details of deductions made so that the taxpayers on whose behalf deductions have been made are able to claim credit for the same.

6.15. In their TDS return, the TDS deductors will give following details for every transaction:

- (i) GSTIN/GDI of deductor
- (ii) GSTIN of deductee/supplier
- (iii) Invoice no. with date (iv) TDS Certificate no. with date and value
- (iv) Taxable value
- (v) Rate of TDS for IGST, CGST and SGST as applicable
- (vi) Amount of IGST, CGST and SGST as applicable, deducted as TDS

6.16. As explained earlier, these details will be available with the GST common portal by 10th of the month and the same will be auto-populated in the returns of the taxpayers on whose behalf the deductions have been made. These deductees will claim the credit for these deductions in their return and their cash ledgers will be credited by the amount of deduction made by the deductors.

ISD

6.17. ISDs, who will only be distributing credit onwards to their subsidiaries or sister concerns will be giving details of the inward supplies and will be distributing credit through issue of documents that have been deemed to be a tax invoice as per explanation under section 23 of the draft Model Bill. These entities will be giving following details for the invoices issued by them for distributing the credit.

- (i) Details of ISD i.e. GSTIN, name and address

- (ii) Details of recipient i.e. GSTIN, name and address
- (iii) Details of the inward supply invoices on the basis of which Input Tax Credit is claimed.
- (iv) Invoice / Document no. with date
- (v) Amount of IGST, CGST, SGST Credit, as applicable, being distributed.

6.18. Based on the invoices issued by the suppliers to the ISD, the inward supply details of the ISD shall be auto-populated and based on the invoices issued by them, the subsidiaries will be availing the credit.

7. Matching of Input Tax Credit and Auto-reversal

7.1. Matching of ITC and auto-reversal is one of the core features of GST. The primary reason for having this feature arises from the fact that one of the most important design specifications of GST is that it should allow full credit of taxes paid across State boundaries, making it a truly national tax while keeping the federal structure intact. Operationally, it allows a taxpayer registered in one State can take credit of IGST paid to a taxpayer registered in another State against SGST payable by him in his State and vice versa. This requires that whenever a taxpayer takes credit of IGST paid against SGST payable, the Centre transfers an equivalent amount to the relevant State and whenever a taxpayer takes credit of SGST paid against IGST payable, the relevant State transfers an equivalent amount to the relevant Centre.

7.2. For smooth operation of such a fund transfer mechanism, which is essential for smooth flow of credit, it is important that a system is in place which ensures that whenever a taxpayer takes credit of any tax paid on his inputs, the tax amount has either already been collected or gets collected in due course. It is also essential that such a system runs without any manual intervention. Matching of input tax credit and auto-reversal provides exactly that mechanism.

Provisional acceptance of ITC

7.3. The first aspect that the framework recognises is that ITC is a matter of the claim of the taxpayer availing it and the taxpayer has to be initially allowed the ITC he has claimed. Therefore, as provided in section 28, the ITC claimed by a taxpayer is allowed every taxpayer to on provisional basis and he is allowed to utilise it for payment of tax declared in his return

7.4. Therefore, even before the ITC claim of the taxpayer is matched and finally allowed, it can be availed for payment of taxes in the return. However, the taxpayer cannot utilise the credit for payment of any other liability like demand created as a result of audit.

Matching Process

7.5. After the due date for filing of return, the invoices for ITC claims of taxpayers will be matched with corresponding outward supplies as per section 29 of the draft model

bill. If the recipient has claimed ITC based on the details auto-populated in his GSTR-2 without any modifications, it will be presumed that the ITC has been matched if the corresponding supplier has discharged his tax liability, that is, his return is a valid return.

7.6. The invoices for ITC claims will be matched for duplicates and with the tax paid on the invoices of corresponding outward supplies. For the purpose of matching, invoice number, invoice date, taxable value, tax rate and tax amount shall be matched. If the details match, that is, if the other fields are same and the tax amount in the ITC claim is less than or equal to the tax amount in the invoice for the corresponding outward supply, the input tax credit claim will be finally accepted and final acceptance of the credit will be communicated to the taxpayer as provided in section 29 (2).

7.7. Where the claim of ITC is found to be duplicate, the person making the claim alone shall be intimated and where there is a mismatch, both the supplier and recipient shall be intimated.

Auto-reversal

7.8. Although, the system shall do a de-duplication check when taxpayers file their returns, where offline utilities have been used or third party apps or software has been used, there is a possibility of having duplicate claims. If the claim is found to be duplicate, an amount equal to the ITC claimed on account of the duplicate claim will be added to his output liability in the next return and shall become payable with interest for one month.

7.9. If there is a mismatch found in the ITC claim of the taxpayer, that is, if he has uploaded an invoice that has not been declared by the corresponding supplier or if he has modified an invoice to claim more credit than the tax declared by the supplier, the supplier may accept the liability in his next return and pay the tax alongwith interest payable on delayed payment of the tax. In such a case, in the next cycle, the ITC claim shall match with the invoice for corresponding outward supply and the ITC claim of the recipient shall get accepted. If the supplier fails to own up the tax liability in his next return, an amount equal to the ITC claimed on account of the mismatched claim will be added to his output liability in the next return and shall become payable with interest for two months.

Reclaim of reversal

7.10. Once claim of ITC on an invoice has been auto-reversed, the recipient cannot claim it again unless the supplier uploads that invoice in his return. After auto-reversal, if at any stage, but before 30th September of the next financial year, the supplier uploads the invoice for corresponding outward supply, the invoice shall automatically appear in the return of the recipient and the recipient shall be eligible to claim ITC on that invoice. The interest paid by him on auto-reversal shall also be credited back to his cash ledger. If any taxpayer claims ITC on an invoice that has been auto-reversed in the past without

the corresponding supplier uploading that invoice, such ITC shall be auto-reversed in the next month itself and a higher interest shall be payable on such auto-reversal.

7.11. The above process outlines the process for invoices and the same process would apply for debit notes as well. Debit notes are in the nature of increase in value of supply and therefore increase the tax payable for supplies and increase the ITC available with the recipient which, in effect, is same as that in case of invoices. Therefore, wherever there is a mismatch, in both cases, the ITC of recipient is subjected to auto reversal.

Matching and auto reversal of Credit Notes

7.12. In case of Credit Note, however, the nature of transaction and its impact is different. When a supplier issues a credit note, the value of supply and the tax liability reduces in his hands. Simultaneously, the recipient should reduce the ITC claim by an equivalent amount. Thus, in case of mismatch, if the recipient does not reduce his ITC claim, the reduction of tax liability in the hands of the supplier should be reversed. The process followed in case of credit notes is also same except for this one basic difference.

7.13. Even in case of credit notes, the claims would be first checked for duplicates and duplicate claims shall be communicated to the supplier. If there is a mismatch, i.e. the recipient has not reduced the ITC claim at least by an equivalent amount, both of them will be intimated. If the recipient reduces the ITC claim accordingly, along with the payment of tax and interest, the credit note will be considered as matched. In case the recipient does not take any such corrective action, the amount of tax liability reduced by the supplier will be added to his tax liability in the subsequent returns and shall become payable along with interest for two months.

7.14. Even in the case of credit note, the supplier shall automatically be given the benefit of the credit note if the recipient acknowledges it and reduces his ITC claim at any print and provisions similar to that for invoice and debit notes apply to credit notes as well.

8. Revision of Return

8.1. Since the return framework in GST is predominantly transaction based, any changes required to be done at any stage shall also have to be done at the transaction level rather than at the aggregate level of return. Therefore, in GST, no revision of returns is allowed.

8.2. Instead, as provided in Section 25 (2) and 26 (3), if taxpayers find that there is an error in the invoices uploaded by them, they can correct the details of invoices in the return of the month when they were noticed, by providing necessary details in tables meant for amendment of details already furnished in statements of outward and inward supplies. In case the invoices were wrongly uploaded, it is presumed that they would not have got matched and the ITC on such invoice would not have been claimed. This system

allows such invoices to be corrected through amendment tables. However, in case of matched invoices, the corrections shall have to be done through credit/debit notes.

8.3. All unreported invoices of previous tax period would be reflected in the return for the month in which they are proposed to be included. The interest, if applicable will be auto populated.

8.4. All under-reported invoices and ITC revision that have been matched, will have to be corrected using credit/debit note and such credit / debit note would be reflected in the return for the month in which such adjustment is carried out. The credit/debit note will have provision to record original invoice, date etc. to enable the system to link the same with the original invoice as also to calculate the interest, if applicable. Its format will be like the invoice.

8.5. There would be separate tables in the returns for reflecting those adjustments for which credit/debit notes are not required to be issued/issued. The interest, if applicable will be auto populated.

9. Non-filing, late-filing and short-filing of return

Non-Filers & Late-Filers

9.1. In case of failure by the taxpayer to submit periodic returns, a defaulter list will be generated by the IT system by comparing the return filers with the registrant database. Such defaulter list will be provided to the respective GST Authorities for necessary enforcement and follow up action.

9.2. GST Common Portal will auto generate and send the notice to all non-filers in the form of email and SMS. The details of non-filers shall be made available on the dash board of jurisdictional officers.

Short-Filers

9.3. As per the requirement of the IGST model, return should be allowed to be filed only on payment of due tax as self-assessed and declared in the return. However, returns would be allowed to be uploaded even in case of short payment for the limited purpose of having the information about self-assessed tax liability even though not paid. The invoice matching and inter-governmental fund settlement would, however, take place only after the full tax has been paid. Return without full payment of tax will be allowed to be uploaded but it will be treated as an invalid return and this return will not be used for matching of invoices and settlement of funds.

9.4. Any invalid return (including the one not supported by full payment) will merely be recorded with unique transaction ID, but not accepted in the system, and that aspect will be made known to the taxpayer at the time of communicating the ID itself.

10. Return for Casual Taxpayers:

10.1. Casual Taxpayers should file GSTR-1, GSTR-2 and GSTR-3 for the period for which they have obtained registration within a period of seven days after the date of expiry of registration. In case registration period is for more than one month, monthly return(s) would be filed and thereafter return for remaining period would be filed within a period of seven days as stated earlier.

11. First and Final Return

11.1. In the normal course, any person doing business would be taking registration as and when he becomes liable for registration. It has also been prescribed that a person shall be liable to get registered when he crosses 90% of the threshold for becoming liable to pay tax and therefore, in normal cases, a person would already be registered by the time he becomes liable to pay tax. However, the section 19 (1) of the draft model law allows taxpayers to register within thirty days from becoming liable to register. In some cases it may happen that even if the tax payer has applied for registration within thirty days from the day he become liable to register, he may become liable to pay tax even before he has been granted registration. In addition, he could have received taxable supplies within those thirty days on which he may choose to take input tax credit.

11.2. For the period before he gets his GSTIN, the returns cannot be filed electronically on the GST common portal. To enable the taxpayer to declare the taxable supplies made by him before grant of registration and to allow him to take credit of taxes paid on his input during that period, section 27A of the draft model bill allows for filing a first return. The format for this return including the statement of outward and inward supplies associated with it is the same as that for regular return but this return will have to be filed and processed manually.

11.3. On cancellation of registration either on closure of business or where the taxpayer is no longer liable to pay tax, the input tax credit for inputs held in stock and inputs contained in finished and semi-finished goods will have to be reversed as per section 21 (7) of the draft model bill. Similarly, as per the same section, input tax credit on capital goods as per the residual value will have to be reversed. To enable the tax payer to discharge these liabilities, the draft model bill provides for a Final Return in Section 31. This return has to be filed within three months of cancellation of registration.

12. Annual Return

12.1. All the Normal taxpayers would be required to submit Annual Return. This return to be filed annually is intended to provide 360 degree view about the activities of the taxpayer. This statement would provide a reconciliation of the returns with the audited financial statements of the taxpayer.

12.2. This return is a detailed return and captures the details of all the income and expenditure of the taxpayer and regroups them in accordance with the monthly returns

filed by the taxpayer. This return also provides for the reconciliation of the monthly tax payments and will provide the opportunity to make good for any short reporting of activities undertaken supply wise. The said return would also capture the details of pending arrears against the taxpayer and the current status of the orders leading to such arrears. The details of all the refund claims pending with the tax authorities would also be captured. Since this return captures the minutest details of income and expenditure of the taxpayer, the gross profit/loss arrived on the basis of the details submitted in this statement should tally with the gross profit/loss indicated in the Profit and Loss Account of the dealer. Accordingly, this return is to be submitted along with the audited copies of the Annual Accounts of the dealer and would be filed by 31st December following the end of the financial year for which it is filed.

12.3. A separate reconciliation statement, duly certified by a Chartered Accountant, will have to be filed by those taxpayers who are required to get their accounts audited under section 44AB of Income Tax Act 1961. Currently this limit is Rs 1 Crore.

12.4. Consolidated statement of purchases and supplies based on monthly returns filed by the taxpayer can be made available to taxpayers by GSTN common portal as a facilitation measure for enabling him to prepare annual return.

13. Processing of Return

13.1. After the GST Return has been uploaded onto the GST Common Portal, the Portal will undertake the following activities:

- (i) Acknowledge the receipt of the return filed by the taxpayer after conducting required validations.
- (ii) Acknowledgement number would be issued as per procedure detailed above.
- (iii) Once a return is acknowledged, forward that GST Return to tax authorities of Central and appropriate State Govt. through the established IT interface.
- (iv) The ITC claim will be confirmed to purchasing taxpayer in case of matched invoices after 20th of the month succeeding the month of the tax period month provided counterparty supplying taxpayer has submitted the valid return (and paid self-assessed tax as per return).
- (v) Communicate to the taxpayers through SMS/e-Mail, about the macro-results of the matching. The details will be in the taxpayers' dashboard/ledger which can be viewed after log-in at the Portal.
- (vi) Auto-populate the ITC reversals due to mismatching of invoices in the taxpayer's account in the return for the 2nd month after filing of return for a particular month.
- (vii) Aggregation of cross-credit utilization of IGST and SGST for each State and generation of settlement instructions based on IGST model and as finalized by the Payments Committee. This has to be with dealer-wise details as the concerned tax administration's follow on activities will be dependent on that detailing.

13.2. GST return and the associated statements will have a large amount of information for post return tax analysis. The return will throw out various exceptions that require closer scrutiny. Since all statements of outward supplies of medium and large suppliers are HSN/SAC based, it will give ample scope for commodity analysis in addition to rudimentary input-output analysis. In addition, annual returns will have detailed commodity level information including quantity details. Commodity based trends in tax collection will be available for all sectors from all parts of the country.

13.3. GST being a destination based consumption tax it would give an ample scope of correlating tax collection data with other macroeconomic and various micro parameters. Being fully computerised system with uniform PAN based system structure across the country it will allow robust interface with other tax systems like Income tax and Customs.

13.4. Using data analysis techniques, it is expected that the tax departments will select targeted outliers and take up for detailed scrutiny and determination of taxes short paid or not paid, if any. This would ensure that even in the process relating to scrutiny, audit and assessment, any manual intervention will be limited to select outliers identified on the basis of detailed statistical analysis.

Legal Provisions relating to Return and Matching of ITC

Chapter VII-Tax Invoice, Debit and Credit Notes

Section 23.Tax invoice

A registered taxable person supplying,-

(i) taxable goods shall issue, at the time of supply, a tax invoice showing the description, quantity and value of goods, the tax charged thereon and such other particulars as may be prescribed;

(ii) taxable services shall issue a tax invoice, within the prescribed time, showing the description, the tax charged thereon and such other particulars as may be prescribed:

(1) Provided that a registered taxable person may issue a revised invoice against the invoice already issued during the period starting from the effective date of registration till the date of issuance of certificate of registration to him:

Provided further that a registered taxable person supplying non-taxable goods and/or services or paying tax under the provisions of section 8 shall issue, instead of a tax invoice, a bill of supply containing such particulars as may be prescribed.

(2) Explanation.- The expression "tax invoice" shall be deemed to include a document issued by an Input Service Distributor under section 17, and shall also include any supplementary or revised invoice issued by the supplier in respect of a supply made earlier.

Section 23A. Amount of tax to be indicated in tax invoice and other documents

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

Section 24. Credit and debit notes

(1) Where a tax invoice has been issued for supply of any goods and/or services and the taxable value and/or tax charged in that tax invoice is found to exceed the taxable value and/or tax payable in respect of such supply, the taxable person, who has supplied such goods and/or services, may issue to the recipient a credit note containing such particulars as may be prescribed on or before the thirtieth day of September following the end of the financial year in which such supply was made, or the date of filing of the relevant annual return, whichever is earlier:

Provided that no credit note shall be issued by the said person if the incidence of tax and interest on such supply has been passed by him to any other person.

(2) Where a tax invoice has been issued for supply of any goods and/or services and the taxable value and/or tax charged in that tax invoice is found to be less than the taxable value and/or tax payable in respect of such supply, the taxable person, who has supplied such goods and/or services, shall issue to the recipient a debit note containing such particulars as may be prescribed on or before the thirtieth day of September following the end of the financial year in which such supply was made, or the date of filing of the relevant annual return, whichever is earlier.

(3) Any registered taxable person who issues or receives a credit or debit note in relation to a supply of goods and/or services shall declare the details of such credit or debit note, as the case may be, in the return for the month during which such credit or debit note has been issued or received or in the return for any subsequent month but not later than September following the end of financial year in which such supply was made, or the date of filing of the relevant annual return, whichever is earlier, and the tax liability shall be adjusted in the manner specified in this Act.

Chapter VIII-Returns**Section 25. Furnishing details of outward supplies**

(1) Every registered taxable person, other than an input service distributor and a person paying tax under the provisions of section 8 or section 37, shall furnish, electronically, in such form and manner as may be prescribed, the details of outward supplies of goods and/or services effected, during a tax period on or before the tenth day of the month succeeding the said tax period and such details shall be communicated to the recipient of the said supplies within the time and in the manner as may be prescribed:

Provided that the Board / Commissioner may, for valid and sufficient reasons, by notification, extend the time limit for furnishing such details:

Provided further that any extension of time limit by the Board/Commissioner of State Goods and Services Tax shall be deemed to be approved by the Commissioner of State Goods and Services Tax/Board:

Explanation.- For the purposes of this section, the expression “details of outward supplies” shall include details relating to zero-rated supplies, inter-state supplies, return of goods received in relation to/ in pursuance of an inward supply, exports, debit notes, credit notes and supplementary invoices issued during the said tax period.

(2) Any registered taxable person, who has furnished the details under sub-section (1) for any tax period and which have remained unmatched under section 29, shall, upon discovery of any error or omission therein, rectify such error or omission in the tax period during which such error or omission is noticed in such manner as may be prescribed, and shall pay the tax and interest, if any, in case there is a short payment of tax on account of such error or omission, in the return to be furnished for such tax period:

Provided that no rectification of error or omission in respect of the details furnished under sub-section (1) shall be allowed after filing of the return under section 27 for the month of September following the end of the financial year to which such details pertain, or filing of the relevant annual return, whichever is earlier.

Section 26. Furnishing details of inward supplies

(1) Every registered taxable person, other than an input service distributor and a person paying tax under the provisions of section 8 or section 37, shall verify, validate, modify or, if required, delete the details relating to outward supplies and credit or debit notes communicated under sub-section (1) of section 25 to prepare the details of his inward supplies and credit or debit notes and may include therein, the details of inward supplies and credit or debit notes received by him in respect of such supplies that have not been declared by the supplier under sub-section (1) of section 25.

(2) Every registered taxable person shall furnish, electronically, the details of inward supplies of taxable goods and/or services, including inward supplies of services on which the tax is payable on reverse charge basis under this Act and inward supplies of goods and/or services taxable under the IGST Act, and credit or debit notes received in respect of such supplies during a tax period on or before the fifteenth day of the month succeeding the tax period in such form and manner as may be prescribed:

Provided that the Board/Commissioner may, for valid and sufficient reasons, by notification, extend the time limit for furnishing such details:

Provided further that any extension of time limit by the Board/Commissioner of State Goods and Services Tax shall be deemed to be approved by the Commissioner of State Goods and Services Tax/Board.

(3) Any registered taxable person, who has furnished the details under sub-section (2) for any tax period and which have remained unmatched under section 29, shall, upon discovery of any error or omission therein, rectify such error or omission in the tax period during which such error or omission is noticed in such manner as may be prescribed, and shall pay the tax and interest, if any, in case there is a short payment of tax on account of such error or omission, in the return to be furnished for such tax period:

Provided that no rectification of error or omission in respect of the details furnished under sub-section (2) shall be allowed after filing of the return under section 27 for the month of September following the end of the financial year to which such details pertain, or filing of the relevant annual return, whichever is earlier.

Section 27. Returns

(1) Every registered taxable person shall, for every calendar month or part thereof, furnish, in such form and in such manner as may be prescribed, a return, electronically, of inward and outward supplies of goods and/or services, input tax credit availed, tax payable, tax paid and other particulars as may be prescribed within twenty days after the end of such month:

Provided that a registered taxable person paying tax under the provisions of section 8 of this Act shall furnish a return for each quarter or part thereof, electronically, in such form and in such manner as may be prescribed, within eighteen days after the end of such quarter:

Provided further that a registered taxable person shall not be allowed to furnish return for a tax period if valid return for any previous tax period has not been furnished by him.

(2) Every registered taxable person, who is required to furnish a return under sub-section (1), shall pay to the credit of the appropriate Government the tax due as per such return not later than the last date on which he is required to furnish such return.

(3) A return furnished under sub-section (1) by a registered taxable person without payment of full tax due as per such return shall not be treated as a valid return for allowing input tax credit in respect of supplies made by such person.

(4) Every registered taxable person shall furnish a return for every tax period under sub-section (1), whether or not any supplies of goods and/or services have been effected during such tax period.

(5) Every registered taxable person required to deduct tax at source shall furnish a return, electronically, in such form and in such manner as may be prescribed, for the month in which such deductions have been made along with the payment of tax so deducted, within ten days after the end of such month.

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

(7) Subject to the provisions of sections 25 and 26, if any taxable person after furnishing a return under sub-section (1) discovers any omission or incorrect particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, he shall rectify such omission or incorrect particulars in the return to be filed for the month or quarter, as the case may be, during which such omission or incorrect particulars are noticed, subject to payment of interest, where applicable and as specified in the Act:

Provided that no such rectification of any omission or incorrect particulars shall be allowed after the due date for filing of return for the month of September or second quarter, as the case may be, following the end of the financial year, or the actual date of filing of relevant annual return, whichever is earlier.

Section 27A. First Return

(1) Every registered taxable person paying tax under the provisions of section 7 shall furnish the first return containing the details of:

(a) outward supplies under section 25 from the date on which he became liable to registration till the end of the month in which the registration has been granted;

(b) inward supplies under section 26 from the effective date of registration till the end of the month in which the registration has been granted:

Provided that a registered taxable person paying tax under the provisions of section 8 shall furnish the first return for the period starting from the date on which he becomes a registered taxable person till the end of the quarter in which the registration has been granted.

(2) Provisions of section 25, 26 and 27, other than the provision pertaining to tax period, shall apply mutatis mutandis to the said person furnishing return under sub-section (1).

Section 28. Claim of input tax credit and provisional acceptance thereof

Every taxable person shall, subject to such conditions and restrictions as may be prescribed in this behalf, be entitled to take credit of input tax, as self-assessed, in his return and such amount shall be credited, on a provisional basis, to his electronic credit ledger to be maintained in the manner as may be prescribed:

Provided that a taxable person who has not furnished a valid return under section 27 of the Act shall not be allowed to utilize such credit till he discharges his self-assessed tax liability.

Section 29. Matching, reversal and reclaim of input tax credit

(1) The details of every inward supply furnished by a taxable person (hereinafter referred to in this section as the 'recipient') for a tax period shall, in the manner and within the time prescribed, be matched-

(a) with the corresponding details of outward supply furnished by the corresponding taxable person (hereinafter referred to in this section as the 'supplier') in his valid return for the same tax period or any preceding tax period,

(b) with the additional duty of customs paid under section 3 of the Customs Tariff Act, 1975 (51 of 1975) in respect of goods imported by him, and

(c) for duplication of claims of input tax credit.

(2) The claim of input tax credit in respect of invoices and/or debit notes relating to inward supply that match with the details of corresponding outward supply or with the additional duty of customs paid shall, subject to the provisions of section 16, be finally accepted and such acceptance shall be communicated, in the manner as may be prescribed, to the recipient.

(3) Where the input tax credit claimed by a recipient in respect of an inward supply is in excess of the tax declared by the supplier for the same supply or the outward supply is not declared by the supplier in his valid returns, the discrepancy shall be communicated to both such persons in the manner as may be prescribed.

(4) The duplication of claims of input tax credit shall be communicated to the recipient in the manner as may be prescribed.

(5) The amount in respect of which any discrepancy is communicated under sub-section (3) and which is not rectified by the supplier in his valid return for the month in which discrepancy is communicated shall be added to the output tax liability of the recipient, in the manner as may be prescribed, in his return for the month succeeding the month in which the discrepancy is communicated.

(6) The amount claimed as input tax credit that is found to be in excess on account of duplication of claims shall be added to the output tax liability of the recipient in his return for the month in which the duplication is communicated.

(7) The recipient shall be eligible to reduce, from his output tax liability, the amount added under sub-section (5) if the supplier declares the details of the invoice and/or debit note in his valid return within the time specified in sub-section (7) of section 27.

(8) A recipient in whose output tax liability any amount has been added under sub-section (5) or, as the case may be, under sub-section (6), shall be liable to pay interest at the rate specified under sub-section (1) of section 36 on the amount so added from the date of availing of credit till the corresponding additions are made under the said sub-sections.

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

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

(10) The amount reduced from the output tax liability in contravention of the provisions of sub-section (7) shall be added to the output tax liability of the recipient in his return for the month in which such contravention takes place and such recipient shall be liable to pay interest on the amount so added at the rate specified in sub-section (3) of section 36.

Section 29A. Matching, reversal and reclaim of reduction in output tax liability

(1) The details of every credit note relating to outward supply furnished by a taxable person (hereinafter referred to in this section as the 'supplier') for a tax period shall, in the manner and within the time prescribed, be matched -

(a) with the corresponding reduction in the claim for input tax credit by the corresponding taxable person (hereinafter referred to in this section as the 'recipient') in his valid return for the same tax period or any subsequent tax period, and

(b) for duplication of claims for reduction in output tax liability.

(2) The claim for reduction in output tax liability by the supplier that matches with the corresponding reduction in the claim for input tax credit by the recipient shall be finally accepted and communicated, in the manner as may be prescribed, to the supplier.

(3) Where the reduction of output tax liability in respect of outward supplies exceeds the corresponding reduction in the claim for input tax credit or the corresponding credit note is not declared by the recipient in his valid returns, the discrepancy shall be communicated to both such persons in the manner as may be prescribed.

(4) The duplication of claims for reduction in output tax liability shall be communicated to the supplier in the manner as may be prescribed.

(5) The amount in respect of which any discrepancy is communicated under sub-section (3) and which is not rectified by the recipient in his valid return for the month in which discrepancy is communicated shall be added to the output tax liability of the supplier, in the manner as may be prescribed, in his return for the month succeeding the month in which the discrepancy is communicated.

(6) The amount in respect of any reduction in output tax liability that is found to be on account of duplication of claims shall be added to the output tax liability of the supplier in his return for the month in which such duplication is communicated.

(7) The supplier shall be eligible to reduce, from his output tax liability, the amount added under sub-section (5) if the recipient declares the details of the credit note in his valid return within the time specified in sub-section (7) of section 27.

(8) A supplier in whose output tax liability any amount has been added under sub-section (5) or, as the case may be, under sub-section (6), shall be liable to pay interest at the rate specified under sub-section (1) of section 36 in respect of the amount so added from the date of such claim for reduction in the output tax liability till the corresponding additions are made under the said sub-sections.

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

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

(10) The amount reduced from output tax liability in contravention of the provision of sub-section (7) shall be added to the output tax liability of the supplier in his return for the month in which such contravention takes place and such supplier shall be liable to pay interest on the amount so added at the rate specified in sub-section (3) of section 36.

Section 30. Annual return

(1) Every registered taxable person, other than an input service distributor, a deductor under section 37, a casual taxable person and a non-resident taxable person, shall furnish an annual return for every financial year electronically in such form and in such manner as may be prescribed on or before the thirty first day of December following the end of such financial year.

(2) Every taxable person who is required to get his accounts audited under sub-section (4) of section 42 shall furnish, electronically, the annual return along with the audited copy of the annual accounts and a reconciliation statement, reconciling the value of supplies declared in the return furnished for the year with the audited annual financial statement, and such other particulars as may be prescribed.

Section 31. Final return

Every registered taxable person who applies for cancellation of registration shall furnish a final return within three months of the date of cancellation or date of cancellation order, whichever is later, in such form and in such manner as may be prescribed.

Section 32. Notice to return defaulters

Where a registered taxable person fails to furnish a return under section 27 or section 31, a notice shall be issued requiring him to furnish such return within such time and in such form and manner as may be prescribed.

Section 33. Levy of late fee

(1) Any registered taxable person who fails to furnish the details of outward or inward supplies required under section 25 or section 26, as the case may be, or returns required under section 27 or section 31 by the due date shall be liable to a late fee of rupees one hundred for every day during which such failure continues subject to a maximum of rupees five thousand.

(2) Any registered taxable person who fails to furnish the return required under section 30 by the due date shall be liable to a late fee of rupees one hundred for every day during which such failure continues subject to a maximum of an amount calculated at a quarter percent of his aggregate turnover.

Section 34. Tax Return Preparers

(1) The appropriate Government may, by rules, prescribe the manner of approval of Tax Return Preparers, their eligibility conditions, duties and obligations, manner of removal and such other conditions as may be relevant for their functioning as a Tax Return Preparer.

(2) A registered taxable person may, in the manner prescribed, authorise an approved Tax Return Preparer to furnish the details of outward supplies under section 25, the details of inward supplies under section 26 and the return under section 27, 30 or section 31, as the case may be, and such other tasks as may be prescribed.

(3) Notwithstanding anything contained in sub-section (2), the responsibility for correctness of any particulars furnished in the return and/or other details filed by the Tax Return Preparer shall continue to rest with the registered taxable person on whose behalf such return and details are filed.

Return Formats

These formats are based on the report of the Joint Committee on the business process relating to return as approved by the Empowered Committee of State Finance Ministers. The changes required in the formats as per the decisions taken on the consultations made are yet to be made in the formats. Similarly, changes required due to provisions of the draft Model GST Bills as approved by the Empowered Committee have also not yet been carried out in these formats. However, these formats give a fair understanding of the concepts and idea behind returns in GST.

GSRT-1: OUTWARD SUPPLIES MADE BY THE TAXPAYER

[To be furnished by the 10th of the month]

[Not to be furnished by compounding taxpayer/ISD]

1. GSTIN:

2. Name of the taxpayer:
(S. No. 1 and 2 will be auto-populated on logging)

3. Gross Turnover of the taxpayer in the previous FY.....
(To be submitted only in first year. To be auto populated in subsequent year)

4. Period: Month..... Year

5. Taxable outward supplies to a registered person

(figures in Rs)

GSTIN/ UIN	Invoice					IGST		CGST		SGST		POS (only if different from the location of recipient)	Indicate if supply attracts reverse charge
	No.	Date	Value	HSN/ SAC	Taxable value	Rate	Amt	Rate	Amt	Rate	Amt		
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(15)	(16)

Notes:

- SAC to be different from HSN (may be prefix 'S')
- Taxpayer has the option to furnish the details of nil rate and exempted supplies in this Table
- In case of inter-state supplies, only IGST & Additional Tax (if applicable) would be filled
- In case of intra-state supplies, CGST & SGST would be filled.

6. Taxable outward supplies to a consumer where place of supply is other than the State where supplier is located (Inter-state supplies) and Invoice value is more than Rs 2.5 lakh (optional in respect of other supplies)

(figures in Rs)

Recipient's State code	Name of the recipient/ GDI	Invoice					IGST		POS (only if different from the location of recipient)
		No.	Date	Value	HSN/ SAC	Taxable value	Rate	Amt	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(12)

Notes:

- SAC to be different from HSN (may be prefix 'S')
- Taxpayer has the option to furnish the details of nil rate and exempted supplies in this Table

7. Taxable outward supplies to consumer (Other than 6 above)

(figures in Rs)

HSN /SAC	State code (Place of supply)	Aggregate Taxable Value	IGST		CGST		SGST	
			Rate	Amt	Rate	Amt	Rate	Amt
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)

Notes:

1. SAC to be different from HSN (may be prefix 'S')
2. Taxpayer has the option to furnish the details of nil rate and exempted supplies in this Table

8. Details of Credit/Debit Notes

(figures in Rs)

debit note/credit note		Original Invoice		Differential Value	Differential Tax					
No	Date	No.	Date		IGST		CGST		SGST	
				Rate	Amt	Rate	Amt	Rate	Amt	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)

DebitNote

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CreditNote

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Note: Information about Credit Note / Debit Note to be submitted only if issued as a supplier.

9. Amendments to details of Outward Supplies of earlier tax periods

(figures in Rs)

Original Invoice		GSTIN/ UIN	Revised Invoice				IGST		CGST		SGST		POS (only if different from the location of recipient)
No.	Date		No.	Date	HSN/ SAC	Taxable Value	Rate	Amt	Rate	Amt	Rate	Amt	
(1)	(2)	(3)	(4)	(5)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(17)

10. Nil rated, Exempted and Non GST outward supplies*

(figures in Rs)

	Nil Rated (Amount)	Exempted (Amount)	Non GST supplies (Amount)
(1)	(2)	(3)	(4)
Interstate supplies to registered person			
Intrastate supplies to registered person			
Interstate supplies to consumer			
Intrastate supplies to consumer			

*If the details of "nil" rated and "exempt" supplies have been provided in Table 5,6 and 7, then info in column (3) may only be furnished.

11. Supplies Exported (including deemed exports)

(figures in Rs)

Invoice					Shipping bill/ bill of export		IGST		CGST		SGST	
No.	Date	Value	HSN/ SAC	Taxable value	No	Date	Rate	Amt	Rate	Amt	Rate	Amt
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)
Without payment of GST												
With payment of GST												

12. Tax liability of amount received in advance against a supply to be made in future

(figures in Rs)

GSTIN/UID /GDI/Name of customer	State Code	HSN/ SAC	Amount of advance received without raising a bill	TAX						
				IGST		CGST		SGST		
				Rate	Tax	Rate	Tax	Rate	Tax	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	

Note: A transaction id would be generated by system for each transaction on which tax is paid in advance

13. Tax already paid (on advance receipt) on invoices issued in the current period
(figures in Rs)

Invoice No.	Transaction id (A number assigned by the system when tax was paid)	TAX Paid on receipt of advance					
		IGST		CGST		SGST	
		Rate	Tax	Rate	Tax	Rate	Tax
(1)	(2)	(4)	(5)	(6)	(7)	(8)	(9)

Note: Tax liability in respect of invoices issued in this period shall be net of tax already paid on advance receipt.

Usual Declaration

(Signatures of Authorized Person)

14. INSTRUCTIONS for furnishing the information

1. Terms used:

GSTIN: Goods and Services Taxpayer Identification Number

UID: Unique Identity Number for embassies

HSN: Harmonized System of Nomenclature for goods

SAC: Service Accounting Code

GDI: Government department unique ID where department does not have GSTIN

POS: Place of supply of goods or services – State Code to be mentioned

GSRT-2: INWARD SUPPLIES MADE BY THE TAXPAYER

[To be furnished by the 15th of the month]

[Not to be furnished by compounding taxpayer /ISD]

Note:

1. Auto-population would be done, on the basis of GSTR1 of counter-party supplier, on or after 11th of succeeding month.
2. Addition of invoices / debit note / credit note, not submitted by counter-party supplier, would be permitted between 12th to 15th of succeeding month.
3. Adjustments would be permitted on 16th and 17th of succeeding month.
4. Further the other details that are not auto-populated, i.e. import of services, eligibility of ITC and quantum thereof and purchases from unregistered taxpayer shall be furnished.

1. GSTIN..... ..

2. Name of taxpayer.....

(S. No. 1 and 2 will be auto-populated on logging)

3. Period : Month..... Year

4. From Registered taxpayers

(figures in Rs)

GSTI No of supplier	Invoice					IGST		CGST		SGST		Eligibility of ITC	Total Tax available as ITC	ITC available this month
	No.	Date	Value	HSN/ SAC	Taxable value	Rate	Amt	Rate	Amt	Rate	Amt			
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(15)	(16)	(17)

Other than supplies attracting reverse charge

Auto populated

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Not auto populated (Claimed)

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Supplies attracting reverse charge

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Note: If the supply is received in more than one lot, the invoice information should be reported in the return period in which the last lot is received and recorded in the books of accounts.

5. Goods /Capital goods received from Overseas (Import of goods)

(figures in Rs)

Bill of entry					IGST		Eligibility for ITC	Total IGST available as ITC	ITC available this month
No.	Date	Value	HSN/ SAC	Taxable value	Rate	Amt			
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)

6. Services received from a supplier located outside India (Import of services)

(figures in Rs)

Invoice					IGST		ITC Admissibility	
No	Date	Value	SAC	Taxable value	Rate	Amt	Total ITC admissible	ITC admissible this month
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)

7. Details of Credit/Debit Notes

(figures in Rs)

Debit Note/ credit note		Original Invoice		Differential Value	Differential Tax						Eligibility for ITC	Total IGST available as ITC	ITC available this month
No.	Date	No.	Date		IGST		CGST		SGST				
					Rate	Amt	Rate	Amt	Rate	Amt			
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(14)	(15)	(16)

Debit Note

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Credit Note

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8. Amendments to details of inward supplies received in earlier tax periods (including post purchase discounts received)

(figures in Rs)

Original Invoice		GSTIN/ UIN	Revised Invoice				IGST		CGST		SGST		Eligibility for ITC	Total IGST available as ITC	ITC available this month
No.	Date		No.	Date	HSN / SAC	Taxable Value	Rate	Amt	Rate	Amt	Rate	Amt			
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(16)	(17)	(18)

9. Supplies received from compounding /unregistered dealer&other exempt/nil/non GST supplies

(figures in Rs)

	HSN Code/SAC code	Value of supplies received from				
		Compounding Dealer	Unregistered dealer	Any exempt supply not included in Table 4 above	Any nil rated supply not included in Table 4 above	Non GST Supply
(1)	(2)	(3)	(4)	(5)	(6)	(7)
Interstate supplies						
Intrastate supplies						

10. ISD credit received

(figures in Rs)

GSTIN_ISD	Invoice/Document details		ISD Credit		
	No	Date	IGST	CGST	SGST
(1)	(2)	(3)	(4)	(5)	(6)

11. TDS Credit received

(figures in Rs)

GSTIN/ TDS deductor	TDS Certificate		TDS					
	No	Date	IGST		CGST		SGST	
			Rate	Tax	Rate	Tax	Rate	Tax
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(3)

12. ITC Received on an invoice on which partial credit availed earlier

(figures in Rs)

Original invoice/ doc.		ITC availed					
No	Date	IGST		CGST		SGST	
		Earlier	This month	Earlier	This month	Earlier	This month
(2)	(3)	(4)	(5)	(6)	(7)	(8)	(3)

13. Usual declaration

Signature of Authorized Person

GSTR-3:GST RETURN

**[To be furnished by the 20th of the month]
[Other than compounding taxpayer / ISD]**

1. GSTIN

2. Name of Taxpayer:.....

3. Address:

[S. Nos. 1, 2 and 3 shall be auto populated on logging]

4. Period **Month**..... **Year**.....

5. TURNOVER DETAILS

(figures in Rs)

A.	Gross Turnover	
B.	Export Turnover	
C.	Exempted Domestic Turnover	
D.	Nil rated Domestic Turnover	
E.	Non GST Turnover	
F.	Net Taxable Turnover	

6. Outward Supplies

6.1. Inter-state supplies to Registered taxpayers (Auto populated from GSTR-1)

(figures in Rs)

State Code	Rate of Tax (Rate wise-Including Nil, exempt and Non GST)	Value	IGST
(1)	(2)	(3)	(4)
Goods			
Services			

Note: To be auto-populated from Table 5, Table 8 and Table 10 of GSTR-1

6.2. Intra-State Supplies to Registered taxpayers

(Auto populated from GSTR-1)

(figures in Rs)

Rate of Tax (Rate wise-Including Nil, exempt and Non GST)	Value	CGST	SGST
(1)	(2)	(3)	(4)
Goods			
Services			

Note: To be auto-populated from Table 5 plus Table 8 plus Table 10 of GSTR-1

6.3. Inter-State Supplies to Consumers

(Auto populated from GSTR-1)

(including unregistered Government Departments / persons dealing in exempted / NIL rated/ non GST goods or services)

(figures in Rs)

State Code	Rate of Tax (Rate wise-Including Nil, exempt and Non GST)	Value	IGST

State Code	Rate of Tax (Rate wise-Including Nil, exempt and Non GST)	Value	IGST
(1)	(2)	(3)	(4)

Goods

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Services

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Note: To be auto-populated from Table 6 plus Table 7 plus Table 8 plus Table 10 of GSTR-1

6.4. Intra-State Supplies to Consumers (Auto populated from GSTR-1)

(figures in Rs)

Rate of Tax (Rate wise-Including Nil, exempt and Non GST)	Value	CGST	SGST
(1)	(2)	(3)	(4)

Goods

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Services

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Note: To be auto-populated from Table 7 plus Table 8 plus Table 10 of GSTR-1

6.5. Exports (including deemed exports)

(Auto populated from GSTR-1)

(figures in Rs)

Description	Taxable Value	IGST	CGST	SGST
(1)	(2)	(3)	(4)	(5)

Goods

Without payment of GST				
With Payment of GST				

Services

Without payment of GST				
With Payment of GST				

Note: To be auto-populated from Table 11 of GSTR-1

6.6. Revision of supply invoices pertaining to previous tax period (including post sales discounts or any clerical/other errors)

[Auto populated from GSTR1]

(figures in Rs)

InvoiceNo	InvoiceDate	Differential Value (Plus or Minus)	IGST	CGST	SGST
-----------	-------------	---------------------------------------	------	------	------

InvoiceNo	InvoiceDate	Differential Value (Plus or Minus)	IGST	CGST	SGST
(1)	(2)	(3)	(4)	(5)	(6)

Goods

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Services

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Note: To be auto-populated from Table 9 of GSTR-1

6.7. Total tax liability on outward supplies (Auto Populated from the Tables above)

(figures in Rs)

Value	IGST	CGST	SGST
(1)	(2)	(3)	(4)

Goods

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Services

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Note: To be auto-populated from Tables 6.1 to 6.6 above of this Return

7. Inward Supplies

7.1. Inter-State supplies received

(Auto-populated from GSTR2)

(figures in Rs)

State Code	Rate of Tax (Rate wise-Including Nil, exempt and non-GST)	Value	IGST	ITC of IGST available in the current month
(1)	(2)	(3)	(4)	(5)

Goods

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Services

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Note: To be auto-populated from Table 4 plus Table 7 plus Table 9 of GSTR-2

7.2. Intra-State supplies received

(Auto populated from GSTR -2)

(figures in Rs)

Rate of Tax (Rate wise-Including Nil, exempt, compounding dealer and non-GST)	Value	CGST	SGST	ITC-CGST available in current month	ITC-SGST available in current month
(1)	(2)	(3)	(4)	(5)	(6)
Goods					
Services					

Note: To be auto-populated from Table 4 plus Table 7 plus Table 9 of GSTR-2

7.3. Imports

(Auto populated from GSTR -2)

(figures in Rs)

	Assessable Value	IGST	ITC-IGST available in current month
(1)	(2)	(3)	(4)
Goods			
Services			

Note: To be auto-populated from Table 5 plus Table 6 of GSTR-2

7.4. Revision of purchase invoices pertaining to previous tax period (including post sales discounts received or any clerical / other errors (Auto populated from GSTR-2)

(figures in Rs)

Differential Value	CGST	SGST	IGST
(1)	(2)	(3)	(4)
Goods			
Services			

Note: To be auto-populated from Table 8 of GSTR-2

7.5. Total Tax liability on inward supplies on reverse charge

(figures in Rs)

Value	CGST	SGST	IGST
(1)	(2)	(3)	(4)
Goods			

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Services

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Note: To be auto-populated from Table 6 of GSTR-2

8. Total Tax liability for the month (Table 6.7 plus Table 7.5 of this Return)

(figures in Rs)

Value	CGST	SGST	IGST
(1)	(2)	(3)	(4)

Goods

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Services

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9. TDS credit received during the month(Auto-populated from GSTR-2)

(figures in Rs)

GSTIN/ GDI/of TDS deductor	TDS Certificate		IGST		CGST		SGST	
	No	Date	Rate	Tax	Rate	Tax	Rate	Tax
(1)	(3)		(4)	(5)	(6)	(7)	(8)	(9)

Note: To be auto-populated from Table 11 of GSTR-2

10. ITC received during the month (auto populated from ITC Ledger)

(figures in Rs)

IGST		CGST		SGST	
Rate	Tax	Rate	Tax	Rate	Tax
(2)	(3)	(4)	(5)	(6)	(7)

11. Tax, fine and penalty paid (auto-populated from cash and ITC ledger)

(figures in Rs)

S. No.	Description	IGST	CGST	SGST

S. No.	Description	IGST	CGST	SGST
(1)	(2)	(3)	(4)	(5)
1.	ITC Reversal paid (On account of adjustment)			
2.	ITC Reversal paid (On account of mismatch)			
3.	Interest			
4.	Tax for previous Tax periods			
5.	Tax for Current Tax period			
6.	Late fee			
7.	Penalty			
	Debit Nos. in Ledger			
1.	In Cash Ledger			
2.	In ITC ledger			

12. Refunds claim of excess ITC in specified cases and excess tax paid earlier

(figures in Rs)

(1)	CGST	SGST	IGST
(1)	(2)	(3)	(4)
Refund of ITC accumulation claimed in specified cases			
Refund of excess amount of tax paid earlier			
Refund from cash ledger			
Bank Account Number*			

*This should be one of the bank accounts mentioned in the GSTIN

13. Usual declaration

Signatures of Authorized Person

GSTR-4: QUARTERLY RETURN FOR COMPOUNDING DEALER

(To be furnished by 18th of the month succeeding the quarter)

1. GSTIN

2. Name of Taxpayer:.....

3. Address:

[S. Nos. 1, 2 and 3 shall be auto populated on logging]

4. Period Month..... Year.....

5. Inward supplies including supplies received from unregistered traders

(figures in Rs)

GSTINof supplier	Invoice					IGST		CGST		SGST	
	No	Date	Value	HSN/S AC	Taxable Value	Rate	Amt	Rate	Amt	Rate	Amt
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)

Other than supplies attracting reverse charge

Auto populated											
Not auto populated											

Supplies attracting reverse charge (including supplies received from unregistered dealer)

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6. Goods /Capital goods received from Overseas (Import of goods)

(figures in Rs)

Bill of entry					IGST	
No.	Date	Value	HSN/SAC	Taxablevalue	Rate	Amt
(1)	(2)	(3)	(4)	(5)	(6)	(7)

*at 8-digit level

7. Services received from a supplier located outside India(Import of services)

(figures in Rs)

Invoice					IGST	
No	Date	Value	SAC	Assessable Value	Rate	Amt
(1)	(2)	(3)	(4)	(5)	(6)	(7)

8. Outward Supplies made

(figures in Rs)

S.No.	Nature of supplies	Amount
(1)	(2)	(3)
1	Intra-state supplies	
2	Non GST Supplies	
3	Exports	

9. Tax Payable

(figures in Rs)

	IGST#	CGST#	SGST#	Compounding Tax
(1)	(2)	(3)	(4)	(5)
Tax payable as per return				
Interest payable for delayed payment of Tax				
Fees for late filing of return				
Others				
Total				

Tax paid in respect of supplies attracting reverse charge and those received from unregistered traders

10. Details of Tax Payment

(figures in Rs)

Cash Ledger Debit Entry No.	Date	IGST	CGST	SGST	Compounding Tax
(1)	(2)	(3)	(4)	(5)	(6)

11. Are you likely to cross composition limit before the date of next return: Y/N

12. Usual declaration

Signatures of Authorized Person

GSTR-5: RETURN FOR NON RESIDENT TAXPAYERS

(To be furnished on monthly basis by 20th of the month & within 7 days after expiry of registration)

1. GSTIN

2. Name of Taxpayer:.....

3. Address:

[S. Nos. 1, 2 and 3 shall be auto populated on logging]

4. Period Month..... Year.....

5. Goods imported:

(figures in Rs.)

S. No.	Description of goods	Bill of Entry No.	Bill of Entry Date	HSN Code*	UQC	Quantity	Value	IGST paid, if any
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)

* at 8-digit level

6. Outward supplies made:

(figures in Rs.)

S. No.	GSTIN, if any	Invoice					IGST		CGST		SGST	
		No.	Date	Value	HSN *	Taxable value	Rate	Amt	Rate	Amt	Rate	Amt
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)

7. ITC availed on inputs and input services

(figures in Rs.)

S. No.	GSTIN of supplier	Invoice					IGST		CGST		SGST	
		No.	Date	Value	HSN/SAC*	Taxable value	Rate	Amt	Rate	Amt	Rate	A m t
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)

8. Tax paid

(figures in Rs.)

Description	Tax payable (Table 6)	ITC utilized	Tax paid in cash (after adjusting ITC)
(1)	(2)	(3)	(4)
IGST			
CGST			
SGST			
Total			

9. Closing stock of Goods

(figures in Rs.)

S. No.	Description of goods	HSN*	UQC	Quantity	Value (Rs.)
(1)	(2)	(3)	(4)	(5)	(6)

10. Usual Declaration

Signature

GSTR-6: RETURN FOR INPUT SERVICE DISTRIBUTOR

(To be furnished by 13th of the month)

1. GSTIN

2. Name of Taxpayer:.....

3. Address:

[S. Nos. 1, 2 and 3 shall be auto populated on logging]

4. Period Month..... Year.....

5. From Registered taxpayers (to be auto-populated from counter party GSTR-1)

(figures in Rs)

GSTIN of supplier	Invoice					IGST		CGST		SGST		Total Tax available as ITC	ITC available this month
	No.	Date	Value	SAC	Taxable value	Rate	Amt	Rate	Amt	Rate	Amt		
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(16)	(17)
Supplies not attracting reverse charge													
Auto populated													
Not auto populated (Claimed)													

Supplies not attracting reverse charge

Auto populated

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Not auto populated (Claimed)

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Supplies attracting reverse charge

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6. Input Service Distribution

(figures in Rs)

GSTIN of receiver of credit	Invoice/Document No.				
	No.	Date	ISD Credit distributed		
			CGST	SGST	IGST
(1)	(2)	(3)	(4)	(5)	(6)

7. ISD Ledger

(figures in Rs)

	CGST	SGST	IGST	Total
(1)	(2)	(3)	(4)	(5)
Opening Balance				
ITCs received*				
ITC Reversal				
ITC Distributed				
Closing balance				

* To be auto-populated from table No. 4 above

8. Usual Declaration:

(Signatures of Authorized Person)

GSTR-7: TDS Return

(To be furnished by 10th of the month)

(To be furnished by person liable to deduct TDS)

1. GSTIN
2. Name of Taxpayer:.....
3. Address:
[S. Nos. 1, 2 and 3 shall be auto populated on logging]
4. Period Month..... Year.....
5. TDS details

(figures in Rs.)

GSTIN of supplier	Invoice			CIN No. vide which TDS paid	TDS_IGST		TDS_CGST		TDS_SGST		TDS_All Taxes	
	No	Date	Value		Rate	Amt	Rate	Amt	Rate	Amt	Rate	Amt
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)

6. Other amount paid

(figures in Rs.)

	CGST	SGST	IGST	CIN No
(1)	(2)	(3)	(4)	
Interest on delayed payment of TDS				
Fees for late filing of return				
Others (pl specify)				
Total				

7. Usual Declaration

(Signatures of Authorized Person)

GSTR-8: ANNUAL RETURN

[To be furnished by the 31st December of the next Financial Year]

1. GSTIN

2. Name of Taxpayer:.....

[S. Nos. 1, and 2 shall be auto populated on logging]

3. Date of statutory Audit.....

4. Auditors.....

5. Details of expenditure:

5.1. Total value of purchases on which ITC availed (inter-State)

Goods

Sl.No.	Description	HSN Code	UQC	Quantity	TaxRate	Taxable Value	IGST Credit

Services

Sl. No.	Description	Accounting Code	TaxRate	Taxable Value	IGST Credit

5.2. Total value of purchases on which ITC availed (intra-State)**Goods**

Sl.No	Description	HSN Code	UQC	Quantity	Taxable Value	Tax Rate		Tax Credit	
						CGST	SGST	CGST	SGST

Services

Sl.No	Description	SAC	Taxable Value	TaxRate		TaxCredit	
				CGST	SGST	CGST	SGST

5.3. Total value of purchases on which ITC availed (Imports)**Goods**

Sl.No.	Description	HSN Code	UQC	Quantity	TaxRate	CIF Value	IGST	Custom Duty paid

Services

Sl.No.	Description	SAC	TaxRate	Taxable Value	IGST

5.4. Other Purchases on which no ITC availed

Sl.No.	Goods/Services	Purchase Value

5.5. Sales Returns

Sl.No	Goods	HSN Code	Taxable Value	CGST	SGST	IGST

5.6. Other Expenditure (Expenditure other than purchases)

Sl. No.	Specify Head	Amount

6. Details of Income:**6.1. Total value of supplies on which GST paid (inter-State Supplies)****Goods**

Sl. No.	Description	HSN Code	TaxRate	Taxable Value	IGST

Services

Sl. No.	Description	Accounting Code	TaxRate	Taxable Value	IGST

6.2. Total value of supplies on which GST Paid (intra-State Supplies)**Goods**

Sl.No	Description	HSN Code	Taxable Value	TaxRate		Tax	
				CGST	SGST	CGST	SGST

Services

Sl.No	Description	SAC	Taxable Value	TaxRate		Tax	
				CGST	SGST	CGST	SGST

6.3. Total value of supplies on which GST Paid (Exports)**Goods**

Sl.No	Goods	HSN Code	TaxRate	FOB Value	IGST	CustomDuty

Services

Sl.No	Services	SAC	TaxRate	FOB Value	IGST

6.4. Total value of supplies on which no GST Paid (Exports)

Goods

Sl.No	Goods	HSN Code	TaxRate	FOB Value

Services

Sl.No	Services	SA	TaxRate	FOB Value

6.5. Value of Other Supplies on which no GST paid

Sl. No.	Goods/Services	Value

6.6. Purchase Returns

Goods

Sl. No	Goods	HSN Code	Taxable Value	CGST	SGST	IGST

Services

Sl. No	Services	SAC	Taxable Value	CGST	SGST	IGST

6.7. Other Income (Income other than from supplies)

Sl. No.	Specify Head	Amount

7. Return reconciliation Statement

7.1. CGST

Sl. No	Month	TaxPaid	Tax Payable (As per audited a/c)**	Difference	Interest	Penalty
	Total					

7.2. SGST

Sl. No	Month	Tax Paid	Tax Payable (As per audited a/c)**	Difference	Interest	Penalty
	Total					

7.3. IGST

Sl. No.	Month	Tax Paid	Tax Payable (As per audited a/c)**	Difference	Interest	Penalty
	Total					

**

1. Presently the statutory auditor is not required to calculate the tax payable on account of CE and ST.
2. Further there is bound to be difference in supply value when compared with the Taxable value determined in accordance with the Valuation Rules (this may be on account of certain permissible deductions from the supply value or on account of certain additions which may be required to be made to arrive at the taxable value).
3. A reconciliation format (reconciling the supply value with the taxable value), therefore, is required to be prescribed. Such a format can be prepared only after the GST law particularly the valuation Rules are finalized.

8. Other Amounts

8.1. Arrears (Audit/Assessment etc.)

Sl. No.	Details of Order	Tax Payable	Interest	Penalty	Current Status of the Order
	Total				

8.2. Refunds

Sl. No.	Details of Claim	Date of Filing	Amount of Refund	Current Status of the claim

This may be divided into parts:-

- i) amount already paid / refund already received during the year,
- ii) amount payable / refund pending.

9. Profit as per the Profit and Loss Statement

Gross Profit

Profit after Tax

Net Profit



***BACKGROUND MATERIAL
FOR TRAINING ON
'GOODS AND SERVICES TAX'***



**COMPILED BY
NATIONAL ACADEMY OF CUSTOMS EXCISE AND NARCOTICS
FARIDABAD**

JULY 2016

12. Assessment, Provisional Assessment and Audit

ASSESSMENT

1. Preamble

1.1 Assessment is the process of determination of the tax liability of a tax payer. Section 6203 of the Revenue and Taxation Code of the Internal Revenue Service of the USA defines it as the “**statutorily required recording of tax liability**”. Analysis of this definition reveals that assessment is a--

- statutory requirement (laid down in the law) which provides that
- tax liability by recorded

Fiscal Statutes lay down a code for assessment which, *inter alia*, encapsulates--

- the person whose liability is to be recorded i.e. the tax payer
- the person who is empowered/authorised to undertake such determination i.e. the assessing
- the manner in which the tax liabilities is to be determined, and
- the procedure to be followed for recording the tax liability.

2. Kinds of assessment

Based on the manner in which and the circumstances under which, it is carried out, assessments can be classified in the following categories:-

- 1) **Self Assessment:** In this case the tax liability is determined/ascertained by the assessee himself since he is in possession of the records/documents, facts/information and circumstances of his transactions. Based on his records the assessee assesses his liability for a tax period and declares the same in the return filed by him.
- 2) **Summary Assessment:** The assessing officer determines the liability of the assessee on the basis of returns filed by the tax payer and other evidence in the possession of the assessing officer without calling for either the tax payer or his records. The liability determined is communicated to the tax payer.
- 3) **Provisional Assessment:** Where tax liability is to be discharged on a continuing and regular/recurrent basis and certain determinants of the tax liability (primarily the applicable tax rate or value or nature of the transaction) are subject to the outcome of a process that requires deliberation and time, the law provides for provisional assessment. The assessing officer provisionally determines the amount of tax payable by the

assessee but this is subject to the final determination. Any amount that has been paid on the basis of such assessment is to be adjusted against the amount finally determined as payable and the short/excess is to be paid by/refunded to the tax payer.

- 4) **Regular Assessment:** Such assessments are made after examination of all the relevant records/returns/documents/material and are made after hearing him/his authorized representative. Assessments of this kind were the norm prior to the era of self assessment.
 - 5) **Protective Assessment:** The charge created under the law can be actualized either through admission of liability in a return or through a demand made in pursuance of an order. There could be cases where there is no admission of a liability and yet the assessee does not dispute the liability. Further, there could be cases where it is difficult to secure the continued presence of the assessee for purposes of realization. It is in view of such situation that the law could provide for protective assessment. A protective assessment is an assessment by which the amount of tax owed is determined, but usually not collected. For example, the income tax owed on the income subject to a protective assessment is calculated separately and shown in a protective assessment. If matters take a course which are considered in contravention of the law – e.g., if taxable income has accrued to the assessee and he migrates from the country –the protective assessment will be implemented retrospectively.
 - 6) **Best Judgment:** Such assessments are made either *ex parte* or by rejecting the accounts/records/documents/plea of the assessee. In such cases either no documents or records are furnished/claims are not substantiated or the records and/or evidence produced before the Assessing Officer are rejected as being unreliable or in complete/incorrect, either wholly or in part.
2. Under the GST Law the assessment scheme is pre dominantly self assessment which is the different rule. The other modes of assessment are:-
- Provisional Assessment
 - Assessment of non-filers (*which may be regular or best judgment assessment*)
 - Assessment of un-registered persons (*which may again be regular or best judgment assessment*)
 - Protective Assessment

2.1 Self Assessment: Section 44 of the Act provides for self assessment of tax liability by the tax payer. A plain reading of the said provisions would reveal that self assessment is available to every registered taxable person who is authorized by law to assess the tax payable by him under this Act for any tax period. Thus, determination of tax liability is to be undertaken by the tax payer himself and

stated in the return to be filed by him. The return under Section 27 is required to primarily contain inward and outward supplies of goods and/or services, ITC, tax payable and tax paid. Hence, furnishing of the return required by Section 27 shall operate as the assessment of the tax payer.

Further, the aforesaid self assessment also includes, by way of tax payable for the tax period, amount of ITC that has been availed by the person on any receipt of goods if the goods have been returned by the recipient within six months of the date of the invoice.

Illustration

Goods worth Rs.1000 are supplied to A by B on 15th May, 2017 on which SGST of Rs.110 and CGST of Rs.100 are charged. B returns goods worth Rs.500 from this consignment to A on or before 14th November, 2017 then B will have to add Rs.55 and Rs.50 on account of SGST and CGST respectively to his output liability in respect of the month of November, 2017.

2.2 Provisional Assessment: Section 44A of the Model GST Law deals with provisional assessment and this provision is structured along the lines of Rule 7 of the Central Excise Rule, 2002. Provisional assessment can be invoked by a taxable person by making a request/application to the assessing officer and such request can be made only under the following two circumstances:-

- if he is not able to determine the value of the supplies, or
- if he is not certain about the tax rate applicable to such supplies.

Thus, wherever an assessee finds that he is not able to ascertain the value of a supply or the tax rate applicable to it he will make a detailed request in writing to the proper officer, indicating:-

- Specific grounds/reasons, and the documents or information's, for want of which the tax payable cannot be ascertained
- Period for which provisional assessment is required
- The rate of duty or the value or both, as the case may be, proposed to be applied by the assessee, for provisional payment of tax
- An undertaking to appear before the proper officer on the date fixed by him, and furnish all relevant information and documents within the time specified by the proper officer so as to enable the proper officer to finalise the provisional assessment

Where the proper officer is satisfied with the genuineness of the assessee's request he will issue a specific order directing provisional assessment clearly stating:-

- The grounds on which Provisional Assessment has been ordered
- The rate and /or value at which the tax has to be provisionally paid
- The amount of differential tax for which bond is to be executed
- The amount of security or surety as may be fixed by the proper officer.

The final assessment order has to be passed within six months from the date of communication of the provisional order. This period of six months may be extended by the Additional/Joint Commissioner if sufficient cause is shown that the order cannot be finalized in six month; such extension will be for a period not exceeding six months. The Commissioner may extend this period (after the first extension) to such other period that he may deem fit.

2.3 Scrutiny of Returns: Section 45 of the Model GST Law provides that the proper officer may scrutinize a return and the related particulars with a view to verifying the correctness thereof. The return contains information regarding, *inter-alia*, details and classes of supply and receipts during a tax period, the output tax, input tax credit, tax payable, tax deducted at source, etc. The related particulars primarily include the details of inward and outward supplies containing invoice-wise details along with commodity codes.

The scrutiny is to be conducted with a view to ascertain and verify the correctness of the said return and related particulars. The words “correctness” or “correct” have not been defined in the Act. Webster’s Encyclopaedic Unabridged Dictionary of the English Language defines the word “correct” as “conforming to fact or truth; free from error; accurate”. In this view of the matter, the process of scrutiny should be undertaken to ensure that all transactions undertaken by the assessee during the tax period have been disclosed fully and classified in the manner that has been mandated by, and is in conformity with, the provisions of law. The Rules may lay down a set of parameters along with the bench-mark in respect of each such parameter. The objective of the process of scrutiny would be to assess or verify the level of compliance of the return and related particulars with regard to such bench-marks. For this purpose the proper officer will also make use of any other relevant information regarding the transactions of the assessee.

If, upon scrutiny, any discrepancies in the return or related particulars are discovered by the proper officer the assessee shall be informed in the prescribed manner and the assessee shall be asked to provide his explanation for the same. If the explanation offered is found acceptable by the proper officer, the proceeding shall be dropped, the assessee shall be informed and no further action in the matter shall be taken. If, however, the assessee

- does not furnish a satisfactory explanation within 30 days of being informed (extendable by the proper officer), or
- does not take any corrective action permitted by law or does not pay the tax along with interest,

the proper officer can proceed to initiate

- departmental audit proceedings under section 49
- special audit under section 50
- inspection, search/seizure under section 60
- adjudication proceedings for determining the tax liability under section 51.

2.4 Assessment of non-filers: Any assessment or determination of tax liability can be recorded in the following two manners:-

- by the assessee himself i.e. through self-assessment, or
- by the assessing officer i.e. through an assessment order.

It follows that if the assessee does not furnish a self-assessment then the assessing officer is left with no recourse but to pass an assessment order. Section 46 of the Act provides for such an eventuality. Accordingly, if a registered taxable person fails to file

- the monthly return under section 27 (in case of a normal taxable person)
- the quarterly return under section 27 (in case of a person opting for composition)
- the monthly return under section 27 (in case of a person deducting tax at source)
- the monthly return under section 27 (in case of an ISD)
- the final return under section 31 (in case of a person applying for cancellation)

even after service of a notice under section 32 then the proper officer can proceed to assess such person to the best of his judgment after a period of 15 days from the date of the service of notice under section 32. Such assessment order can be passed within

- a period of 5 years from the due date of the annual return for the relevant year or the actual date of filing of the annual return for that year, whichever is earlier, in case there is evidence of any fraud or any wilful misstatement or suppression of fact to evade tax,
- a period of 3 years from the due date of the annual return for the relevant year or the actual date of filing of the annual return for that year, whichever is earlier, in any other case.

Such an order has to be passed after considering the material available on record and other relevant material. Best judgment assessments are though completed on the basis of information and documents available with the assessing officer and in accordance with his best judgement, there are certain guidelines which need to be followed. These guidelines are set in judicial decisions from time to time.

- In **CST vs. H.M. Esufali H.M. Abdulali (1970) 90 ITR 271 (SC)** it has been observed by the Supreme Court that the assessing authority while making the "best judgment" assessment, no doubt, should arrive at its conclusion without any bias and on rational basis and that the said authority should not be vindictive or capricious and that basis adopted in estimating the turnover should have a reasonable nexus with the estimate made.
- In **State of Kerala vs. C. Velukutty (1966) 60 ITR 239 (SC)**, it has been observed that limits of powers are implicit in the expression "best of his

judgment". Judgment is a faculty to decide matters with wisdom truly and legally. Judgment does not depend upon arbitrary caprice of a judge, but on settled and invariable principles of justice and though there is an element of guesswork in a "best judgment" assessment, it shall not be a wild one but shall have a reasonable nexus to the available material and the circumstances of each case.

- The decision of Privy Council in **CIT vs. Laxminarayan Badridas (1937) 5 ITR 170 (PC)** rendered on the provisions of the Indian Income Tax Act, 1922 is a classic one in which it was observed that the officer making best judgment assessment should not act dishonestly, vindictively or capriciously because he must exercise "judgment" in the matter. He must make what he honestly believes to be a fair estimate of the proper figure of assessment and for this purpose, he must take into account local knowledge and repute in regard to the assessee's circumstances and all other matters which he thinks will assist him in arriving at a fair and proper estimate and though there must necessary be a guesswork in the matter it must be a honest guesswork.

The assessment order that has been passed is required to be served on the assessee and if the assessee files a **valid** return within 30 days of such service, the said assessment order shall be deemed to have been withdrawn. It is to be noted that in terms of section 27(3) a return shall be considered as a valid return only if the tax due according to such return has been paid. It must further be noted that, upon filing of the return, the assessing officer is not required to pass an order to the effect that the assessment order is being withdrawn; the law **deems the order to have been withdrawn** once the return is filed within 30 days of the service of the assessment order.

2.5 Assessment of un-registered person: If any taxable person fails to apply for and obtain registration despite being liable to be registered in terms of Schedule III of the Act, the proper officer shall assess the tax payable by such person during the period he remains un-registered. Such order shall be passed

- after serving a notice on and giving an opportunity of being heard to the assessee
- according to the **best of the judgment** of the assessing officer
- within 5 years from the due date for filing of the annual return of the relevant year.

2.6 Summary Assessment: If the proper officer is in possession of any evidence that any person is liable to pay any tax under the provisions of this Act and he has sufficient reason to believe that any delay in assessment will adversely affect the interest of revenue (i.e. the officer has reason to believe that the person would fail to discharge liability of the tax) then the officer may proceed to determine the tax liability of such a person. Such an order can be passed only after

the prior sanction of the Additional/Joint Commissioner and it is not mandatory to hear the person whose liability is being assessed.

However, if the liability relates to goods and it is difficult to ascertain the person liable to tax then the person in-charge of the goods shall be deemed to be liable to pay the tax and such person shall be assessed to tax under this provision.

If the person assessed to tax files an application to the Additional/Joint Commissioner within 30 days of the receipt of the order, **or** if such Additional/Joint Commissioner himself is of the view that the said order is erroneous then such order may be withdrawn by the said Additional/Joint Commissioner. Once such order is withdrawn, the authority is to follow the procedure laid down in the w with regard to adjudication if he comes to a finding that any tax due under the Act has not been paid, whether fully or partly, or any ineligible input tax credit has been availed irregularly or any refund of tax has been erroneously obtained.

It has been held by the Courts that the assessing officer cannot be expected to be a silent spectator of the uncertainty as the inherent power given to him in the law is to protect the interest of the revenue which will be frustrated if he fails to act within the time of limitation.

There are two essential conditions that must be fulfilled before this provision is invoked. Firstly, the proper officer must have evidence in his position that the person has incurred, or is likely to incur, a liability to pay tax under this Act and, secondly, the proper officer must have sufficient ground or reason to believe that any delay in assessment will adversely impact the interest of revenue.

DEPARTMENTAL VAT AUDIT

3.1 Any system of tax administration that relies on self-assessment has to put in place a robust audit mechanism to measure and ensure compliance with the provisions of the Act. Tax administrations have, over the years, evolved from mandatory assessment of virtually all tax payers without an institutionalized audit mechanism to a system of self assessment for virtually every tax payer coupled with risk profiling of tax payers and their audit.

3.2 The word “audit” has been defined in section 2(14) of the Model GST Law and it involves a detailed examination of all records, accounts and returns of the tax payer to test their reliability, to verify the correctness of information disclosed in them and to assess the degree of compliance with the provisions of the Act and the Rules. Every information disclosed in a record or any return or document has to be assessed, cross verified and tested in terms of the internal and external evidence available. Internal evidence includes such documents or records as are maintained by the person being audited while, external evidence means such documents or records regarding the person being audited as are generated by other persons with whom he has business dealings. Audit involves examining the evidence, ascertaining its reliability and establishing the relevance or applicability

of such evidence to the affairs of the person being audited and testing or verifying the information disclosed in the records, accounts or returns of the person. Thus, audit is an activity that calls for the application of specialized skills.

3.3 In terms of section 49 of the Act, the Commissioner, or any officer authorized by the Commissioner in this behalf, may undertake the audit of the business transaction of any taxable person. Such an audit may be done by a general order, in which case many taxable persons, selected on the basis of pre-defined parameters, may be required to be audited. An audit may also be conducted upon a special order in which case, a particular person may be required to be audited in the context of certain transactions/class of transactions that this person may have undertaken. The order authorizing the audit will also contain the frequency at which any audit is to be conducted and the audit shall be conducted in accordance with a standardized audit manual that will be issued in this behalf.

3.4 It is imperative to adopt a scientific method for selecting persons to be subjected to audit. A study undertaken in this regard has shown that the very best of auditors could produce only average result while auditing persons selected randomly whereas even average auditors performed above par while auditing persons selected on the basis of risk profiling. Hence, a model containing parameters which are indicative of, or have strong and demonstrated co-relation to, tax evasion should be developed for the purpose of selecting persons for audit. The past history regarding compliance should also be a decisive factor in selection for audit along with the scale of operations of the taxable person. Some of the following criteria may be adopted for selection:

- Total tax/tax throughput
- Refund claim
- Export/zero rating
- Ratio analysis
- Cash dealings
- History of delinquency
- Unusual deviations from “norms”/”standards”.

3.5 Once selection for audit has been made, the auditee has to be informed by a notice issued at-least 15 working days before the proposed audit is to be undertaken and the notice shall also specify the place where the audit is proposed to be conducted; the audit can be conducted at either the place of business of the taxable person or the office of the audit authority or at both places.

3.6 Before undertaking the audit, the authorities have to prepare for such audit and this involves gathering evidence and other information that is considered to be relevant for, or related to, the business transactions of the auditee. This may include the past records of the person, comparative information regarding similar persons in the same trade or industry, trends of economic activity which are relevant in the context of the business of the auditee, business processes adopted

by the auditee and generally a profile that gives a 360° view of the business activities of the auditee.

3.7 During the conduct of the audit every class of transactions undertaken by the taxable person should be thoroughly examined and scrutinized by the audit authority. But before doing so, the internal control mechanism put in place by the person should be examined and tested and probable areas of weakness in the system should be identified. Internal controls encompass a set of rules, policies, and procedures an organization implements to provide reasonable assurance that:

- its financial reports are reliable,
- its operations are effective and efficient, and
- its activities comply with applicable laws and regulations.

How rigorous an audit should be and the degree of detail which the auditor has to adopt while examination would largely depend on the effectiveness of the internal control mechanisms and systems put in place by the auditee.

3.8 The audit is to be conducted in a transparent manner and is to be completed within 3 months from the date of commencement of the audit and if the Commissioner is satisfied that the audit can't be completed in the said period of 3 months, he may extend it by any period not exceeding 6 months. In this context an audit shall be deemed to have commenced on the earlier of the following:

- the date on which the records have been furnished to the audit authority, or
- the date on which the audit has been instituted at the place of business of the auditee.

Even though the Act does not elaborate on the issue of what constitutes “a transparent manner” An audit shall be deemed to have been conducted in a transparent manner if it is carried out in accordance with standardized, pre-defined and well understood operating procedures. Accordingly, the auditee should be afforded sufficient opportunity to present his views on every evidence collected and that the auditee may not be burdened with the task of providing any evidence/document that is not within his control. During the course of audit, it shall be the duty of the auditee to arrange for necessary facilities to verify the records and documents that are produce and also to furnish such evidence/documents/information that may be required in the context of the audit. The auditee should also render all assistance to complete the audit in a timely manner.

3.9 Upon the completion of the audit, the audit authority shall prepare a report of such audit and also informed the auditee of

- the findings of such audit,
- the reasons for such findings, and
- the rights and obligations of the person who has been audited.

3.10 The proper officer may initiate proceeding for determination of tax, levy of interest and/or penalty if the audit conducted reveals any evidence of

- tax not paid or short paid
- input tax credit erroneously availed
- amount erroneously refunded.

SPECIAL AUDIT

4.1 Special audit is actually an audit conducted with a definite objective or focus. Such an audit is confined to only certain aspects of the transactions which are examined in great detail. This provision under section 50 of the Act takes off from section 233A of the Companies Act, 1956. Under the Model GST Law it has been proposed that special audit can be ordered in writing by Deputy/Assistant Commissioner of GST, (with the prior approval of the Commissioner), if such officer is of the view that

- the value has not been correctly declared, or
- the credit availed is not within normal limits.

4.2 The said officer must have come to this view on the basis of any scrutiny, enquiry, investigation or any other proceeding that is being conducted with regard to the taxable person and that it is not the outcome of any subjective assessment of such authority. The audit, once ordered, is to be conducted by such Chartered Accountant or Cost Accountant that the Commissioner may nominate for this purpose.

4.3 The audit report, duly signed and certified by the auditor, is to be submitted within a period of 90 days. The aforesaid period may be extended by the proper officer by a further period of 90 days on the basis of

- an application by the auditor or the auditee, or
- any material and sufficient reason.

4.4 The special audit, if ordered, shall be in addition to any other audit that may be required to be conducted under this Act or under any other law and the expanses of the audit shall be fixed by the Commissioner and be borne by the Government.

4.5 Proceedings under section 51 to be initiated for determination of tax, levy of interest and/or penalty if the audit reveals any evidence of

- tax not paid/short paid or
- ITC erroneously availed or
- tax erroneously refunded.

The auditee is to be afforded an opportunity of hearing if the findings of special audit are proposed to be used in any proceeding against him.



***BACKGROUND MATERIAL
FOR TRAINING ON
'GOODS AND SERVICES TAX'***



**COMPILED BY
NATIONAL ACADEMY OF CUSTOMS EXCISE AND NARCOTICS
FARIDABAD**

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13. Refunds

PART-I-INTRODUCTION

1. VAT is a multi-stage tax levy system which envisages collection of tax at each stage of the value addition chain, with a provision to allow input tax credit (ITC) on tax paid at an earlier stage (ie.for inputs), which can be appropriated against the VAT liability on subsequent sale. Under VAT system, the dealer has to pay Net tax on his taxable transactions.

$$\text{Net Tax} = \text{Output tax} - \text{Input tax credit.}$$

Simply, If anything is paid in excess of this amount, this has to be refunded to the dealer. Timely and proper refunding mechanism is a must in tax administration, since it promotes the following:

- Hassle free conduct between tax administrators and dealers.
- Expansion and Modernization of existing business and starting of new business since funds are not get blocked.
- Due to increase and efficiency in production, Cost of production is reduced.
- Since cost of production is reduced, the price will come down, demand will increase, production goes up, which ultimately increases the tax revenue to the Government exchequer.

PART-II- Refund provisions in various states

The gist of refund provisions existing in various States VAT Act is narrated below:

Kerala

Nature of credit	Relevant Section/Rule	Treatment
Refunds	Sec.89	When an assessing authority finds, on completion of annual assessment, that a dealer has paid tax in excess of what is due from him, it shall refund the excess to the dealer. When an assessing authority receives an order from any appellate or revisional authority or any officer authorised, to make a refund of tax or penalty or cash security paid by a dealer or any other person, it shall effect the refund to such dealer or such other person.

Nature of credit	Relevant Section/Rule	Treatment
		<p>The assessing authority shall have the power to adjust the amount due to be refunded towards the recovery of any amount due, on the date of adjustment, from the dealer.</p> <p>In case refund is not made within ninety days of the completion of assessment or of the date of receipt of the order in appeal or revision or the date of expiry of the time for preferring appeal or revision, the dealer shall be entitled to claim interest at the rate of ten percent per annum on the amount due to him from the date of expiry of the said period upto the date of payment or adjustment.</p>
Power to withhold refund in certain cases	Sec.90	<p>Where an order giving rise to refund is the subject matter of appeal or any other proceedings under the Act and the assessing authority is of the opinion that the grant of refund is likely to prejudice the public revenue, it may, for good and sufficient reasons to be recorded in writing withhold the refund until such time as it deems proper.</p> <p>Where a refund is withheld and the matter is finally settled in favour of a dealer, a simple interest of six percent per annum shall be paid for the period commencing from the first day of the order determined, in favour of the dealer and ending the date on which the refund is made, where the assessing authority fails to make the refund within ninety days from the date of receipt of such order by it.</p>
Refund in case of Excess Input Tax credit	Sec.11(6)/rule 47A	If the input tax of a dealer for a return period is more than the Output tax of that return period, the excess ITC shall be first

Nature of credit	Relevant Section/Rule	Treatment
		<p>adjusted against any interest, tax or any other amount due from the dealer under the Act for any previous return periods and then against tax payable under the CST Act. Still if there is any excess credit, it shall be carried forward to the succeeding return period for availing the credit.</p> <p>In cases, where the excess ITC carried forward cannot be fully adjusted during the last return period of that year, it shall be refunded to the dealer. Dealer claiming refund of ITC remaining unadjusted at the end of the year has to submit an application in Form No.21CC within 3 months after the expiry of the year to which the input tax relates along with the Closing stock inventory in respect of VAT suffered goods locally purchased during the respective year and held as closing stock as on 31st March, in Form No.54.</p>
Refund of Input tax in the case of export or inter state sale	Sec.13(iv)(a)/Rule.47	As per Sec.13(2) (iv)(a) input tax paid on goods (other than falling under Fourth Schedule (ie. KGST) which are used or consumed in the manufacture of taxable or non-taxable goods or used as containers or as packing materials of such goods, is entitled to refund if the manufactured goods are exported.
	Sec.13(iv)(b)	Refund of input tax when taxable goods are manufactured and sold interstate.
Stock Transfer		Where input tax paid goods are sent to outside State by way of stock transfer, the refund shall be limited to the amount of input tax paid in excess of 5% on the purchase turnover of such goods.

ANDHRA PRADESH

38. (1) (a) A VAT dealer effecting sales falling under sub-section (1) or (3) of Section 5 (and sub-section (6) of Section 8) of the Central Sales Tax Act, 1956 in any tax period shall be eligible for refund of tax, if the input tax credit exceeds the amount of tax payable subject to the condition that the exports have been made outside the territory of India. The excess of tax shall be refunded within a period of ninety days on a claim made on a VAT return prescribed to the authority prescribed subject to the provisions of the Act and the rules made thereunder;
- (b) In all other cases, the VAT dealer may make a claim for refund of any excess credit available at the end of second year after the commencement of the Act and thereafter in the return to be filed for the month of March every year if registered as a VAT dealer for a minimum period of twelve months or in the event of cancellation of registration. The excess of input tax credit claimed as refund shall be refunded within ninety days of the date of receipt of the claim;
- (c) The claim for refund under this Section shall be made on the VAT return in the form prescribed;
- (d) A VAT dealer, who has paid tax in excess of the amount due for a tax period, may claim a credit in the next tax return.
- (2) Where a VAT dealer claiming a refund is required by authority prescribed to provide accounts or records to substantiate the claim but fails to do so in a manner satisfactory to the authority prescribed within seven days of issue of notice, the time period specified in sub-section (1) for making the refund shall not apply.
- (3) Where a claim of a VAT dealer is not accepted either in full or in part, the authority prescribed, shall send a notice in writing, to the VAT dealer.
- (4) A VAT dealer aggrieved by the decision under sub-section (3) may file an appeal as prescribed in the Act.
- (5) The tax paid under the Act on the purchases made by specialized agencies of the UNITED NATIONS ORGANISATION and Consulates or Embassies of any country located in the State, or International Crop Research Institute for Semi Arid Tropics, Hyderabad shall be refunded in such manner as may be prescribed.

Provided that, Government may by notification denotify or exclude any of the Organizations, Consulates or Embassies or any other International Institutions

from the purview of this sub-section making them not eligible for refund of tax under the Act on the purchases made by them.

- (6) Where the authority prescribed fails to make a refund within the time specified under sub-section (1) the amount of refund shall carry simple interest at the rate of one percent per month on the amount of the refund for the period of delay.
 - (7) A TOT dealer shall be eligible to adjust any excess tax paid by him in the subsequent returns or may claim refund at the time of cancellation of registration in the manner prescribed.
 - (8) The Government may, by notification provide for grant of refund earlier than the period stipulated in this section, of any excess credit available, after adjusting the tax payable under the Act or any tax payable under the provisions of Central Sales Tax Act, 1956 in respect of any Value Added Tax dealer or any category of Value Added Tax dealers.
 - (9) The tax paid under the Act, by the person who is not liable to be registered as Value Added Tax or Turnover Tax dealer and not liable to pay tax under the Act, may be refunded in the manner as may be prescribed.
- 39.** (1) Where the authority prescribed is required to refund an amount of tax to a VAT dealer or TOT dealer or any other dealer as a result of:-
- (a) a decision under Section 31; or
 - (b) a decision of the Appellate Tribunal under Section 33; or
 - (c) a decision of the High Court under Section 35; such refund shall be made within a period of ninety days from the date of the receipt of the order.
- (2) Where refund is not made within the stipulated time, as mentioned in sub-section (1) the amount of refund shall carry interest at the rate of one percent per month for the period of delay. The interest in respect of part of a month shall be computed proportionately and for this purpose, a month shall mean a period of 30 days.
- 40.** (1) The Commissioner or the authority prescribed shall have the power to adjust any amount due to be refunded against any tax, penalty and interest outstanding against a VAT dealer or a TOT dealer or any other dealer.
- (2) Where an order giving rise to a refund is the subject matter of an appeal or further proceeding, or where any other proceeding is pending, and the authority prescribed is of the opinion that the grant of the refund is likely to adversely affect the revenue, the authority prescribed may, with the previous approval of the Deputy Commissioner, withhold the refund till such time as the Deputy Commissioner may determine.

- (3) Where any demand of tax or penalty or both is disputed by a VAT dealer or TOT dealer before any appellate authority or Sales Tax Appellate Tribunal or High Court and the demand becomes finally due either partly or fully an interest at the rate of one percent per month shall be charged from the date such tax or penalty was originally due.

TAMIL NADU

Sec.18(2) - The dealer, who makes zero rate sale, shall be entitled to refund of input tax paid or payable by him on purchase of those goods, which are exported as such or consumed or used in the manufacture of other goods that are exported as specified in sub-section (1), subject to such restrictions and conditions as may be prescribed.

3) Where the dealer has not adjusted the input tax credit or has not made a claim for refund within a period of one hundred and eighty days from the date of 1[making zero rate sales] accrual of such input tax credit, such credit shall lapse to Government.

PART-III- Various issues in refund

- Reluctance on the part of the officials to grant speedy refund on apprehension of AG's objection.
- Over emphasis on creating revenue for the Government exchequer at the cost of granting benefit to the dealers legitimately due to them under the Statute.
- Illegal gratification on the part of the Officials.
- Accrual of interest for delayed refund.

Ways to overcome these limitations.

- ✓ Strict compliance to the procedures enumerated in VAT Rules and Circulars issued by CCT's from time to time.
- ✓ Strict supervision by Higher authorities should be made mandatory for prompt and speedy refund.
- ✓ The same importance given to collecting demand should also be given to refund. As per Kerala RTS Act, a refund application should be disposed off within two months.

PART-IV-REFUND PROVISIONS IN MODEL GST LAW

Chapter X Sections 38 to 41 of Model **GST** Law deals with refund Provisions. For the purposes of this section "refund" includes refund of tax on goods and/or services exported out of India or on inputs or input services used in the goods and/or services which are exported out of India, or refund of tax on the supply of goods regarded as

deemed exports, or refund of unutilized input tax credit as provided under sub-section (2) of Section 38.

- Any person claiming refund of any tax and interest may make an application to the proper Officer of IGST/CGST/SGST before the expiry of two years from the relevant date in such form and in such manner as may be prescribed. Provided that the limitation period of two years shall not apply in cases where the amount referred above has been paid under protest.
- A taxable person may claim refund of any unutilized input tax credit at the end of any tax period.
- No refund of unutilized ITC shall be allowed in cases other than exports or in cases where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on outputs. **GST (Sec.38(2))**
- No refund of unutilized ITC in cases where the goods are exported out of India are subjected to export duty.
- The Refund application shall be accompanied by :
 - documentary evidence as may be prescribed to establish that a refund is due.
 - Such documentary or other evidence as the applicant may furnish to establish that the amount of tax and interest, if any, paid on such tax or any other amount paid in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such tax and interest had not been passed on by him to any other person.
 - If the amount claimed is less than five lakh rupees, he may file a declaration, based on the documentary and other evidences with him, certifying that the incidence of such tax and interest had not been passed on by him to any other person.
- If the proper officer is satisfied that the whole or part of the amount claimed as refund is refundable, he may make an order accordingly and the amount so determined shall be credited to the Consumer Welfare Fund. The proper Officer shall issue the order within ninety days from the date of receipt of application (i.e. complete application containing all information as may be prescribed). **CGST Sec.38(4)& 38(5).**
- In case of any claim for refund on account of export of goods and /services made by such category of registered taxable persons as may be notified in this behalf, refund eighty percent of the total amount so claimed, excluding the amount of input tax credit provisionally accepted, on a provisional basis, subject to such conditions, limitations and safeguards and the remaining twenty percent may be refunded after due verification of documents furnished by the applicant. **GST Sec.38(4A)**
- Notwithstanding anything contained in sub section (4) or (4A), the refundable

amount shall, instead of being credited to the Fund, be paid to the applicant if such amount is relatable to (a) refund of tax on goods and /or services exported out of India or on inputs used in the goods and/or services which are exported out of India (b) refund of unutilized ITC under sub section (2) ,(c) the tax and interest, if any, or any other amount paid by the applicant, if he had not passed on the incidence of such tax and interest to any other person and (d) the tax or interest borne by such other class of applicants as the Central/State Government may on the recommendation of the Council, by notification, specify. **CGST Sec.38(6).**

- Notwithstanding anything to the contrary contained in any judgment, decree, order or direction of the Appellate Tribunal or any Court or in any other provision of this Act or the rules made thereunder or in any other law for the time being in force, no refund shall be made except as provided in sub-section (6) **(GST 38(7)).**
- Notwithstanding anything contained in sub-section (2), where any refund is due under the said sub-section to a registered taxable person who has defaulted in furnishing any return or who is required to pay any tax, interest or penalty, which has not been stayed by any Court, Tribunal or Appellate Authority by the specified date, the proper officer may —
 - (a) withhold payment of refund due until the said person has submitted the return or paid the tax, interest or penalty, as the case may be;
 - (b) deduct from the refund due, any tax, interest or penalty which the taxable person is liable to pay but which remains unpaid. **(GST.Sec.38(8))**
- Notwithstanding anything contained in sub-section (4) or sub-section (4A), where an order giving rise to a refund is the subject matter of an appeal or further proceeding or where any other proceeding under this Act is pending and the Commissioner / Board is of the opinion that grant of such refund is likely to adversely affect the revenue, he may, after giving the taxpayer an opportunity of being heard, withhold the refund till such time as he may determine. If such withheld is made, the taxable person shall be entitled to interest as provided under section 39, if as a result of the appeal or further proceeding he becomes entitled to refund. **(GST Sec.38(9) and (10)).**
- Notwithstanding anything contained in this section, no refund under sub-section (4) or sub-section (4A) shall be paid to an applicant if the amount is less than rupees one thousand. **(Sec.38(11)).**
- The United Nations Organization or any Multilateral Financial Institution and Organization notified under the United Nations (Privileges and Immunities) Act, 1947 (46 of 1947), Consulate or Embassy of foreign countries and any other person or class of persons as may be notified by the Board / Commissioner, shall obtain a Unique Identity Number, in the manner prescribed, for the purpose(s)

notified, including refund of taxes on the supplies of goods and/or services received by them. **GST Sec.19(6)**.

- **Tax wrongfully collected and deposited with the Central or State Government.** A taxable person who has paid IGST considering to be an Interstate supply, but which subsequently held to be an intra state supply, upon payment of CGST and SGST in the appropriate State, be allowed to take the amount of IGST so paid as refund subject to provisions of sec.38 of the CGST Act and other prescribed conditions. **IGST Sec.30** and Sec.53 GST.
- **Pending refund claims to be disposed of under earlier law.** Every claim for refund of any duty/tax and interest, if any, paid on such duty/tax or any other amount, filed by any person before the appointed day, shall be disposed of in accordance with the provisions of earlier law and any amount eventually accruing to him shall be paid in cash, notwithstanding anything to the contrary contained under the provisions of earlier law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 (1 of 1944): Provided that where any claim for refund is fully or partially rejected, the amount so rejected shall lapse. (**Chapter XXV.Transitional Provisions CGST Sec.154 (Central Law)**) Similarly, every claim for refund of any tax and interest, if any, paid on such tax or any other amount, filed by any person before the appointed day, shall be disposed of in accordance with the provisions of earlier law and any amount eventually accruing to him shall be refunded to him in accordance with the provisions of the said law: Provided that where any claim for refund is fully or partially rejected, the amount so rejected shall lapse. (**Chapter XXV.Transitional Provisions GST Sec.154 (State Law)**)
- **Every proceeding of appeal, revision, review or reference relating to any output duty liability initiated before the appointed day,** shall be disposed of in accordance with the provisions of the earlier law, and any amount found to be admissible to the claimant shall be refunded to him in cash, notwithstanding anything to the contrary contained under the provisions of earlier law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 and shall not be admissible as input tax credit under this Act. (**Chapter XXV.Transitional Provisions GST Sec.155**). Similarly, every proceeding of appeal, revision, review or reference relating to any output tax liability initiated before the appointed day, shall be disposed of in accordance with the provisions of the earlier law, and any amount found to be admissible to the claimant shall be refunded to him in accordance with the provisions of the earlier law and shall not be admissible as input tax credit under this Act. (**Chapter XXV.Transitional Provisions GST Sec.155**).
- Every proceeding of appeal, revision, review or reference relating to any output duty liability initiated before the appointed day, shall be disposed of in accordance with the provisions of the earlier law, and any amount found to be admissible to the claimant shall be refunded to him in cash, notwithstanding

anything to the contrary contained under the provisions of earlier law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 and shall not be admissible as input tax credit under this Act. **(Chapter XXV. Transitional Provisions GST Sec.156)**. Similarly, Every proceeding of appeal, revision, review or reference relating to any output tax liability initiated before the appointed day, shall be disposed of in accordance with the provisions of the earlier law, and any amount found to be admissible to the claimant shall be refunded to him in accordance with the provisions of the earlier law and shall not be admissible as input tax credit under this Act.

Where in pursuance of an assessment or adjudication proceedings instituted, whether before or after the appointed day, under the earlier 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 earlier 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. **(Chapter XXV. Transitional Provisions GST Sec.157)** Similarly, Where in pursuance of an assessment proceedings instituted, whether before or after the appointed day, under the earlier law, any amount of tax, interest, fine or penalty becomes refundable to the taxable person, the same shall be refunded to him in accordance with the provisions of earlier law. **(Chapter XXV. Transitional Provisions GST Sec.157)**

Where any return, furnished under the earlier law, is revised and if, pursuant to such revision, any amount is found to be refundable to any taxable person, the same shall be refunded to him in cash under the earlier 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 **(Chapter XXV. Transitional Provisions GST Sec.158)**. Similarly, Where any return, furnished under the earlier law, is revised and if, pursuant to such revision, any amount is found to be refundable to any taxable person, the amount shall be refunded to the said person in accordance with the provisions of the earlier law **(Chapter XXV. Transitional Provisions GST Sec.158)**.

- The amount of refund, under the provisions of the Act shall be rounded off to the nearest rupee and, for this purpose, where such amount contains a part of a rupee consisting of paise then, if such part is fifty paise or more, it shall be increased to one rupee and if such part is less than fifty paise it shall be ignored. **(Sec.137 CGST Act)**
- Where an amount deposited by the appellant with regard to filing of appeals

before the First appellate authority or before the Appellate Tribunal is required to be refunded consequent to any order of the First Appellate Authority or of the Appellate Tribunal, as the case may be, interest at the rate specified under section 39 shall be payable in respect of such refund from the date of payment of the amount till the date of refund of such amount. **(Sec.85 of CGST Act).**

- **Interest on delayed refunds :If any tax refundable under section 38 to any applicant is not refunded within** three months from the date of receipt of application under sub-section (1) of that section, interest at such rate as may be specified in the notification issued by the Central or a State Government on the recommendation of the Council shall be payable in respect of such refund from the date immediately after the expiry of the due date for sanction of refund under section 38 till the date of refund of such tax.

PART V- REFUND AT A GLANCE

1) Refund scenarios in GST

A) Refund of unutilized Input tax credit allowed only in cases Sec.38(2)

(i) Exports of goods and services. It can be tax paid on the inputs used in the use of goods and services which are exported at zero rate or if tax is paid on such exports ; such tax

(No refund of Unutilized ITC, if goods exported outside India are subjected to export duty) (proviso to 38(2))

- (ii) On account of accumulation of account of rate of tax on inputs higher than the rate of taxes on Outputs.**(Credit accumulation due to output being tax exempt or nil-rated and Credit accumulation due to inverted duty structure i.e. due to tax rate differential between output and inputs). There will be no refund of ITC of goods lying in stock at the end of the Financial year. It is proposed to be carried forward.

B) On Finalization of provisional assessment under Sec.44A(5)

A dealer can apply for Provisional assessment u/s.44A after which the officer is bound to do final assessment. If on final assessment refund is due to the dealer, it shall be paid.

C) Refund of Pre - deposit for filing appeal including refund arising in pursuance of an appellate authority's order (when the appeal is decided in favor of the appellant .

D) Excess payment of tax due to mistake or **inadvertence:-** Such excess payment may be on account of wrong mentioning of nature of tax/GSTIN/ of tax amount. In case of wrong mentioning of tax/GSTIN, the tax administration has to verify the correctness of tax payers claim while verifying the refund application filed by the him, which should be decided within the prescribed period. In case of wrong mentioning of tax, the refund of excess amount of tax, at the option of the taxpayer, would either be automatically carried forward or adjustment against future tax liabilities or be refunded.

E) Tax wrongfully collected and deposited with the Central or State Government.

A taxable person who has paid IGST/CGST/SGST mistakenly as an Interstate/intrastate supply, but the nature of which was subsequently clarified, then, upon payment of CGST and SGST in the appropriate State or IGST, he shall be allowed to take refund of the tax paid under the mistaken head, subject to Rules which will be made and provisions of Sec.38. **(IGST Sec.30 and Sec.53 GST).**

F) Refund of tax payment on purchases made by Embassies or UN

The United Nations Organization and Consulates or Embassies are required to take a Unique Identity Number and purchases made by them will be reflected against their number in GSTIN and refunds can be granted. A separate process will be notified in the Rules. **GST Sec.19(6).**

2) Procedure

a) General procedures on submission of application

- Refunds under GST is application based and subject to verification. Application to be submitted through GSTN Portal with provision for uploading supporting documents.
- Any person claiming refund of any tax or interest shall make application to the proper officer.(S.38(1))
- The application form shall be correct and complete and will be prescribed in the Rules.S.38(5) Expln.
- The application shall be made before expiry of two years from the relevant date.
- Relevant dates for different scenarios 38(B)

b) Documents to be accompanied with the Application form -

General documents which will be prescribed in the Rules .

But the following documents for various scenarios are mentioned in the Business Process document.

For exports refund application to be submitted by the applicant. There will be a provision to upload scanned copies wherever possible

- 1.Shipping Bill (Export Promotion copy);
- 2.Mate's Receipt / Transporter's Challan (in case of export by road);
- 3.Export invoice;
- 4.Packing list;
- 5.Bill of Lading/ Airway Bill;
- 6.Bank Realization Certificate (BRC).
- 7.In case of services, invoice and BRC.

c) Verification

The verification will be mostly online.

The Import Export code (IEC) details captured at the time of issuance of GSTN can be verified with DGFT online. As proposed, if the linkage with the customs network ICEGATE is worked out, shipping bill which includes relevant details from the export invoice and packing list can be verified online.

BRC-Since the exporter has a time period of one year from the date of export for remitting of export proceeds, BRC may not be available at the time of refund application. But if export proceeds are received in advance BRC may be available. Thus, in case of BRC refund should be subject to submission of BRC details within a period of maximum one year or as extended by RBI. e-BRC module of DGFT will be integrated with GST module.

If export is done on payment of duty, the uploaded export invoice can be verified online for verification of payment of duty.

If refund is claimed on GST paid on inputs used for exported goods, utilization for exports is required to be verified. For this, The GST paid character of purchases can be matched with supplier and exporter's return. No separate documents is necessary. As regard to utilization of inputs for export,

- A simple formula will be prescribed in the rules may be based on proportionate credit based on export turnover/total turnover.
- A declaration can be obtained from the exporter regarding Utilization of inputs in exported goods.
- Refund shall be granted within 90 days from the date of application.Sec.38(5)

- For export refunds to notified category of dealers, 80% refund can be granted before verification subject to such conditions and restrictions.

3) Unjust enrichment and consumer Welfare Fund

Except in cases of exports, refund of unutilized ITC and the amount of tax and interest or other amounts paid by the applicant, if he had not passed on the incidence of such tax and interest to any other person and tax or interest borne by such notified persons, the refundable amount shall be credited to consumer welfare fund constituted under sec.40.

4) Interest on delayed refunds (Sec.39)

- Interest accrues from after 3months from the date of receipt of application.
- Interest rate yet to be notified. Business process Committee recommends 6%.
- In case of refund pursuant to appellate authority/Tribunal/Court from the date of order.

5) Withholding of refunds Sec.38

Refund can be withheld in the following circumstances:

- If the registered dealer has not submitted return, till he files the return.
- The proper officer can also deduct unpaid taxes if any of the dealer.
- Commissioner/Board can withhold refund, if, the Order of Refund is under appeal and he is of the opinion that grant of such refund will adversely affect revenue.

6) Deminimus threshold for refund sec.38(11)

No refund shall be granted if the amount is less than Rs.1000/-.

7) Refunds under earlier law to be paid in cash (see transitional provisions)

PART-VI-Advantages of refund system in GST vis-vis to current refund systems

- Refund scenarios limited.
- Total online process.
- Online verification to the extent possible.
- Communication and status check of refund application by the dealer online.
- Fixed time limit for refunds in the Act.
- Minimal or no blockage of Capital to dealers.



***BACKGROUND MATERIAL
FOR TRAINING ON
'GOODS AND SERVICES TAX'***



**COMPILED BY
NATIONAL ACADEMY OF CUSTOMS EXCISE AND NARCOTICS
FARIDABAD**

JULY 2016

14. Demands and Recovery

I. Introduction

Sections 51 to 59 of the Model GST Law deals with demands and recovery of taxes. Sections 108 to 115 deals with liability to pay tax in certain cases such as transfer of business, amalgamation, merger, company in liquidation etc. This paper explains the provisions relating to determination of tax not paid or short paid, or erroneously refunded or where the inputs tax credit has been wrongly or utilised, tax collected but not deposited with the Central or a State government, various modes of recovery of tax, payment of tax in instalments, provisional attachment of property and continuation of recovery proceedings. It also covers the provisions governing the liability to pay taxes in specified circumstances like transfer of business, amalgamation/merger and liability to pay tax in case of liquidation of company, dissolution of partnership firm.

II. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised

2.1 Section 51 of the Model GST Law deals with the powers of proper officer to determine tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised. Section 51 has 4 sub-divisions, namely, (A) determination of tax not paid or short paid or erroneously refunded, wrong availment and utilisation of credit where there is no fraud or willful-misstatement or suppression of facts to evade tax, (B) determination of tax not paid or short paid or erroneously refunded or wrong availment and utilisation of credit where there is fraud or willful-misstatement or suppression of facts to evade tax, (C) general provisions relating to demand of tax, and (D) recovery of interest.

(i) Determination of tax where no fraud, willful-misstatement or suppression of facts involved;

2.2 Where any tax has not been paid or short paid or erroneously refunded, or the input tax credit has been wrongly availed or utilised for any reason other than fraud or willful-misstatement or suppression of facts to evade tax, the proper officer is required to issue a notice of demand under sub-sec. (1) of sec. 51(A), to the person chargeable with tax to show cause why he should not pay the amount specified in the notice along with interest and penalty. Sub-section (2) of section 51(A) provides for serving a statement, instead of a notice, containing the details of taxes not paid etc. for subsequent periods provided the grounds relied upon are the same as mentioned in the notice issued under sub-sec. (1).

2.3 Before issue of notice under sub section (1) or a statement under sub section (2), a person chargeable with tax, shall have an option to pay the amount of tax along with

interest, ascertained either on his own or informed by the proper officer, and on such payment, no notice shall be issued with respect to the tax so paid. No penalty is also leviable in such cases. [Sub sec. (3)]. However, this does not preclude the proper officer to proceed to issue the notice where the amount paid under sub section (3) falls short of the amount actually payable. Where the person to whom a notice has been under sub section (1) issued, pays the tax along with interest within 30 days of issue of notice, no penalty shall be payable and all proceedings in respect of such notice shall be deemed to be concluded.

2.4 Where any person to whom a notice under sub section (1) or statement under sub sec.(2) issued do not come forward to pay the tax along with interest, the proper officer shall proceed to determine the amount of tax, interest and penalty, after considering representation, if any, made by such person and issue an order within the time limit prescribed under sub section (7) i.e. within 3 years from the due date or the actual date, whichever is earlier, for filing of Annual Return for the year to which such short paid tax or input tax credit or erroneous refund relates. Unlike the existing provisions under central laws which provide separate time limit for issue of notice and issue of an adjudication order, the Model GST Law provides a combined time period of 3 years both for issue of notice and issue of adjudication order in cases involving no suppression.

(ii) Determination of tax where fraud, willful-misstatement or suppression of facts involved

2.5 Where any tax has not been paid or short paid or erroneously refunded, or the input tax credit has been wrongly availed or utilised involving fraud or willful-misstatement or suppression of facts to evade tax, the proper officer is required to issue a notice of demand under sub-sec. (1) of sec. 51(B), to the person chargeable with tax to show cause why he should not pay the amount specified in the notice along with interest and penalty. Sub-section (2) of section 51(B) provides for serving a statement, instead of a notice, containing the details of taxes not paid etc. for subsequent periods provided the grounds relied upon are the same as mentioned in the notice issued under sub-sec. (1).

2.6 Before issue of notice under sub section (1) or a statement under sub section (2), a person chargeable with tax, shall have an option to pay the amount of tax along with interest and fifteen percent penalty, ascertained either on his own or informed by the proper officer, and on such payment, no notice shall be issued with respect to the tax so paid. However, this does not preclude the proper officer to proceed to issue the notice where the amount paid under sub section (3) falls short of the amount actually payable. Where the person to whom a notice has been under sub section (1) issued, pays the tax along with interest with twenty five percent penalty within 30 days of issue of notice all proceedings in respect of such notice shall be deemed to be concluded.

2.7 Where any person to whom a notice under sub section (1) or statement under sub sec.(2) issued do not come forward to pay the tax along with interest and penalty , the proper officer shall proceed to determine the amount of tax, interest and penalty, after considering representation, if any, made by such person and issue an order within the time limit prescribed under sub section (7) i.e. within 5 years from the due date or the actual date, whichever is earlier, for filing of Annual Return for the year to which such short paid tax or input tax credit or erroneous refund relates. The Model GST Law provides a combined time period of 5 years both for issue of notice and issue of adjudication order in cases involving suppression. Where any person served with an order issued under sub-section (6) pays the tax along with interest and a penalty equivalent to fifty percent of such tax within thirty days of the communication of order, all proceedings in respect of the said tax shall be deemed to be concluded.

(iii) General provisions relating to demand of tax

2.8. Where the service of notice or issuance of order is stayed by an order of a Court or Tribunal, the period of such stay shall be excluded in computing the period of three /five years. Where any Appellate Authority or Tribunal or Court holds that the notice issued under sub-section B (1) or B (2) is not sustainable for the reason that the charges of fraud or any wilful mis-statement or suppression of facts to evade tax has not been established, the proper officer has to determine the tax payable for the period of three years, deeming as if the notice were issued under sub-section A (1) or A .

2.9. Personal hearing to be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person. On sufficient cause being shown by the person issued with notice, the proper officer may grant adjournment of hearing for a maximum number of 3 times.

2.10. The proper officer shall set out the relevant facts and the basis of his decision. Under no circumstances, the amount of tax, interest and penalty demanded in the order shall be in excess of the amount specified in the notice and no demand shall be confirmed on grounds other than the grounds specified in the notice.

2.11. Where the Appellate Authority or Tribunal or Court modifies the amount of tax determined by the proper officer, the amount of interest and penalty shall stand modified accordingly, taking into account the amount of tax so modified. Interest on the tax short paid or not paid shall be payable whether or not specified in the order determining the tax liability.

2.12. The Model GST Law provides for deemed conclusion of the adjudication proceedings if the order is not issued within three years as provided for in sub-section A (7) or within five years as provided for in sub-section B (7).

III. Tax collected but not deposited with the Central or a State Government

3.1.1. Every person who has collected from any other person any amount as representing the tax under this Act, shall deposit the said amount to the credit of the Central or a State Government, regardless of whether the supplies in respect of which such amount was collected are taxable or not.

3.1.2. Where such amount is not deposited to the credit of the Central or a State Government, the proper officer shall serve on the person liable to pay such amount a notice requiring him to show cause why the said amount should not be paid by him and why a penalty equivalent to the amount specified in the notice should not be imposed on him. After considering the representation, if any, the proper officer shall proceed to demand the amount by issuing an order. In addition to paying the amount, such persons shall be liable to pay interest. No order shall be passed without granting an opportunity of being heard in person. Such order needs to be issued within one year from the date of issue of notice.

3.2. The amount paid to the credit of the Central Government or a State Government under sub-section (1) or sub-section (3) could be adjusted against the tax payable, if any by the person. Where any surplus is left after the adjustment, the amount of such surplus may either be credited to the Fund or, refunded to the person who has borne the incidence of such amount, subject to provisions of Section 38.

IV. Tax wrongfully collected and deposited with the Central or a State Government

4. A taxable person who has paid CGST/SGST (in SGST Act) on a transaction considered by him to be an intra-state supply, but which is subsequently held to be an inter-state supply, shall, upon payment of IGST, be allowed to take the amount of CGST /SGST (in SGST Act) so paid as refund subject to the provisions of section 38.

V. Modes of recovery of tax

5.1. Where any amount payable by a person under this Act is not paid by the person, the proper officer shall proceed to recover the amount by one or more of the following modes;

5.1.1. The proper officer may deduct or may require any other specified officer to deduct the amount so payable from any money owing to such person.

5.1.2. The proper officer may recover or may require any other specified officer to recover the amount so payable by detaining and selling any goods belonging to such person.

5.2.1. The proper officer may, by a notice in writing, require any other person from whom money is due or may become due to such person or who holds or may subsequently hold money for or on account of such person, to pay to the credit of the Central or a State Government.

5.2.2. In case the person to whom a notice issued as mentioned in 5.1.3 above, fails to make the payment in pursuance thereof to the Central or a State 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.

5.2.3. Any person making any payment in compliance with a notice issued shall be deemed to have made the payment under the authority of the person in default and such payment being credited to the appropriate Government shall be deemed to constitute a good and sufficient discharge of the liability of such person to the person in default to the extent of the amount specified in the receipt.

5.2.4. Where a person on whom a notice is served under sub-clause (i) proves to the satisfaction of the officer issuing the notice that the money demanded or any part thereof was not due to the person in default or that he did not hold any money for or on account of the person in default, nothing contained in this section shall be deemed to require the person on whom the notice has been served to pay to the credit of the appropriate Government any such money.

5.3. The proper officer may, on an authorisation by the competent authority, distrain any movable or immovable property belonging to or under the control of such person, and detain the same until the amount payable is paid; if the dues remains unpaid for a period of thirty days after any such distress, he may cause the said property to be sold and with the proceeds of such sale, may satisfy the amount payable and the costs including cost of sale remaining unpaid and pay the surplus amount, if any, to such person.

5.4. The proper officer may prepare a certificate signed by him specifying the amount due from such person and send it to the Collector of the district in which such person owns any property or resides or carries on his business and on receipt of such certificate, the Collector shall proceed to recover from such person the amount specified as if it were an arrear of land revenue.

5.5. Where any amount of tax, interest or penalty is payable by a person to the credit of the Central Government under this Act remains unpaid, the proper officer of SGST, during the course of recovery of SGST arrears, may recover the amount from the said person as if it were an arrear of SGST and credit the amount so recovered to the account of the Central Government.

5.6. Where any amount of tax, interest or penalty is payable by a person to the credit of the State Government under this Act remains unpaid, the proper officer of CGST, during the course of recovery of CGST arrears, may recover the amount from the said person as if it were an arrear of CGST and credit the amount so recovered to the account of the State Government.

VI. Payment of tax and other dues in instalments.

6. The [Commissioner/Chief Commissioner] may extend the time for payment or allow payment of any amount due under the Act, other than the amount due as per the liability self-assessed in any return, by such person in monthly instalments not exceeding twenty four, subject to payment of interest under section 36 with such

restrictions 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 due and payable forthwith and recovered without any further notice.

VII. Transfer of property to be void in certain cases

7. Where a person, after any tax has become due from him, creates a charge on or parts with the property belonging to him or in his possession by way of sale, mortgage, exchange, or any other mode of transfer whatsoever of any of his properties in favour of any other person with the intention of defrauding the Government revenue, such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by the said person. Such charge or transfer, however shall not be void if it is made for adequate consideration and without notice of the pendency of such proceeding under this Act or with the previous permission of the proper officer.

VIII. Tax to be first charge on property

8. Notwithstanding anything to the contrary contained in any law for the time being in force, any amount payable by a taxable person on account of tax, interest or penalty which he is liable to pay to the Central or a State Government shall be a first charge on the property of such taxable person.

IX. Provisional attachment to protect revenue in certain cases

9. Where during the pendency of any proceedings under section 46, section 47, section 48 or section 51, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue, it is necessary so to do, he may by order in writing attach provisionally any property belonging to the taxable person in such a manner as may be prescribed. Every such provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the order made under sub-section (1).

X. Continuation of certain recovery proceedings

10.1. Where any notice of demand for tax, interest, and penalty is served upon any taxable person and any appeal, revision is filed or other proceedings initiated in respect of such dues, then, where dues are enhanced in appeal/revision/proceeding, the Commissioner shall serve upon the person another notice of demand only in respect of the amount by which such dues are enhanced and any recovery proceeding in relation to the dues covered by the notice of demand served on such person before the disposal of such appeal/revision/proceeding may without service of any fresh notice of demand, be

continued from the stage at which such proceedings stood immediately before such disposal.

10.2. Where the dues are reduced in appeal/revision/proceeding, it shall not be necessary for the Commissioner to serve upon the taxable person a fresh notice of demand. The Commissioner shall give an intimation of such reduction to the person or the appropriate authority with whom the recovery proceeding is pending. Any recovery proceedings initiated on the basis of demand served upon him prior to the disposal of such appeal/revision/proceeding may be continued in relation to the amount so reduced from the stage at which such proceedings stood immediately before such disposal.

XI. Liability to pay in certain cases

(i) Transfer of Business

11.1.1. Where any person liable to pay tax, transfers his business in whole/part, by sale, gift, lease, leave and license, hire, or in any other manner, then such person and the person to whom the business is transferred shall jointly and severally be liable to pay the tax, interest or penalty due from the taxable person up to the time of such transfer, whether such dues has been determined before such transfer, but has remained unpaid or is determined thereafter.

11.1.2. Whether the transferee/lessee of the business carries on such business either in his name or in some other name, he shall be liable to pay tax on supplies effected by him from the date of such transfer and if he is an existing taxable person, apply within the prescribed time for amendment of his certificate of registration.

(ii) Amalgamation / Merger of companies

11.2.1. Where by an order of Court/Tribunal or of the Central Government amalgamation/merger of two or more companies takes effect from a date earlier to the date of such order, the companies who have supplied or received any goods and/or services to or from each other during the period commencing from the date on which the order takes effect till the date of the order, such transactions of supply and receipt shall be included in the turnover of supply or receipt of the respective companies and shall be liable to tax accordingly.

11.2.2. Notwithstanding anything contained in the order, for the purposes of this Act, the two or more companies shall be treated as distinct companies up to the date of such order and registration certificates of the said companies shall be cancelled, with effect from the date of such order

(iii) Liquidation of company

11.3.1. Every person appointed by an order of the Court/Tribunal as receiver of any assets of a company (liquidator) shall within thirty days of his appointment, give intimation of his appointment to the Commissioner. Commissioner to notify the liquidator within 3 months from the date on which he receives intimation of the appointment of the liquidator, the amount of tax, interest or penalty which is payable by the company

11.3.2. When any company is wound up and any tax or other dues determined whether before or after liquidation that remains unrecovered, every person who was a director of the company during the period for which the tax was due, shall jointly and severally be liable for payment of dues unless he proves to the satisfaction of the Commissioner that such non-recovery is not attributed to any gross neglect, misfeasance or breach of duties on his part in relation to the affairs of the company.

(iv) Partners of a firm

11.4. Partners of any firm shall jointly and severally liable for payment of any tax, interest or penalty. Firm/partner shall intimate the retirement of any partner to the Commissioner by a notice in writing – liability to pay tax, interest or penalty up to the date of such retirement, whether determined on that date or subsequently, shall be on such partner. If no intimation is given within one month from the date of retirement, the liability of such partner shall continue until the date on which such intimation is received by the Commissioner

(v) Guardians / Trustees

11.5. Where the business in respect of which any tax is payable is carried on by any guardian / trustee / agent of a minor or other incapacitated person on behalf of and for the benefit of such minor/incapacitated person, the tax, interest or penalty shall be levied upon and recoverable from such guardian / trustee / agent.

(vi) Court of Wards

11.6. Where the estate of a taxable person owning a business in respect of which any tax, interest or penalty is payable is under the control of the Court of Wards/Administrator General / Official Trustee / Receiver or Manager appointed under any order of a Court, the tax, interest or penalty shall be levied and recoverable from such Court of Wards/Administrator General / Official Trustee / Receiver or Manager to the same extent as it would be determined and recoverable from a taxable person.

(vii) Special provisions in certain cases

(a) Death

11.7. Where a person liable to pay tax dies, then, if the business is continued by his legal representative or any other person, such legal / any other person shall be liable to pay tax, interest or penalty due from such person. If the business is discontinued whether before or after his death, his legal representative shall be liable to pay out of the estate of the deceased to the extent to which he is capable of meeting the charge, tax, penalty or interest due from such person, whether such dues have been determined before his death but has remained as unpaid or is determined after his death

(b) Partition of Hindu Undivided Family / Association of Persons

11.8. Where a taxable person is liable to pay tax as HUF or AOP and the property of HUF / AOP is partitioned among various members or groups of members, each member shall jointly and severally be liable to pay the tax, interest or penalty due from the taxable person up to the time of partition whether such dues have been determined before partition but has remained unpaid or is determined after the partition

(c) Dissolution of a firm

11.9. Where a taxable person liable to pay tax is a firm and the firm is dissolved, then every person who was partner shall jointly and severally be liable to pay the tax, interest or penalty up to the time of dissolution whether such tax, interest or penalty has been determined before the dissolution but has remained unpaid or is determined after dissolution

(d) Guardian / Trustee

11.10. Where a taxable person liable to pay tax is the guardian of a ward on whose behalf the business is carried on by the guardian or a trustee who carries on the business under a trust for a beneficiary, if the guardianship or trust is terminated, the ward or, as the case may be, the beneficiary shall be liable to pay the tax, interest or penalty due from the taxable person up to the time of the termination of the guardianship or trust whether such dues have been determined before the termination of the guardianship or trust but has remained as unpaid or is determined thereafter

(viii) Other Cases

Where a firm / AOP / HUF has discontinued the business, the tax payable by such entity up to the date of discontinuance may be determined as if no such discontinuance has taken place. Every person who was at the time of discontinuance, a partner of

firm/member of AOP/HUF notwithstanding such discontinuance shall be liable jointly and severally for the payment of tax, interest or penalty whether determined prior to or after such discontinuance as if every such partner/member were himself a taxable person. Where a change has occurred in the constitution of a firm or an association of persons, the partners of the firm or the members of the association as it existed before and as it exists after the reconstitution, shall without prejudice to the provisions of sec.111, jointly and severally be liable to pay the due from such firm or association for any period before its reconstitution.



***BACKGROUND MATERIAL
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15. Appeals, Review and Revision in GST

1. Introduction

1.1 The purpose of this write-up is to provide an overall basic understanding of the statutory provisions (contained in the Model GST Law) which deal with the processes of tax appeals at various levels. For a detailed understanding, the text of the Model GST Law available on the websites of the Union Finance Ministry (www.finmin.nic.in) or the Central Board of Excise and Customs (www.cbec.gov.in) should be referred to. However, for ready reference, extracts of the relevant sections from the model GST Act / IGST Act are given in the **Appendix** at the end of this write-up.

2. Need for an appeal mechanism

2.1 Why do we at all need *appeal* mechanisms? Or, more generally, why do we need *dispute resolution* mechanisms? The simple answer is: because there are disputes.

2.2 But, why do we have disputes?

2.3 Tax laws (or any laws, for that matter) impose *obligations*. Such obligations are broadly of two kinds: tax-related and procedure-related. The taxpayer's compliance with these obligations is verified by the tax officer (by various instruments such as audit, anti-evasion, SIB, etc.), as a result of which sometimes there are situations of actual or perceived *non-compliance*. If the difference in views persists, it results into a *dispute*, which is then required to be resolved.

2.4 The initial resolution of this dispute is done by a departmental officer by a quasi-judicial process resulting into the issue of an initial order known by various names – assessment order, adjudication order, order-in-original, etc. Section 2(4) of the Model GST Act defines the phrase “*adjudicating authority*” as *any authority competent to pass any order or decision under this Act, but does not include the Board, the First Appellate Authority and the Appellate Tribunal*. Thus, in a way, *any decision or order* passed under the Act is an act of “adjudication”. Some *examples* are :- cancellation of registration under Section 21; best judgment assessment under Section 46; decision on a refund claim under Section 38, decision on a demand show cause notice issued under Section 51; imposition of a penalty under Section 66. There can be several other situations involving an “adjudication”.

2.5 Tax law recognizes that on any given set of facts and laws, there can be different opinions or viewpoints. Hence, it is likely that the assessee may not agree with the “adjudication order” so passed by the tax officer. It is equally possible that the

Department may itself not be in agreement with the adjudication order in some cases. *It is for this reason that the statute provides further channels of appeal, to both sides.*

2.6 However, since the right to appeal is a statutory right, the statute also places reasonable fetters on the exercise of that right (by way of time limits, pre-deposits, etc., as discussed later).

3. Overall structure of appeals in GST

3.1 The model law provides for a **four-layered appeal structure** as under :-

Appeal against the orders passed by....lies to the following authority	Appeal level	Sections of model law
Adjudicating Authority	First Appellate Authority	1 st	79
First Appellate Authority	Appellate Tribunal	2 nd	81, 82, 83, 84
Appellate Tribunal	High Court	3 rd	87
High Court	Supreme Court	4 th	88, 89

3.2 The various sections of the model law use some phrases which are defined in the section 2. The **Appendix** to this note contains extracts of the definitions relevant to this topic.

4. Overview of some differences in the model law relating to CGST and SGST

4.1 The Model GST law has different provisions in respect of CGST and SGST for the appeals at the first two levels. Thus, Sections 79 to 83 appear twice (once for CGST and once for SGST). Section 80 in the CGST portion is left blank, and in the SGST portion, it deals with the Commissioner's revision powers.

4.2 The **Appendix** to this note brings out the similarities and differences in Sections 79 to 83, between CGST and SGST. One set of differences arises from the provision that whereas the CGST law (sections 79 and 82) provides for a review appeal before the first two appellate levels, the SGST law (section 80) provides for revision. The other difference is about the quantum of pre-deposit at the first two appeal levels. This is discussed later in detail.

4.3 Sections 84 to 93 are common to CGST and SGST. For ready reference, these are also reproduced in the **Appendix**.

5. Appeals by the party to the First Appellate Authority (FAA)

5.1 Section 2(45) defines “*First Appellate Authority*” as an authority referred to in section 79. Section 79(1) refers to the “*prescribed First Appellate Authority*”. Section 2 (76) defines “prescribed” as prescribed by the rules, regulations or by any notification issued under the Act. Presently, in the central indirect taxes, a Commissioner (Appeals) is the first appellate authority. In the states, the first appeals are decided by a Deputy Commissioner (Appeals); some states also have JC (Appeals) / ADC (Appeals).

5.2 Section 79 provides that a person who is aggrieved by a decision or order passed against him by an adjudicating authority, can file an appeal to the First Appellate Authority (FAA, for short). It is important to note that it is only the *aggrieved* person who can file the appeal. Also, the appeal must be against a decision or order passed *under the Act*. Further, as will be discussed later, some decisions or orders are not appealable (section 93).

5.3 The time limit for the party to file an appeal before the FAA is 3 months from the date of communication of the impugned order. But the FAA may condone a delay of upto one month, if he is satisfied that there was sufficient cause for such delay.

5.4 The appeal forms etc. will be prescribed by Rules being made separately.

5.5 The FAA has to follow the principles of natural justice – such as hearing the appellant, allowing reasonable adjournments (not more than 3), permitting additional grounds (if found reasonable), etc. The FAA can also make such further inquiry as may be necessary.

5.6 On conclusion of the appeal process, the FAA will pass his order (Order-in-Appeal) which may confirm, modify or annul the decision or order appealed against. The FAA can also increase the “rigour” of the order appealed against by 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, but this can only be done after the FAA has given to the appellant a reasonable opportunity of showing cause against the proposed order. Further, if the FAA 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 utilized, 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 51.

5.7 The Order-in-appeal has to be a “speaking order” i.e. it should state the points for determination, the decision thereon and the reasons for the decision.

5.8 The law provides an advisory (“where it is possible to do so”) time limit of 1 year for the FAA to decide the appeal.

5.9 Copies of the Orders passed by the FAA will be sent to the appellant, the adjudicating authority, the CGST Commissioner, and the SGST Commissioner.

6. Concept of pre-deposit

6.1 As mentioned earlier, the right to appeal is a statutory right which operates within the limitations placed on it by the law. One such limitation flows from the principle that an appellant must first deposit the adjudged dues before his further appeal can be heard. However, often an appellant may succeed in his appeal, and hence it would (in retrospect) be unfair to saddle him with this financial burden. To balance these factors, tax laws mandate some “pre-deposit” so as to discourage frivolous appeals and also safeguard the bonafide interests of both the taxpayers and the revenue.

6.2 Section 79(6) for CGST and 79(4) for SGST require an appellant before FAA to pre-deposit 10% of the “amount in dispute” arising from the order appealed against. The phrase “amount in dispute” has been defined to include:- (i) amounts determined under section 46 (assessment of non-filers), or 47 (assessment of unregistered persons) or 48 (summary assessment) or 51(demands); (ii) amounts payable under rule-----of the GST Credit Rules 201...; and (iii) amounts of fee levied or penalty imposed.

6.3 The above requirement of pre-deposit of 10% of the amount-in-dispute is common to both CGST and SGST. However, the SGST law has two *additional* features :-

- Full pre-deposit of the admitted amount of tax, interest, fine, fee and penalty arising from the impugned order.
- The department can apply to the FAA for ordering a higher amount of pre-deposit, not exceeding 50% of the amount in dispute, in a “serious case” (i.e. a case involving a disputed tax liability of not less than Rs. 25 crs. and where the Commissioner is of the reasoned recorded opinion that the department has a very good case against the taxpayer).

6.4 The pre-deposit provisions for appeals before the Tribunal are similar to the above and are contained in Section 82 (See **Appendix**).

6.5 **Section 85** provides for interest on refund of pre-deposit. If the pre-deposit made by the appellant under section 79 (FAA) or under section 82 (Tribunal) is required to be refunded consequent to any order of the FAA or of the Tribunal, as the case may be, interest at the specified rate shall be payable from the date of payment of the amount till the date of refund of such amount.

7. Appeals by the Department (CGST) before the FAA

7.1 Para 5 above dealt with appeals filed by the *party* before the FAA. However, often the *Department* itself is not in agreement with the decision or order passed by the (initial) adjudicating authority. The model GST Law provides that in such cases, the Department can file what is commonly known as a “review application/appeal”.

7.2 The law in this regard is given in sub-sections (2) and (3) of section 79 – which is applicable only for CGST.

7.3 If the CGST Commissioner on examination of the case record is of the view that the decision or order passed by the adjudicating authority is *not legal or proper*, he can by order (known as “review order”) direct any CGST Officer subordinate to him to apply to the FAA for the determination of such points arising out of the said decision or order as may be specified in the review order. The resultant review application is required to be dealt with by the FAAAs if it were an appeal made against the decision or order of the adjudicating authority and the statutory provisions relating to appeals shall, so far as may be, apply to such application.

7.4 By virtue of Section 79 (4), the above processes of review by the Commissioner and filing the resultant application by the authorized officer before the FAA have to be completed within a joint time-limit of 3 months, with another 1 month of condonable delay on sufficient cause being shown. *Thus, the time limits are the same for party appeals and Revenue appeals.*

8. Revision by Commissioner (SGST)

8.1 Section 80 (SGST)¹ provides for the mechanism of revision, by the SGST Commissioner, of the orders passed by his subordinate officers.

8.2 If the SGST Commissioner on examination of the case record is of the view that the decision or order passed by *any officer subordinate to him* is erroneous in so far as it is *prejudicial to the interest of the revenue*, 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.

8.3 The above power is subject to the provisions of section 93 (non-appealable orders and decisions), and is also subject to the following restrictions:-

- A decision or order cannot be revised if it has been subject to an appeal under section 79 (FAA) or under section 82 (Tribunal) or under section 87 (High Court) or under section 88 (Supreme Court).
 - However, the SGST Commissioner may pass a revision order on any point which has not been raised and decided in an appeal referred to above, before the expiry of 1 year from the date of the order in such appeal or before the expiry of 3 years from the decision or order sought to be revised, whichever is later.
- A decision or order cannot be revised if more than 3 years have expired after the passing of the decision or order sought to be revised.
 - However, if the decision or order (which is sought to be revised) involves an issue on which the Appellate Tribunal or the High Court has given its decision which is prejudicial to the interest of revenue in some other

¹Section 80 (CGST) is left blank; see **Appendix**

proceedings and an appeal to the High Court or the Supreme Court against such decision of the Appellate Tribunal or as the case may be, the High Court is pending, the period spent between the date of the decision of the Appellate Tribunal and the date of the decision of the High Court or as the case may be, the date of the decision of the High Court and the date of the decision of the Supreme Court shall be excluded in computing this period of 3 years.

- Also, where the issuance of a revision order is stayed by the order of a Court or Tribunal, the period of such stay shall be excluded in computing this period of 3 years.

8.4 It is also provided that for the purposes of revision :-

- '*record*' includes all records relating to any proceedings under the Act available at the time of examination by the SGST Commissioner
- '*decision*' includes intimation given by any officer subordinate to the SGST Commissioner.

8.5 Every Revision Order shall be final, subject to further appeals before the Tribunal, High Court, and Supreme Court.

9. Appeals by the party before the Appellate Tribunal

9.1 Section 81 deals with the constitution of the National Appellate Tribunal. The provisions of Section 81, though repeated in the SGST portion, are identical.

9.2 It is provided that the Central Government shall on the recommendation of the GST Council² constitute a "National Goods and Services Tax Appellate Tribunal" (Tribunal, for short).

9.3 Following are some administrative features of the Tribunal :-

- Headed by a National President
- One branch for each state (the State GST Tribunal), headed by a State President
- Every State GST Tribunal to consist of as many Members (Judicial), Members (Technical - CGST) and Members (Technical - SGST) as may be prescribed
- The qualifications, eligibility conditions and the manner of selection and appointment of the National President, the State Presidents, and the Members to be as prescribed on the recommendations of the Council
- The National President and the State Presidents to exercise such powers and discharge such functions as prescribed on the recommendations of the Council
- On ceasing to hold office, the National President, the State Presidents or other Members not to be entitled to appear before the Tribunal

²For definition of "Council" please refer to **Appendix**

9.4 Section 82 (CGST) and Section 82 (SGST) deal with the filing of appeals before the Tribunal. The similarities and differences between these (please see **Appendix**) are on the same lines as in the case of Section 79.

9.5 The Tribunal is the **second level of appeal**, where appeals can be filed against the orders-in-appeal passed by the FAA under section 79, by any person aggrieved by such an order-in-appeal. (*In case of SGST, appeal against the Revision Order passed by the Commissioner under section 80, will also lie to the Tribunal*).

9.6 The Tribunal has the discretion not to admit any appeal involving an amount of Rs. 1 lakh or less.

9.7 Appeal to the Tribunal is to be filed within 3 months from the communication of the order under appeal. Further, Tribunal has the power to condone delay (of any length) on being satisfied that there is sufficient cause for the delay.

9.8 The law also provides for *cross-objections* by the respondent against such part of the order against which the respondent may initially not have chosen to file an appeal. It is provided that on receipt of notice that an appeal has been filed (by the appellant), the party against whom the appeal has been preferred (i.e. the respondent) may, notwithstanding that he may not have appealed against such order or any part thereof, file within 45 days 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 time specified for the initial appeal. Condonation of delay (on sufficient cause) applies here also.

9.9 The form, fees, etc. for the appeals to Tribunal shall be as prescribed by Rules being made separately.

9.10 The provisions for pre-deposit (including interest thereon) in respect of appeals before the Tribunal are similar to those before the FAA.

9.11 **Section 83** (similar for both CGST and SGST, see **Appendix**) deals with the disposal of the aforesaid appeals (including cross-objections, review appeals, etc.) by the Tribunal. It is provided that the Tribunal after hearing both sides may pass such orders thereon as it thinks fit, confirming, modifying or annulling the decision or order appealed against or may refer the case back to the FAA (or, in the case of SGST, to the revisional authority), or to the original adjudicating authority, with such directions as it may think fit, for a fresh adjudication or decision, as the case may be, after taking additional evidence, if necessary. For reasons of natural justice (reasonable opportunity) it is also provided that the Tribunal may, if sufficient cause is shown, grant upto 3 adjournments to either side.

9.12 The Tribunal also has the power to rectify any apparent mistake in its order if such mistake is noticed by the Tribunal or is brought to its notice by either side, within a period of three months from the date of the order. However, 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 provision

unless the Tribunal has given notice to him of its intention to do so and has allowed him a reasonable opportunity of being heard.

9.13 The Tribunal shall, where it is possible to do so, hear and decide every appeal within a period of 1 year from filing.

9.14 Copies of the Tribunal's orders are to be sent to the First Appellate Authority, Revisional Authority (in case of appeals against Revision Orders passed by SGST Commissioner), the original adjudicating authority, the appellant, the jurisdictional Commissioner of CGST and the jurisdictional Commissioner of SGST.

9.15 As the Tribunal is considered to be the *final fact-finding authority*, every order passed by it shall be final, subject to the provisions of section 87 (appeal to HC on questions of law) or 88 (appeal to SC).

9.16 **Section 84** (common for CGST and SGST) lays down the procedure to be followed by the Tribunal. It is provided that the Tribunal's powers and functions may be exercised and discharged by Benches constituted by the National President or the State Presidents from amongst the members thereof. It is further provided that a Bench shall consist of one Member (Judicial), one Member (Technical-CGST) and one Member (Technical-SGST). *Thus, the "default" Bench in GST shall be a 3-Member Bench.* However, duly constituted Single Member Benches may dispose of any case involving a disputed amount not exceeding Rs 10 lakhs.

9.17 If the members of a Bench differ in opinion on any point, the point shall be decided according to the opinion of the majority, if there is a majority; but if the members are equally divided, they shall refer the point(s) of difference to the National President or the State President who shall either hear the point(s) himself or refer the case for hearing on such point(s) by one or more of the other members of the Tribunal and such point(s) shall be decided according to the opinion of the majority of these members of the Tribunal who have heard the case, including those who first heard it.

9.18 For other matters such as the Tribunal's power to regulate its own procedure, the Tribunal being vested with the powers of a court under the Code of Civil Procedure in respect of specified matters, proceedings before the Tribunal being deemed to be judicial proceedings within the IPC, etc., the text of the model law (see **Appendix**) may be referred to, as these are largely same as the existing provisions in the central/state laws.

10. Appeals by the Department before the Tribunal

10.1.1 As in the case of appeals before the FAA, there are provisions for review appeals to be filed by the Department (**CGST**) before the Tribunal as well (sub-sections 3, 4 and 5 of Section 82 – see **Appendix**). For this purpose, the CBEC is empowered to constitute Review Committees comprising two designated CGST officers. It is provided that if the Review Committee finds an order passed by the FAA to be *not legal or proper*, it can by order authorize and direct a CGST officer to apply to the Tribunal for the

determination of such points arising out of the FAA's order as may be specified by the Committee in its Review Order. In the event of a difference of opinion between the Review Committee members, it shall be deemed that the Committee has formed the opinion that the order under review is not legal or proper.

10.1.2 Where the officer so authorized by the Review Committee makes an application to the Tribunal, such application shall be dealt with by the Tribunal as if it were an appeal made against the FAA's order and the provisions of the Act shall, so far as may be, apply to such application, as they apply in relation to appeals filed under the main provision of sub-section (1) of Section 82.

10.1.3 By virtue of sub-section (5), (6) and (8) of Section 82, read together, the above processes of review by the Committee and filing the resultant application by the authorized officer before the Tribunal have to be completed within a joint time-limit of 3 months, with further condonable delay on sufficient cause being shown. *Thus, the time limits are the same for party appeals and Revenue appeals.*

10.2 As mentioned earlier, in case of **SGST** there is a provision for revision of the FAA's order by the SGST Commissioner, under Section 80.

11. Concept of authorised representative

11.1 **Section 86** provides that if any person is entitled or required to appear before a GST Officer or the FAA or the Tribunal in connection with any proceedings under the Act, he may appear by an *authorised representative* (except when he is required under the Act to appear personally for examination on oath or affirmation).

11.2 For this purpose, "authorised representative" has been defined in the section itself (see **Appendix**). Broadly, it includes a relative, a regular employee, an advocate, a chartered accountant, a cost accountant, a company secretary, or any person with prescribed qualifications. It is also provided that indirect tax gazetted officers can appear as authorised representative after one year from retirement.

11.3 The model law also provides for some disqualifications for an authorised representative such as dismissal from government service, conviction under some specified Acts, insolvency, misconduct, etc. Such orders of disqualification are however required to be passed after following the principles of natural justice.

11.4 For details, please refer to the model law as extracted in the **Appendix**.

12. Appeal to the High Court

12.1 **Section 87** provides that either side (department or party) if *aggrieved* by any order passed by the Tribunal (except as in para 12.2 below) 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*. (Please recall that on questions of facts the

tribunal is the final authority).

12.2 In GST, there can be situations (especially in inter-state supplies) where the center and states, or two states, may have a different view. The model law recognizes the need for such disputes to be resolved by the Supreme Court. It is provided that no appeal shall lie to High Court against a Tribunal order which relates to a matter where two or more States, or a State and Center, have a difference of views regarding the treatment of a transaction(s) being intra-State or inter-State; or regarding place of supply. Such appeals will lie *directly* to the Supreme Court under Section 88.

12.3 Appeals to the High Court are to be filed within 180 days, but the HC has the power to condone delay on being satisfied of sufficient cause for the same.

12.4 Fees shall be as prescribed.

12.5 On being satisfied that a substantial question of law is involved, the High Court shall formulate that question, and the appeal shall be heard only on the question so formulated. However, the HC has the power to hear the appeal on any other substantial question of law if it is satisfied that the case involves such question. The High Court shall decide the questions of law so formulated and deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit. The High Court may determine any issue which has not been determined by the Tribunal or has been wrongly determined by the Tribunal, by reason of a decision on such questions of law.

12.6 An appeal filed before the High Court shall be heard by a bench of not less than two Judges, and shall be decided in accordance with the majority opinion. Where there is no such majority, the points of difference shall be heard by one or more of the other Judges and such points shall be decided according to the opinion of the majority of the Judges who have heard the case including those who first heard it.

13. Appeal to the Supreme Court

13.1 **Section 88** provides for appeals to the Supreme Court from any judgment or order passed by the High Court in an appeal made under section 87, in any case which, on its own motion or on an oral 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.

13.2 A (direct) appeal shall also lie to the Supreme Court from any orders passed by the Tribunal which are of the nature discussed in para 12.2 above.

13.3 Section 89 provides that the costs of the appeal shall be at the discretion of the Supreme Court.

14. Sums due to be paid notwithstanding appeal etc.

14.1 **Section 90** provides that notwithstanding an appeal having been preferred to the High Court or the Supreme Court, sums due to the Government as a result of an order passed by the Tribunal or an order passed by the High Court, as the case may be, shall be payable in accordance with the order so passed.

15. Exclusion of time taken for copy

15.1 Section 91 provides that in computing the period of limitation prescribed for an appeal or application under Chapter XVIII of the model law, the day on which the order complained of was served, and if the party preferring the appeal or making the application was not furnished with a copy of the order when the notice of the order was served upon him, the time required for obtaining a copy of such order, shall be excluded.

16. Appeal not to be filed in certain cases

16.1 In keeping with the spirit of the *National Litigation Policy*, Section 92 empowers the CBEC (Center) or the State Government to issue (on the recommendation of the Council) orders fixing such monetary limits, as it may deem fit, for the purposes of regulating the filing of departmental appeals. In essence, this means that the department will ordinarily not file appeals in cases involving amounts below the specified monetary limits.

16.2 Where in pursuance of such orders the department has not filed an appeal against any decision or order, it shall not preclude the department from filing appeal in any other case involving the same or similar issues or questions of law.

16.3 It is also provided that notwithstanding the fact that no appeal has been filed by the department in accordance with such monetary-limit policy, no party shall contend that the department has acquiesced in the decision on the disputed issue by not filing an appeal.

16.4 The Tribunal or court hearing such appeal shall have regard to the circumstances under which appeal was not filed by the department in pursuance of such monetary-limit policy. (In other words, such cases will not form a binding precedent).

17. Non Appealable decisions and orders

17.1 Section 93 lays down that certain types of decisions or orders shall not be appealable, notwithstanding anything to the contrary in any provision of the Act.

17.2 These are as under :-

(a) An order of the competent authority for transfer of proceeding from one officer to another;

- (b) An order pertaining to the seizure or retention of books of account, register and other documents; or
- (c) An order sanctioning prosecution under the Act; or
- (d) An order passed under section 55 (payment of tax in instalments).

18. Some other relevant sections

18.1 This note has so far discussed the provisions of Chapter XVIII of the model GST Act, which are the main provisions dealing with appeals. However, some other provisions are also relevant, which are briefly discussed below.

18.2 **Section 128** of the GST Act provides that various proceedings such as assessment, adjudication, **review, revision, appeal**, etc. shall not be invalid merely by reason of any mistake therein, if such proceedings are in substance in conformity with the Act or any earlier law. For details, see **Appendix**.

18.3 **Section 129** of the GST Act provides that any authority who has passed any decision or order (etc.) may rectify any error which is apparent from record in such decision or order (etc.) within a period of six months, after putting the affected person(s) to notice. For details, see **Appendix**.

18.4 **Section 27** of the model **IGST Act** makes certain provisions of the GST Act applicable to like matters in respect of IGST. This includes the provisions relating to appeals and review. Thus, whatever is discussed hereinabove in relation to appeals and review under CGST, will also apply in respect of IGST. For details, see **Appendix**.

19. Concluding note

19.1 It is reiterated that this write-up only outlines the salient features of the various aspects as per the model law. For a more detailed study, the trainees are advised to carefully go through the text of the Model GST Law.

19.2 The sections of the model law which are relevant to this topic, are extracted in the **Appendix** for ready reference.

20. Feedback

20.1 Your feedback on this note may please be mailed to bbagrawal@yahoo.com

Appendix

Extracts of Sections relevant to the subject of Appeals, Review and Revision (Some Definitions from Section 2; Sections 79 to 93; Sections 128 and 129 of the Model GST Act; and Section 27 of the Model IGST Act)

2. Definitions :-

In this Act, unless the context otherwise requires,-

xxx

(4) “**adjudicating authority**” means any authority competent to pass any order or decision under this Act, but does not include the Board, the First Appellate Authority and the Appellate Tribunal;

xxx

(9) “**Appellate Tribunal**” means the National Goods and Services Tax Appellate Tribunal constituted under section 81;

xxx

(12) “**assessment**” means determination of tax liability under this Act and includes self-assessment, re-assessment, provisional assessment, summary assessment and best judgement assessment;

xxx

(16) “**Board**” means the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963;

xxx

(22) “**CGST**” means the tax levied under the Central Goods and Services Tax Act, 2016;

xxx

(24) “**commissioner**” means the Commissioner of Central Goods and Services Tax /Commissioner of State Goods and Services Tax appointed under section 4 of the Central/State Goods and Services Tax Act, 2016;

xxx

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

xxx

(45) “**First Appellate Authority**” means an authority referred to in section 79;

xxx

(49) “**government**” means Central Government and its departments, a State Government and its departments and a Union territory and its departments, but shall not include any entity, whether created by a statute or otherwise, the accounts of which are not required to be kept in accordance with Article 150 of the Constitution or the rules made thereunder;

xxx

(50) “**IGST**” means the tax levied under the Integrated Goods and Services Tax Act, 2016;

xxx

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

xxx

(74) “**person**” includes— (a) an individual; (b) a Hindu undivided family; (c) a company; (d) a firm; (e) a Limited Liability Partnership; (f) an association of persons or a body of individuals, whether incorporated or not, in India or outside India; (g) any corporation established by or under any Central, State or Provincial Act or a Government company as defined in section 2(45) of the Companies Act, 2013 (18 of 2013); (h) any body corporate incorporated by or under the laws of a country outside India; (i) a co-operative society registered under any law relating to cooperative societies; (j) a local authority; (k) government; (l) society as defined under the

Societies Registration Act, 1860 (21 of 1860); (m) trust; and (n) every artificial juridical person, not falling within any of the preceding sub-clauses;

xxx

(76) “**prescribed**” means prescribed by the rules, regulations or by any notification issued under this Act;

xxx

(79) “**proper officer**” in relation to any function to be performed under this Act, means the officer of goods and services tax who is assigned that function by the Board/Commissioner of SGST;

xxx

(81) “**regulations**” means the regulations made by the Board/Commissioner under any provision of the Act on the recommendation of the Council;

xxx

(86) “**rules**” means the rules made by the Central/State Government under any provision of the Act on the recommendation of the Council;

xxx

(89) “**SGST**” means the tax levied under the State Goods and Services Tax Act;

xxx

(94) “**tax**” means goods and services tax levied on the supply of goods and/or services under this Act and includes any amount payable under section 8;

xxx

Sections dealing with Appeals :-

Note : In the Model GST Law, Chapter-XVIII occurs twice, as under :-

<p>CHAPTER–XVIII APPEALS (Sections 79, 81, 82 and 83 shall be applicable for appeals under CGST Law. Sections 84 to 93 are common for CGST and SGST law)</p>
<p>CHAPTER–XVIII APPEALS AND REVISION (Sections 79, 80, 81, 82 and 83 shall be applicable for appeals under SGST Law. Sections 84 to 93 are common for CGST and SGST law)</p>

Thus, Sections 79, 80, 81, 82 and 83 have some differences between CGST and SGST, and Sections 84 to 93 are common for both CGST and SGST. For easy understanding, this Appendix gives hereinbelow the text of Sections 79, 80, 81, 82 and 83 in a comparative format (with the differences being highlighted in yellow in the soft copy), followed by a simple reproduction of the common Sections 84 to 93.

Section 79 :-

CGST	SGST	Remarks
79. Appeals to First Appellate Authority	79. Appeals to First Appellate Authority	
(1) Any person aggrieved by any decision or order passed against him under this Act by an adjudicating authority, may appeal to the	(1) Any person aggrieved by any decision or order passed against him under this Act by an adjudicating authority, may appeal to the	Same

CGST	SGST	Remarks
prescribed First Appellate Authority.	prescribed First Appellate Authority.	
<p>(2) The Commissioner of GST may, of his own motion, call for and examine the record of any proceeding in which an adjudicating authority has passed any decision or order under this Act, for the purpose of satisfying himself as to the legality or propriety of the said decision or order and may, by order, direct any GST Officer subordinate to him to apply to the First Appellate Authority for the determination of such points arising out of the said decision or order as may be specified by the Commissioner of GST in his order.</p> <p>(3) Where, in pursuance of an order under sub-section (2), the authorized officer makes an application to the First Appellate Authority, such application shall be dealt with by the First Appellate Authority as if it were an appeal made against the decision or order of the adjudicating authority and the provisions of this Act relating to appeals shall, so far as may be, apply to such application.</p>		<p><i>This is the provision for review appeal in CGST. (The SGST law has a provision for Revision under Section 80).</i></p>
<p>(4) Every appeal under this section shall be filed within three months from the date on which the decision or order sought to be appealed against is communicated to the Commissioner of GST, or, as the case may be, the person preferring the appeal:</p> <p>Provided that the First Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months, allow it to be presented within a further period of one month.</p>	<p>(2) Every appeal under this section shall be filed within three months from the date on which the decision or order sought to be appealed against is communicated to the person preferring the appeal:</p> <p>Provided that the First Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months, allow it to be presented within a further period of one month.</p>	<p><i>Same, except for addition of the reference to Commr in the CGST part, so as to prescribe a time limit for the review appeal by the deptt.</i></p>
<p>(5) Every appeal under this section shall be in the prescribed form and shall be verified in the prescribed manner.</p>	<p>(3) Every appeal under this section shall be in the prescribed form and shall be verified in the prescribed manner.</p>	<p><i>Same</i></p>
<p>(6) No appeal shall be filed under sub-</p>	<p>(4) No appeal shall be filed under sub-</p>	<p><i>Different</i></p>

CGST	SGST	Remarks
<p>section (1) unless the appellant has deposited a sum equal to ten percent of the amount in dispute arising from the said order, in relation to which the appeal has been filed.</p> <p>Explanation.- For the purposes of this sub-section, the expression “amount in dispute” shall include –</p> <p>i. amount determined under section 46 or 47 or 48 or 51;</p> <p>ii. amount payable under rule-----of the GST Credit Rules 201...; and</p> <p>iii. amount of fee levied or penalty imposed.</p>	<p>section (1) unless the appellant has deposited –</p> <p>(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</p> <p>(b) a sum equal to ten percent of the remaining amount in dispute arising from the said order, in relation to which the appeal has been filed.</p> <p>Explanation.- For the purposes of this sub-section, the expression “amount in dispute” shall include –</p> <p>i. amount determined under section 46 or 47 or 48 or 51;</p> <p>ii. amount payable under rule-----of the GST Credit Rules 201...; and</p> <p>iii. amount of fee levied or penalty imposed:</p> <p>Provided that nothing in this sub-section shall affect the right of the departmental authorities to apply to the First Appellate Authority for ordering a higher amount of pre-deposit, not exceeding fifty percent of the amount in the dispute, in a case which is considered by the Commissioner of GST to be a “serious case”.</p> <p>Explanation - For the purpose of this proviso, the expression “serious case” shall mean a case involving a disputed tax liability of not less than Rupees Twenty Five Crores and where the Commissioner of GST is of the opinion (for reasons to be recorded in writing) that the department has a very good case against the taxpayer.</p>	
<p>(7) The First Appellate Authority shall give an opportunity to the appellant of being heard, if he so desires.</p>	<p>(5) The First Appellate Authority shall give an opportunity to the appellant of being heard, if he so desires.</p>	<p>Same</p>
<p>(8) The First Appellate Authority may, if sufficient cause is shown at any stage of hearing of an appeal, grant time, from time to time, to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in</p>	<p>(6) The First Appellate Authority may, if sufficient cause is shown at any stage of hearing of an appeal, grant time, from time to time, to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in</p>	<p>Same</p>

CGST	SGST	Remarks
writing: Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.	writing: Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.	
(9) The First Appellate Authority may, at the hearing of an appeal, allow an appellant to go into any ground of appeal not specified in the grounds of appeal, if he is satisfied that the omission of that ground from the grounds of appeal was not wilful or unreasonable.	(7) The First Appellate Authority may, at the hearing of an appeal, allow an appellant to go into any ground of appeal not specified in the grounds of appeal, if he is satisfied that the omission of that ground from the grounds of appeal was not wilful or unreasonable.	<i>Same</i>
(10) The First Appellate Authority shall, after making such further inquiry as may be necessary, pass such order, as he thinks just and proper, confirming, modifying or annulling the decision or order appealed against: Provided that an order enhancing any fee or penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund or input tax credit shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed order: Provided further that where the First 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 utilized, 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 51.	(8) The First Appellate Authority shall, after making such further inquiry as may be necessary, pass such order, as he thinks just and proper, confirming, modifying or annulling the decision or order appealed against: Provided that an order enhancing any fee or penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund or input tax credit shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed order: Provided further that where the First 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 utilized, 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 51.	<i>Same</i>
(11) The order of the First Appellate Authority disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for the decision.	(9) The order of the First Appellate Authority disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for the decision.	<i>Same</i>
(12) The First Appellate Authority shall, where it is possible to do so, hear	(10) The First Appellate Authority shall, where it is possible to do so, hear	<i>Same</i>

CGST	SGST	Remarks
and decide every appeal within a period of one year from the date on which it is filed: Provided that where the issuance of order is stayed by an order of a Court or Tribunal, the period of such stay shall be excluded in computing the period of one year.	and decide every appeal within a period of one year from the date on which it is filed: Provided that where the issuance of order is stayed by an order of a Court or Tribunal, the period of such stay shall be excluded in computing the period of one year.	
(13) On disposal of the appeal, the First Appellate Authority shall communicate the order passed by him to the appellant and to the adjudicating authority.	(11) On disposal of the appeal, the First Appellate Authority shall communicate the order passed by him to the appellant and to the adjudicating authority.	<i>Same</i>
(14) A copy of the order passed by the First Appellate Authority shall also be sent to the jurisdictional Commissioner of CGST or the authority designated by him in this behalf and the jurisdictional Commissioner of SGST or the authority designated by him in this behalf.	(12) A copy of the order passed by the First Appellate Authority shall also be sent to the jurisdictional Commissioner of CGST or the authority designated by him in this behalf and the jurisdictional Commissioner of SGST or the authority designated by him in this behalf.	<i>Same</i>
(15) Every order passed under this section shall, subject to the provisions of section 83, 87 or 88, be final.	(13) Every order passed under this section shall, subject to the provisions of sections 80, 83, 87 or 88, be final.	<i>Same (except for addition of the ref to sec. 80 in SGST)</i>

Section 80 :-

CGST	SGST	Remarks
80. Left Blank	80. Revisional powers of Commissioner	
	(1) Subject to the provisions of section 93 and any rules made thereunder, the Commissioner may on his own motion or upon information received by him, call for and examine the record of any proceeding under this Act, and if he considers that any decision or order passed under this Act by any officer subordinate to him is erroneous in so far as it is prejudicial to the interest of the revenue, he may, if necessary, stay the operation of such decision or order for such period as he deems fit and after giving the person concerned an opportunity of being heard and after making such further inquiry as may be necessary, pass such order, as he thinks just and proper, including enhancing or modifying or annulling the said decision or order. (2) The Commissioner shall not exercise any power under sub-	<i>Different</i>

CGST	SGST	Remarks
	<p>section (1), if-</p> <p>(a) the order has been subject to an appeal under section 79 or under section 82 or under section 87 or under section 88; or</p> <p>(b) more than three years have expired after the passing of the decision or order sought to be revised.</p> <p>(3) Notwithstanding anything contained in sub-section (2), the Commissioner may pass an order under sub-section (1) on any point which has not been raised and decided in an appeal referred to in clause (a) of sub-section (2), before the expiry of a period of one year from the date of the order in such appeal or before the expiry of a period of three years referred to in clause (b) of that sub-section, whichever is later.</p> <p>(4) Every order passed in revision under sub-section (1) shall, subject to the provisions of sections 83, 87 or 88, be final.</p> <p>(5) If the decision or order passed under this Act by an officer subordinate to the Commissioner involves an issue on which the Appellate Tribunal or the High Court has given its decision which is prejudicial to the interest of revenue in some other proceedings and an appeal to the High Court or the Supreme Court against such decision of the Appellate Tribunal or as the case may be, the High Court is pending, the period spent between the date of the decision of the Appellate Tribunal and the date of the decision of the High Court or as the case may be, the date of the decision of the High Court and the date of the decision of the Supreme Court shall be excluded in computing the period referred to in clause (b) of sub-section (2).</p> <p>(6) Where the issuance of an order under sub-section (1) is stayed by the order of a Court or Tribunal, the period of such stay shall be excluded in computing the period of three years under sub-section (2).</p> <p>(7) For the purposes of this section, 'record' shall include all records relating to any proceedings under this Act available at the time of examination by the Commissioner.</p> <p>(8) For the purposes of this section, 'decision' shall include intimation given by any officer subordinate to the Commissioner.</p>	

Section 81 :-

CGST	SGST	Remarks
81. Constitution of the National Appellate Tribunal	81. Constitution of the National Appellate Tribunal	
(1) The Central Government shall on the recommendation of the GST	(1) The Central Government shall on the recommendation of the GST	<i>Same</i>

CGST	SGST	Remarks
Council constitute a National Goods and Services Tax Appellate Tribunal (hereinafter referred to as the Appellate Tribunal).	Council constitute a National Goods and Services Tax Appellate Tribunal (hereinafter referred to as the Appellate Tribunal).	
(2) The Appellate Tribunal shall be headed by a National President.	(2) The Appellate Tribunal shall be headed by a National President.	<i>Same</i>
(3) The Appellate Tribunal shall have one branch for each state, which shall be called as the State GST Tribunal.	(3) The Appellate Tribunal shall have one branch for each state, which shall be called as the State GST Tribunal.	<i>Same</i>
(4) Every State GST Tribunal will be headed by a State President.	(4) Every State GST Tribunal will be headed by a State President.	<i>Same</i>
(5) Every State GST Tribunal shall consist of as many Members (Judicial), Members (Technical - CGST) and Members (Technical - SGST) as may be prescribed, to exercise the powers and discharge the functions conferred on the Appellate Tribunal by this Act.	(5) Every State GST Tribunal shall consist of as many Members (Judicial), Members (Technical - CGST) and Members (Technical - SGST) as may be prescribed, to exercise the powers and discharge the functions conferred on the Appellate Tribunal by this Act.	<i>Same</i>
(6) The qualifications, eligibility conditions and the manner of selection and appointment of the National President, the State Presidents, and the Members shall be such as may be prescribed on the recommendations of the Council.	(6) The qualifications, eligibility conditions and the manner of selection and appointment of the National President, the State Presidents, and the Members shall be such as may be prescribed on the recommendations of the Council.	<i>Same</i>
(7) The National President and the State Presidents shall exercise such powers and discharge such functions as may be prescribed on the recommendations of the Council.	(7) The National President and the State Presidents shall exercise such powers and discharge such functions as may be prescribed on the recommendations of the Council.	<i>Same</i>
(8) On ceasing to hold office, the National President, the State Presidents or other Members of the Appellate Tribunal shall not be entitled to appear, act or plead before the Appellate Tribunal.	(8) On ceasing to hold office, the National President, the State Presidents or other Members of the Appellate Tribunal shall not be entitled to appear, act or plead before the Appellate Tribunal.	<i>Same</i>

Section 82 :-

CGST	SGST	Remarks
82. Appeals to the Appellate Tribunal	82. Appeals to the Appellate Tribunal	

CGST	SGST	Remarks
(1) Any person aggrieved by an order passed against him under section 79 may appeal to the Appellate Tribunal against such order.	(1) Any person aggrieved by an order passed against him under section 79 or under section 80 may appeal to the Appellate Tribunal against such order.	<i>Same except for addition of reference to Section 80 orders</i>
(2) The Appellate Tribunal may, in its discretion, refuse to admit any such appeal where the tax or input tax credit involved or the difference in tax or input tax credit involved or the amount of fine, fee or penalty determined by such order, does not exceed one lakh rupees.	(2) The Appellate Tribunal may, in its discretion, refuse to admit any such appeal where the tax or input tax credit involved or the difference in tax or input tax credit involved or the amount of fine, fee or penalty determined by such order, does not exceed one lakh rupees.	
<p>(3) The Board may by order constitute such Committees as may be necessary for the purposes of filing appeals against the orders of the First Appellate Authority. Every such Committee shall consist of two designated officers of GST.</p> <p>(4) The Committee of designated officers of GST may, if it is of the opinion that an order passed by the First Appellate Authority under sub-section (10) of section 79, is not legal or proper, direct any GST Officer authorized by it in this behalf to apply to the Appellate Tribunal for the determination of such points arising out of the order passed by the First Appellate Authority as may be specified by the Committee in its order:</p> <p>Provided that where the Committee of designated officers of GST differs in its opinion, it shall be deemed that the Committee has formed the opinion that the order under review is not legal or proper.</p> <p>(5) Where in pursuance of an order under sub-section (4) the authorized officer makes an application to the Appellate Tribunal, such application shall be dealt with by the Appellate Tribunal as if it were an appeal made against the order of the First Appellate Authority and the provisions of this Act shall, so far as may be, apply to such application, as they apply in relation to appeals filed under sub-section (1).</p>		<i>This is the provision for review appeal in CGST. (The SGST law has a provision for Revision under Section 80).</i>

CGST	SGST	Remarks
(6) Every appeal under this section shall be filed within three months from the date on which the order sought to be appealed against is communicated to the Commissioner of GST, or, as the case may be, the person preferring the appeal.	(3) Every appeal under this section shall be filed within three months from the date on which the order sought to be appealed against is communicated to the person preferring the appeal.	<i>Same, except for addition of the reference to Commr in the CGST part, so as to prescribe a time limit for the review appeal by the deptt.</i>
(7) On receipt of notice that an appeal has been preferred under this section, the party against whom the appeal has been preferred may, notwithstanding that he may not have appealed against such order or any part thereof, file, within forty-five days of the receipt of the notice, a memorandum of cross-objections, verified in the prescribed manner, against any part of the order appealed against and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified in sub-section (6).	(4) On receipt of notice that an appeal has been preferred under this section, the party against whom the appeal has been preferred may, notwithstanding that he may not have appealed against such order or any part thereof, file, within forty-five days of the receipt of the notice, a memorandum of cross-objections, verified in the prescribed manner, against any part of the order appealed against and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified in sub-section (3).	<i>Same</i>
(8) The Appellate Tribunal may admit an appeal or permit the filing of a memorandum of cross-objections after the expiry of the period referred to in sub-section (6) or sub-section (7) respectively, if it is satisfied that there was sufficient cause for not presenting it within that period.	(5) The Appellate Tribunal may admit an appeal or permit the filing of a memorandum of cross-objections after the expiry of the period referred to in sub-section (3) or sub-section (4) respectively, if it is satisfied that there was sufficient cause for not presenting it within that period.	<i>Same</i>
(9) An appeal to the Appellate Tribunal shall be in the prescribed form and shall be verified in the prescribed manner and shall be accompanied by a prescribed fee: Provided that no such fee shall be payable in the case of an appeal filed by the Commissioner referred to in sub-section (5) or a memorandum of cross-objections referred to in sub-section (7).	(6) An appeal to the Appellate Tribunal shall be in the prescribed form and shall be verified in the prescribed manner and shall be accompanied by a prescribed fee: Provided that no such fee shall be payable in the case of an appeal filed by the Commissioner or a memorandum of cross-objections referred to in sub-section (4).	<i>Similar</i>
(10) No appeal shall be filed under	(7) (a) No appeal shall be filed under	<i>Different</i>

CGST	SGST	Remarks
<p>sub-section (1) unless the appellant has deposited a sum equal to ten percent of the amount in dispute arising from the said order, in relation to which the appeal has been filed.</p> <p>Explanation.- For the purposes of this sub-section, the expression “amount in dispute” shall include –</p> <p>i. amount determined under section 46 or 47 or 48 or 51;</p> <p>ii. amount payable under rule----of the GST Credit Rules 201...; and</p> <p>iii. amount of fee levied or penalty imposed.</p>	<p>sub-section (1) unless the appellant has deposited –</p> <p>(i) 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</p> <p>(ii) a sum equal to ten percent of the remaining amount in dispute arising from the said order, in relation to which the appeal has been filed.</p> <p>Explanation.- For the purposes of this sub-section, the expression “amount in dispute” shall include –</p> <p>i. amount determined under section 46 or 47 or 48 or 51;</p> <p>iii. amount payable under rule----of the GST Credit Rules 201...; and</p> <p>iii. amount of fee levied or penalty imposed:</p> <p>Provided that nothing in this sub-section shall affect the right of the departmental authorities to apply to the Appellate Tribunal for ordering a higher amount of pre-deposit, not exceeding fifty percent of the amount in the dispute after taking into account the amount deposited in the first appeal, in a case which is considered by the Commissioner of GST to be a “serious case”.</p> <p>Explanation. - For the purpose of this proviso, the expression “serious case” shall mean a case involving a disputed tax liability of not less than Rupees Twenty Five Crores and where the Commissioner of GST is of the opinion (for reasons to be recorded in writing) that the department has a very good case against the taxpayer.</p> <p>(b) The provisions of clause (a) shall also apply mutatis mutandis to cross objections filed under sub-section (4).</p>	
<p>(11) Every application made before the Appellate Tribunal, —</p> <p>(a) in an appeal for rectification of mistake or for any other purpose; or</p> <p>(b) for restoration of an appeal or an application,</p> <p>shall be accompanied by a prescribed fee :</p> <p>Provided that no such fee shall be</p>	<p>(8) Every application made before the Appellate Tribunal, —</p> <p>(a) in an appeal for rectification of mistake or for any other purpose; or</p> <p>(b) for restoration of an appeal or an application,</p> <p>shall be accompanied by a prescribed fee :</p> <p>Provided that no such fee shall be</p>	<p><i>Similar</i></p>

CGST	SGST	Remarks
payable in the case of an application filed by or on behalf of the Commissioner of GST under sub-section (5).	payable in the case of an application filed by or on behalf of the Commissioner of GST.	

Section 83 :-

CGST	SGST	Remarks
83.Orders of Appellate Tribunal	83. Orders of Appellate Tribunal	
(1) The Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the decision or order appealed against or may refer the case back to the First Appellate Authority or to the original adjudicating authority, with such directions as it may think fit, for a fresh adjudication or decision, as the case may be, after taking additional evidence, if necessary.	(1) The Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the decision or order appealed against or may refer the case back to the First Appellate Authority, or the revisional authority, as the case may be, or to the original adjudicating authority, with such directions as it may think fit, for a fresh adjudication or decision, as the case may be, after taking additional evidence, if necessary.	<i>Same except for addition of the reference to the revisional authority in SGST</i>
(2) The Appellate Tribunal may, if sufficient cause is shown, at any stage of hearing of an appeal, grant time, from time to time, to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing: Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.	(2) The Appellate Tribunal may, if sufficient cause is shown, at any stage of hearing of an appeal, grant time, from time to time, to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing: Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.	<i>Same</i>
(3) The Appellate Tribunal may amend any order passed by it under sub-section (1) so as to rectify any mistake apparent from the record, if such mistake is noticed by it on its own accord, or is brought to its notice by the Commissioner of GST or the other party to the appeal within a period of three months from the date of the order: Provided that no amendment which	(3) The Appellate Tribunal may amend any order passed by it under sub-section (1) so as to rectify any mistake apparent from the record, if such mistake is noticed by it on its own accord, or is brought to its notice by the Commissioner of GST or the other party to the appeal within a period of three months from the date of the order: Provided that no amendment which	<i>Same</i>

CGST	SGST	Remarks
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 Appellate Tribunal has given notice to him of its intention to do so and has allowed him a reasonable opportunity of being heard.	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 Appellate Tribunal has given notice to him of its intention to do so and has allowed him a reasonable opportunity of being heard.	
(4) The Appellate Tribunal 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.	(4) The Appellate Tribunal 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.	<i>Same</i>
(5) The Appellate Tribunal shall send a copy of every order passed under this section to the First Appellate Authority, or to the original adjudicating authority, as the case may be, the appellant, the jurisdictional Commissioner of CGST and the jurisdictional Commissioner of SGST.	(5) The Appellate Tribunal shall send a copy of every order passed under this section to the First Appellate Authority or the revisional authority, or the original adjudicating authority, as the case may be, the appellant, the jurisdictional Commissioner of CGST and the jurisdictional Commissioner of SGST.	<i>Same except for addition of the reference to the revisional authority in SGST</i>
(6) Every order passed under this section shall, subject to the provisions of section 87 or 88, be final.	(6) Save as provided in section 87 or section 88, orders passed by the Appellate Tribunal on an appeal shall be final.	<i>Same except for difference of drafting</i>

Section 84. Procedure of Appellate Tribunal

(1) The powers and functions of the Appellate Tribunal may be exercised and discharged by Benches constituted by the National President or the State Presidents from amongst the members thereof.

(2) Subject to the provisions contained in sub-section (3), a Bench shall consist of one Member (Judicial), one Member (Technical - CGST) and one Member (Technical - SGST).

(3) The National President or a State President, or any other member of the Appellate Tribunal authorized in this behalf by the National President or a State President, may, sitting singly, dispose of any case which has been allotted to the Bench of which he is a member, where in any disputed case, the tax or input tax credit involved or the difference in tax or input tax credit involved or the amount of fine, fee or penalty involved, does not exceed ten lakh rupees.

(4) If the members of a Bench differ in opinion on any point, the point 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 make a reference to the National President or the State President who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other members of the Appellate Tribunal and such point or points shall be decided according to the opinion of the

majority of these members of the Appellate Tribunal who have heard the case, including those who first heard it.

(5) Subject to the provisions of this Act, the Appellate Tribunal shall have power to regulate its own procedure and the procedure of the Benches thereof in all matters arising out of the exercise of its powers or of the discharge of its functions, including the places at which the Benches shall hold their sittings.

(6) The Appellate Tribunal shall, for the purposes of discharging its functions, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908), when trying a suit in respect of the following matters, namely :-

- a) discovery and inspection;
- b) enforcing the attendance of any person and examining him on oath;
- c) compelling the production of books of account and other documents; and
- d) issuing commissions.

(7) Any proceeding before the Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purpose of section 196 of the Indian Penal Code (45 of 1860), and the Appellate Tribunal shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

Section 85. Interest on delayed refund of pre-deposit

Where an amount deposited by the appellant under sub-section (6)/(4) of section 79 or under sub-section (10)/(7) of section 82 is required to be refunded consequent to any order of the First Appellate Authority or of the Appellate Tribunal, as the case may be, interest at the rate specified under section 39 shall be payable in respect of such refund from the date of payment of the amount till the date of refund of such amount.

Section 86. Appearance by authorised representative

(1) Any person who is entitled or required to appear before a GST Officer appointed under this Act, or the First Appellate Authority or the Appellate Tribunal in connection with any proceedings under the Act, may, otherwise than when required under this Act to appear personally for examination on oath or affirmation, subject to the other provisions of this section, appear by an authorized representative.

(2) For the purposes of this section, "authorised representative" means a person authorised by the person referred to in sub-section (1) to appear on his behalf, being —

- (a) his relative or regular employee; or
- (b) an advocate who is entitled to practice in any court in India, and who has not been debarred from practicing before any court in India; or
- (c) any chartered accountant, a cost accountant or a company secretary, who holds a valid certificate of practice and who has not been debarred from practice; or
- (d) any person who has acquired such qualifications as the Central Government (or the State Government) may, on the recommendation of the Council, prescribe for this purpose.

(3) Notwithstanding anything contained in this section, no person who was serving in the indirect tax departments of the Government of India or of any State Government, and has retired or resigned from such service after having served for not less than two years as a Gazetted officer in that department shall be entitled to appear as an authorised representative in any proceedings before a GST Officer for a period of one year from the date of his retirement or resignation, as the case may be.

- (4) No person, —
- a) who has been dismissed or removed from government service; or
 - b) who is convicted of an offence connected with any proceeding under this Act, the Customs Act, 1962 (52 of 1962), the Central Excise Act, 1944 (1 of 1944) or Chapter V of the Finance Act 1994 (25 of 2014) or under any of the Acts passed by a state legislature dealing with the imposition of taxes on sale of goods or supply of goods and/or services, or
 - c) who has become an insolvent,
- shall be qualified to represent any person under sub-section (1) --

- (i) for all times in the case of a person referred to in clause (a),
- (ii) for such time as the Commissioner of GST or the competent authority under the Acts referred to in clause (b) may, by order, determine in the case of a person referred to in clause (b), and
- (iii) for the period during which the insolvency continues in the case of a person referred to in clause (c).

(5) If any person is found guilty of misconduct by the prescribed authority in connection with any proceedings under this Act or under any of the Acts referred to in clause (b) of sub-section (4), the prescribed authority may direct that he shall thenceforth be disqualified to represent any person under sub-section (1).

(6) Any order or direction under clause (b) of sub-section (4) or sub-section (5) shall be subject to the following conditions, namely:—

- a) no such order or direction shall be made in respect of any person unless he has been given a reasonable opportunity of being heard;
- b) any person against whom any such order or direction is made may, within one month of the making of the order or direction, appeal to the competent authority [Central/State Government] to have the order or direction cancelled; and
- c) no such order or direction shall take effect until the expiration of one month from the making thereof, or, where an appeal has been preferred, until the disposal of the appeal.

Section 87. Appeal to the High Court

(1) The Commissioner of GST or the other party aggrieved by any order passed by the Appellate Tribunal under section 83 may file an appeal to the High Court and the High Court may admit such appeal if it is satisfied that the case involves a substantial question of law.

(2) Notwithstanding the provisions of sub-section (1), no appeal shall lie to High Court against an order passed by the Appellate Tribunal under section 83 if such order relates, among other things, to:-

- i) a matter where two or more States, or a State and Center, have a difference of views regarding the treatment of a transaction(s) being intra-State or inter-State; or
- ii) a matter where two or more States, or a State and Center, have a difference of views regarding place of supply.

(3) An appeal under sub-section (1) shall be -

- a) filed within one hundred and eighty days from the date on which the order appealed against is received by the Commissioner of GST or the other party;
- b) accompanied by a prescribed fee ;
- c) in the form of a memorandum of appeal precisely stating therein the substantial question of law involved.

(4) The High Court may admit an appeal after the expiry of the period of one hundred and eighty days referred to in clause (a) of sub-section (3), if it is satisfied that there was sufficient

cause for not filing the same within that period.

(5) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(6) The appeal shall be heard only on the question so formulated, and the respondents shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question:

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question.

(7) The High Court shall decide the question of law so formulated and deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit.

(8) The High Court may determine any issue which -

- a) has not been determined by the Appellate Tribunal; or
- b) has been wrongly determined by the Appellate Tribunal, by reason of a decision on such question of law as herein referred to above.

(9) When an appeal has been filed before the High Court, it shall be heard by a bench of not less than two Judges of the High Court, and shall be decided in accordance with the opinion of such Judges or of the majority, if any, of such Judges.

(10) Where there is no such majority, the Judges shall state the point of law upon which they differ and the case shall, then, be heard upon that point only, by one or more of the other Judges of the High Court and such point shall be decided according to the opinion of the majority of the Judges who have heard the case including those who first heard it.

(11) Where the High Court delivers a judgment in an appeal filed before it under this section, effect shall be given to such judgment by either side on the basis of a certified copy of the judgment.

(12) Save as otherwise provided in this Act, the provisions of the Code of Civil Procedure, 1908 (5 of 1908), relating to appeals to the High Court shall, as far as may be, apply in the case of appeals under this section.

Section 88. Appeal to the Supreme Court

(1) An appeal shall lie to the Supreme Court from any judgment or order passed by the High Court in an appeal made under section 87, in any case which, on its own motion or on an oral application made by or on behalf of the party aggrieved, immediately after passing of the judgment or order, the High Court certifies to be a fit one for appeal to the Supreme Court.

(2) An appeal shall lie to the Supreme Court from any order passed by the Appellate Tribunal under section 83 where such order is of the nature referred to in sub section (2) of section 87.

Section 89. Hearing before Supreme Court

(1) The provisions of the Code of Civil Procedure, 1908 (5 of 1908), relating to appeals to the Supreme Court shall, so far as may be, apply in the case of appeals under section 88 as they apply in the case of appeals from decrees of a High Court :

Provided that nothing in this sub-section shall be deemed to affect the provisions of section 90.

(2) The costs of the appeal shall be at the discretion of the Supreme Court.

(3) Where the judgment of the High Court is varied or reversed in the appeal, effect shall be

given to the order of the Supreme Court in the manner provided in section 87 in the case of a judgment of the High Court.

Section90. Sums due to be paid notwithstanding appeal etc.

Notwithstanding that an appeal has been preferred to the High Court or the Supreme Court, sums due to the Government as a result of an order passed by the Appellate Tribunal under sub-section (1) of section 83 or an order passed by the High Court under section 87, as the case may be, shall be payable in accordance with the order so passed.

Section91. Exclusion of time taken for copy

In computing the period of limitation prescribed for an appeal or application under this Chapter, the day on which the order complained of was served, and if the party preferring the appeal or making the application was not furnished with a copy of the order when the notice of the order was served upon him, the time required for obtaining a copy of such order, shall be excluded.

Section92. Appeal not to be filed in certain cases

(1) The Board or the State Government may, on the recommendation 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 GST officer under the provisions of this Chapter.

(2) Where, in pursuance of the orders or instructions or directions, issued under sub-section (1), the GST officer has not filed an appeal or application against any decision or order passed under the provisions of this Act, it shall not preclude such GST officer from filing appeal or application in any other case involving the same or similar issues or questions of law.

(3) Notwithstanding the fact that no appeal or application has been filed by the GST Officer pursuant to the orders or instructions or directions issued under sub-section (1), no person, being a party in appeal or application shall contend that the GST officer has acquiesced in the decision on the disputed issue by not filing an appeal or application.

(4) The Appellate Tribunal or court hearing such appeal or application shall have regard to the circumstances under which appeal or application was not filed by the GST Officer in pursuance of the orders or instructions or directions issued under sub-section (1).

Section93. Non Appealable decisions and orders

Notwithstanding anything to the contrary in any provisions of this Act, no appeal shall lie against any decision taken or order passed by a GST officer if such decision taken or order passed relates to any one or more of the following matters:-

- (a) An order of the Commissioner or other competent authority for transfer of proceeding from one officer to another officer;
- (b) An order pertaining to the seizure or retention of books of account, register and other documents; or
- (c) An order sanctioning prosecution under the Act; or
- (d) An order passed under section 55.

* * * *

Section 128. Assessment proceedings, etc. not to be invalid on certain grounds

(1) No assessment, re-assessment, adjudication, review, revision, appeal, rectification, notice, summons or other proceedings done, accepted, made, issued, initiated, or purported to have been done, accepted, made, issued, initiated in pursuance of any of the provisions of the Act shall be invalid or deemed to be invalid merely by reason of any mistake, defect or omission therein, if such assessment, re-assessment, adjudication, review, revision, appeal, rectification, notice, summons or other proceedings is/are in substance and effect in conformity with or according to the intents, purposes and requirements of the Act or any earlier law.

(2) The service of any notice, order or communication shall not be called in question if the notice, order or communication, as the case may be, has already been acted upon by the person to whom it is issued or where such service has not been called in question at or in the earliest proceedings commenced, continued or finalised pursuant to such notice, order or communication.

Section 129. Rectification of mistakes or errors apparent from record

Without prejudice to the provisions of section 128, and notwithstanding anything contained in any other provisions of this Act, any authority, who has passed or issued any decision or order or summons or notice or certificate or any other document, may rectify any error or mistake which is apparent from record in such decision or order or summons or notice or certificate or any other document, either on its own motion or where such error or mistake is brought to its notice by any CGST / SGST officer or by the affected person within a period of three months from the date of issue of such decision or order or summons or notice or certificate or other document, as the case may be:

Provided that no such rectification shall be done after a period of six months from the date of issue of such decision or order or summons or notice or certificate or any other document:

Provided further that the period of six months referred to in the first proviso shall not apply in such cases where the rectification is purely in the nature of correction of a clerical or arithmetical error or mistake, arising from any accidental slip or omission:

Provided also that the principles of natural justice shall be followed by the authority carrying out such rectification if it adversely affects any person.

Explanation.— For the removal of doubts, it is hereby clarified that the authority shall not, while rectifying any mistake apparent from record, amend substantive part of its decision or order or summons or notice or certificate or any other document passed or, as the case may be, issued under the provisions of this Act.

* * * *

Section 27 of the model IGST Act :-

27. Application of certain provisions of the CGST Act, 2016

The provisions relating to registration, valuation, time of supply of goods, time of supply of services, change in rate of tax in respect of supply of services, exemption from payment of tax, input tax credit and utilization thereof, accounts and records, payment, return, audit, assessment, adjudication, demands, refunds, interest, recovery of tax, offences and penalties, inspection, search and seizure, prosecution and power to arrest, **appeals, review**, advance ruling and compounding shall apply, so far as may be, in relation to the levy of tax under this Act as they apply in relation to levy of tax under the CGST Act, 2016.



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16. Advance Ruling

Chapter-XIX

Introduction

Obtaining an advance ruling helps the applicant in planning his activities which are liable for payment of GST, well in advance. It also brings certainty in determining the tax liability, as the ruling given by the Authority for Advance Ruling is binding on the applicant as well as Government authorities. Further, it helps in avoiding long drawn and expensive litigation at a later date. Seeking an advance ruling is inexpensive and the procedure is simple and expeditious. It thus provides certainty and transparency to a taxpayer with respect to an issue which may potentially cause a dispute with the tax administration. A legally constituted body called Authority for Advance Ruling (AAR) can give a binding ruling to an applicant who is a registered taxable person or is liable to be registered. The advance ruling given by the Authority can be appealed before an Appellate authority for Advance Ruling (AAAR). There are time lines prescribed for passing an order by AAR and by AAAR.

Concept of Advance Rulings under Revised Kyoto Convention of World Customs Organisation (WCO) and under WTO Agreement on Trade Facilitation

Standard 9.9 of the Revised Kyoto Convention, which is the International Convention on the Simplification and Harmonization of Customs procedures and was adopted in June, 1999 as a blueprint for modern and efficient Customs procedures in the 21st century, deals with Advance Rulings. It states as under:-

“The Customs shall issue binding rulings at the request of the interested person, provided that the customs have all the information they deem necessary”.

Further, the WTO Agreement on Trade Facilitation signed on 6 December, 2013 at Bali, Indonesia, under Article 3, makes it obligatory for the member countries to have mechanism of Advance Ruling.

The Article 3 of the Agreement on Trade Facilitation reads as under:-

ARTICLE 3: ADVANCE RULINGS

1. Each Member shall issue an advance ruling in a reasonable, time bound manner to an applicant that has submitted a written request containing all necessary information. If a Member declines to issue an advance ruling, it shall promptly notify the applicant in writing, setting out the relevant facts and the basis for its decision.
2. A Member may decline to issue an advance ruling to an applicant where the question raised in the application:

- (a) is already pending in the applicant's case before any governmental agency, appellate tribunal or court; or
 - (b) has already been decided by any appellate tribunal or court.
3. The advance ruling shall be valid for a reasonable period of time after its issuance unless the law, facts or circumstances supporting the original advance ruling have changed.
 4. Where the Member revokes, modifies or invalidates the advance ruling, it shall provide written notice to the applicant setting out the relevant facts and the basis for its decision. Where a Member revokes, modifies or invalidates advance rulings with retroactive effect, it may only do so where the ruling was based on incomplete, incorrect, false or misleading information.
 5. An advance ruling issued by a Member shall be binding on that Member in respect of the applicant that sought it. The Member may provide that the advance ruling be binding on the applicant.
 6. Each Member shall publish, at a minimum:
 - (a) the requirements for the application for an advance ruling, including the information to be provided and the format;
 - (b) the time period by which it will issue an advance ruling; and
 - (c) the length of time for which the advance ruling is valid.
 7. Each Member shall provide, upon written request of an applicant, a review of the advance ruling or the decision to revoke, modify or invalidate the advance ruling.
 8. Each Member shall endeavour to make publicly available any information on advance rulings which it considers to be of significant interest to other interested parties, taking into account the need to protect commercially confidential information.
 9. Definitions and scope:
 - (a) An advance ruling is a written decision provided by a Member to an applicant prior to the importation of a good covered by the application that sets forth the treatment that the Member shall provide to the good at the time of importation with regard to:
 - (i) the good's tariff classification, and
 - (ii) the origin of the good.
 - (b) In addition to the advance rulings defined in subparagraph a, Members are encouraged to provide advance rulings on:
 - (i) the appropriate method or criteria, and the application thereof, to be used for determining the customs value under a particular set of facts;
 - (ii) the applicability of the Member's requirements for relief or exemption from customs duties;
 - (iii) the application of the Member's requirements for quotas, including tariff quotas; and
 - (iv) any additional matters for which a Member considers it appropriate to issue an advance ruling.

- (c) An applicant is an exporter, importer or any person with a justifiable cause or a representative thereof.
- (d) A Member may require that an applicant have legal representation or registration in its territory. To the extent possible, such requirements shall not restrict the categories of persons eligible to apply for advance rulings, with particular consideration for the specific needs of small and medium sized enterprises. These requirements shall be clear and transparent and not constitute a means of arbitrary or unjustifiable discrimination.

Objectives for setting up Advance Ruling Authority

There is an Advance Ruling Authority at national level for Customs, Central Excise and Service tax laws. Several states also have Advance Ruling Authority. The broad objective for setting up such an authority is to:

- i. provide certainty in tax liability in advance in relation to an activity proposed to be undertaken by the applicant;
- ii. attract Foreign Direct Investment (FDI);
- iii. reduce litigation;
- iv. pronounce ruling expeditiously in transparent and inexpensive manner;
- v. implement Standard 9.9 of Revised Kyoto Convention under WCO.

Composition of 'Authority for advance ruling' (AAR) and 'Appellate authority for advance ruling' (AAAR)

'Authority for advance ruling' (AAR) shall comprise one member CGST and one member SGST. They will be appointed by the Central and State government respectively. Their qualification and eligibility condition for appointment will be prescribed in the Model GST Rules. (section 95)

'Appellate authority for advance ruling' (AAAR) will hear appeal against advance ruling given by the AAR. This will comprise of two members namely Chief Commissioner of CGST designated by the Central Board Excise and Customs (CBEC) and Commissioner of SGST having jurisdiction over the applicant. (section 96)

There will be one AAR and AAAR for each State (sections 95 and 96).

Meaning of advance ruling

As per section 94 of Model CGST/SGST Law, '**advance ruling**' means a written decision provided by the authority to an applicant on matters or on questions as enumerated in section 97 (listed below) and appeals thereon (section 99):

- (a) classification of any goods and/or services under the Act;
- (b) applicability of a notification issued under provisions of the Act having a bearing on the rate of tax;

- (c) the principles to be adopted for the purposes of determination of value of the goods and/or services under the provisions of the Act;
- (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 and/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 and/or services amounts to or results in a supply of goods and/or services, within the meaning of that term.

To whom the Advance Ruling is applicable

Section 102 provides that an advance ruling pronounced by AAR or AAAR shall be binding only on the applicant 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.

Time period for applicability of Advance Ruling

The law does not provide for a fixed time period for which the ruling shall apply. Instead, in section 102, 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. This formulation is borrowed from the WTO Agreement on Trade Facilitation.

However, section 103 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 CGST/SGST Act 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.

Procedure for obtaining Advance Ruling

Section 97 and 98 deals with procedure for obtaining advance ruling. Section 97 provides that the applicant desirous of obtaining advance ruling should make application to AAR in a prescribed form and manner. The format of the form and the detailed procedure for making application will be prescribed in the Model GST 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 he will pass an order either admitting or rejecting the application.

Application has to be invariably rejected in certain situations as prescribed under section 98 (2) which are enumerated as below:

- (a) if the question raised in the application is already pending in the applicant's case before any First Appellate Authority, the Appellate Tribunal or any Court;
- (b) if the question raised in the application is the same as in a matter already decided by the First Appellate Authority, the Appellate Tribunal or any Court;
- (c) if the question raised in the application is the same as in a matter already pending in any proceedings in the applicant's case under any of the provisions of the Act;
- (d) if the question raised in the application is the same as in a matter in the applicant's case already decided by the adjudicating authority or assessing authority, whichever is applicable.

If the application is rejected, it should be by way of a speaking order giving the reasons for rejection.

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 authorised representative as well as the jurisdictional officers of CGST/SGST.

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.

Appeals against order of AAR

The provisions of appeal before AAAR is dealt in section 99 and 100 of Model GST Law.

If the applicant is aggrieved with the finding of the AAR, he can file an appeal with AAAR. Similarly, if the prescribed or jurisdictional officer of CGST/SGST does not agree with the finding of AAR, he can also file an appeal with AAAR. The word prescribed 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 prescribed form and has to be verified in prescribed manner. This will be prescribed in the Model GST Rules.

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.

Rectification of Mistakes

Section 101 of the Act gives power to AAR and AAAR 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 prescribed 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 must be heard before the order is passed.

Powers and procedure of AAR and AAAR

The powers and procedures of AAR and AAAR are given in sections 104 and 105. Both the authorities are vested with the powers of a civil court under Code of Civil Procedure, 1908, for discovery and inspection, enforcing the attendance of a person and examining him on oath, and compelling production of books of account and other records. Both the authorities are deemed to be a civil court for the purposes of section 195 of the Code of Criminal Procedure, 1973. Any proceeding before the authority shall be deemed to be judicial proceeding under section 193 and 228 and for the purpose of section 196, of the Indian Penal Code, 1860. The AAR and AAAR also have the power to regulate their own procedure.



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17. Settlement Commission

Chapter-VIII (IGST Act)

Objectives

The basic objectives of setting up of the Settlement Commission are:-

- i. to provide an alternate channel for dispute resolution for the taxpayer;
- ii. to expedite payment of GST involved in disputes by avoiding costly and time consuming litigation process;
- iii. to provide an opportunity to tax payers to come clean who may have evaded payment of tax;
- iv. to serve as a forum for the taxpayer to apply for settlement of their cases, on the basis of true and complete disclosure of their tax liability;
- v. to encourage quick settlement of disputes and save the business from the worries of prosecution in certain situations.

In the Model GST Law, the provisions for Settlement Commission are incorporated only under the IGST Act (sections 11 to 26). This implies that cases cannot be settled in relation to tax liability of CGST/SGST Act. However, there is a possibility that those state tax administrations which want to constitute Settlement Commission can do so on the basis of the template provided under the IGST Act and the CGST Act can have an enabling provision drawing from the IGST Act for such states.

Definitions

Section 11 of the IGST Act deals with some important definitions which are as follows:

S.No.	Term	Definition
1	Bench	It means a bench of Settlement Commission
2	Case	It means any proceeding under the IGST Act for levy, assessment and collection of IGST before an IGST officer or before a First Appellate Authority in connection with such levy, assessment or collection of IGST pending on the date on which an application for settlement is made. Case will also mean an order passed by an adjudicating authority for which the period of appeal has not expired. It is clarified in the definition that an appeal filed after the expiry of the period of appeal or a case remanded by a higher judicial authority to a lower one will not be treated as a proceeding pending and therefore no application for settlement can be made in such cases.
3	Designated officer	It means an officer of the IGST appointed in the Settlement Commission to conduct inquiry or investigation for the purposes

S.No.	Term	Definition
		of the chapter on Settlement Commission.
4	Member	It means a Member of the Settlement Commission and includes the National/State Chairman.
5	Settlement Commission	It means the National Goods and Services Tax Settlement Commission constituted under section 12 of IGST Act.

Constitution of National Goods and Services Tax Settlement Commission and decision making

Section 12 of the IGST Act provides that the central government shall constitute a National Goods and Services Tax Settlement Commission. This shall be done on the recommendation of the GST Council. It shall be headed by a national Chairman.

It shall have benches called State Settlement Commission each to be headed by a State Chairman. One bench of State Settlement Commission may cover one or more states. Every State Settlement Commission shall consist of Chairman and such number of Members as may be prescribed. These will be called Technical Members and will be drawn from the CGST administration. The State Settlement Commissions shall be the body to hear and dispose of the applications. Each application for settlement shall be heard by a bench presided over by the State Chairman and shall consist of two other members.

It is provided that the National and State Chairman shall be a person who is either sitting or a retired judge of a high court. However, the other qualifications, eligibility conditions, the manner of selection and appointment of the National Chairman, the State Chairman, and the Members shall be prescribed in the Model GST Rules. The powers and functions of the National and the State Chairman shall also be prescribed in the Model GST Rules. Keeping in view that some state governments may also choose to set up a Settlement Commission, in order to ensure a uniform approach, it is provided that qualification, eligibility etc. shall be prescribed on the recommendations of the GST Council.

Section 14 of the IGST Act provides that where the members of a bench of Settlement Commission differ on any point, the decision shall be taken on the basis of the majority opinion. It is provided that a decision can also be taken by a bench consisting of only two members, if the third member is not available due to factors like absence, illness or vacancy. If there is a difference of opinion between such two members, the matter will then be referred to a third member, and decision will be taken by the majority opinion.

Who can apply for settlement

As per section 15 of the IGST Act, any taxable person can apply for settlement of a case in relation to which he has been issued one or more show cause notice(s) under the IGST

Act and the same is pending before the adjudicating authority or the First Appellate Authority.

His application should contain full and true disclosure of:

- i. tax Liability which has not been disclosed to the proper officer of IGST;
- ii. manner of deriving such tax liability;
- iii. additional amount of tax which he accepts to be payable;
- iv. other particulars such as misclassification, exemption notification because of which he admits to short payment.

Conditions which must be fulfilled before application for settlement can be accepted

As per section 15 of the IGST Act, the following conditions must be fulfilled before an application for settlement of a case can be accepted:

- (a) the applicant has furnished the return(s), which he is or was required to furnish under the IGST Act or this requirement has been waived by the Settlement Commission after recording the reasons that it was satisfied that certain valid circumstances existed for not filing the return(s);
- (b) the applicant has received a show cause notice for demand of tax or has received an order confirming the demand of tax issued by the IGST officer and the same is pending before the First Appellate Authority;
- (c) the additional amount of tax accepted by the applicant in his application exceeds five lakh rupees; and
- (d) the applicant has paid the additional amount of tax accepted by him along with the interest due thereon under section 36 of the CGST Act.

Circumstances in which application for settlement cannot be entertained

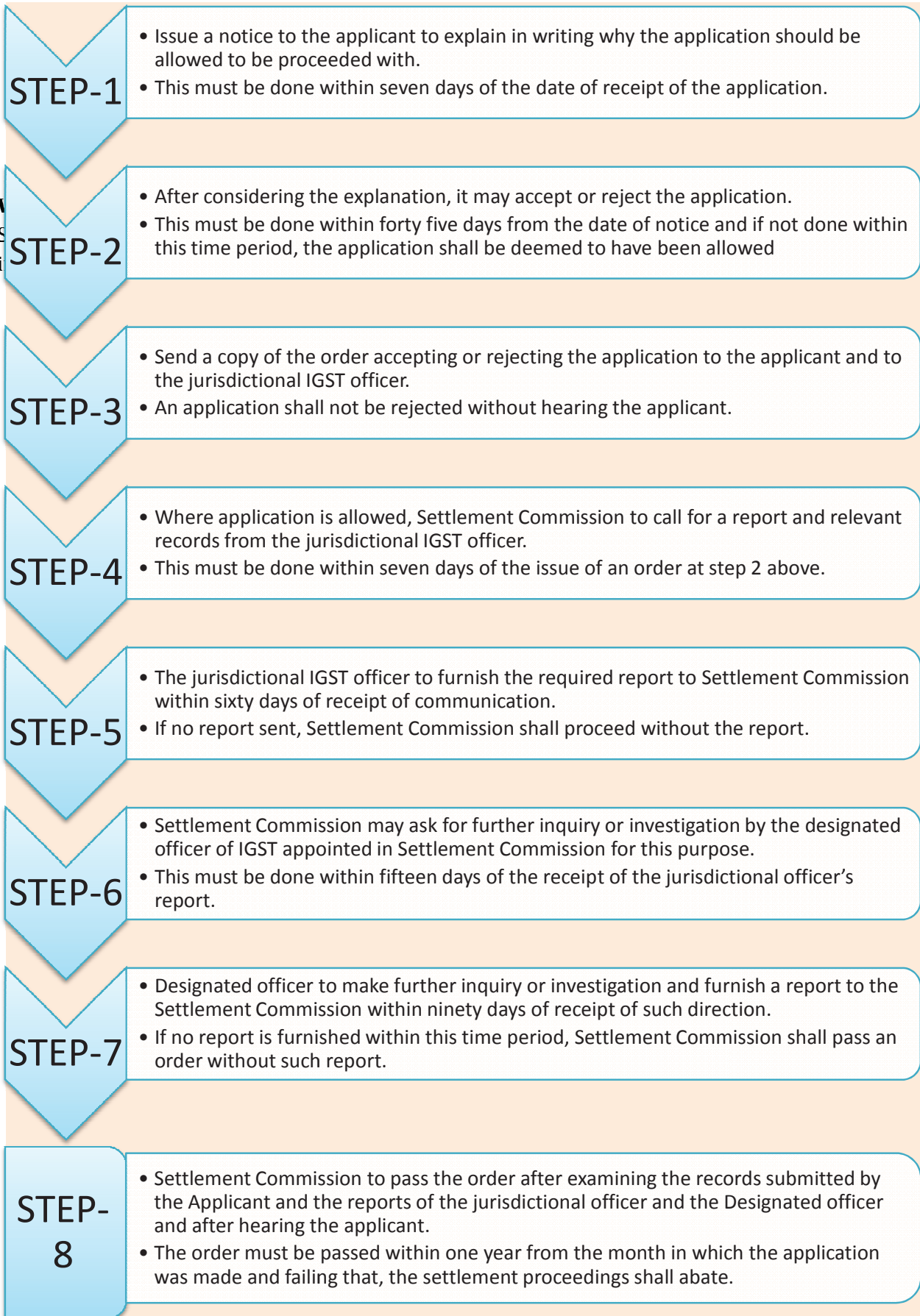
As per section 15 of the IGST Act, in the following circumstances, Settlement Commission will not accept an application for settlement:

- i. If the case involved in the application is pending with the Appellate Tribunal or any Court.
- ii. If the application involves determination of any question having a bearing on the rate of tax or determination of liability to pay tax on goods and/or services.
- iii. If the fees as prescribed has not been paid.

It is to be noted that once an application has been made, it cannot be allowed to be withdrawn by the applicant.

Procedure to be followed by the Settlement Commission after receipt of application

As provided under section 16 of the IGST Act, the Settlement Commission shall follow the following procedure after the receipt of an application for settlement of a case:



payment of penalty can be withdrawn where it finds later that the applicant had concealed any facts or had given any false evidence or if he has failed to pay the sum specified in the settlement order in the prescribed time. (section 20)

Who cannot use Settlement Commission

- i. No person can avail the facility of settlement more than twice. (section 23)
- ii. A person cannot apply for settlement in any other matter where after passing of a settlement order, a person was convicted of any offence under the IGST Act in relation to that case or where due to lack of cooperation from the applicant, the Settlement Commission has sent back the case to the relevant adjudicating authority. (section 23)

Powers of Settlement Commission

The powers and procedures of Settlement Commission are given in sections 25 and 26 of IGST Act. It is vested with the powers of a civil court under the Code of Civil Procedure, 1908, for discovery and inspection, enforcing the attendance of a person and examining him on oath, and compelling production of books of account and other records. Settlement Commission is deemed to be a civil court for the purposes of section 195 of the Code of Criminal Procedure, 1973. Any proceeding before it shall be deemed to be a judicial proceeding under section 193 and 228 and for the purpose of section 196, of the Indian Penal Code, 1860. The Settlement Commission also has the power to regulate its own procedure.

Section 193 of IPC, 1860 contains penal provision for giving false evidence under summons and section 228 of IPC, 1860 contains penal provisions for intentionally insulting or interrupting the Officer sitting in summons proceedings. Accordingly these provisions of IPC can be invoked where the person summoned gives false evidence or interrupts the proceedings of the Settlement Commission.

Section 24 of the IGST Act gives power to Settlement Commission to amend its order to rectify any mistake apparent from the record within a period of three months from the date of the order. Such mistake may be noticed by the Settlement Commission on its own accord or may be brought to its notice by the applicant or the jurisdictional IGST officer. If a rectification has the effect of enhancing the tax liability or reducing the quantum of input tax credit, the applicant must be heard before the order is passed.



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18. Inspection, Search, Seizure and Arrest

CHAPTER-XV

Introduction

This chapter deals with powers of officers of CGST and SGST to carry out inspection or search of any places of business or a transporter or a warehouse where there is a reason to believe that tax evasion has taken place or is likely to take place.

The word 'search' has not been defined in law. As per Black's Law dictionary search is *"an examination of a man's house or other buildings or premises, or of his person, with a view to the discovery of contraband or illicit or stolen property, or some evidence of guilt to be used in the prosecution of a criminal action for some crime or offence with which he is charged."* 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. There are elaborate provisions regarding search under Central Excise, Customs and Service Tax Laws and the provisions under Model GST Law is largely based on these provisions.

However, provision of 'inspection' is a new provision. 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.

The authorisation for inspection or search has to be given in writing by an officer not below the rank of Joint Commissioner. An officer authorised to conduct search can seize goods which are liable to confiscation or seize documents which may be relevant for any proceedings. For this purpose, he has power to force open any premises or any almira etc. He can also seal the premises. There are certain safeguards provided in the chapter with respect to the power of search and seizure.

The chapter also deals with the following:

- i. power of the Central or State Government to prescribe certain documents to be carried by a transporter along with the consignment of goods if the value of the consignment is more than fifty thousand rupees;

- ii. power of an officer to arrest a persons who has committed certain specified category of offences along with certain safeguards prescribed in respect of the person arrested;
- iii. power of a CGST/ SGST officer to summon a person to give evidence and produce documents;
- iv. power of a CGST/SGST officer to have access to any business premises for inspection of various documents;
- v. the category of officers who as per law are required to assist CGST/SGST officers in execution of the CGST/ SGST Act.

Section 60: Power of Inspection, Search, Seizure and Arrest

This section deals with circumstances in which the power of inspection, search and seizure can be exercised.

Inspection

It must be remembered that such inspection can be carried out by an officer of CGST/SGST only upon a written authorisation given by an officer of the rank of Joint Commissioner or above. A Joint Commissioner or an officer higher in rank can give such authorisation 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.

Authorisation 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.

Search and seizure

An officer of the rank of Joint Commissioner or above can also authorise an officer in writing to carry out search and seize goods, documents, books or things. Such authorisation 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.

'Reason to Believe' or 'Reasonable Belief'

One of the essential conditions to be satisfied before authorizing/conducting the inspection or search in respect of all the provisions pertaining to Central Excise, Service Tax and Customs is '*reason to believe*'. The same expression has been borrowed in the

Model GST Law. 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.” The word ‘believe’ is much stronger than the word ‘suspect’. A belief in the existence of a thing requires a more solid foundation than in the case of a mere suspicion. ‘*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. 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. In case the authorizing officer’s satisfaction of reasonable belief is questioned in any collateral proceedings, only then he has to produce relevant evidence which formed the basis of his belief. Generally, courts do not go into the question of sufficiency of material to form such belief. The existence of such material is considered sufficient. Only in those cases where seizure is unreasonable and perverse and that no reasonable person could have reached that conclusion, procedures become unauthorized.

Search Warrant and its content

The 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 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.

Liability to confiscation

As per section 70 of Model GST Law, goods become liable to confiscation when any person does the following:

- (i) supplies 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.

Power of an officer during search

An officer carrying out a search, has the power to break open its door if access to the premises 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.

Procedure for conducting search

Section 60(8) 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 as below:-

- i. Whenever any place liable to search or inspection under this Chapter, is closed, any person residing in, or being in charge of, such place, shall, on demand of the officer or other person executing the warrant, and on production of the warrant, allow him free ingress thereto, and afford all reasonable facilities for a search therein.
- ii. If ingress into such place cannot be so obtained, the officer or other persons executing the warrant may proceed in the manner provided by sub-section (2) of section 47.
- iii. Where any person in or about such place is reasonably suspected of concealing about his person any article for which search should be made, such person may be searched and if such person is a woman, the search shall be made by another woman with strict regard to decency.
- iv. Before making a search under this Chapter, the officer or other person about to make it shall call upon two or more independent and respectable inhabitants of the locality in which the place to be searched is situated or any other locality, if no such inhabitant of the said locality is available or is willing to be a witness to the search, to attend and witness the search and may issue an order in writing to them or any of them so to do.
- v. The search shall be made in their presence, and a list of all things seized in the course of such search and of the places in which they are respectively found shall be prepared by such officer or other person and signed by such witnesses; but no person witnessing a search under this section shall be required to attend the court as a witness of the search unless specially summoned by it.
- vi. The occupant of the place searched, or some person in his behalf shall, in every instance be permitted to attend during the search, and a copy of the list prepared under this section, signed by the said witnesses, shall be delivered to such occupant or person.

- vii. When any person is searched under sub-section (3), a list of all things taken possession of shall be prepared, and a copy thereof shall be delivered to such person.
- viii. Any person who, without reasonable cause, refuses or neglects to attend and witness a search under this section, when called upon to do so by an order in writing delivered or tendered to him, shall be deemed to have committed an offence under section 187 of the Indian Penal Code, 1860.

Sub-section 2 above of section 100 makes a reference to section 47(2) of Cr.P.C. which provides for forceful entry. Section 47(2) of Cr.P.C. reads as under:

If ingress to such place cannot be obtained under sub-section (1), it shall be lawful in any case for a person acting under a warrant and in any case in which a warrant may issue, but cannot be obtained without affording the person to be arrested an opportunity of escape, for a police officer to enter such place and search therein, and in order to effect an entrance into such place, to break open any outer or inner door or window of any house or place, whether that of the person to be arrested or of any other person, if after notification of his authority and demand of admittance duly made, he cannot otherwise obtain admittance:

Provided that, if any such place is an apartment in the actual occupancy of a female (not being the person to be arrested) who, according to custom, does not appear in public, such person or police officer shall, before entering such apartment, give notice to such female that she is at liberty to withdraw and shall afford her every reasonable facility for withdrawing, and may then break open the apartment and enter it.

Certain Basic Requirement to 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 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.

Vitiating of Search

Search without a valid search warrant (i.e. issued by other than a competent authority) results in an illegal search without authority of law. However, due to this reason, the accused cannot get benefit. Accordingly, evidence collected even during an illegal search and seizure is considered admissible in trial and adjudication proceedings.

Seizure

The term 'seizure' has not been specifically defined in the Model 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. It may not always be synonymous with manual detention or physical retention. It may happen that physical removal of goods is not possible then also it can be seized by the tax authority by giving notice to that effect to the owner or who has the possession of goods. The ownership of seized goods is suspended till finalisation of the adjudication proceedings. If it is confiscated by an order issued by a competent authority which attains finality then only the ownership is transferred to the Government. If it is not confiscated, then the ownership is again transferred to the original owner of the goods. It is to be noted that seizure of goods and

documents can be made in relation to an investigation concerning supply of goods but in an investigation relating to supply of services, mostly only documents will be seized.

Distinction in law between 'Seizure' and 'Detention'

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. The purpose of detention is to prevent that property being removed or used by the owner of the property or the person who possesses the property for some time. In detention the possession of the property is not taken away by the department, but in seizure the possession is transferred from the owner to the department. The detention order is served when it is not practicable to seize the goods at that particular point of time. Secondly, when it is suspected that the goods are liable to confiscation then detention order is issued. As soon as the 'suspicion' is converted into 'reasonable belief' after enquiry/ investigation, the detained goods are formally seized because seizure can be made only on the basis of 'reasonable belief' that the goods are liable to confiscation. Taking possession by the department is necessary condition of seizure. During the period of seizure, the ownership of the seized goods is suspended till finalisation of the adjudication proceedings. It is to be noted here that no confiscation can be ordered without seizure.

Certain safeguards are provided in section 60 of Model CGST/SGST Law 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 sixty days of its seizure, goods shall be returned to the person from whose possession it was seized. This period of sixty days can be extended on justified grounds up to a maximum period of six months;
- iv. An inventory of seized goods shall be made by the seizing officer;
- v. Certain categories of goods to be specified under Model GST 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 .

Section 61: Inspection of goods in movement:

This section gives power to the Central or State Government to prescribe certain documents (which will be done under Model GST Rules) that must be carried by a person in charge of a conveyance (such as truck, bus etc.) if the conveyance is carrying any consignment of goods of a value of more than fifty thousand rupees. The taxpayer who is putting the goods in a conveyance will generate this document on the common portal and hand over to the person in charge of the conveyance. If a truck is carrying several consignments and the value of an individual consignment is less than fifty thousand rupees but the combined value of different consignments in the truck is more than fifty thousand rupees, no document as prescribed in this section needs to be carried by the person in charge of the truck. However, if a truck is carrying six consignments and out of these two are of a value of more than fifty thousand rupees, the prescribed document will be generated by these two consignors and handed over to the person in charge of the truck. This document will need to be shown upon demand by any officer conducting any checks of vehicles on the road.

Section 62: Power to Arrest:

Arrest

The term 'arrest' has not been defined in the Model GST Law. 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. Section 46 of the Cr.P.C. 1973 provides that a police officer or any other person making an arrest shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action. It further provides that if such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such police officer or other person may use all means necessary to effect the arrest. However, this section also lays down that nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death or with imprisonment for life. Article 22 of the Constitution of India deals with protection against arrest and detention in certain cases.

Necessity of assuming control over person

To constitute an arrest it is necessary that the officers should assume custody and control over the person, either by force or with his consent, and it has been held that neither the utterance of words indicating an intention to arrest on the part of the person uttering them, nor the reading of the warrant is of itself sufficient.

The Commissioner of CGST/SGST can authorise 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 73 (1)(i), 73 (1)(ii) and 73 (2) of the CGST/SGST Act. This essentially means that a person can be arrested only where the tax evasion is

more than fifty lakhs rupees or where a person has earlier been convicted for an offence under section 73 of the Model CGST/SGST Act.

There are certain safeguards provided under section 62 for a person who is placed under arrest. These are:

- i. 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;
- ii. 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 incharge of a police station under section 436 of the Code of Criminal Procedure, 1973;
- iii. All arrest must be in accordance with the provisions of the Code of Criminal Procedure, 1973 relating to arrest.

Post arrest formalities

- In cases of arrest falling under the category of bailable / non-cognizable offence, the arresting officer is bound to release a person on bail against a bail bond. The bail conditions should be informed in writing to the arrested person and also informed on telephone to the nominated person of the person(s) arrested. The arrested person should be also allowed to talk to a nominated person. The conditions will relate to, *inter alia*, execution of a personal bail bond and one surety of like amount given by a local person of repute, appearance before the investigating officer when required and not leaving the country without informing the officer. The amount to be indicated in the personal bail bond and security will depend, *inter alia*, on the amount of tax involved.
- If the conditions of the bail are fulfilled by the arrested person, he shall be released by the officer concerned on bail forthwith. However, only in cases where the conditions for granting bail are not fulfilled, the arrested person shall be produced before the appropriate Magistrate without unnecessary delay and within twenty-four hours of arrest. The arrested person may be handed over to the nearest police station for his safe custody, within 24 hours, during the night under a challan, before he is produced before the Court.
- In cases falling under the category of non-bailable / cognizable offence and only in the event of circumstances preventing the production of the arrested person before a Magistrate without unnecessary delay, the arrested person may be handed over to nearest Police Station for his safe custody, within 24 hours, under a proper challan, and produced before the Magistrate on the next day, and the nominated person of the arrested person may be also informed accordingly.
- Formats of the relevant documentation i.e. the Bail Offer Letter, the Bail Bond and the Challan for handing over to the police, in the Code of Criminal Procedure, 1973 (2 of 1974) may be followed.

- The existing instructions in the Central Excise and Customs formations is that every Commissionerate should maintain a Bail Register which will have the details of the case, arrested person, bail amount, surety amount. The money/instruments/documents received as surety should be kept in safe custody. The money should be deposited in the treasury. The other instruments/documents should be kept in the custody of a single nominated officer. It should be ensured that the instruments/documents received as surety are kept valid till the bail is discharged.

Precautions to be taken during arrest

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 all 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 centre 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 Organisation 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.

There is no prescribed format for arrest memo but an arrest memo must be in compliance with the directions in the judgement of the Hon'ble Supreme Court in the case of *D.K. Basu v. 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 arrest must be explained to the arrested person and this fact should be recorded in the arrest memo;
- a nominated person (as per the details 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 and the arrest memo should be given to the person arrested under proper acknowledgment;
- 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.

Further there are certain modalities that should be complied with at the time of arrest and pursuant to an arrest, which include the following :

- A female should be arrested by or in the presence of a woman officer;
- Medical examination of an arrested person should be conducted by a medical officer in the service of Central or State Governments 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.

It shall be the duty of the person having the custody of an arrested person to take reasonable care of the health and safety of the arrested person.

Some broad guidelines for arrest followed in CBEC

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 organised 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 *mens rea* /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 50 lakh rupees.

Cognizable and non-cognizable offence:

Generally, cognisable offence means 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. By contrast, in the case of a non-cognisable offence, 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. The police can file a FIR only for cognisable offences. Normally, serious offences are defined as cognisable and usually carry a sentence of 3 years or more. Cognizable offences would be severe acts such as murder, rape, aggravated assault, kidnapping. These are the sorts of crimes that Police may act independently to arrest suspects immediately, and so they are authorized to affect the arrest and to mount a further investigation, autonomously of the Court.

Non-cognizable offences would be not very severe acts like shoplifting, failure to renew a license, petty theft. For these, Police are not authorized to act independently to arrest a suspect and must present a case to the Court in order to prosecute an arrest, at which time they will also be charged with investigating the case fully.

The dividing line between cognizable and non-cognizable is the extent harm to the person of a victim or of risk to life or limb of others that may be involved, or the gross extent of loss of property involved or possible.

Similar principle has to be followed in regard to offences committed under the CGST/SGST Act. In section 73 (4) of Model CGST/SGST Law, it is provided that the offences relating to taxable goods and /or services where the amount of tax evaded exceeds Rs. 2.5 crores, shall be cognizable and non-bailable. Other offences under the act are non-cognizable and bailable.

In case a person is arrested for a non-cognizable and bailable offence, the officer carrying out the arrest can grant him bail in accordance with Section 436 of the Code of Criminal Procedure, 1973. This section provides that when any person other than a person accused of a non-bailable offence is arrested or detained without warrant by an officer in charge of a police station, or appears or is brought before a Court, and is prepared at any time while in the custody of such officer or at any stage of the proceeding before such Court to give bail, such person shall be released on bail. It further provides that where such officer or Court, if he or it thinks fit, may, instead of taking bail from such person, discharge him on his executing a bond without sureties for his appearance.

Section 63: Power to summon persons to give evidence and produce documents:

Introduction:

In order to have a successful investigation, it is often necessary to question a suspect or a witness and seek information from him to unearth the tax evaded. Calling suspect or witness to give evidence or produce documents is an important step in investigation which helps to convert the findings into admissible evidence.

Summon, as understood in legal parlance, is intimation requiring a person to whom it is issued to appear to give evidence and /or produce documents, etc. The indirect tax statutes, namely, the Customs Act, 1962, Central Excise Act, 1962 and Finance Act, 1994 have provisions which empower the designated officers to summon witnesses to give evidence and/or to produce documents. The provision of Section 63 of CGST/SGST Act is largely borrowed from Section 108 of Customs Act, 1962 and Section 14 of the Central Excise Act, 1944.

Section 63 of CGST/SGST Act gives powers to a duly authorised 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.

A person who is issued a summon is legally bound to attend either in person or by an authorised representative, as such officer may direct. Thus it is to be noted that officer has the discretion to summon a person himself or to allow him to be represented by an authorised representative. The exemptions under section 132 and 133 of Code of Civil Procedure, 1908 applies to requisitions for attendance under the CGST/SGST Act.

A person summoned is bound to state the truth before the officer who has issued the summon upon any subject respecting which they are examined or make statements and produce such documents and other things as may be required. This proceeding will be deemed to be a 'judicial proceeding' as understood under section 193 and section 228 of the Indian Penal Code, 1860.

Section 193 of IPC, 1860 contains penal provision for giving false evidence under summons and section 228 of IPC, 1860 contains penal provisions for intentionally insulting or interrupting the Officer sitting in summons proceedings. Accordingly these provisions of IPC can be invoked where the person summoned under CGST/SGST Act gives false evidence or interrupts the proceedings under summons.

Sections 172, 174 and 175 of Indian Penal Code, 1860 are also relevant as they contain penal provisions in case of person:

- i. Absconding to avoid service of summons or other proceeding;
- ii. Non-attendance in obedience to an order from public servant;
- iii. Omission to produce document or electronic record to public servant by person legally bound to produce it.

Under Civil Procedure Code, 1908, (CPC), there are some categories of persons who are exempt from being summoned. Section 132 of CPC provides exemption to the women who, according to the customs and manners of the country, ought not to be compelled to appear in public shall be exempt from personal appearance in Court. Section 133 of CPC provides entitlement to exemption from personal appearance in Court to some dignitaries, such as the President of India, the Vice President of India and some other high dignitaries of the State/ Government. All these exemptions will apply in respect of summons issued under the CGST/SGST Act.

The power to summon has a vital bearing in an enquiry under the CGST/SGST Act. The evidence so gathered will have a bearing on the quality of adjudication proceedings. Status of the person summoned is of no consequence. However, sufficient care should be taken to summon only such persons who would have first-hand knowledge of material relevant to the investigation being conducted. It must be ensured that the procedural safeguards are not violated.

The Central Board of Excise and Customs (CBEC) 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 are 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 authorised the issuance of summons;
- vi. senior management officials such as CEO, CFO, General Managers of a large company or a PSU 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.

Precautions while issuing summons:-

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. Repeated summons often lead to complaints of harassment and embarrassment before the Courts of Law.

(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.

Course of Action in Case of Non-response to Summons

- If a person does not answer to the summons, he would render himself liable to prosecution under Section 174 of the I.P.C.
- If on the other hand, he gives false evidence, he would be liable to prosecution under Section 193 of the I.P.C. for giving false evidence in a judicial proceeding.
- In situations where a person refuses to record any statement, the summoning officer should record his non-cooperation and submit the same to his superior officer for further necessary action. Invariably, in such cases the matter should be brought to the notice of the Magistrate.
- If a person does not appear for statement even after repeated summons, then after giving reasonable opportunity, generally three summons at reasonable intervals, a complaint should be filed with the jurisdictional Magistrate alleging that the accused has committed offence under Section 172 of Indian Penal Code (absconding to avoid service of summons or other proceedings); and/ or Section 174 of IPC (non-attendance in obedience to an order from public servant); and/ or Section 175 of IPC (Omission to produce documents called for to public servant by the person legally bound to produce it). The Courts generally issue necessary directives to the accused to join investigations. Failing to appear even after issuance of such directives by Courts, the Courts may proceed for punitive action as per Law.

A format of summon used Section 14 of Central Excise Act, 1944 is reproduced below for guidance:

SUMMON	
<i>Format of Summon normally used by Central Excise Officer in Central Excise cases</i>	
OFFICE OF THE COMMISSIONER CUSTOMS, CENTRAL EXCISE & SERVICE TAX OFFICE AT _____	
C.NO.....	DATED:
SUMMONS (Under Section 14 of Central Excise Act, 1944)	
To, M/s _____ _____	
WHEREAS a case against M/s _____ about evasion of excise duty under the provisions of Central Excise Rules, 2002 read with Central Excise Act 1944 is being enquired by me.	
AND WHEREAS I have reason to believe that you are in possession of facts or/and documents and records, which are material to the above enquiry.	
You are hereby summoned under Section 14 of the Central Excise Act, 1944 to appear before me in person on _____ 2015 at _____ Hrs in the Office of _____ to give evidence /tender statement truthfully on such matters concerning the enquiry as you may be asked and produce the documents and records for examination.	
SCHEDULE	
If you fail to comply with this summons without lawful excuse, you will be liable to be punished under the law.	
Given under my hand and seal today the _____ day/month/year	
Superintendent Central Excise,	
Note: Under clause 3 of section 14 of the Central Excise Act and clause 4 of the Section 108 of Customs Act, 1962 above enquiry is to be deemed a judicial proceeding within the meaning of Section 193 and 228 of the Indian Penal Code.	

Section 64: Access to business premises

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 50 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 authorisation is still to be issued by an officer of the rank of Additional/Joint 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.

Upon demand by the proper officer or audit party or cost accountant or chartered accountant so authorised, the person incharge of premises will have to produce the records maintained by a registered taxable person at the said premises for his scrutiny within a reasonable time. However, records must be produced within fifteen working days of making the demand or such further extended period that may be allowed by the person who made the request for the documents.

Certain documents are specifically listed in the section but if any other relevant records are maintained at the said premises, they will also need to be produced. The listed documents are as follows:

- (i) the records as prepared or maintained by the registered taxable person and declared to the CGST/SGST officer as may be prescribed;
- (ii) trial balance or its equivalent;
- (iii) Statements of annual financial accounts, duly audited, wherever required;
- (iv) cost audit report, if any, under section 148 of the Companies Act, 2013;
- (v) the income-tax audit report, if any, under section 44AB of the Income-tax Act, 1961.

Section 65: Officers required to assist CGST/SGST officers:

In the course of implementing the various provisions of the CGST/SGST Act, help of some other agencies may also be required. For example, in conducting a raid, help of police officers may be required. Similarly, for recovery of any arrear of tax, help of land revenue officers may be needed. Under this provision, certain categories of officers have been empowered and also legally required to assist CGST/SGST officers in the execution of this Act. The specified category of officers are:

- i. Police;
- ii. Customs ;
- iii. Officers of state/ central government engaged in collection of GST;
- iv. Officers of state/ central government engaged in collection of land revenue;
- v. All village officers;
- vi. Any other class of officers as may be notified by central/ state government.



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JULY 2016

19. Offences and Penalties, Prosecution and Compounding

OFFENCES AND PENALTIES

1.1 The word “offence” has not been defined in the Model GST Law. It comes from the Latin word “*offendere*” which means “strike against” and this, in the context of a tax law, is derived as striking against the law. The Courts have interpreted “offence” as violation of a law in force and for the violation of which the law prescribes a penalty.

1.2 The Model GST Law codifies the offences and penalties in Chapter XVI. The Act list 21 offences in section 66, apart from the penalty prescribed under section 8 for availing compounding by a dealer 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 3 months
- 4) Not paying tax collected in contravention of the 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 37
- 6) Non collection or lower collection of or non-payment of tax collectible at source under section 43C
- 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 17
- 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 mandatory fields for registration
- 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.

PENALTY:

2.1 Penalty has been held by the Courts to be a substantive levy which means that no penalty can be levied for any breach unless the law specifically provides for it. The word “penalty” has not been defined in the model Law 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.

2.2 Any law that casts an obligation to carry out a certain act or to refrain from doing something must also provide for penal action in the event of the violation of the statutory obligation otherwise it becomes difficult to administer or enforce the law. But the penal provisions can be invoked only after serving a notice to show cause and affording an opportunity of hearing to the person proceeded against. 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 68 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 commensurate to 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 and the range or quantum of penalty specified in the law for the offence alleged to have been committed

Section 68 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 Act, the provisions of this Chapter shall not apply.

Quantum of penalty

2.3.1 Section 66(1) Provides that any taxable person who has committed any of the offences mentioned in para 1.2 above 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/-

2.3.2 Section 66(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 required to be issued under law.

2.3.3 Section 66(2) provides that any registered taxable person who repeatedly makes a short payment of tax shall be liable to penalty which will be the **higher** of

- 10% of the tax short paid, or
- Rs.10,000.

The said sub-section explains that three short payment in respect of three returns during any six consecutive tax periods shall be considered as repeated short payment for the purpose of levy of penalty.

2.3.4 Section 67 of the Model Law 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/-

2.3.5 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. Such goods may be released only after payment of the applicable tax, interest and penalty or upon furnishing of security equivalent to the said amount.

2.3.6 Section 8(3) provides that if a person who has opted for composition of his tax liability 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.

CONFISCATION:

3.1 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 transfer 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."

3.2 Section 70 of the Model GST Law provides for confiscation of goods in certain circumstances. Accordingly, goods shall be liable to confiscation if any person

- supplies 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
- contravenes any provision of the Act/Rules with the intention of evading payment of tax

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. The proper officer shall, after providing an opportunity of being heard by serving a notice on the owner or person in charge of the goods, shall proceed to levy penalty which shall be **higher** of

- The tax evaded on the confiscate goods or
- Rs.10,000

In terms of section 70(6), 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.

3.3 Section 71 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 goods shall not be liable to confiscation as aforesaid. If the conveyance is being used for carrying goods or passengers for hire then the owner of such a conveyance may be provided an option to pay a fine equivalent to the tax payable on the goods, in lieu of confiscation. Section 72 provides that the confiscation or penalty under section 70 or 71 shall be without prejudice to any other punishment/action provided in the Act for the offence of carrying goods without cover of the required documents/declaration.

PROSECUTION:

4.1 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.

4.2 Section 73 of the Model GST Law codifies the major offences under the Act which warrant institution of criminal proceedings and prosecution. 12 such major offences have been listed as follows:

- 1) Making a supply without issuing an invoice or upon issuance of a false/incorrect invoice
- 2) Issuing an invoice without making supply
- 3) Not paying tax collected for a period exceeding 3 months
- 4) Not depositing any tax that has been collected in contravention of the Act for a period exceeding 3 months
- 5) Availing or utilizing credit of input tax without actual receipt of goods and/or services
- 6) Obtaining any fraudulent refund
- 7) Furnishing false information or falsification of financial records or furnishing of fake accounts/documents with intent to evade payment of tax
- 8) Obstructing or preventing any official in the discharge of his duty
- 9) Dealing with goods liable to confiscation i.e. receipt, supply, storage or transportation of goods liable to confiscation
- 10) Receiving/dealing with supply of services in contravention of the Act
- 11) Failing to supply any information required of him under the Act/Rules or supplying false information
- 12) Attempting to commit or abetting the commission of any of the above 11 offences.

4.3 The scheme of punishment provided in section 73(1) is as follows:

Offence involving--	Punishment (Imprisonment extending to--)
Tax evaded exceeding Rs.250 lakh	5 years and fine
Tax evaded between Rs.50 lakh and Rs.250 lakh	3 years and fine
Tax evaded between Rs.25 lakh and Rs.50 lakh	1 years and fine

Section 73(2) provides that a second or any subsequent conviction for an offence in this section shall be punishable with imprisonment for a term that may extend to 5 years and a fine. However, no imprisonment for any of the offences shall be for a period less than six months.

4.4 Section 73(3) and 73(4) provide that:

- All offences where the evasion of tax is less than Rs.250 lakh shall be non-cognizable and bailable,
- All offences where the evasion of tax exceeds Rs.250 lakh shall be cognizable and non-bailable
- No person shall be prosecuted for any offence without the prior sanction of the designated authority.

4.5 In the context of GST Law, in the case of a cognizable offence an arrest can be made without an arrest warrant/FIR and in a bailable offence the bail can be granted, subject to conditions that may be set in this regard, after appropriate bail bond or surety by authority effecting arrest has been furnished. Bail is a matter of discretion in a non-bailable offence and can be granted only by the Court before which the offender has to be produced within 24 hours of arrest. Section 74 provides that no officer inferior to a First Class Magistrate shall be competent to conduct trial for any offence.

4.6 Section 75 presumes the existence of a state of mind (i.e. “culpable mental state” or *mens rea*) required to commit an offence if it cannot be committed without such a state of mind. 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.

4.7 Section 76 provides that any statement made and signed by any person during the course of any proceeding before a gazetted officer of GST is to be relevant for proving its contents during prosecution for any offence if the Court considers it unreasonably difficult or impossible to examine the person making

the said statement or the person is prevented by sufficient cause from testifying before the Court.

OFFENCES BY COMPANIES AND CERTAIN OTHER PERSONS:

5.1 Since entities such as companies, firms or trusts, entities do not have a will of their own or the “culpable mental state” (for want of mental faculties), in case offences are committed by such entities it can be assumed that every person who is in-charge of the affairs of such entities, or is entrusted with the responsibility of administering or managing the affairs of these entities, is prime mover or the person who actually committed the offence that has been attributed to the said entity. Section 77 of the Model GST Law recognizes the aforesaid assertion and provides that every person who was in-charge of or responsible to a company for the conduct of its business shall, alongwith 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.

5.2 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 proceeded against and punished accordingly.

5.3 The above provisions relating to any officer, director or manager, etc. of a company shall apply *mutatis mutandis* to the partner, managing partner, karta or trustee in the case of any offence is committed by a partnership, LLP, HUF, or trust, as the case may be.

5.4 If the person charged with committing an offence while being an officer in-charge of, or responsible for the conduct of the business of, a company, partnership, LLP, HUF, or trust shall not be liable to prosecuted if he is able to establish that:

- the offence was committed without his knowledge, or
- that he took all steps to prevent the commission of the offence.

COMPOUNDING OF OFFENCES:

6.1 Section 320 of the Code of Criminal Procedure defines “compounding” as to forbear from prosecution for consideration or any private motive. Aiyar’s Law Lexicon defines it variously as “arranging, coming to terms; condone for money;”. Compounding is thus is a legally recognized arrangement whereby the person charged with an offence is offered the option of avoiding prosecution and imprisonment in lieu of monetary considerations by way of penalty; compounding is essentially a contract between the State and the offender

whereby the State secures revenue and the offender secures immunity from prosecution.

6.2 Section 78 of the Model GST Law provides for compounding of offences. According to the proviso to sub-section (1), the following offences are not eligible for compounding:

- Offences numbered 1 to 7 of the 12 major offences (outlined in paragraph 4.2 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 7 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
- Any other class of offences or persons that may be prescribed in this behalf.

6.3 Any other offence may, upon payment of the prescribed (compounding) amount be compounded and such compounding is permissible either before or after the institution of prosecution. 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.

6.4 The lower limit for compounding amount is to be the greater of the following amounts:-

- 50% of tax involved, or
- Rs.10,000

6.5 The upper limit for compounding amount is to be greater of the following amounts:-

- 150% of tax involved or
- Rs.30,000

6.6 Sub-section (3) of section 77 provides that on payment of compounding amount:

- no further proceeding **to be initiated** under this Act and, criminal proceeding already initiated to stand abated.



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20. Transitional Provisions

The purpose of incorporating Transitional Provisions in any Act is to clarify as to when and how the operative parts of the enactments are to take effect. The Transitional Provisions generally are intended to take care of the events during the period of transition.

Francis Bennion in his book on Statutory Interpretation (14 Edition, p.442) outlines the purpose of transitional provisions as follows:-

“189. Transitional Provisions: Transitional provisions in an Act are provisions which spell out precisely when and how the operative parts of the instrument are to take effect Where an act contains substantive, amending or repealing enactments, it commonly also includes transitional provisions which regulate the coming into operation of those enactments and modify their effect during the period transition.”

G. C. Thornton in his treatise on “Legislative Drafting” has stated that –

“The function of a transitional provision is to make special provision for the application of legislation to the circumstances which exist when that legislation comes into force.”

THE TRANSITIONAL PROVISIONS in the model GST law ---

1. Appointment of GST officers / Competent Authorities [Section 141]:

- ❖ All Central/State Government officials of Central/State laws (being subsumed in GST) and continuing in office on the appointed day shall be deemed to have been appointed as GST officers / Competent Authorities.
- ❖ The Central/State Government shall have the power to issue orders or make rules for smooth transition to GST.

2. Migration of existing taxpayers to GST [Section 142]:

- ❖ On the appointed day provisional certificate of registration would be issued to every person registered under any law being subsumed;

- ❖ The provisional certificate shall be valid for 6 months (or time as extended) and within the said period the provisional certificate holder shall be required to furnish information as may be prescribed.
- ❖ Once the information has been furnished the provisional certificate holder shall be issued a final certificate of registration.

Subject to the provisions of Section 19 i.e. registration.

- ❖ Failure to furnish the information may lead to cancellation of the provisional certificate.
- ❖ If a person is not liable for registration under GST then he may apply for cancellation of the provisional certificate issued to him.

3. CENVAT credit or VAT ITC C/F in a return to be allowed as ITC under GST [Section 143]:

- ❖ Any CENVAT credit or VAT ITC carried forward in the last return prior to GST shall be allowed as ITC in GST, subject to the condition that it was admissible as ITC in the earlier law and is also admissible as ITC in GST.
- ❖ If any proceeding has been instituted against the taxable person under the earlier law, either before or after the appointed day, with regard to the admissibility of ITC then it shall be recovered as an arrear of tax under GST.

4. Situations where un-availed CENVAT credit/ITC on capital goods, not carried forward in a return, to be allowed as ITC under GST [Section 144]:

- ❖ Un-availed CENVAT credit/ITC on capital goods which has not been carried forward in a return under the earlier law will be admissible as ITC under GST in the manner to be prescribed.

Further, subject to the condition that it was admissible as ITC in the earlier law and is also admissible as ITC in GST.

- ❖ “Un-availed CENVAT credit”/ “un-availed ITC” means the differential amount of the aggregate of eligible CENVAT credit/ITC in respect of the said capital goods under the earlier law and CENVAT credit/ITC already availed in respect of such capital goods;
- ❖ For CENVAT credit the capital goods means the goods as defined under clause (a) of rule 2 of CENVAT Credit Rules, 2004.

- ❖ If any proceeding has been instituted against the taxable person under the earlier law, either before or after the appointed day, with regard to the admissibility of ITC then it shall be recovered as an arrear of tax under GST.

5. Situations where credit of eligible duties and taxes in respect of inputs held in stock to be allowed as ITC under GST [Section 145]:

- ❖ A registered taxable person who was not liable to be registered under the earlier law or was a manufacturer of goods (exempted under the earlier law, but taxable under GST) shall be entitled to take credit of eligible duties and taxes/value added tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day subject to the following conditions:
 - ✓ such inputs and/or goods are used or intended to be used for making taxable supplies in GST;
 - ✓ he was eligible for CENVAT credit/ITC on receipt of such inputs and/or goods if he had been liable for registration under the earlier law or if such goods had been taxable under the earlier law;
 - ✓ he is eligible for ITC in GST;
 - ✓ he is in possession of invoice and/or other prescribed documents evidencing payment of duty / tax under the earlier law in respect of such inputs held in stock, etc; and
 - ✓ such invoices and /or other prescribed documents were issued not earlier than 12 months prior to the appointed day.
- ❖ The amount of credit shall be calculated in accordance with the generally accepted accounting principles (i.e. GAAP) and in the manner as may be prescribed.
- ❖ If any proceeding has been instituted against the taxable person under the earlier law, either before or after the appointed day, with regard to the admissibility of ITC then it shall be recovered as an arrear of tax under GST
- ❖ Under the CGST law “Eligible duties and taxes” in respect of units held in stock, etc on the appointed day, means –
 - ✓ Excise duty specified in the First & Second Schedule to The Central Excise Tariff Act, 1985;
 - ✓ Additional duty of excise leviable under section 3 of the:
 - Additional Duties of Excise (Textile and Textile Articles) Act, 1978, and

- Additional Duties of Excise (Goods of Special Importance) Act, 1957;
- ✓ the National Calamity Contingent Duty leviable under section 136 of the Finance Act, 2001;
- ✓ the additional duty leviable under:
 - section 3(1) of the Customs Tariff Act, 1975;
 - section 3(5) of the Customs Tariff Act, 1975;
- ✓ the service tax leviable under section 66B of the Finance Act, 1994;

6. Credit of 'eligible duties and taxes' / ITC on inputs held in stock to be allowed to a taxable person switching over from composition scheme [section 146]:

- ❖ A "composition taxpayer" under earlier law shall be entitled to take ITC on stock of inputs and on semi-finished or finished goods held in stock on the appointed date subject to the following conditions:
 - ✓ such inputs and / or goods are used or intended to be used for making taxable supply;
 - ✓ he was eligible for CENVAT credit/ITC on receipt of such inputs and/or goods if he had been liable for registration under the earlier law or if such goods had been taxable under the earlier law;
 - ✓ the said person is not under composition scheme in GST (Section 8);
 - ✓ he is eligible for ITC in GST;
 - ✓ he is in possession of invoice and/or other prescribed documents evidencing payment of duty / tax under the earlier law in respect of such stock, semi-finished or finished goods; and
 - ✓ such invoices and /or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day.
- ❖ The amount of credit shall be calculated in accordance with generally accepted accounting principles in such manner as may be prescribed.
- ❖ The amount taken as credit as above shall be recovered as an arrear of tax under this Act from the taxable person if the said amount is found to be recoverable as a result of any proceeding instituted, whether before or after the appointed day, against such person under the earlier law.

7. Amount payable in the event of a taxable person switching over to composition scheme [Section 147]:

- ❖ If a taxable person, who has carried forward eligible credit in the last return furnished under the earlier law to GST, switches over to composition scheme in GST, he shall pay an amount equivalent to the credit of input tax in respect of inputs held in stock, etc by debiting his electronic credit ledger/ cash ledger.
- ❖ The balance of ITC, if any, lying in his electronic credit ledger after making good the above payment shall lapse.

8. Exempted goods returned to the place of business on or after the appointed day [Section 148]:

- ❖ If goods exempt from duty/tax under the earlier laws (*dispatched within 6 months prior to the appointed day*) are returned to any place of business within 6 months from the appointed day, **no tax** shall be payable while returning them on the condition that the goods are identifiable.
- ❖ If the said goods are taxable in GST and are returned after 6 months from the appointed day then tax shall be payable by the person returning those goods.

9. Duty/tax paid goods returned to the place of business on or after the appointed day [Section 149]:

- ❖ If duty/tax paid goods under earlier law (*dispatched within 6 months prior to the appointed day*) are returned to any place of business within 6 months from the appointed day, **no tax** shall be payable while returning them on the condition that the goods are identifiable.
- ❖ If the goods are taxable in GST and are returned after 6 months from the appointed day then tax shall be payable by the person returning those goods.

Moreover the taxable person who receives such returned goods can take credit of the duty/tax paid earlier at the time of removal.

10. Inputs removed for JOB WORK and returned on or after the appointed day [Section 150]:

- ❖ Where inputs received in a factory had been removed as such or after being partially processed to a job worker for further processing, testing etc., before the appointed day, then no tax shall be payable if it is returned to the factory after completion of job work within 6 months (or within the extended period of further 2 months).

Condition: Both the manufacturer and the job worker has declared the details of the inputs held in stock by the job worker on the appointed day as per the rules.

- ❖ If such inputs are returned after the stipulated period and are taxable in GST then, tax shall be payable by the job worker.
- ❖ Further, if such goods are taxable in GST and are not returned within the stipulated period then tax shall be payable by the manufacturer.

11. Semi-finished goods removed for job work and returned on or after the appointed day [Section 151]:

- ❖ Where semi-finished goods that had been removed from factory for further manufacturing processes to any other premises before the appointed day are returned after completion of such process within 6 months (or within the extended period of further 2 months) from the appointed day then **no tax** shall be payable thereon.

Condition: Both the manufacturer and the job worker has declared the details of the inputs held in stock by the job worker on the appointed day as per the rules.

- ❖ If such goods are returned after the stipulated period and are taxable in GST then, tax shall be payable by the job worker;
- ❖ Further, if such goods are taxable in GST and are not returned within the stipulated period then tax shall be payable by the manufacturer;

- ❖ A manufacturer may in accordance with the provision of earlier law transfer the said goods to the premises of any registered taxable person for the purpose of –

- ✓ making supply in India on payment of tax, or
- ✓ exports without payment of tax

Within 6 months (or the extended period) from the appointed day

12. Finished goods removed for carrying out certain processes and returned on or after the appointed day [section 152]:

- ❖ Where any *goods (*excisable goods manufactured in a factory for CGST law) removed/dispatched without payment of duty/tax to any other premises for testing or processing before the appointed day are returned to the factory/place of business within 6 months (or extended period of further two months), from the appointed day, then notax shall be payable thereon.

- ❖ Tax shall be payable by the person returning those goods if such goods are returned after the stipulated period and are taxable in GST.

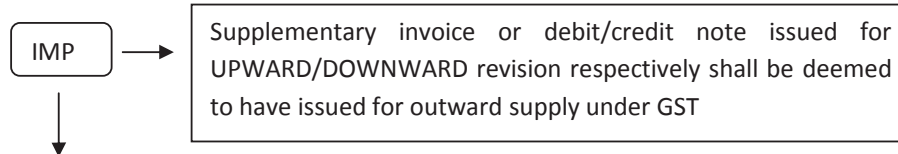
- ❖ A manufacturer (or person dispatching the goods in SGST law) may in accordance with the provision of earlier law transfer the said goods to the premises of any registered taxable person for the purpose of –

- ✓ making supply in India on payment of tax, or
- ✓ exports without payment of tax

Within 6 months (or the extended period) from the appointed day

13. Issue of supplementary invoices, debit or credit notes where price is revised in pursuance of a contract [Section 153]:

- ❖ As a result of any earlier contract entered into prior to the appointed day, the price of any goods and/or service is revised upward or downward, on or after the appointed day, the taxable person who removed/sold or provided such goods and/or service may issue to the recipient a supplementary invoice or debit/credit note as applicable within 30 days of such price revision.



The taxable person can reduce his tax liability for DOWNWARD price revision & for which a supplementary invoice or credit note has been issued **only** if the recipient of the said invoice or credit note has reduced his ITC corresponding to such reduction of tax liability.

14. Pending refund claims to be disposed of under earlier law[154]:

- ❖ Every claim of refund of duty/tax and interest, if any, filed before the appointed day shall be disposed of as per the provisions of the earlier law. If any amount accrues for refund –

CGST → It shall be paid in cash notwithstanding anything to the contrary contained in the provisions of earlier law other than section 11B(2) of the Central Excise Act, 1944.

SGST → It shall be refunded in accordance with the provisions of the earlier law

- ❖ Where any claim for refund is fully or partially rejected, the amount so rejected shall lapse.

15. Claim of CENVAT credit / ITC to be disposed of under the earlier law [Section 155]:

- ❖ The appeal, revision, review and reference relating to claim or recovery of CENVAT credit / ITC, initiated before the appointed day, shall be disposed of as per the provisions of the earlier law.

Check the caveat for refund under CGST	If claim is found admissible	:	Cash refund to be made under the earlier law
	If found recoverable	:	To be recovered as an arrear of tax in GST

& the amount so refunded/recovered shall not be admissible as ITC in GST.

16. Finalization of proceedings relating to output duty liability [Section 156]:

- ❖ The appeal, revision, review and reference relating to any output duty/output tax, liability, initiated before the appointed day, shall be disposed of as per the provisions of the earlier law.

Check the caveat for refund under CGST	If found admissible	:	Cash refund to be made under the earlier law
	If found recoverable	:	To be recovered as an arrear of tax in GST

& the amount so refunded/recovered shall not be admissible as ITC in GST.

17. Treatment of the amount recovered or refunded in pursuance of assessment or adjudication proceedings [Section 157]:

- ❖ Any amount of tax, interest, fine or penalty found recoverable on any assessment or adjudication under the earlier law, instituted before or after the appointed day, would be recovered as an arrear of tax in GST. And, in case it is found admissible to the claimant it shall be refunded (*CGST - cash refund & SGST - as per the provisions of the earlier law*).

IMP

→ The amount recovered, if any, shall not be admissible as ITC in GST.

↘ Refund under CGST law shall be made notwithstanding anything to the contrary contained in the provisions of earlier law other than section 11B of the Central Excise Act, 1944.

18. Treatment of the amount recovered or refunded pursuant to revision of returns [Section 158]:

- ❖ If any amount becomes recoverable due to the filing of a revised return relating to the earlier law then such an amount shall be recovered as an arrear of tax under this Act. And, in case it is found refundable to the taxable person then it shall be refunded (*CGST - cash refund & SGST - as per the provisions of the earlier law*).

IMP

Amount recovered, if any, shall not be admissible as ITC in GST.

19. Treatment of long term construction / works contracts [Section 159]:

- ❖ In pursuance to a contract entered into before the appointed day, if any goods and/or services are supplied on or after the appointed day then tax shall be payable on it in GST.

20. Progressive or periodic supply of goods or services [Section 160]:

- ❖ Where consideration for supply of goods and/or services has been received prior to the appointed day & duty/tax has already been paid as per the earlier law, then **no tax** shall be payable on supply of it made on or after the appointed day.

This provision overrides the provisions of section 12 and section 13 (i.e. provisions relating to time of supply of goods and time of supply of services).

21. Treatment of retention payments [Section 161]:

- ❖ **No tax** shall be payable on part consideration received, on or after the appointed day, in respect supply of goods and /or services made before the appointed day where full duty/tax has already been paid under earlier law in respect of the said supply.

This provision overrides the provisions of section 12 and section 13 (i.e. provisions relating to time of supply of goods and time of supply of services).

22. Credit distribution of service tax by ISD [Section 162, for CGST Act only]:

- ❖ The ITC on any services received prior to the appointed day by an Input Service Distributor (ISD) shall be eligible for distribution as credit in GST even if the invoice(s) relating to such services is received on or after the appointed day.

This provision overrides any provision(s) of the GST Act which runs contrary to it.

23. Tax paid on goods lying with agents to be allowed as credit [Section 162A, for SGST Act only]:

- ❖ An agent shall be entitled to take credit of the tax paid on goods belonging to the principal and lying at his premises on the appointed day subject to the following conditions:-

- ✓ the agent is a registered taxable person in GST;

*in a
prescribe

- ✓ both the principal and the agent *declare the details of stock of goods lying with such agent on the date immediately preceding the appointed day;

- ✓ the invoices for such goods had been issued not earlier than 12 months prior to the appointed day; and

- ✓ the principal has either not availed of the ITC in respect of such goods or has reversed it.

24. Tax paid on capital goods lying with agents to be allowed as credit [Section 162B, for SGST Act only]:

- ❖ An agent shall be entitled to take credit of the tax paid on capital goods belonging to the principal and lying at his premises on the appointed day subject to the following conditions:-

- ✓ the agent is a registered taxable person in GST;

* in a
prescribed

- ✓ both the principal and the agent *declare the details of stock of capital goods lying with the agent on the date immediately preceding the appointed day;

- ✓ the invoices for such capital goods had been issued not earlier than 12 months prior to the appointed day; and

- ✓ the principal has either not availed of the ITC in respect of such capital goods or has reversed it.

25. Treatment of branch transfers [Section 162C, for SGST Act only]:

- ❖ Any amount of ITC reversed (*i.e. under VAT*) prior to the appointed day for branch transfers shall not be admissible as credit as ITC in GST.

This provision overrides any provision(s) of the GST Act which runs contrary to it



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26. Goods sent on approval basis returned on or after the appointed day [Section 162D, for SGST Act only]:

- ❖ Where any goods sent on approval basis, not earlier than 6 months before the appointed day, are rejected or not approved by the buyer and are returned to the seller within 6 months from the appointed day (or within the extended period of further two months) then no tax shall be payable by him.
- ❖ If the goods are taxable in GST and are returned after the stipulated period stated above then tax shall be payable by the person returning those goods.
- ❖ Further, if such goods are not returned within the stipulated time as stated, then tax shall be payable in GST by the person who sent the goods on approval basis.

27. Deduction of tax at source (TDS) [section 162E, for SGST Act only]:

- ❖ TDS shall not be deducted at the time of payment by the deductor in GST (relevant section is section 37) for any sale of goods made by a supplier before the appointed day & for which invoice has also been issued by him before the appointed day.

Even if TDS was deductible under the earlier law.

21. Miscellaneous Provisions

Generally, while drafting any law, provisions made through various sections are grouped under one subject matter commonly called as chapters. A chapter deals with a particular subject matter. Relevant sections and subsections are provided under that chapter. However, there are certain provisions unique in nature and are single but equally important. Such provisions are grouped generally under one Chapter-Miscellaneous provision

In Model GST Law, provisions relating to following matters are provided in chapter XXIII – Miscellaneous Provisions.

1. GST Compliance Rating.
2. Information return.
3. Power to collect statistics & its disclosure.
4. Test purchase of goods.
5. Drawl of Samples.
6. Burden of proof.
7. GST Authorities to be Public Servants.
8. Indemnity.
9. Disclosure of information by public servants.
10. Publication of certain information.
11. Assessment proceedings not to be invalid on certain grounds.
12. Rectification of mistakes & errors.
13. Bar on Jurisdiction of Civil Courts.
14. Levy of Fees.
15. Power of Central/State Government to make rules.
16. Power to make regulations.
17. Delegation of powers.
18. Instructions to GST Officers.
19. Removal of difficulties.
20. Service of Notice.
21. Rounding off tax
22. Effect of Amendments of Rules, Notification, Orders, etc.
23. Publication of Rules, Notifications and layingof Rules before Parliament or State Legislature.

Similarly, miscellaneous provisions in Model IGST Act are provided in chapter IX. This chapter deals with –

1. Application of certain provisions of the Central GST Act in IGST Act
2. Power to make rules
3. Interest on delayed payment of tax
4. Wrong collection and deposition of IGST

Now let's discuss the miscellaneous provisions in Model GST Law and Model IGST Law -

A. Miscellaneous Provisions in Model GST Law:

1. Compliance Rating :

The new concept of "Compliance Rating" would be introduced in GST Act. Section 116 of Model GST Law provides that there will be compliance rating of each tax payer based on his compliances with provisions of the Act. This rating will be updated periodically and published in public domain. Exact parameters of this rating will be provided in the rules.

GSTN may be given the responsibility of deciding rating based on parameters, its periodic updating and publication of updated list. High rated taxable person may get certain privileges. Whereas, as the rating will be made public, lower rated taxable person may lose his credibility. Intention of concept of "Compliance Rating" is to create healthy competition amongst taxable persons.

2. Information return :

In GST, every taxable person would be required to file monthly returns. Only in cases, where he has opted for compounding scheme, return filing periodicity will be quarterly. Section 45 of Model GST Act provides for scrutiny of returns and section 49 provides for audit. The sole purpose of scrutiny or audit is to ascertain the appropriate tax liability and to verify the correctness of self-assessed tax admitted in return by the tax-payer. To achieve the purpose of ascertaining the appropriate tax, outside information of tax-payer lying with other authorities or agencies has always proved to be of immense help. The section 117 of Model GST Law provides for filing of "Information Returns" by a taxable person, certain Government / Semi-Government authorities, banks and other agencies. Particularly State VAT authorities, Central excise / service tax authorities, Income tax authorities, banking companies, RBI, stock exchanges, GSTN, etc. will be required to file information returns as per the periodicity and in the format provided in the rules. Such practice is prevalent in administration of many taxation acts. E.g. Income Tax Department ask for annual information return (Form No. 61A) from banks, non-banking financial companies, Post-masters etc. Information received from various such agencies can be used for selection of cases for audit and can further be useful for assessment of appropriate tax due from a tax-payer.

3. Power to collect statistics and its disclosure) :

For proper administration of taxation laws, hands on information of related statistics should be available with tax-administration. The section 119 of Model GST Law empowers Board or Commissioner administering Central GST, Integrated GST or State GST laws, to collect statistics from various agencies, organisations, persons, etc.

The Board or Commissioner shall first notify the matters for which collection of statistics is required to be done. The Formats, particulars and the interval of furnishing such statistics to Board or Commissioner would be provided in the rules.

The section 120 of Model GST Law provides for certain restrictions on Board / Commissioners regarding disclosure of information collected under section 119. Board or Commissioner is barred from disclosure of any information related to any person or taxable person without his consent. This restriction is of prime importance because the information provided may contain such particulars which when made public, may cause harm to his business. Information provided to tax authority can be regarded as provided in fiduciary relationship and hence require trust and confidence. To protect this trust and confidence of the information provider, Board or Commissioner is barred to disclose the information without his consent. Further, the section provides for limited access of such information to tax-administering authorities and goes ahead to provide for fine and imprisonment for wilful disclosure of such information. However, in the public interest or for many other reasons, sometimes it is required by the tax administrators to disclose trend of any particular business, analysis of certain trade and industry with respect to growth, revenue collection etc. Hence, the section also carves out exceptions to disclose the statistics of class of tax-payers or class of transactions.

4. Test Purchase of goods and drawl of Samples

GST is an account based taxation system. A periodic return, based on records of inward and outward supply, is required to be filled by each taxpayer. This return is treated as self-assessment as per section 44 of Model GST Law. Thus self – assessment of tax and further audit, assessment, revision etc. entirely relies on accurate recording of tax-invoices in the accounts. A test-check of this recording is envisaged in GST to increase tax-compliance by taxpayer. Section 121 provides for test-purchase of goods by tax-authorities. This will help tax-authorities to check if tax-payer is involved in practice of under invoicing or not accounting of invoices in the books of accounts, etc. This power is a great deterrent and as a result, issue and recording of correct tax invoices would be encouraged. Tax authority will get the refund of test-purchases after goods are returned back & invoice is cancelled.

Similarly, while assessing the appropriate tax due, disputes regarding classification of commodities are bound to happen as tax authorities always tend to interpret of commodities for higher rate of tax and tax-payer claims it at lower rate. This needs further analysis and authentication by experts. e.g. in VAT Act, Medicines are taxed at lower rate but certain chemicals are taxed at higher rate. Sometimes there are disputes if certain product is medicine or not. This requires expert's opinion. So to send samples of commodities for further analysis and opinion by experts, drawl of samples is required. Section 122 of Model GST Law allows tax authority for this drawl of samples.

5. Burden of proof:

It is a general rule in direct taxes statutes that for levy of tax, onus is on tax-authority, whereas, for exemption from tax or for claim of deduction from taxable turnover, onus is always on the claimant tax-payer. Same principle is followed in Model GST Law and section 123 speaks about the issue.

6. GST authorities to be Public Servants:

Section 21 of Indian Penal Code, 1860 describes the person to be Public Servants. One of the clauses under this section reads as –

Every officer whose duty it is as such officer, to take, receive, keep or expend any property on behalf of the Government, or to make any survey, assessment or contract on behalf of the Government, or to execute any revenue process, or to investigate, or to report, on any matter affecting the pecuniary interests of the Government, or to make authenticate or keep any document relating to the pecuniary interests of the Government, or to prevent the infraction of any law for the protection of the pecuniary interests of the Government;

All persons discharging functions under Model GST Law can well be covered under above description and thus are public servants.

7. Indemnity:

All persons discharging their functions under Model GST Law would be Public Servants. While discharging quasi-judicial functions and implementing the Act, GST authorities would be required to take decisions. So Section 125 of Model GST Law provides for certain immunity to the authorities for properly carrying out the purposes of the Act. No legal proceedings against GST authority is allowed, if he has acted in good-faith. Good faith here means any act done not prejudicially but with the intention to administer the Act and to protect the revenue. E.g. If names of Directors of a defaulter company are published in public domain, the directors cannot file a defamation suit against tax-authorities.

8. Disclosure of Information:

Every tax-payer, TDS collector, ISD etc. is required to furnish return under the Act. Some Govt. or semi authorities, agencies, banks etc. are also required to furnish information return under the Act. Moreover, Board or Commissioner are empowered to collect statistics under the Act. This information of various persons from various agencies is available with GST authorities and this information is supplied in accordance with or under any proceedings of the Act. As this information is of personal nature and its disclosure can hamper the business interest, it is treated as

confidential under section 126 of Model GST Law. This section also bars courts to ask for production or give evidence with respect to this information.

But disclosure of above information is required in some situations which are carved out to be exception for such disclosure.

e.g.(i) Disclosure to court or Tribunal where hearing of dispute arising out of any proceeding under the Act is going on,

(ii) Disclosure to enquiry officer conducting enquiry of GST Officer,

(iii) Disclosure to authorities taking disciplinary action against a CA or a Advocate, etc.

Also, fine and Imprisonment is provided for wilful disclosure of information by any GST officer.

9. **Publication of Information of persons in certain cases:**

Section 127 of Model GST Law provides for judicial discretion to the competent authority for disclosure of information of persons. Many times, it is demand of the situation to use “Naming and Shaming” Concept. This technique is widely used by banks to recover its dues from defaulters. Name of directors/ partners of the firms are published in newspaper by bank. Apparently, same concept is adopted in Model GST Law. Thus names and information of frequent defaulters, tax evaders, persons involved in issuing of fake invoices, etc. can be placed in public domain. This facilitates recovery of arrears from defaulters and also discourages other persons to get involved in such activities.

10. **Assessment proceedings not be invalid on certain grounds:**

Section 128 of Model GST Law provides immunity to the authority so that mere technical or inadvertent mistakes do not result the proceeding to be bad in law. Similar provisions are available in almost all VAT Acts.

Examples –

If a tax-payer has responded to a notice served in any earlier case, now he cannot question service of notice in similar manner. Further, mentioning of wrong section in the notice or order does not vitiate the action unless substantial right of the assessee is affected.

Hon. Bombay High Court in the case of M/s. Clip Nail Care (STR 4 of 2009) held that though service of notice is in the name of firm and not in the name of proprietor, notice can be treated as properly served.

11. **Rectification of mistakes apparent from the record:**

Section 129 of Model GST Law provides that simple calculations mistakes, errors or mistakes apparent from record can be rectified within 6 months. These corrective

measures are available for tax—payer as well as tax-authorities. But the principle of natural justice is to be followed by tax-authorities if such rectification is adversely affecting any person. Any decision, order, summons, notice, certificate or any other document issued by a authority can be rectified by the same authority. But change in application of mind, conscious decisions taken earlier cannot be affected or changed subsequently under rectification.

12. Bar on jurisdiction of Civil Courts:

Except appeal to High Court and appeal to Supreme Court, section 130 of Model GST Law puts a bar to civil courts to decide the issues under GST Law.

13. Levy of fees:

Section 131 provides for levy of fees for copy of any order or document. The exact fees will be provided in the rules.

14. Power to make rules:

Section 132 of Model GST Law empowers State or Central Government to make rules on the recommendation of the GST Council. Government can give retrospective effect to these rules and also includes power to issue notifications. Penalty provided for breach of any rule is at Rs. 10,000 if it is not provided elsewhere.

Section 132 provides for general power to make rules with respect to any matter, but also provides specific subjects with respect to which rules can be made. Those 48 subjects includes registration, return, deemed registration, assessment and collection of tax, manner of recovery of dues, charging & payment of interest, refund, inspection and audit etc.

15. Power to make regulations :

Board or Commissioner is empowered to make regulations under section 132A of Model GST Law.

16. Delegation of powers:

Section 133 of Model GST Law provides for delegation of powers. Delegation of power must be exercised by notification in the Gazette along with conditions, if any.

17. Instruction to GST officers:

Section 134 of Model GST Law empowers the Board or Commissioner (competent authority) to issue order, instructions or direction to GST officers for the purpose of uniformity in implementation of the Act. Such orders, instruction or directions are generally issued through circulars. It is established fact that these circulars are

binding on lower authorities in the procedural part as far as implementation of Act is concerned. However, many courts have upheld that no such orders, instructions or directions are binding on lower authorities while interpreting provisions of law. Thus instructions, orders or directions by higher authorities are not binding while taking decisions in assessment or appeals. Section 134 of Model GST Law speaks the same. For proceedings such as assessment or appeal, the authorities have independent quasi-judicial powers.

18. Service of Notice:

Section 136 provides for manner for service of any decision, order, summons, notice etc. The procedural law for service of statutory notices, orders, summons etc. is generally derived from CPC (Civil Procedure Code, 1860). But the provision of section 136 in Model GST Law encompasses all types of conventional and modern methods of communications, so that any method of service should not be declared as invalid or illegal.

19. Rounding off tax:

Section 137 of Model GST Law provides that any amount of tax, interest, penalties, fines or any amount payable as well as any amount refundable should be rounded off to the nearest rupee.

20. Effect of amendments of Rules, Notifications or orders:

Provision of section 138 of Model GST Law are made to generally protect the position of law earlier to amendment unless the amendment is expressly retrospective.

21. Publication of Rules, Notifications, etc. and laying of Rules before Parliament or State Legislature:

Section 139 of Model GST Law says that all rules, notifications, etc. should be published in the Gazette and should be placed before Parliament or State Legislature as soon as possible. This section further says that if Parliament or State Legislature suggested any modifications or rejected the rule or notification, the effect of such modification or deletion will be prospective.

B. Miscellaneous Provisions in Model IGST Law:

1. Applications of certain provisions of CGST Act:

There are certain machinery provisions like registration, return, assessment, adjudication, recovery, audit etc. which are not incorporated in Model IGST Act. They are rather not required to be provided as the same can be imported from parent act

(CGST Act). Such provisions are mutatis-mutandis to parent act. Section 27 of Model IGST Act provides for such mutatis-mutandis provisions.

2. Power to make rules:

Section 28 of Model IGST Act empowers Central Government to make rules on recommendations of GST Council. The Section speaks about rules to be made for all matters of IGST and specifically that for settlement of cases under chapter VIII. Chapter VIII is regarding settlement of cases by National GST Settlement Commission. Section 28 of Model GST Law says that rules should be made to prescribe qualifications, eligibility conditions and manner of selection & appointment of Nation / State Chairman and members of Settlement Commission. Further, the section also requires to make rules to prescribe powers and functions of National and State Chairman of Settlement Commission and to prescribe form and manner of application for settlement of cases.

3. Interest on delayed payment of tax:

Section 29 of Model IGST Act is about provision for levy of interest in two contingencies.

- (i) Taxes not paid within time
- (ii) Dues accrued on account of wrong or excess Input Tax Credit.

4. Wrong collection and deposition of IGST:

If local supply is wrongly treated as inter-State supply by tax-payer and IGST is collected and deposited, then section 30 of Model IGST Act provides for refund of such IGST. This section further says that the refund will be granted as per provisions of section 38 of CGST Act (Refunds) after making payment of appropriate CGST & SGST.



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22. Overview of the IGST Act

Introduction

One of the distinctive features of Goods and Services Tax is that it is levied on the value addition on each stage of supply chain. This is achieved by allowing input tax credit (ITC) of tax incidence on the immediately preceding stage of supply chain. Illustratively, the tax paid by manufacturer supplier is available as ITC to whole seller. The tax paid by the whole seller is available as ITC to retailer. Thus it is essential to maintain integrity of ITC chain in GST regime.

In the case of interstate supplies, the supplier and recipient are located in different states. In the present scheme of taxation, Central Sales Tax (CST) is levied on inter-state sale of goods which is an origin-based tax accruing to the exporting State. GST will be a destination based tax levied on both intra-state and inter-state supply of goods or services. For inter-state supplies, although the tax would be paid in exporting State, the same has to reach the importing State. It may not be feasible to do so by levying SGST in the exporting state. The Integrated GST (IGST) model is essentially evolved to ensure availability of the input tax credit of tax paid by the taxpayer in exporting State, on inter-state supply, to the taxpayer in the importing State.

The Scope

The IGST Act envisages that Centre would levy IGST on all inter-State transactions of taxable goods and services with appropriate provision for consignment or stock transfer of goods and services.

For the purposes of this levy, the interstate supply has been specified as the one in respect of which the location of supplier and the place of supply are located in two different states (**Section 3 of the IGST Act**). In the situation where the state of location of supplier is the same as the state where place of supply falls, such supplies are to be treated as inter-state supplies (**Section 3A of the IGST Act**).

Illustratively

S. No.	Location of supplier	Place of supply	Nature of supply
1	Haryana	U.P.	Interstate
2	Haryana	Haryana	Intrastate

It may be seen that the location of service recipient is not the determining factor. Essentially the nature of supply is governed by the Place of Supply. Therefore, in the context of the IGST Act, the most significant factor is the place of supply, which is

elaborated in **section 5 and section 6 of the Act**. Section 5 deals with the place of supply of goods, while section 6 deals with the place of supply of services.

The Place of supply of goods and services have been discussed in details in the next section, as it requires extensive deliberation for proper appreciation.

Once the supply is determined as Inter-state, the subsequent business process like payment, return etc are to be complied with by the taxpayer in the manner similar to compliance in CGST Act. For this purpose, the IGST Act, borrows a large number of provisions from the CGST Act. This is for the reason the nature of tax is same, i.e. it is levied on the supply of goods and service. The requirement of registration, payment, return, compliance verification, dispute settlement are akin to CGST, depending upon the business process. The only distinction being that tax even are distinct, i.e. inter-state supplies. The provisions from CGST that have application to IGST Act are as follows,-

- Registration
- Valuation.
- Time of supply of goods and services
- Change in rate of tax of services
- Exemption
- Input tax credit and utilisation thereof
- Payment of Tax
- Furnishing of return
- Audit
- Assessment
- Adjudication
- Demands
- Refunds
- Interest
- Recovery of tax
- Offence and penalties
- Inspection
- Search and seizure
- Prosecution and power of arrest
- Appeal
- Review
- Advance Ruling
- Compounding
- Recovery of tax

The charge of tax, manner of payment, settlement and apportionment

The inter-State seller will pay IGST on value addition after adjusting available credit of IGST, CGST, and SGST, in that order, 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. Further the IGST amount used for payment of CGST shall be transferred from IGST account to the CGST account.

The requirement of transfer of ITC under **section 9 of the Act** are illustrated below:

Category	Transfer of credit
M/s X uses Rs 100 ITC-IGST for payment of SGST in M. P.	Centre transfers Rs 100 to SGST account of M.P from the IGST collection
Mr X also uses Rs 100 ITC_IGST for payment of CGST	Centre transfers Rs 100 to CGST account from the IGST collection

Similar settlement/transfer has been envisaged in SGST and CGST Act when the ITC of SGST and ITC of CGST respectively is used for payment of IGST.

This settlement/transfer between the state and the Centre could be netted out for all interstate supplies during the period of settlement. In other words, for a particular state the settlement amount will be based on whether the state is net exporter or net importer during the period of settlement. The relevant information will also be 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. However, the detailed modalities in this regard are yet to be worked out,

Basic Features of IGST assessment, compliance and settlement

- The system of self-assessment of tax liability and availability of input tax credit (ITC), if the buyer has received goods and services and if he is in possession of valid invoice, would apply equally to IGST.
- The supplier will pay IGST on the interstate supplies. The IGST payment can be done utilising ITC. 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_IGST is exhausted, the ITC of CGST shall be used for payment of IGST.
 - If both ITC_IGST and ITC_CGST are exhausted, then only the dealer would be permitted to use ITC_SGST for payment of IGST.
 - Renaming IGST liability shall be discharged using payment in cash.

- GST System will ensure maintenance of this hierarchy for payment of IGST using the credit.
- Taxpayer will upload their specified supply invoice details by 10th of the following month.
- The purchase statements would get auto populated from such supply details.
- The purchaser would be allowed to add any purchase details corresponding supply details of which have not been uploaded by the counterparty supplier.
- The supply and purchase details would be finalized by 17th of the following month.
- In case of mismatch of supply and purchase invoices, ITC would be required to be reversed after two tax periods.
- There will be system based verification of returns on monthly basis wherein invoice details filed by the supplier and those of the purchaser will be matched for verifying ITC claimed by the purchaser.
- Once the sales and purchase invoice are matched, the recipient dealer would become entitled to the ITC (including ITC of IGST) of GST paid by the dealer.
- The recipient dealer shall be able to utilise IGST credit in the manner as mentioned above (point No. 2).
- 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_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_IGST used by a dealer for payment of SGST on intra state supplies.
- The settlement would be 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.

Illustration

Supplier 'X' State 'A' makes supply to a dealer 'Y' in State 'B':

Value of supply= Rs 2000

IGST rate=20%

IGST liability on such supply is Rs 400.

Let us assume that opening balance of credit available with seller in the books of account is as under:

ITC_IGST = Rs. 100, ITC_CGST = Rs. 50 and ITC_SGST Rs. 100.

Accordingly, the IGST liability of the seller would be discharged in the following manner:

Table-I

i	IGST payable	400
ii	Paid through ITC_IGST	100
iii	Paid through ITC_CGST	50
iv	Paid through ITC_SGST	100
v	IGST payable in cash = i-(ii+iii+iv)	150

Utilisation of IT-SGST for payment of IGST is allowed as dealer has exhausted ITC of IGST and CGST

The exporting State (A in the above case) will transfer to Centre the credit of SGST used (see entry at iv in the above Table) in payment of IGST.

The receiver 'Y' in State 'B' can claim the credit of IGST while discharging the output tax liability in his own State. In case the 'Y' sells the goods within State of 'B', such sale would be liable to CGST and SGST. However, he can utilise the credit of IGST for discharging his CGST and SGST liabilities subject to rules as stated above.

Let us assume that 'Y' uses inputs acquired from 'X' for manufacture of goods in State 'B' and sells the entire goods so manufactured in State 'B'

Suppose tax liability of 'Y' is as follows:

Output tax liability of SGST = Rs 1,000

Output tax liability of CGST=Rs 1000

Let us assume that the opening balance of credit available with 'Y' , before acquisition of supply from 'X' is as under:

IGST = Rs. 250; CGST = Rs. 500 and SGST = Rs. 300.

The credit of IGST availed on purchase of goods from 'X' is Rs. 400. Thus, total IGST credit available now will be Rs. 650.

Manner in which 'Y' would pay GST liability

[Payment of CGST liability by Y']

Table-II

CGST payable	1000
Paid through ITC_CGST credit	500
Paid through ITC_IGST credit	500
CGST payable in cash	0

[Payment of SGST by Y]

Table-III

(i)	SGST payable	1,000
(ii)	Paid through ITC_SGST credit	300
(iii)	Paid through ITC_IGST credit	150
(iv)	SGST payable in cash	550

Utilisation of IT-IGST for payment of SGST is allowed as dealer has exhausted ITC of SGST

In this case Centre will transfer to the State 'B' the credit of IGST used in payment of SGST, i.e. Rs 150 [S. No. (iii) in Table III refers].

This illustration shows calculations for one dealer each in State "A" and State "B". However, in a state there would be a large number of dealers. Some of these may acquire interstate supplies, some may be supplier of interstate supplies, and some may be doing both. Thus adjustment between Centre and the concerned state has to be worked out on net basis for all dealers in a state.

Apportionment of tax to Centre and State in certain cases [Sec 10]:

In case of B2B transaction where the recipient of supplies takes ITC of IGST paid on input supplies, the tax collected on such input supplies is revenue neutral and therefore there is no requirement of apportioning the tax. Only where there is a cross utilisation of such ITC of IGST there arises a need of transfer of amount to State or CGST account equal to the amount so cross utilised, as discussed in details above.

However, B2C transactions are distinct. These are not the revenue neutral transaction. The tax paid on B2C transaction is a real revenue at consumption point for the consuming state. Similarly, even in case of B2B supplies that are not eligible as inputs for availing ITC or where the recipient business is not able to avail ITC are akin to B2C transaction in so far as revenue accrual to a consuming state is concerned. Section 10 provides for apportionment of tax amount to respective government in such cases.

The manner of apportionment has been prescribed as follows,

- Apportion CGST equivalent involved in B2C domestic supply and imports to Central Government
- Apportion CGST equivalent involved in B2B supplies domestic supply and imports on which ITC not eligible or not taken to Central Government
- Balance amount shall be apportioned to the State in which place of supply is located in terms of section 5 and section 6 of the Act
- The above provision would *mutatis mutandis* apply to interest and penalty.

Essential requirements for IGST Transfer and apportioning of residual IGST/IGST paid on B2C supplies :

Taxpayer is required to file a Valid return filed within prescribed date containing the following information:

- Final supply and purchase statements; and
- ITC utilised (which will be as per the hierarchy as mentioned above for utilising the ITC for payment of IGST and as the case may be for payment of SGST) and additional tax liability arising from the settlement of the returns of the previous tax period.
- Short filing of the return i.e. filing of return without payment or less payment of the tax liability accepted therein will be allowed but the same will be considered as invalid return for the purpose of matching of ITC and IGST fund settlement.
- Return information validation such as ITC information, i.e., ITC taken, utilisation, rate of tax etc would be done by the system.
- Settlement amount between the centre (GOI) and states would be computed by the settlement agency using the above information in the manner as may be prescribed.

Requirements with respect to Registration, Returns and Payments

- There will be Uniform e-Registration both for Centre and State Tax Authorities.
- Taxpayer would be required to file a Common e-Return for various taxes to be paid under the GTS regime i.e. CGST, SGST, IGST and Additional Tax.
- Regular dealers would be required to file monthly returns by the 20th of the succeeding month. The casual dealers would be required to file return for the period co-terminus with their validity period of registration. If the registration period exceeds one month then they would be required to file return for the month and another return for the remaining period of registration would have to be filed.
- Processes concerning requirements of filing Supply and Purchase statements (Invoice Level) in the Return; Mention of HSN Code at invoice level and its capture in the Return; revision of returns; matching of input tax credit and determination of tax liability to be same as described in the general Return Process.

Transfer Mechanism between GOI and States

- Settlement between GOI and State Government of the buying dealer would not be dependent on the settlement between State Government of selling dealer and GOI.

- State Government of the selling Dealer to transfer SGST credit used (for payment of IGST) to GOI. Filing of valid return with full supply and purchase statement by selling Dealer to trigger transfer of SGST credit (claimed and utilized by him for payment of IGST) to GOI.
- GOI to transfer IGST credit used by buying Dealer (for payment of SGST) to the concerned State. Filing of valid return with full supply and purchase statement by buying Dealer to trigger transfer of IGST credit (claimed and utilized by him for payment of SGST) to the concerned State.
- All Govt. Departments / persons dealing in non-GST goods / exempted goods or services making inter-State purchases, would be given Departmental Ids by the State governments, which would be quoted by suppliers in invoices for inter-State B2C supplies. SGST portion of IGST paid in respect of such supplies would be transferred by GOI to the concerned State.
- Inter-Government settlement should be completed within last day of the month subsequent to the tax period.

Other Provisions in the IGST Act

Section 7 of the IGST Act, deals with the following aspect of the levy,-

- I. Self assessment of tax and other dues-discharge thereof
- II. Payment of tax by net banking, Card, RTGS etc
- III. Electronic cash ledger- Maintenance/usage/conditions
- IV. Electronic credit ledger- Maintenance/usage/conditions
- V. Hierarchy of utilisation of ITC of IGST, CGST and SGST

The hierarchy of utilisation of ITCs have been discussed in details in the above paragraphs. The other process enumerated above are akin to CGST Act and details thereof is available in the respective presentation and papers. Therefore, these are not being discussed further in this paper.

Section 8 of the IGST Act deals with the claim of input tax credit, provisional acceptance, matching, reversal and reclaim thereof. The business process is exactly same as that for CGST and provision of section 29 of the CGST Act apply mutatis mutandis

Section 28 of the IGST Act provides for power for making rules.

Section 30 prescribes that if a taxpayer wrongly pays IGST on a supply that is held as intra-state supplies, and accordingly is required to pay CGST and SGST, then in such case the refund of IGST that has wrongly been paid by the taxpayer shall be allowed only after he has paid CGST and SGST on such supplies.

Section 31 prescribes that IGST shall apply to all interstate and import of supplies after the date the IGST Act comes into effect. However, it may so happen that in the earlier regime, a tax may have been levied, particularly in respect of services, under the Finance Act, 1994, for the reason that invoice was issued in advance, or payment was made in

advance though actual supply made after GST coming into effect. In such case if IGST is levied again it would be double taxation. Therefore, to obviate such hardship to taxpayer, section 31 provides that only the balance amount of tax remaining unpaid. If entire liability under the previous regime had been discharged in the earlier regime no tax shall be payable in IGST regime.

Settlement of Cases

Chapter VII, section 11 to section 26 deals with the Settlement of cases. These provisions have been covered in in other paper and respective presentation. Therefore, not being discussed in detail here.



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23. Place of Supply of Goods and Service

The need for the Place of Supply of Service and Goods under GST

Goods and Services Tax (GST) is levied on the taxable supplies of goods and services. The principle that is generally adopted for levy 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. Goods being tangible do not pose any significant problems for determination of their consumption. The only challenge thus in case of goods is the manner of taxation so as to avoid any double/multiple taxation or no taxation, and accrual of tax thereon to the consuming state, particularly if it is a supply at the end of the supply chain and meant for consumption of end consumer. Of-course, e-commerce based trading of goods would throw challenges for the tax administration.

2. Place of Supply of Goods is required to determine whether a supply is subject to SGST in a given State. These provisions determine the place i.e. taxable jurisdiction where the tax should reach. Rules for supply of goods are primarily based on the physical location of the goods, though there are exceptions to the rule. For goods to be taxed in a State, it must be at some stage be located in the State concerned.

3. While in respect of supply of goods it may not be difficult to determine tax jurisdiction, based on consumption thereof, and therefore taxation of supply of goods under the GST regime may be relatively easier. However, taxation of inter-state/international services is extremely complex issue and internationally even the highly developed tax administration is struggling for effective taxation thereof. In India taxation of services is relatively new phenomenon and states do not have any experience in handling taxation thereof.

4. The major challenge as regards taxation of services, under GST regime in a federal setup, is that services being intangible in nature, it is not feasible to determine the exact place where services are acquired, enjoyed and consumed. For example interstate transport of passenger and goods, or the consultancy services, or the online database retrieval service or the intellectual property services pose such problems. The various elements involved in a transaction in services, like the (i) location of service provider (he may in fact be floating); (ii) the location of service receiver (which may not be readily ascertainable at time, for exp voucher sale of pre-paid cards, or in the case of online information service etc); (iii) the place where the activity takes place (say a movie theater, a restaurant, an interstate transport or international transport); (iv) the place where it is consumed (broadcasting service, roaming telecom service); and (v) the place/person to which actual benefit flows would in respect of the same transaction flow in different directions and thus lead to distinct physical locations. Some time 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 location 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.

Therefore the location where a service is consumed and accordingly to be taxed is difficult to determine.

5. The taxation of services becomes more complex if the following factors, to say a few, are also taken into account;

- (i) In respect of goods the supply chain is usually long and as result incremental value addition in each stage is small. Therefore, capturing the transaction in at least few of the points in the supply chain is not difficult and therefore, major portion of tax is assured. Further, there always remains a trail for audit/compliance verification or enforcement. However, in case of service value addition occurs in lesser number of stages, and therefore, missing even a link would result in wiping out of complete revenue.
- (ii) 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 were earlier required customer to go to the bank, now the customer could avail service from anywhere;
- (iii) 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;
- (iv) 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;
- (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.

Dual tax regime in a federal setup increases the enormity of this challenge many fold.

6. The beginning point/ first challenge is as regards the determination of the place of supply of services. Since, exact determination of place of supply of service/consumption thereof is not determinable, as discussed above, the same needs to be determined by applying proxies that determine the place to supply of service proximately. However,

while doing so, the tax administration needs to keep in mind the factors having bearing to tax administration and so also to the taxpayer, namely,

- certainty,
- simplicity,
- practicality,
- ease of collection of tax (compliance issue),
- competitive neutrality;
- implication to business decisions and
- overall fiscal objective.

7. Place of supply of services is required to be devised in a manner that the domestic supplier is not at a disadvantage (or advantage) as compared to foreign supplier and may be gets effective protection in internationally competed service. Exports are to be effectively zero rated.

8. The principles for determination of place of supply of goods are enumerated in section 5 of the IGST Act. These are as follows:

I. PLACE OF SUPPLY OF GOODS WHERE GOODS ARE REMOVED [SEC 5 (1)]:

- i. Removal is said to take place when goods are physically moved by transport or are dispatched.
- ii. This would cover Stock Transfer to branches also. Transfers to branches/consignment agents located within the State should not amount to supply of goods whereas transfers to branches located outside the State should be deemed to be supply of goods. This is because in case of inter-State branch transfer, though the goods are being transferred within the same legal entity they are getting transferred from branch with one registration number to another with a different registration number.

II PLACE OF SUPPLY OF GOODS WHERE GOODS ARE NOT REMOVED [Section 5(3)]

- i. This deals with such situation as supply of plant. This also deals with the situation where goods are supplied from a place other than supplier's premises. For example - A manufacturer having a factory in Delhi hires a machine from a company in Gurgaon, Haryana and at a later date decides to buy the machine, the place of supply is Delhi rather than Gurgaon.

III SUPPLY OF GOODS MADE ON THE DIRECTION OF THIRD PERSON [Sec 5 (2A)]

In case supply is made on behalf of third person, then the place of supply shall be the principal place of business of the third person.

IV. PLACE OF SUPPLY OF GOODS ASSEMBLED OR INSTALLED [Sec 5 (4)]

- i. The identifying element for application of this provision is installation or assembly either by the supplier or by somebody on his behalf as typically happens in case of installation of plant and machinery requiring expertise to make it operational. This applies even when the element of installation is not substantial.
- ii. This applies even if the contract for supply and installation of plant and machinery has been split into two contracts, one for supply of goods and one for supply of services of installation.
- iii. Where the supplier sends components separately and such supply of machinery is not a supply in completely knocked down condition i.e. such supply is distinct from the supply of finally assembled goods, then the place of supply of each of such component will be the place from where they are removed and the place of supply of the assembled goods will be the place where the goods are assembled. Input credit of taxes paid on components would be available for payment of taxes on supply of assembled goods.

V. PLACE OF SUPPLY OF GOODS ON BOARD A VESSEL, AIRCRAFT OR TRAIN [Sec 5(5)]

- i. When such goods are taken on board by the supplier to the carrier (say airlines), it will be taxable i.e. the supplier of goods shall charge the tax as applicable.
- ii. Further supply to the passengers is generally exempt when such supply is without any consideration.
- iii. Such supplies may be taxed when sale takes place on board and in such a situation the place of supply of goods is where the goods are taken on board. For example, food and beverages supplied on board after preparation on board (e.g. in a train), place of supply would be the place where the transport originated.

VI For other supplies of goods (not specified above), the lace of supply shall be specified by the Central Government on the recommendation of the GST Council [Sec 5 (6) of the IGST Act]

PLACE OF SUPPLY OF SERVICES [sec (6)]

I Place of supply of B 2B services- Default rule [Section 6(2)]

The place of supply of B2B services except the exception given below is the location the service recipient.

II Place of supply of B2C (Business to Customer) and B2G (Business to Government) services [Sec 5(3)]

It has prescribed that in default (other than the exceptions given below) the place of supply of service shall be the location of recipient where the address is available on

record. If the address is not on record, the place of supply of service shall be the location of service provider.

Exceptions to the general principle:

(i) Services having nexus to immovable property-Place of supply shall be location of immovable property [Section 6(4)].

Services relating to immovable property are not interdependent on the location of service provider or the service receiver. The place of supply of service provided by an engineer, architect, estate agent, interior decorator and surveyor is specified as location of such property.

For example: A Delhi based businessman wish to construct a school in Bhopal. He may hire the services of Architect having usual place of residence in Mumbai. Here, the entire economic activity is culminating in the form of construction of school and such activity is taking place in Bhopal. Services in relation to immovable property are treated as supplied at the location of immovable property. Therefore, in this case the place of supply is Bhopal.

The supplies that are covered under this exception are,-

- a) The grant , assignment or surrender of any interest in or right over land;
- b) The grant, assignment or surrender of a personal right to call for or be granted any interest in or right over land;
- c) The grant, assignment or surrender of a license to occupy land or any other contractual right exercisable over or in relation to land (including the provision of holiday accommodation, tents and camping facilities);
- d) Any works of construction, demolition, conversion, reconstruction, alteration, enlargement, repair or maintenance of a building or civil engineering work; and
- e) It also covers the services of professionals such as estate agents, auctioneers, architects, surveyors and engineers, in so far as they are directly related to a specific site (or sites) of land. It does not apply where such services are only indirectly related to land, or where the land related service is only an incidental component of a more comprehensive service. Examples of land related services include,-
 - Services of estate agents, auctioneers, architects, surveyors, engineers and similar professional people relating to land, buildings or civil engineering works and management, conveyance, survey or valuation of property by a solicitor or surveyor;
 - seismic surveying and associated data processing services on land;
 - services of a loss adjuster in assessing validity of an insurance claim relating to damage to land or buildings;
 - legal services such as conveyancing and dealing with applications for planning permission;
 - accountancy services relating to the letting of property;

- lease or hire of exhibition stand space, where the specific stand space is reserved by an individual exhibitor;
 - property management, including rent collection and arranging for routine maintenance;
 - interior designing in buildings;
 - leases of buildings for less than 21 years (which is a supply of a service);
 - provision of hotel or holiday accommodation;
 - options to purchase land;
 - provision of car parking, provision of space in a warehouse (whether in a designated area or not).
- f) Services in the course of construction, alteration, demolition, repair or maintenance of any building or civil engineering work on land, including painting, decorating, and the supply of plant or machinery together with an operator for work on a construction site.
- g) The provision in an hotel, or similar accommodation of sleeping accommodation or of accommodation in rooms which are provided in conjunction with sleeping accommodation or for the purpose of a supply of catering.

(ii) Restaurant services, catering services and other performance based services-Place of supply shall be the place of performance [section 6 (5)]

The services provided by a restaurant, beauty parlour, therapeutic massage centre, dance or drama classes or other training or coaching etc are such services which require simultaneous presence of service provider and service receiver. The place of supply of such service has been prescribed as the location where such services is performed. The restaurant and catering services are also performance based services. The place of performance of these services, and thus place of consumption thereof is readily ascertainable. The place of supply of these services will be where the services are actually performed and it is the closest proxy for determining the place of supply of these services.

(iii) The place of supply of training and performance appraisal when provided to a non-registered person- Place of supply shall be the place of performance service [Section 6(6)].

The place of supply of such services to a registered person is governed by the default rule, i.e., location of service recipient. However, in respect of B2C supply the location of such supply is the place where such services are performed.

(iv) Admission to an event or amusement park- Place of supply shall be the place of performance service where event is held [section 6(7)].

Illustratively

A Mumbai based event manager organizes an event in Hyderabad. It allows admission to the employee of Bangalore based company in the said event. The place of supply of this service is Hyderabad as even is held there.

(v) Services relating to organizing an events when provided to a non-registered person - Place of supply shall be the location where event is held [section 6(8)].

The place of supply of services that have direct nexus to the admission, organization and conduct of an event is determinable as the place of such event.

Services covered under this sub-rule are,

- any supply of cultural, artistic, sporting, technical support, educational, or entertainment services
- miscellaneous services relating to organizing exhibitions, conferences, or meetings
- Sporting services include
 - (i) individual sports persons appearing at an event for a fee (appearance money')
 - (ii) organisation of sporting events such as races and tournaments, and provision of race prepared cars to racing teams or drivers, comprising a package including the hire of the car and support services to ensure the optimum maintenance and operation of the car throughout a series of races.
- Entertainment services include of the services of an artist or performer before a live audience, or services relating to a performance. It would also include the services of a DJ or musician at a concert or event.

(vi) Goods transportation services including courier or mail when provided to a non-registered person [section 6(9)]-

Place of supply of B2C supply shall be the location where such goods are handed over for transportation. For B2B services default rule shall be followed.

(vii) Passenger transportation service when provided to a non-registered person - [section 6(10)]

Place of supply shall be the location where the passenger embarks for a continuous journey. For B2B services default rule shall be followed. Therefore in respect of a flight from Delhi to Chennai, when provided to a non-business entity, the place of supply shall be Delhi.

(viii) Services provided on board a conveyance- [Section 6(11)]

Place of supply of service provided on board a conveyance shall be the location first schedule point of departure of the conveyance.

(ix) Telecom services -Cable services/DTH services [Section 6(12)]

The place of supply of telecom company to a customer shall be determined in the following manner;

(i) in case of service by way of fixed telecom line, leased circuits, internet leased circuit shall be the state where the fixed line is made available to the user ;

(ii) In case of mobile connection for telecom and internet service provided on post-paid basis, the place of supply shall be the billing address for such service;

(iii) In case where such service is provided on pre-paid basis through a pre-paid voucher the place of supply of service shall be the state where such vouchers are sold. However, if voucher are sold on internet banking or other mode of e-payment then in such cases the location/address of recipient would be available. Hence in such cases the place of supply of service be the recipient location on the record.

(iv) The place of supply of such services is determinable almost like telecom service, in the following manner. The place of supply of service by way of cable connection and direct to home connection service shall be the state where such connection is made available to the service recipient. For example Tatasky has a registered business premises in Chandigarh from where it supplies services to whole of India. Tatasky can identify, at the time of payment itself, the location of the subscriber in case of payment made, other than by way of pre-paid vouchers.

(X) The Place of supply of banking and financial services including the stock broking service shall be the location of service recipient on record. If location is not available then the location of service provider shall be the place of supply of service. [Section 6(13)]

This provision shall cover a transaction of lease/hire-purchase finance, money changing, mutual fund service, bill discounting, credit card service, banking services, brokerage service, demat services etc.

(XI) The Place of supply of insurance services in case of B2C transaction shall be the location of service recipient on record. For B2B services it shall be the location of recipient, i.e., default rule [Section 6(14)]

(XII) Place of supply advertisement service to the Central Government, State Government, a statutory body etc [Section 6(15)]-

The place of supply of such services shall be the state to which such service identifiable. If it is attributable to more than one state, it shall be determined in terms of contract and in absence thereof it shall be determined on reasonable basis as may be prescribed.

Illustratively

- (i) A Government Department , say, Women and Child Welfare, from Delhi office hires the services of say Doordarshan, also located in Delhi for advertisement campaign across the country. The campaigns are broadcasted across the country;
- (ii) Income tax department hires the service of Times of India from a centralized location for publication of advertisement in all editions across the country;
- (iv) A national political party hires a service broadcasting channel or paper for dissemination of advertisement across the country.



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24. Frontend Business Process on GST Portal

1. Imperatives Driving GST and GSTN :

The proposed implementation of GST, a destination based consumption tax, has been designed as a dual VAT, keeping in view the unique federal nature of India's Constitutional Polity. The different imperatives driving this reform and role of GSTN in achieving them is briefly spelled out below

1.1 Seamless Flow of Input Tax Credit across the Country

GST rollout envisages implementation of 35 GST Laws of the different State governments and the Central Government in such a manner so as to ensure seamless flow of input tax credit across States in the country. For achieving the seamless flow of input tax credit it has been proposed that the all interstate transaction will attract a levy of IGST, approximately equal to the sum of the CGST levy and the Standard SGST levy for a particular commodity. Consequently, in case of business to business (B2B) transactions the recipient will accumulate IGST credit which can be utilised for discharging his liabilities of IGST, CGST or SGST. Successful implementation of this scheme will require prompt verification of the IGST credits claimed on interstate transactions in the returns.

Hence a need was felt for a trustworthy entity which will facilitate ITC verification on interstate transactions. Further, a strong need has been felt by all the State governments for quick verification of all type of input tax credits claimed by the taxpayers which would be facilitated by the GST system managed by an entity having very strong IT infrastructure.

1.2 Settlement of IGST on interstate transaction to consumers to the destination State Govt. and the Central Government.

GST is a destination based consumption tax in which interstate transactions are proposed to be taxed at full rate. Under this design the tax on transactions destined to a consumer in a different state will be collected at full rate in the state of origin as IGST but it will be apportioned between the Central Government and the destination State government. The information support and the accounting of this settlement needs to be done by an independent entity.

Further, to simplify the administration of the GST regime, it is proposed that the IGST credit can be used to pay CGST and SGST liabilities and the IGST liabilities can be discharged using SGST and IGST credits. This would however impact the revenues of the State and Central Governments and the GST system is expected to provide information on the cross utilisation of IGST credit, SGST credits and CGST

credit to finally transfer funds amongst the IGST, CGST and SGST accounts to reverse any impact caused by cross utilisations. This again has to be performed by the GST system.

1.3 Ease of doing business and minimisation of Compliance Cost:

The indirect tax domain in India has developed in a very complex manner. The GST reform is expected to simplify it. However, the federal nature of polity imposes constraint on the extent of simplification possible. There are going to be 34 State GST Laws and one Central GST laws. To overcome this limitation, a need was felt to have a single common interface with the tax payer through a GST Common Portal, which will be the medium for most of his interactions with the tax authorities. A tax payer will take registration through this common portal, file a single return for each tax period, make payments of all types of due taxes, and claim all types of refunds.

The complexity of the GST System can be envisioned with the data which the GST System is expected to handle as given below:

- a. 70 to 80 Lakhs taxpayers;
- b. 260 to 300 Crores B2B invoice data per month
- c. More than 120,000 tax officials to work
- d. Monthly filing of returns
- e. Credit of ITC

In view of the above complexities and requirement, an Empowered Group on IT for GST was set up under the chairmanship of Shri Nandan Nilkeni in the year 2010 to prepare the IT strategy for GST Implementation. This task group recommended the setting up of GSTN as a private section 25 company with the central government and the State Government holding 24.5 % each (together around 49%) and rest with private institutional players. The strategic control of this organisation was envisioned to jointly with the Central and State Governments. The recommendations of the Committee were approved by the Empowered Committee of State Finance Ministers (EC) and the Union Cabinet, which led to incorporation of Goods and Services Tax Network, as a Section 25 (not for profit), non-Government, private limited company in March 2013. The union cabinet while approving creation of GSTN also approved that GSTN will be an exclusive national agency responsible for delivering integrated Indirect Tax related services involving multiple tax authorities, which will provide common Registration, Return filing and e-Payment services to the taxpayers. The Cabinet also empowered it to charge the users of the GST Systems namely tax authorities and the taxpayers.

Apart from providing shared IT Infra for registration, return and tax payment, GSTN is also supposed to

- i. Ensure integration of the GST Common Portal with existing tax administration systems of Central / State Governments and other stakeholders
- ii. Run the clearing-house mechanism for IGST amongst centre and states
- iii. Provide Analytics and Business Intelligence to tax authorities
- iv. Carry out research, study best practices and provide training to the stakeholders

To retain strategic control but yet provide flexibility and agility, GSTN has been created as a special purpose vehicle (SPV) for the implementation of common IT Infrastructure for GST with following equity structure:

Central Government	24.5%
State Governments & 2 UTs & EC Collectively	24.5%
LIC Housing Finance Ltd	11%
ICICI Bank Ltd	10%
HDFC Ltd	10%
HDFC Bank Ltd	10%
NSE Strategic Investment Corporation Ltd	10%

2. Interface between GST Core Systems and State/CBEC System

In 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. While GSTN shall develop and host application modules (termed as back-end modules) supporting such statutory functions for 19 States (termed as “Model 2” States), rest of States and Central government (termed as “Model 1” States) have decided to develop and host the back-end modules themselves. (List of Model 1 and Model 2 states as on 30th June 2016 is as per Annexure-I). Schematic diagram of interaction between GST System and the IT Systems of CBEC/States is given in the diagram below.

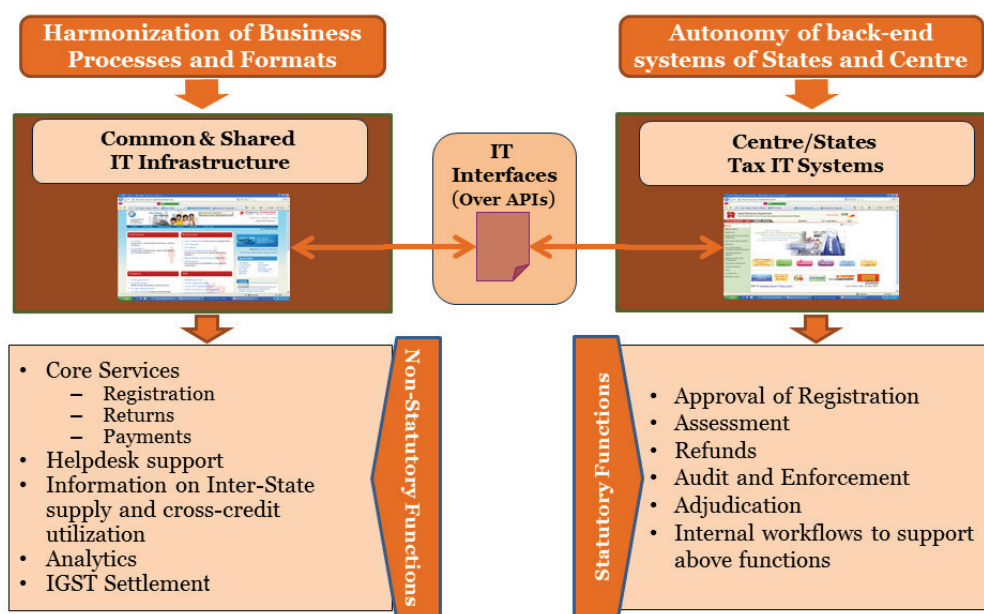


Fig. – Typical Schematic of Integration of GST with States/CBEC

It is imperative that GST System and such back-end modules shall have two-way data exchange for smooth administration of GST. The registration, return and payment information submitted at GST System shall be forwarded to the back-end system on near real-time basis while response generated at back-end system shall flow back to GST System. There shall be scenarios where information shall be generated at back-end systems that need to flow to GST System such as when a demand is generated at the back-end system after completion of an audit or assessment process. GST System shall have provision for receipt of such intimation, just like claims (e.g. refund claims), processing thereof as per law, and for issuance of authorisation with accounting and MIS.

3. Core functions at GST System

a. Registration

a) New Taxpayer Registration

Registration of a business with the tax authorities implies obtaining a unique identification code from the concerned tax authorities so that all the operations of and data relating to the business can be agglomerated and correlated. In any tax system this is the most fundamental requirement for identification of the business for tax purposes or for having any compliance verification program. It is pertinent to mention here that in GST regime, there will be dual authority (concerned State and Central governments) for every taxpayer and registration will be accorded only after due approval from both the authorities are in place.

b) Amendment of Registration

Capturing registration information is not a one-time activity and any change in critical information should be reported / entered at the GST System within a stipulated time period to be specified in GST Laws. Accordingly, every registered taxpayer will have the option to amend his registration information (barring few fields such as PAN, Legal Business Name / Proprietor Name, State Code etc.) at the GST System.

c) Surrender of Registration

Surrender module will be available for all valid and active GSTINs. GST System will provide the facility to the registered taxpayer to voluntarily surrender the GSTIN. There are certain situations in which the taxpayer might surrender the GSTIN; some of them are as follows:

- a. Closure of the business
- b. Transfer of business, due to death of taxpayer
- c. Change in the nature of business
- d. Change in the constitution of business from proprietary to partnership or otherwise
- e. Amalgamation of two or more business entities etc.

d) Cancellation of Registration

The cancellation of registration may be initiated by tax authorities in certain situations such as following:

- I. In case a tax payer contravenes specified provision of the GST laws;
- II. In case a taxpayer has not filed any return at all during a predetermined period.

Illustration: Business Process of Registration

The application for Registration will be made Online on GST Portal. The registration will be based on PAN of the Entity. The system envisages minimal documentation for registration as some of the key data like PAN, Business Constitution, Aadhaar, CIN/DIN etc. (as applicable) will be validated online against respective agency i.e. CBDT, UID, MCA etc. The typical workflow of information and responsibilities across GST and CBEC/States in Registration process are as per below:

From GST Systems to States	From States to GST System
Validated Registration application data; or application for amendment/surrender	Query or demand for additional documents, if any
Supporting scanned documents	Approval or Rejection
Additional Document or clarification	Digitally signed Registration Certificate

b. Return

A return is a statement of specified particulars relating to business activity undertaken by taxable person during a prescribed period. A taxable person has a legal obligation:

- a. To declare his tax liability for a given period in the return;
- b. Furnish details about the taxes paid in accordance with that return; and
- c. File correct and complete return within stipulated time frame.

A return needs to be filed even if there is no business activity (i.e. Nil Return) during the period of return. Taxpayers will file return in electronic form only. There will be one common return form for all different types of GST i.e. CGST, SGST, IGST and Additional Tax.

c. Payments

In GST regime, every taxpayer will have to make payment of the due tax, interest, penalty and other amounts specified in law and incorporate such payment information details into the return form before filing of such return. Payment may also be made for other purposes such as for demand against assessment order etc.

4. Approach to the GST System

GSTN has engaged M/S Infosys as a single Managed Service Provider (MSP) for the design, development, deployment of GST system, including all application software, tools and Infrastructure and operate & maintain the same for a period of 5 years from Go-Live. The various tracks under the GST system project are as under:

- Application design, development and implementation of GST common portal

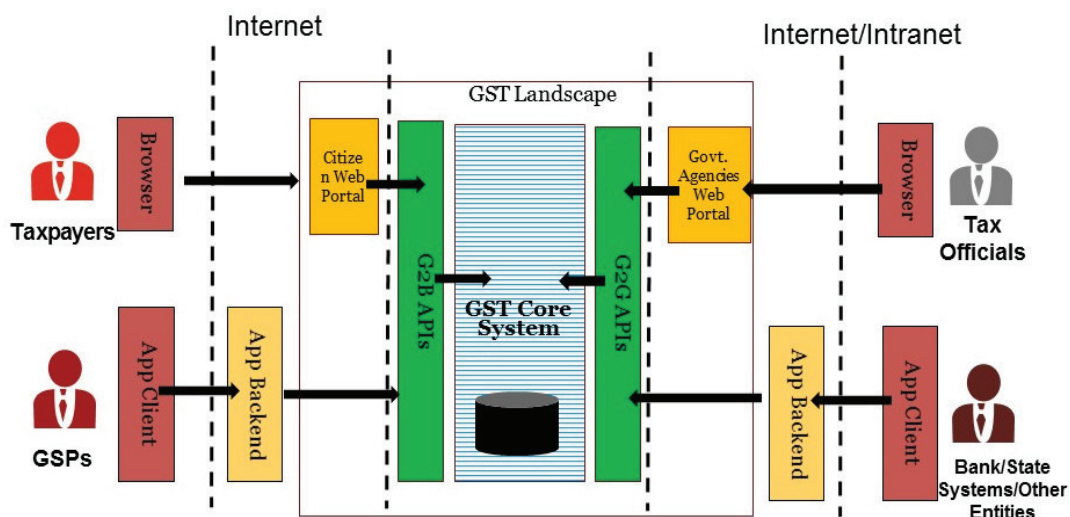
- Backend Modules for Model 2 states
- Taxpayer one time Data Migration and issue of GSTIN
- IT Infrastructure procurement, supply, installation and Info Security
- DC/DR Hosting Services including providing Bandwidth for the project
- Technical Helpdesk Setup and Operations
- Training and Capacity Building
- Operations and Maintenance of the GST System for 5 years from Go-Live

5. GST System Technical Architecture

The GST portal will be direct, browser-based interface for Taxpayers and Tax officials to access GST services. However the GST system is designed to be built on open APIs which can provide platform-independent interfaces to systems at other model-1 State/UT Commercial Tax departments, Central Tax authorities, Agency banks, RBI, CAG, CGA and other stakeholders in GST system.

Some schematics of high level design of the system are as per diagrams below:

GST System – Schematic Design



G2G : Govt to Govt

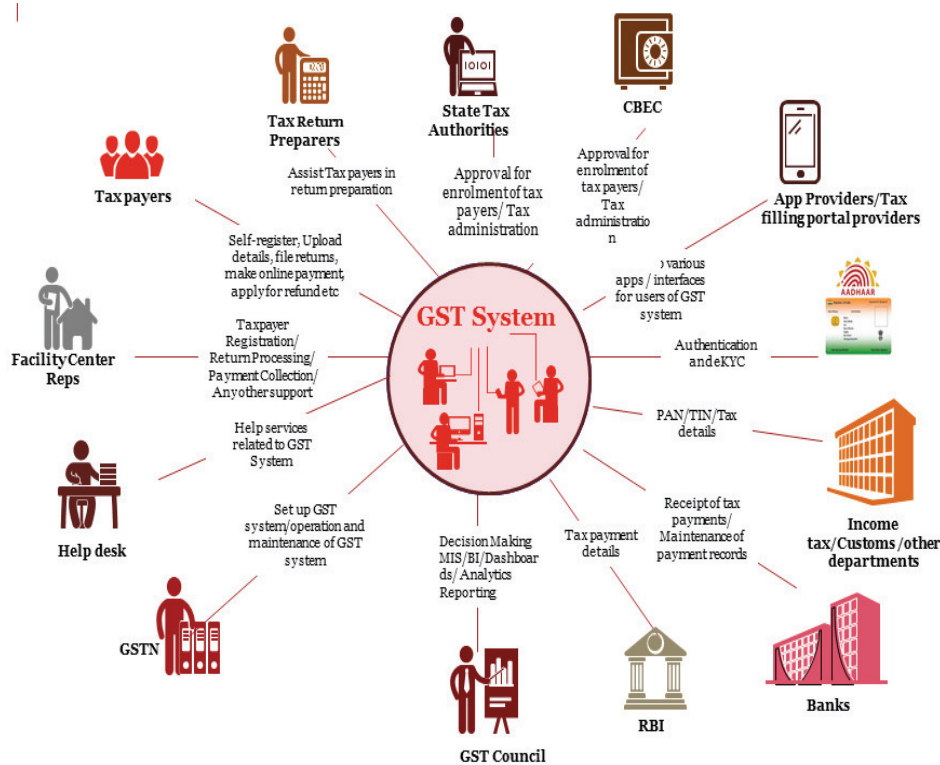
G2B : Govt. to Business

API : Application Programming Interface

6. GST Eco-System

There are multiple stakeholders in GST eco-system:

- a) Tax Payers
- b) CAs/Tax Advocates/TRPs
- c) Banks/ RBI
- d) GST Council
- e) CBEC/State Tax Authorities
- f) Helpdesk
- g) CAG
- h) CGA
- i) 3rd Party Application developers
- j) Aadhaar/MCA21/CBDT



GST Eco-System

7. Key solution design principles

GST System IT Framework is designed around following key design principles that define the state-of-the-art in modern design practice:

- a. **Platform Approach** : Designed as a platform powered by a faceless Open API architecture
- b. **Openness** : Adoption of Open API and Open Standards
- c. **No Vendor lock-in and Replace-ability** : Vendor neutrality to be driven by design ensuring plug-ability and adherence to standards
- d. **Security and Privacy** : Privacy and data integrity and disseminate data to authenticated and authorized users
- e. **Scalability** : Scalability to be driven by application design ensuring scaling out with hardware addition in a modular fashion
- f. **Availability** : Load Balanced in an active-active fashion avoiding single point of failure
- g. **Manageability** : Ensuring non-intrusive monitoring of components assuming infrastructural failure is commonplace
- h. **Reliability** : Ensure Data integrity and prevent unauthorized manipulation of data
- i. **Data Driven Decision Making** : Capture enough system analytical data to provide improvement indicators
- j. **Reconstruction of truth** : Tamper resistance capacity and source of truth (original data of invoices and final returns) could be used to reconstruct derived data

The design is aimed at following key outcomes:



Figure – Key outcomes of solution design principles

b) GST Common Portal:

The GST portal shall be accessible over Internet (by Taxpayers and their CAs/Tax Advocates etc.) and Intranet by Tax Officials etc. The portal shall be one single common portal for all GST related services e.g.

- i. Tax payer registration (New, surrender, cancelation, etc.)
- ii. Invoices upload, auto-drafting of Purchase register of buyer Periodic GST Returns filing
- iii. Tax payment including integration with agency banks
- iv. ITC, Cash and Liability ledger
- v. MIS reporting for tax payers, tax officials and other stakeholders
- vi. BI/Analytics for Tax officials

c) Integration with systems of States & CBEC

Model 1 States

- a) All model 1 states will continue to use their own IT systems. However they will have to augment their system to receive and transmit data from/to GST system based on web services (open APIs). The APIs are being provided by the GSTN to States/CBEC for various transactional activities, specific reports etc.
- b) As an illustration, when a Taxpayer files Registration data in GST system, the registration information along with uploaded scanned documents are transmitted to the respective State's IT system as well as CBEC's IT system. In case of any additional information requirement, state/CBEC official updates the same in their system, which is pushed to GST system as status update to the tax payer. In case, Registration is approved or rejected, the status is transmitted to GST system through open Web Services. Thus, Tax payer is able to check Registration status anytime on GST portal.
- c) In the same manner, returns, payments etc. information shall also be transmitted to respective state on continuous basis and they will be able to process the information as per their own processes, thus ensuring autonomy of state side IT system for Model 1 states.

Model 2 States

For model 2 states (presently 19 in nos. List as per annexure-I), GSTN will develop standard backend modules as per list below:

- a. Approval of Dealer Registration
- b. Return Processing & Payment
- c. Refund

- d. Audit
- e. Assessment
- f. Appeal and Revision
- g. Recovery and Write-off/DCR
- h. Enforcement and Survey
- i. MIS/Reports
- j. Advance ruling
- k. Policy and administration
- l. Prosecution

All these backend modules shall be hosted in the same data center as GST system, however on separate servers, storage etc. The tax officials of Model 2 shall access these backend modules for their various administrative needs over dedicated MPLS network links provided by GSTN for the purpose. Thus Model 2 states need not provide any servers, storage or applications etc. for GST operations. However, Model-2 States will have to assess and maintain the adequacy of their IT systems at their end in terms of the following:

- End Points (Desktops, Laptops etc.)
- Network and Security devices in their internal network (LAN etc.)
- Network Links and their capacity in their WAN (State WAN etc.)
- Information Security (Anti-Malware, Malicious Content filtering etc.)
- User ID and Password management
- Existing IT Systems of VAT/Service Tax/Excise

d) Business Intelligence/Analytics

The GST system shall include a robust Business Intelligence (BI) system (in Phase-III of the project). The system which is aimed to help policy makers for policy formulation and economic analysis shall provide following features:

- a. Building the data warehouse landscape and BI reporting based on data captured
- b. Analytics (predictive modelling based on structured and unstructured data)
- c. Reporting system with visualization, ad-hoc reporting, slicing and dicing capabilities.
- d. The BI system will be used by States, UTs, CBEC, GSTN Team and GST Council for various analytics and dynamic reporting.
- e. Approximate cumulative users of this solution shall be 500 at the start of the project, which may go up in subsequent years. These users shall access the GST System for various BI reports and analytics.

GSTN also intends to implement appropriate fraud management system at a later date through another service provider. The Selected service provider for fraud analytics system will provide requisite specific tools for the purpose.

e) Information Security and Confidentiality

Considering the sensitivity of data in GST system, there is a great focus on information security aspects of the system i.e. Confidentiality, Integrity, Availability and non-repudiation etc. There are many key components included in the Information security Architecture of the system:

- a) Core GST System will not be directly exposed to internet
- b) Multi-layered security architecture with some best of the breed technologies & products – DDoS, Network & Application Firewalls, NIPS, HIPS, Anti-APT, dedicated Encryption devices, DB encryption, SIEM, IDEM and PIM solutions
- c) Access to GST system through Secured tunnel & will have additional layer of control through Two Factor Authentication (2FA) e.g. OTP for critical transactions
- d) Any data transfer from GST System to State system / other system to be done in encrypted format
- e) Real-time collection & monitoring of System logs
- f) Periodic Vulnerability Assessment, Penetration Testing, security and other audits through third party auditors
- g) Certification done against key well-regarded and popular standards e.g. ISO 27001, ISO 20000, ISO 22301

In the GST system being developed by GSTN the requirements of confidentiality and security are being addressed by classifying information in the following four categories

Level	Description	Examples
Level 1 (Public)	Information that is available to all GST system users without any restrictions	(i) GST web public content (ii) GSTIN, Status, Name
Level 2 (Internal)	Information is available to only a sub-set of internal users from GSTN & SP	(i) Configuration parameters (ii) Rules (iii) Application Logs etc.

Level	Description	Examples
Level 3 (Confidential)	Level 2 restrictions plus Information is sensitive needs to be protected through Encryption or through other data masking techniques	(i) Sensitive data and personal information (Bank account details, PAN, Aadhaar number) (ii) Personal information such as Mobile number, Address, Email id (iii) Invoice data, Tax returns details, Ledger entries
Level 4 (Secret)	Information that available to only very few (1 or 2) users.	(i) Passwords (ii) Digital signature, Encryption keys (iii) Highly confidential Govt communication

Annexure - I

List of Model-1 and Model-2 States as on 30th June 2016

States and UTs with legislature		States
1	Arunachal Pradesh	1. Andhra Pradesh
2	Assam	2. Goa
3	Bihar	3. Gujarat
4	Delhi	4. Haryana
5	Himachal Pradesh	5. J & K
6	Manipur	6. Karnataka
7	Mizoram	7. Kerala
8	Nagaland	8. Maharashtra
9	Odisha	9. Meghalaya
10	Puducherry	10. Punjab
11	Tripura	11. Rajasthan
12	Uttar Pradesh	12. Sikkim
13	Uttrakhand	13. Tamil Nadu
14	Madhya Pradesh	14. Telangana
15	Chhattisgarh	15. West Bengal
16	Jharkhand	
UTs without Legislature		
1	Chandigarh	CBEC
2	Daman & Diu	
3	Dadra & Nagar Haveli	